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FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1204

RIN 2590–AA46

Privacy Act Implementation

AGENCY: Federal Housing Finance Agency.

ACTION: Interim final regulation with request for comments.

SUMMARY: The Federal Housing Finance Agency (FHFA) is issuing this interim final regulation with a request for comments on changes to its existing Privacy Act regulation. The changes to the existing Privacy Act regulation provide the procedures and guidelines under which FHFA and FHFA Office of Inspector General (FHFA–OIG) will implement the Privacy Act of 1974, as amended (5 U.S.C. 552a) (Privacy Act). The interim final regulation describes the policies and procedures whereby individuals may obtain notification of whether an FHFA or FHFA–OIG system of records contains information about the individual and, if so, how to access or amend a record under the Privacy Act.

DATES: The interim final regulation is effective August 19, 2011. FHFA will accept comments on the interim final regulation on or before October 18, 2011. For additional information, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: You may submit your comments on the interim final regulation, identified by ''RIN 2590–AA46,'' by any one of the following methods:

- *E-mail:* Comments to Alfred M. Pollard, General Counsel, may be sent by e-mail to *RegComments@fhfa.gov.* Please include ''RIN 2590–AA46'' in the subject line of the message.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. If you submit your comment to the Federal eRulemaking Portal, please also send it by e-mail to FHFA at *RegComments@fhfa.gov* to ensure timely receipt by FHFA. Include the following information in the subject line of your submission: ''Comments/RIN 2590–AA46.''
- *U.S. Mail Service, United Parcel Service, Federal Express, or other commercial delivery service to:* Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA46, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. *Please note that all mail sent to FHFA via the U.S. Mail service is routed through a national irradiation facility, a process that may delay delivery by approximately two weeks. For any time-sensitive correspondence, please plan accordingly.*
- *Hand Delivery/Courier to:* Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA46, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The package must be logged at the Guard Desk, First Floor, on business days between 9 a.m. and 3 p.m.

FOR FURTHER INFORMATION CONTACT: Stacy J. Easter, Privacy Act Officer, telephone (202) 414–3762; David A. Lee, Senior Agency Official for Privacy, telephone (202) 414–3804, (not toll-free numbers), Federal Housing Finance Agency, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Comments

FHFA is issuing an amendment to 12 CFR part 1204 to include language concerning Privacy Act requests as they relate to FHFA–OIG, as well as to clarify and update the existing regulation. FHFA invites comments on all aspects of the interim final regulation and will take all comments into consideration before issuing a final regulation. All submissions received must include the agency name or Regulatory Information Number (RIN) for this rulemaking. Copies of all comments received will be posted without change on the FHFA Web site, *http://www.fhfa.gov,* and will include any personal information provided. In addition, copies of all comments received will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m. at the Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. To make an appointment to inspect comments, please call the Office of General Counsel at (202) 414–6924.

II. Effective Date and Request for Comments

FHFA has concluded that good cause exists, under 5 U.S.C. 553(b)(B) and (d)(3), to waive the notice-and-comment and delayed effective date requirements of the Administrative Procedure Act and to proceed with this interim final regulation. The changes to part 1204 primarily cover how FHFA–OIG will implement the Privacy Act and make clarifying and general updates to the existing regulation, but do not fundamentally change the regulation's nature or scope. Further, in light of the significant need for immediate guidance regarding FHFA–OIG's role in the Privacy Act process, FHFA has determined that notice-and-comment rulemaking is impracticable and contrary to public policy. Nevertheless, FHFA is providing the public with a 60-day period following publication of this document to submit comments on the interim final regulation.

III. Background

A. Establishment of the Federal Housing Finance Agency

The Housing and Economic Recovery Act of 2008 (HERA), Public Law 110–289, 122 Stat. 2654, amended the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Safety and Soundness Act) (12 U.S.C. 4501 *et seq.*) and the Federal Home Loan Bank Act (12 U.S.C. 1421–1449) to establish FHFA as an independent agency of the Federal Government to ensure that the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Federal Home Loan Banks (collectively, the regulated entities) are capitalized adequately; foster liquid, efficient, competitive and resilient national housing finance markets; operate in a safe and sound manner; comply with the Safety and Soundness Act and all rules, regulations, guidelines and orders issued under the Safety and Soundness Act, and the regulated entities' respective authorizing statutes; carry out

their missions through activities consistent with the aforementioned authorities; and the activities and operations of the regulated entities are consistent with the public interest.

In 2009 FHFA issued a final regulation on the Privacy Act at 12 CFR part 1204 (74 FR 33907 (July 14, 2009)). The final regulation provided the procedures and guidelines under which FHFA would implement the Privacy Act. FHFA–OIG did not exist when the regulation was adopted, but came into existence the following year (2010). This interim final regulation amends FHFA's 2009 Privacy Act regulation by adding provisions on how FHFA–OIG will implement the Privacy Act as well as to clarify and update the existing regulation.

B. Establishment of the Office of Inspector General for the Federal Housing Finance Agency

Section 1105 of HERA amended the Safety and Soundness Act and the Inspector General Act of 1978, as amended, by specifying that there shall be established an Inspector General within FHFA. *See* 12 U.S.C. 4517(d). Among other duties, FHFA–OIG is responsible for conducting audits, evaluations, and investigations of FHFA's programs and operations; recommending polices that promote economy and efficiency in the administration of FHFA's programs and operations; and preventing and detecting fraud, waste, and abuse in FHFA's programs and operations.

C. Privacy Act

The Privacy Act serves to balance the Federal Government's need to maintain information about individuals while protecting individuals against unwarranted invasions of privacy stemming from Federal agencies' collection, maintenance, use, security, and disclosure of personal information about them that is contained in systems of records. The Privacy Act requires each Federal agency to publish regulations describing its Privacy Act procedures and any system of records it exempts from provisions of the Privacy Act, including the reasons for the exemption. Pursuant to the Privacy Act, FHFA and FHFA–OIG will inform the public of each system of records it maintains by separately publishing notices of each system of records in the **Federal Register** and also on the FHFA Web site at *http://www.fhfa.gov.* The notices will describe the standards for FHFA and FHFA–OIG employees regarding collection, use, maintenance, or disclosure of records in the system and identify whether information in the system is exempt from provisions of the Privacy Act. The system manager responsible for the system will also be identified and any other contact information will be included. Moreover, notices will provide individuals with detailed information regarding the exercise of their rights, such as how to determine whether a system contains a record pertaining to them, how to access those records, how to seek to amend or correct information in a record about them, and how to contest adverse determinations with respect to such a record.

IV. Section-by-Section Analysis

Section 1204.1 Why did FHFA issue this regulation?

This section describes the purpose of the regulation, which is to implement the Privacy Act, and explains general policies and procedures for individuals requesting access to records, requesting amendments or corrections to records, and requesting an accounting of disclosures of records. In addition, there are minor editorial changes to the existing regulation for clarity and consistency purposes, as well as to notify the public that this regulation applies to FHFA–OIG.

Section 1204.2 What do the terms in this regulation mean?

This section sets forth definitions of select terms in this part and includes new definitions, as well as definitions relating to FHFA–OIG.

Section 1204.3 How do I make a Privacy Act request?

This section is amended to explain what an individual must do to submit a valid request to FHFA or FHFA–OIG for access to records, to amend or correct records, or for an accounting of disclosures of records. It also describes the information an individual must provide to FHFA or FHFA–OIG so that FHFA or FHFA–OIG may identify the records sought and determine whether the request can be granted.

Section 1204.4 How will FHFA or FHFA–OIG respond to my Privacy Act request?

This section describes the period of time within which FHFA or FHFA–OIG will respond to requests. It also explains that FHFA or FHFA–OIG will grant or deny requests in writing, provide reasons if a request is denied in whole or in part, and explain the right of appeal. In addition, there are minor editorial changes to the existing regulation for clarity and consistency purposes.

Section 1204.5 What if I am dissatisfied with the response to my Privacy Act request?

This section describes when and how an individual may appeal an FHFA or FHFA–OIG determination on a Privacy Act request and how and within what period of time FHFA or FHFA–OIG will make a determination on an appeal. In addition, minor editorial changes have been made for clarity and consistency purposes.

Section 1204.6 What does it cost to get records under the Privacy Act?

This section explains that requesters are expected to pay fees for the duplication of requested records.

Section 1204.7 Are there any exemptions from the Privacy Act?

This section explains that certain exemptions from the Privacy Act exist, explains how those exemptions are made effective, what the effect of an exemption is, and how to determine whether an exemption applies. In particular, this section details those FHFA–OIG records that are potentially exempt from the Privacy Act. In addition, minor editorial changes have been made for clarity and consistency purposes.

Section 1204.8 How are records secured?

This section explains how FHFA and FHFA–OIG generally protect records under the Privacy Act.

Section 1204.9 Does FHFA or FHFA–OIG collect and use Social Security numbers?

This section explains that FHFA and FHFA–OIG collect Social Security numbers only when authorized and describes the conditions under which they may be collected.

Section 1204.10 What are FHFA and FHFA–OIG employee responsibilities under the Privacy Act?

This section lists the responsibilities of FHFA employees under the Privacy Act.

Section 1204.11 May FHFA–OIG obtain Privacy Act records from other federal agencies for law enforcement purposes?

This is a new section. This section explains that the FHFA Inspector General or designee may obtain records under the Privacy Act from other Federal agencies for law enforcement purposes.

Regulatory Impacts

Paperwork Reduction Act

The interim final regulation does not contain any information collection requirement that requires the approval of OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation does not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). FHFA has considered the impact of the interim final regulation under the Regulatory Flexibility Act. FHFA certifies that the regulation is not likely to have a significant economic impact on a substantial number of small business entities because the regulation is applicable to the internal operations and legal obligations of FHFA and FHFA–OIG.

List of Subjects in 12 CFR Part 1204

Amendment, Appeals, Correction, Disclosure, Exemptions, Fees, Privacy, Privacy Act, Records, Requests, Social Security numbers.

Authority and Issuance

Accordingly, for the reasons stated in the preamble, FHFA revises part 1204 of chapter XII of title 12 of the Code of Federal Regulations to read as follows:

PART 1204—PRIVACY ACT IMPLEMENTATION

Sec.

1204.1 Why did FHFA issue this part?
1204.2 What do the terms in this part mean?
1204.3 How do I make a Privacy Act request?
1204.4 How will FHFA or FHFA–OIG respond to my Privacy Act request?
1204.5 What if I am dissatisfied with the response to my Privacy Act request?
1204.6 What does it cost to get records under the Privacy Act?
1204.7 Are there any exemptions from the Privacy Act?
1204.8 How are records secured?
1204.9 Does FHFA or FHFA–OIG collect and use Social Security numbers?
1204.10 What are FHFA and FHFA–OIG employee responsibilities under the Privacy Act?
1204.11 May FHFA–OIG obtain Privacy Act records from other Federal agencies for law enforcement purposes?

Authority: 5 U.S.C. 552a.

§ 1204.1 Why did FHFA issue this part?

The Federal Housing Finance Agency (FHFA) issued this part to—

(a) Implement the Privacy Act, a Federal law that helps protect private information about individuals that Federal agencies collect or maintain. You should read this part together with the Privacy Act, which provides additional information about records maintained on individuals;

(b) Establish rules that apply to all FHFA and FHFA Office of Inspector General (FHFA–OIG) maintained systems of records retrievable by an individual's name or other personal identifier;

(c) Describe procedures through which you may request access to records, request amendment or correction of those records, or request an accounting of disclosures of those records by FHFA or FHFA–OIG;

(d) Inform you, that when it is appropriate to do so, FHFA or FHFA–OIG automatically processes a Privacy Act request for access to records under both the Privacy Act and FOIA, following the rules contained in this part and in FHFA's Freedom of Information Act regulation at part 1202 of this title so that you will receive the maximum amount of information available to you by law;

(e) Notify you that this part does not entitle you to any service or to the disclosure of any record to which you are not entitled under the Privacy Act. It also does not, and may not be relied upon, to create any substantive or procedural right or benefit enforceable against FHFA or FHFA–OIG; and

(f) Notify you that this part applies to both FHFA and FHFA–OIG.

§ 1204.2 What do the terms in this part mean?

The following definitions apply to the terms used in this part—

Access means making a record available to a subject individual.

Amendment means any correction of, addition to, or deletion from a record.

Court means any entity conducting a legal proceeding.

Days, unless stated as ''calendar days,'' are working days and do not include Saturdays, Sundays, and federal holidays. If the last day of any period prescribed herein falls on a Saturday, Sunday, or federal holiday, the last day of the period will be the next working day that is not a Saturday, Sunday, or federal holiday.

FHFA means the Federal Housing Finance Agency and includes its predecessor agencies, the Office of Federal Housing Enterprise Oversight (OFHEO) and the Federal Housing Finance Board (FHFB).

FHFA–OIG means the Office of Inspector General for FHFA.

FOIA means the Freedom of Information Act, as amended (5 U.S.C. 552).

Individual means a natural person who is either a citizen of the United States of America or an alien lawfully admitted for permanent residence.

Maintain includes collect, use, disseminate, or control.

Privacy Act means the Privacy Act of 1974, as amended (5 U.S.C. 552a).

Privacy Act Appeals Officer means a person designated by the FHFA Director to process appeals of denials of requests for or seeking amendment of records maintained by FHFA under the Privacy Act. For appeals pertaining to records maintained by FHFA–OIG, *Privacy Act Appeals Officer* means a person designated by the FHFA Inspector General to process appeals of denials of requests for or seeking amendment of records maintained by FHFA–OIG under the Privacy Act.

Privacy Act Officer means a person designated by the FHFA Director who has primary responsibility for privacy and data protection policy and is authorized to process requests for or amendment of records maintained by FHFA under the Privacy Act. For requests pertaining to records maintained by FHFA–OIG, *Privacy Act Officer* means a person designated by the FHFA Inspector General to process requests for or amendment of records maintained by FHFA–OIG under the Privacy Act.

Record means any item, collection, or grouping of information about an individual that FHFA or FHFA–OIG maintains within a system of records, including, but not limited to, the individual's name, an identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print, or photograph.

Routine use means the purposes for which records and information contained in a system of records may be disclosed by FHFA or FHFA–OIG without the consent of the subject of the record. Routine uses for records are identified in each system of records notice. Routine use does not include disclosure that subsection (b) of the Privacy Act (5 U.S.C. 552a(b)) otherwise permits.

Senior Agency Official for Privacy means a person designated by the FHFA

Director who has the authority and responsibility to oversee and supervise the FHFA privacy program and implementation of the Privacy Act.

System of Records means a group of records FHFA or FHFA–OIG maintains or controls from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. Single records or groups of records that are not retrieved by a personal identifier are not part of a system of records.

System of Records Notice means a notice published in the **Federal Register** which announces the creation, deletion, or amendment of one or more system of records. System of records notices are also used to identify a system of records' routine uses.

§ 1204.3 How do I make a Privacy Act request?

(a) *What is a valid request?* In general, a Privacy Act request can be made on your own behalf for records or information about you. You can make a Privacy Act request on behalf of another individual as the parent or guardian of a minor, or as the guardian of someone determined by a court to be incompetent. You also may request access to another individual's record or information if you have that individual's written consent, unless other conditions of disclosure apply.

(b) *How and where do I make a request?* Your request must be in writing. Regardless of whether your request seeks records from FHFA, FHFA–OIG, or both, you may appear in person to submit your written request to the FHFA Privacy Act Officer, or send your written request to the FHFA Privacy Act Officer by electronic mail, mail, delivery service, or facsimile. The electronic mail address is: *privacy@fhfa.gov.* For mail or delivery service, the address is: FHFA Privacy Act Officer, Federal Housing Finance Agency, 1700 G Street, NW., Washington, DC 20552. The facsimile number is (202) 414–6425. Requests for FHFA–OIG maintained records will be forwarded to FHFA–OIG for processing and direct response. You can help FHFA and FHFA–OIG process your request by marking electronic mail, letters, or facsimiles and the subject line, envelope, or facsimile cover sheet with ''Privacy Act Request.'' FHFA's ''Privacy Act Reference Guide,'' which is available on FHFA's Web site, *http://www.fhfa.gov,* provides additional information to assist you in making your request.

(c) *What must the request include?* You must describe the record that you want in enough detail to enable either the FHFA or FHFA–OIG Privacy Act Officer to locate the system of records containing it with a reasonable amount of effort. Include specific information about each record sought, such as the time period in which you believe it was compiled, the name or identifying number of each system of records in which you believe it is kept, and the date, title or name, author, recipient, or subject matter of the record. As a general rule, the more specific you are about the record that you want, the more likely FHFA or FHFA–OIG will be able to locate it in response to your request.

(d) *How do I request amendment or correction of a record?* If you are requesting an amendment or correction of any FHFA or FHFA–OIG record, identify each particular record in question and the system of records in which the record is located, describe the amendment or correction that you want, and state why you believe that the record is not accurate, relevant, timely, or complete. You may submit any documentation that you think would be helpful, including an annotated copy of the record.

(e) *How do I request for an accounting of disclosures?* If you are requesting an accounting of disclosures by FHFA or FHFA–OIG of a record to another person, organization, or Federal agency, you must identify each particular record in question. An accounting generally includes the date, nature, and purpose of each disclosure, as well as the name and address of the person, organization, or Federal agency to which the disclosure was made, subject to § 1204.7.

(f) *Must I verify my identity?* Yes. When making requests under the Privacy Act, your request must verify your identity to protect your privacy or the privacy of the individual on whose behalf you are acting. If you make a Privacy Act request and you do not follow these identity verification procedures, FHFA or FHFA–OIG cannot and will not process your request.

(1) *How do I verify my identity?* To verify your identity, you must state your full name, current address, and date and place of birth. In order to help identify and locate the records you request, you also may, at your option, include your Social Security number. If you make your request in person and your identity is not known to either the FHFA or FHFA–OIG Privacy Act Officer, you must provide either two forms of unexpired identification with photographs issued by a federal, state, or local government agency or entity (*i.e.* passport, passport card, driver's license, ID card, etc.), or one form of unexpired identification with a photograph issued by a federal, state, or local government agency or entity (*i.e.* passport, passport card, driver's license, ID card, etc.) and a properly authenticated birth certificate. If you make your request by mail, your signature either must be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. You may fulfill this requirement by having your signature on your request letter witnessed by a notary or by including the following statement just before the signature on your request letter: ''I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on [date]. [Signature].''

(2) *How do I verify parentage or guardianship?* If you make a Privacy Act request as the parent or guardian of a minor, or as the guardian of someone determined by a court to be incompetent, with respect to records or information about that individual, you must establish—

(i) The identity of the individual who is the subject of the record, by stating the individual's name, current address, date and place of birth, and, at your option, the Social Security number of the individual;

(ii) Your own identity, as required in paragraph (f)(1) of this section;

(iii) That you are the parent or guardian of the individual, which you may prove by providing a properly authenticated copy of the individual's birth certificate showing your parentage or a properly authenticated court order establishing your guardianship; and

(iv) That you are acting on behalf of the individual in making the request.

§ 1204.4 How will FHFA or FHFA–OIG respond to my Privacy Act request?

(a) *How will FHFA or FHFA–OIG locate the requested records?* FHFA or FHFA–OIG will search to determine if requested records exist in the system of records it owns or controls. You can find FHFA and FHFA–OIG system of records notices on our Web site at *http://www.fhfa.gov.* You can also find descriptions of OFHEO and FHFB system of records that have not yet been superseded on the FHFA Web site. A description of the system of records also is available in the ''Privacy Act Issuances'' compilation published by the Office of the Federal Register of the National Archives and Records Administration. You can access the ''Privacy Act Issuances'' compilation in most large reference and university libraries or electronically at the

Government Printing Office Web site at: *http://www.gpoaccess.gov/privacyact/index.html.* You also can request a copy of FHFA or FHFA–OIG system of records from the Privacy Act Officer.

(b) *How long does FHFA or FHFA–OIG have to respond?* Either the FHFA or FHFA–OIG Privacy Act Officer generally will respond to your request in writing within 20 days after receiving it, if it meets the § 1204.3 requirements. For requests to amend a record, either the FHFA or FHFA–OIG Privacy Act Officer will respond within 10 days after receipt of the request to amend. FHFA or FHFA–OIG may extend the response time in unusual circumstances, such as when consultation is needed with another Federal agency (if that agency is subject to the Privacy Act) about a record or to retrieve a record shipped offsite for storage. If you submit your written request in person, either the FHFA or FHFA–OIG Privacy Act Officer may disclose records or information to you directly and create a written record of the grant of the request. If you are to be accompanied by another person when accessing your record or any information pertaining to you, FHFA or FHFA–OIG may require your written authorization before permitting access or discussing the record in the presence of the other person.

(c) *What will the FHFA or FHFA–OIG response include?* The written response will include a determination to grant or deny your request in whole or in part, a brief explanation of the reasons for the determination, and the amount of the fee charged, if any, under § 1204.6. If you are granted a request to access a record, FHFA or FHFA–OIG will make the record available to you. If you are granted a request to amend or correct a record, the response will describe any amendments or corrections made and advise you of your right to obtain a copy of the amended or corrected record.

(d) *What is an adverse determination?* An adverse determination is a determination on a Privacy Act request that—

(1) Withholds any requested record in whole or in part;

(2) Denies a request for an amendment or correction of a record in whole or in part;

(3) Declines to provide a requested accounting of disclosures;

(4) Advises that a requested record does not exist or cannot be located; or

(5) Finds what has been requested is not a record subject to the Privacy Act.

(e) *What will be stated in a response that includes an adverse determination?* If an adverse determination is made with respect to your request, either the FHFA or FHFA–OIG Privacy Act Officer's written response under this section will identify the person responsible for the adverse determination, state that the adverse determination is not a final action of FHFA or FHFA–OIG, and state that you may appeal the adverse determination under § 1204.5.

§ 1204.5 What if I am dissatisfied with the response to my Privacy Act request?

(a) *May I appeal the response?* You may appeal any adverse determination made in response to your Privacy Act request. If you wish to seek review by a court of any adverse determination or denial of a request, you must first appeal it under this section.

(b) *How do I appeal the response?*—(1) You may appeal by submitting in writing, a statement of the reasons you believe the adverse determination should be overturned. FHFA or FHFA–OIG must receive your written appeal within 30 calendar days of the date of the adverse determination under § 1204.4. Your written appeal may include as much or as little related information as you wish, as long as it clearly identifies the determination (including the request number, if known) that you are appealing.

(2) If FHFA or FHFA–OIG denied your request in whole or in part, you may appeal the denial by writing directly to the FHFA Privacy Act Appeals Officer through electronic mail, mail, delivery service, or facsimile. The electronic mail address is: *privacy@fhfa.gov.* For mail or express mail, the address is: FHFA Privacy Act Appeals Officer, Federal Housing Finance Agency, 1700 G Street, NW., Washington, DC 20552. The facsimile number is: (202) 414–8917. For appeals of FHFA–OIG denials, whether in whole or in part, the appeal must be clearly marked by adding ''FHFA–OIG'' after ''Privacy Act Appeal.'' All appeals from denials, in whole or part, made by FHFA–OIG will be forwarded to the FHFA–OIG Privacy Act Appeals Officer for processing and direct response. You can help FHFA and FHFA–OIG process your appeal by marking electronic mail, letters, or facsimiles and the subject line, envelope, or facsimile cover sheet with ''Privacy Act Appeal.'' FHFA's ''Privacy Act Reference Guide,'' which is available on FHFA's Web site, *http://www.fhfa.gov,* provides additional information to assist you in making your appeal. FHFA or FHFA–OIG ordinarily will not act on an appeal if the Privacy Act request becomes a matter of litigation.

(3) If you need more time to file your appeal, you may request an extension of time of no more than ten (10) calendar days in which to file your appeal, but only if your request is made within the original 30-calendar day time period for filing the appeal. Granting an extension is in the sole discretion of either the FHFA or FHFA–OIG Privacy Act Appeals Officer.

(c) *Who has the authority to grant or deny appeals?* For appeals from the FHFA Privacy Act Officer, the FHFA Privacy Act Appeals Officer is authorized to act on your appeal. For appeals from the FHFA–OIG Privacy Act Officer, the FHFA–OIG Privacy Act Appeals Officer is authorized to act on your appeal.

(d) *When will FHFA or FHFA–OIG respond to my appeal?* FHFA or FHFA–OIG generally will respond to you in writing within 30 days of receipt of an appeal that meets the requirements of paragraph (b) of this section, unless for good cause shown, the FHFA or FHFA–OIG Privacy Act Appeals Officer extends the response time.

(e) *What will the FHFA or FHFA–OIG response include?* The written response will include the determination of either the FHFA or FHFA–OIG Privacy Act Appeals Officer, whether to grant or deny your appeal in whole or in part, a brief explanation of the reasons for the determination, and information about the Privacy Act provisions for court review of the determination.

(1) If your appeal concerns a request for access to records or information and the appeal determination grants your access, the records or information, if any, will be made available to you.

(2)(i) If your appeal concerns an amendment or correction of a record and the appeal determination grants your request for an amendment or correction, the response will describe any amendment or correction made to the record and advise you of your right to obtain a copy of the amended or corrected record under this part. FHFA or FHFA–OIG will notify all persons, organizations, or Federal agencies to which it previously disclosed the record, if an accounting of that disclosure was made, that the record has been amended or corrected. Whenever the record is subsequently disclosed, the record will be disclosed as amended or corrected.

(ii) If the response to your appeal denies your request for an amendment or correction to a record, the response will advise you of your right to file a Statement of Disagreement under paragraph (f) of this section.

(f) *What is a Statement of Disagreement?*—(1) A Statement of Disagreement is a concise written statement in which you clearly identify

each part of any record that you dispute and explain your reason(s) for disagreeing with either the FHFA or FHFA–OIG Privacy Act Appeals Officer's denial, in whole or in part, of your appeal requesting amendment or correction. Your Statement of Disagreement must be received by either the FHFA or FHFA–OIG Privacy Act Officer within 30 calendar days of either the FHFA or FHFA–OIG Privacy Act Appeals Officer's denial, in whole or in part, of your appeal concerning amendment or correction of a record. FHFA and FHFA–OIG will place your Statement of Disagreement in the system of records in which the disputed record is maintained. FHFA and FHFA–OIG may also append a concise statement of its reason(s) for denying the request for an amendment or correction of the record.

(2) FHFA and FHFA–OIG will notify all persons, organizations, and Federal agencies to which it previously disclosed the disputed record, if an accounting of that disclosure was made, that the record is disputed and provide your Statement of Disagreement and the FHFA or FHFA–OIG concise statement, if any. Whenever the disputed record is subsequently disclosed, a copy of your Statement of Disagreement and the FHFA or FHFA–OIG concise statement, if any, will also be disclosed.

§ 1204.6 What does it cost to get records under the Privacy Act?

(a) *Must I agree to pay fees?* Your Privacy Act request is your agreement to pay all applicable fees, unless you specify a limit on the amount of fees you agree to pay. FHFA or FHFA–OIG will not exceed the specified limit without your written agreement.

(b) *How does FHFA or FHFA–OIG calculate fees?* FHFA and FHFA–OIG will charge a fee for duplication of a record under the Privacy Act in the same way it charges for duplication of records under FOIA in 12 CFR 1202.11. There are no fees to search for or review records.

§ 1204.7 Are there any exemptions from the Privacy Act?

(a) *What is a Privacy Act exemption?* The Privacy Act authorizes the Director and the FHFA Inspector General to exempt records or information in a system of records from some of the Privacy Act requirements, if the Director or the FHFA Inspector General, as appropriate, determines that the exemption is necessary.

(b) *How do I know if the records or information I want are exempt?*—(1) Each system of records notice will advise you if the Director or the FHFA Inspector General has determined records or information in records are exempt from Privacy Act requirements. If the Director or the FHFA Inspector General has claimed an exemption for a system of records, the system of records notice will identify the exemption and the provisions of the Privacy Act from which the system is exempt.

(2) Until superseded by FHFA or FHFA–OIG systems of records, the following OFHEO and FHFB systems of records are, under 5 U.S.C. 552a(k)(2) or (k)(5), exempt from the Privacy Act requirements of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f)—

(i) OFHEO–11 Litigation and Enforcement Information System; and

(ii) FHFB–5 Agency Personnel Investigative Records.

(c) *What exemptions potentially apply to FHFA–OIG records?* Unless the FHFA Inspector General, his or her designee, or a statute specifically authorizes disclosure, FHFA–OIG will not release records of matters that are subject to the following exemptions—

(1) To the extent that the systems of records entitled ''FHFA–OIG Audit Files Database,'' ''FHFA–OIG Investigative & Evaluative Files Database,'' ''FHFA–OIG Investigative & Evaluative MIS Database,'' ''FHFA–OIG Hotline Database,'' and ''FHFA–OIG Correspondence Database'' contain any information compiled by FHFA–OIG for the purpose of criminal law enforcement investigations, such information falls within the scope of exemption (j)(2) of the Privacy Act, 5 U.S.C. 552a(j)(2), and therefore these systems of records are exempt from the requirements of the following subsections of the Privacy Act to that extent, for the reasons stated in paragraphs (1)(i) through (vi) of this section.

(i) From 5 U.S.C. 552a(c)(3), because release of an accounting of disclosures to an individual who is the subject of an investigation or evaluation could reveal the nature and scope of the investigation or evaluation and could result in the altering or destruction of evidence, improper influencing of witnesses, and other evasive actions that could impede or compromise the investigation or evaluation.

(ii) From 5 U.S.C. 552a(d)(1), because release of investigative or evaluative records to an individual who is the subject of an investigation or evaluation could interfere with pending or prospective law enforcement proceedings, constitute an unwarranted invasion of the personal privacy of third parties, reveal the identity of confidential sources, or reveal sensitive investigative or evaluative techniques and procedures.

(iii) From 5 U.S.C. 552a(d)(2), because amendment or correction of investigative or evaluative records could interfere with pending or prospective law enforcement proceedings, or could impose an impossible administrative and investigative or evaluative burden by requiring FHFA–OIG to continuously retrograde its investigations or evaluations attempting to resolve questions of accuracy, relevance, timeliness, and completeness.

(iv) From 5 U.S.C. 552a(e)(1), because it is often impossible to determine relevance or necessity of information in the early stages of an investigation or evaluation. The value of such information is a question of judgment and timing; what appears relevant and necessary when collected may ultimately be evaluated and viewed as irrelevant and unnecessary to an investigation or evaluation. In addition, FHFA–OIG may obtain information concerning the violation of laws other than those within the scope of its jurisdiction. In the interest of effective law enforcement, FHFA–OIG should retain this information because it may aid in establishing patterns of unlawful activity and provide leads for other law enforcement agencies. Further, in obtaining evidence during an investigation or evaluation, information may be provided to FHFA–OIG that relates to matters incidental to the main purpose of the investigation or evaluation, but which may be pertinent to the investigative or evaluative jurisdiction of another agency. Such information cannot readily be identified.

(v) From 5 U.S.C. 552a(e)(2), because in a law enforcement investigation or an evaluation it is usually counterproductive to collect information to the greatest extent practicable directly from the subject thereof. It is not always feasible to rely upon the subject of an investigation or evaluation as a source for information which may implicate him or her in illegal activities. In addition, collecting information directly from the subject could seriously compromise an investigation or evaluation by prematurely revealing its nature and scope, or could provide the subject with an opportunity to conceal criminal activities, or intimidate potential sources, in order to avoid apprehension.

(vi) From 5 U.S.C. 552a(e)(3), because providing such notice to the subject of an investigation or evaluation, or to other individual sources, could seriously compromise the investigation or evaluation by prematurely revealing

its nature and scope, or could inhibit cooperation, permit the subject to evade apprehension, or cause interference with undercover activities.

(2) To the extent that the systems of records entitled ''FHFA–OIG Audit Files Database,'' ''FHFA–OIG Investigative & Evaluative Files Database,'' ''FHFA–OIG Investigative & Evaluative MIS Database,'' ''FHFA–OIG Hotline Database,'' and ''FHFA–OIG Correspondence Database,'' contain information compiled by FHFA–OIG for the purpose of criminal law enforcement investigations, such information falls within the scope of exemption (k)(2) of the Privacy Act, 5 U.S.C. 552a(k)(2), and therefore these systems of records are exempt from the requirements of the following subsections of the Privacy Act to that extent, for the reasons stated in paragraphs (c)(2)(i) through (iv) of this section.

(i) From 5 U.S.C. 552a(c)(3), because release of an accounting of disclosures to an individual who is the subject of an investigation or evaluation could reveal the nature and scope of the investigation or evaluation and could result in the altering or destruction of evidence, improper influencing of witnesses, and other evasive actions that could impede or compromise the investigation or evaluation.

(ii) From 5 U.S.C. 552a(d)(1), because release of investigative or evaluative records to an individual who is the subject of an investigation or evaluation could interfere with pending or prospective law enforcement proceedings, constitute an unwarranted invasion of the personal privacy of third parties, reveal the identity of confidential sources, or reveal sensitive investigative or evaluative techniques and procedures.

(iii) From 5 U.S.C. 552a(d)(2), because amendment or correction of investigative or evaluative records could interfere with pending or prospective law enforcement proceedings, or could impose an impossible administrative and investigative or evaluative burden by requiring FHFA–OIG to continuously retrograde its investigations or evaluations attempting to resolve questions of accuracy, relevance, timeliness, and completeness.

(iv) From 5 U.S.C. 552a(e)(1), because it is often impossible to determine relevance or necessity of information in the early stages of an investigation or evaluation. The value of such information is a question of judgment and timing; what appears relevant and necessary when collected may ultimately be evaluated and viewed as irrelevant and unnecessary to an investigation or evaluation. In addition, FHFA–OIG may obtain information concerning the violation of laws other than those within the scope of its jurisdiction. In the interest of effective law enforcement, FHFA–OIG should retain this information because it may aid in establishing patterns of unlawful activity and provide leads for other law enforcement agencies. Further, in obtaining evidence during an investigation or evaluation, information may be provided to FHFA–OIG that relates to matters incidental to the main purpose of the investigation or evaluation but which may be pertinent to the investigative or evaluative jurisdiction of another agency. Such information cannot readily be identified.

(3) To the extent that the systems of records entitled ''FHFA–OIG Audit Files Database,'' ''FHFA–OIG Investigative & Evaluative Files Database,'' ''FHFA–OIG Investigative & Evaluative MIS Database,'' ''FHFA–OIG Hotline Database,'' and ''FHFA–OIG Correspondence Database'' contain any investigatory material compiled by FHFA–OIG for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or Federal contracts, the release of which would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, such information falls within the scope of exemption (k)(5) of the Privacy Act, 5 U.S.C. 552a(k)(5), and therefore these systems of records are exempt from the requirements of subsection (d)(1) of the Privacy Act to that extent, because release would reveal the identity of a source who furnished information to the Government under an express promise of confidentiality. Revealing the identity of a confidential source could impede future cooperation by sources, and could result in harassment or harm to such sources.

§ 1204.8 How are records secured?

(a) *What controls must FHFA and FHFA–OIG have in place?* FHFA and FHFA–OIG must establish administrative and physical controls to prevent unauthorized access to their systems of records, unauthorized or inadvertent disclosure of records, and physical damage to or destruction of records. The stringency of these controls corresponds to the sensitivity of the records that the controls protect. At a minimum, the administrative and physical controls must ensure that—

(1) Records are protected from public view;

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

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

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

(b) *Is access to records restricted?* Access to records is restricted to authorized employees who require access in order to perform their official duties.

§ 1204.9 Does FHFA or FHFA–OIG collect and use Social Security numbers?

FHFA and FHFA–OIG collect Social Security numbers only when it is necessary and authorized. At least annually, the FHFA Privacy Act Officer or the Senior Agency Official for Privacy will inform employees who are authorized to collect information that—

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

(b) They must inform individuals who are asked to provide their Social Security numbers—

(1) If providing a Social Security number is mandatory or voluntary;

(2) If any statutory or regulatory authority authorizes collection of a Social Security number; and

(3) The uses that will be made of the Social Security number.

§ 1204.10 What are FHFA and FHFA–OIG employee responsibilities under the Privacy Act?

At least annually, the FHFA Privacy Act Officer or the Senior Agency Official for Privacy will inform employees about the provisions of the Privacy Act, including the Privacy Act's civil liability and criminal penalty provisions. Unless otherwise permitted by law, an authorized FHFA or FHFA–OIG employee shall—

(a) Collect from individuals only information that is relevant and necessary to discharge FHFA or FHFA–OIG responsibilities;

(b) Collect information about an individual directly from that individual whenever practicable;

(c) Inform each individual from whom information is collected of—

(1) The legal authority to collect the information and whether providing it is mandatory or voluntary;

(2) The principal purpose for which FHFA or FHFA–OIG intends to use the information;

(3) The routine uses FHFA or FHFA–OIG may make of the information; and

(4) The effects on the individual, if any, of not providing the information.

(d) Ensure that the employee's office does not maintain a system of records without public notice and notify appropriate officials of the existence or development of any system of records that is not the subject of a current or planned public notice;

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

(f) Except for disclosures made under FOIA, make reasonable efforts, prior to disseminating any record about an individual, to ensure that the record is accurate, relevant, timely, and complete;

(g) When required by the Privacy Act, maintain an accounting in the specified form of all disclosures of records by FHFA or FHFA–OIG to persons, organizations, or Federal agencies;

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

(i) Notify the appropriate official of any record that contains information that the Privacy Act does not permit FHFA or FHFA–OIG to maintain.

§ 1204.11 May FHFA–OIG obtain Privacy Act records from other Federal agencies for law enforcement purposes?

(a) The FHFA Inspector General is authorized under the Inspector General Act of 1978, as amended, to make written requests under 5 U.S.C. 552a(b)(7) for transfer of records maintained by other Federal agencies which are necessary to carry out an authorized law enforcement activity under the Inspector General Act of 1978, as amended.

(b) The FHFA Inspector General delegates the authority under paragraph (a) of this section to the following FHFA–OIG officials—

(1) Principal Deputy Inspector General;

(2) Deputy Inspector General for Audits;

(3) Deputy Inspector General for Investigations;

(4) Deputy Inspector General for Evaluations; and

(5) Deputy Inspector General for Administration.

(c) The officials listed in paragraph (b) of this section may not further delegate or re-delegate the authority described in paragraph (a) of this section.

Dated: August 11, 2011.

Edward J. DeMarco,

Acting Director, Federal Housing Finance Agency.

[FR Doc. 2011–21250 Filed 8–18–11; 8:45 am]

BILLING CODE 8070–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 886

[Docket No. FDA–2011–M–0570]

Medical Devices; Ophthalmic Devices; Classification of the Eyelid Thermal Pulsation System

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is classifying the eyelid thermal pulsation system into class II (special controls). The Agency is classifying the device into class II (special controls) in order to provide a reasonable assurance of safety and effectiveness of the device.

DATES: This rule is effective September 19, 2011. The classification was effective on June 28, 2011.

FOR FURTHER INFORMATION CONTACT: Marc Robboy, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 2256, Silver Spring, MD 20993–0002, 301–796–6860.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with section 513(f)(1) of the Federal Food, Drug, and Cosmetic Act (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 and until the device is classified or reclassified into class I or 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 the 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 into 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 this 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.

In accordance with section 513(f)(1) of the FD&C Act, FDA issued an order on July 12, 2010, classifying the LipiFlow® Thermal Pulsation System 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 which was subsequently reclassified into class I or class II. On August 6, 2010, TearScience, Inc., submitted a petition requesting classification of the LipiFlow® Thermal Pulsation System under section 513(f)(2) of the FD&C Act. 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 section 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 device can be classified into class II with the establishment of special controls. FDA believes these special controls will provide reasonable assurance of the safety and effectiveness of the device.

The device is assigned the generic name eyelid thermal pulsation system, and it is identified as an electrically-powered device intended for use in the application of localized heat and pressure therapy to the eyelids. The device is used in adult patients with chronic cystic conditions of the eyelids,

including meibomian gland dysfunction (MGD), also known as evaporative dry eye or lipid deficiency dry eye. The system consists of a component that is inserted around the eyelids and a component to control the application of heat and pressure to the eyelids.

FDA has identified the following risks to health associated with this type of device and the measures required to mitigate these risks:

Identified risk	Mitigation measures
Infection	Sterility and Shelf Life Testing.
Adverse tissue reaction.	Biocompatibility.
Electrical shock	Electrical Safety Testing.
Electromagnetic interference.	Electromagnetic Compatibility (EMC) Testing; Labeling.
Thermal damage	Temperature Performance Testing.
Mechanical damage	Pressure Performance Testing.
Malfunction	Non-clinical and Clinical Performance Testing.
User error	Labeling.

FDA believes that the following special controls can address these risks to health and provide reasonable assurance of safety and effectiveness: (1) Appropriate analysis/testing should validate electromagnetic compatibility (EMC) and safety of exposure to non-ionizing radiation; (2) Design, description, and performance data should validate safeguards related to the temperature and pressure aspects of the device, including during fault conditions; (3) Performance data should demonstrate the sterility of patient-contacting components and the shelf-life of these components; (4) The device should be demonstrated to be biocompatible; and (5) Performance data should demonstrate that any technological changes do not adversely affect safety and effectiveness. Therefore, on June 28, 2011, FDA issued an order to the petitioner classifying the device into class II. FDA is codifying the classification of the device by adding § 886.5200.

Following the effective date of this final classification rule, any firm submitting a 510(k) premarket notification for an eyelid thermal pulsation system will need to comply with the special controls named in the regulation.

Section 510(m) of the FD&C Act provides that FDA may exempt a class II device from the premarket notification requirements under section 510(k) of the FD&C Act, 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. Therefore, this device type 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 eyelid thermal pulsation system they intend to market.

II. Environmental Impact

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

III. Analysis of Impacts

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

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. Section 4(a) of the Executive order requires agencies to ''construe * * * a Federal statute to preempt State law only where the statute contains an express preemption provision or there is some other clear evidence that the Congress intended preemption of State law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute.'' Federal law includes an express preemption provision that preempts certain state requirements ''different from or in addition to'' certain Federal requirements applicable to devices. (See section 521 of the FD&C Act (21 U.S.C. 360k) *Medtronic Inc.,* v. *Lohr,* 518 U.S. 470 (1996); *Riegel* v. *Medtronic, Inc.,* 128 S. Ct. 999 (2008)). The special controls established by this final rule create ''requirements'' for specific medical devices under 21 U.S.C. 360k, even though product sponsors have some flexibility in how they meet those requirements. See *Papike* v. *Tambrands, Inc., 107 F. 3d 737, 740–42 (9th Cir. 1997).*

V. Paperwork Reduction Act of 1995

This final rule establishes special controls that refer to currently approved collections of information found in other 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. 32501–3520). The collections of information in 21 CFR part 807, supbart E, have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 801 have been approved under OMB control number 0910–0485.

VI. References

The following references have 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 TearScience, Inc., August 6, 2010.

List of Subjects in 21 CFR Part 886

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 886 is amended as follows:

PART 886—OPHTHALMIC DEVICES

■ 1. The authority citation for 21 CFR part 886 continues to read as follows:

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

■ 2. Section 886.5200 is added to subpart F to read as follows:

§ 886.5200 Eyelid thermal pulsation system.

(a) *Identification.* An eyelid thermal pulsation system is an electrically-powered device intended for use in the application of localized heat and pressure therapy to the eyelids. The device is used in adult patients with chronic cystic conditions of the eyelids, including meibomian gland dysfunction (MGD), also known as evaporative dry eye or lipid deficiency dry eye. The system consists of a component that is inserted around the eyelids and a component to control the application of heat and pressure to the eyelids.

(b) *Classification.* Class II (special controls). The special controls for this device are:

(1) Appropriate analysis/testing should validate electromagnetic compatibility (EMC) and safety of exposure to non-ionizing radiation;

(2) Design, description, and performance data should validate safeguards related to the temperature and pressure aspects of the device, including during fault conditions;

(3) Performance data should demonstrate the sterility of patient-contacting components and the shelf-life of these components;

(4) The device should be demonstrated to be biocompatible; and

(5) Performance data should demonstrate that any technological changes do not adversely effect safety and effectiveness.

Dated: August 12, 2011.

Nancy K. Stade,

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

[FR Doc. 2011–21195 Filed 8–18–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9538]

RIN 1545–BK14

Modifications of Certain Derivative Contracts; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final and temporary regulations.

SUMMARY: This document describes corrections to final and temporary regulations (TD 9538) that address when a transfer or assignment of certain derivative contracts does not result in an exchange to the nonassigning counterparty for purposes of § 1.1001–1(a). These regulations were published in the **Federal Register** on Friday, July 22, 2011.

DATES: This correction is effective on August 19, 2011, and is applicable on July 22, 2011.

FOR FURTHER INFORMATION CONTACT: Andrea M. Hoffenson, (202) 622–3920 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final and temporary regulations that are the subject of this correction are under section 1001 of the Internal Revenue Code.

Need for Correction

As published July 22, 2011 (76 FR 43892), final and temporary regulations (TD 9538) contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final and temporary regulations (TD 9538) which were the subject of FR Doc. 2011–18529 is corrected as follows:

1. On page 43892, column 3, in the preamble, under the paragraph heading ''Explanation of Provisions'', first paragraph of the column, lines 5, 6, and 7, the language ''in securities or a clearinghouse transfers or assigns a derivative contract to another dealer in securities or'' is corrected to read ''or a clearinghouse transfers or assigns a derivative contract to another dealer or''.

2. On page 43892, column 3, in the preamble, under the paragraph heading ''Explanation of Provisions'', first paragraph of the column, lines 12 and 13, the language ''those described in section 475(c)(2)(D), 475(c)(2)(E), or 475(c)(2)(F). In addition,'' is corrected to read ''those described in sections 475(c)(2)(D), 475(c)(2)(E), 475(c)(2)(F), 475(e)(2)(B), 475(e)(2)(C), or 475(e)(2)(D), or § 1.446–3(c)(1). In addition,''.

3. On page 43892, column 3, in the preamble, under the paragraph heading ''Special Analyses'', the last line of the paragraph, the language ''on their impact on small business.'' is corrected to read ''on their impact on small businesses.''.

LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 2011–21179 Filed 8–18–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9538]

RIN 1545–BK14

Modifications of Certain Derivative Contracts; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document describes correcting amendments to final and temporary regulations (TD 9538) that address when a transfer or assignment of certain derivative contracts does not result in an exchange to the nonassigning counterparty for purposes.

These regulations were published in the **Federal Register** on Friday, July 22, 2011.

DATES: This correction is effective on August 19, 2011, and is applicable beginning July 22, 2011.

FOR FURTHER INFORMATION CONTACT: Andrea M. Hoffenson, (202) 622–3920 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final and temporary regulations that are the subject of this correction are under section 1001 of the Internal Revenue Code.

Need for Correction

As published July 22, 2011 (76 FR 43892), the final and temporary regulations (TD 9538) contain errors that may prove to be misleading and are in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805. * * *

■ **Par. 2.** Section 1.1001–4T is amended by revising paragraphs (a)(1), (b)(1) and (b)(3) to read as follows:

§ 1.1001–4T Modifications of certain derivative contracts (temporary).

* * * * *

(a) * * *

(1) Both the party transferring or assigning its rights and obligations under the derivative contract and the party to which the rights and obligations are transferred or assigned are either a dealer or a clearinghouse;

* * * * *

(b) * * *

(1) *Dealer.* For purposes of this section, a *dealer* is a taxpayer who meets the definition of a dealer in securities in section 475(c)(1) or is a dealer in commodities derivative contracts.

* * * * *

(3) *Derivative contract.* For purposes of this section, a *derivative contract* is a contract described in—

(i) Section 475(c)(2)(D), 475(c)(2)(E), or 475(c)(2)(F) without regard to the last sentence of section 475(c)(2) referencing section 1256;

(ii) Section 475(e)(2)(B), 475(e)(2)(C), or 475(e)(2)(D); or

(iii) Section 1.446–3(c)(1).

* * * * *

LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 2011–21180 Filed 8–18–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 17

[TD 9546]

RIN 1545–BD04

Definition of Solid Waste Disposal Facilities for Tax-Exempt Bond Purposes

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations on the definition of solid waste disposal facilities for purposes of the rules applicable to tax-exempt bonds issued by State and local governments. These regulations provide guidance to State and local governments that issue tax-exempt bonds to finance solid waste disposal facilities and to taxpayers that use those facilities.

DATES: *Effective Date:* These regulations are effective August 19, 2011.

Applicability Date: For dates of applicability, see § 1.142(a)(6)–1(i).

FOR FURTHER INFORMATION CONTACT: Timothy Jones, (202) 622–3980 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document amends the Income Tax Regulations (26 CFR part 1) under section 142 of the Internal Revenue Code (Code) to provide final rules for determining whether a facility is a solid waste disposal facility under section 142(a)(6). This document also removes certain existing regulations on this subject. On September 16, 2009, the IRS published a Notice of Proposed Rulemaking (REG–140492–02) in the **Federal Register** (74 FR 47500) (the Proposed Regulations). The Proposed Regulations under proposed § 1.142(a)(6)–1 would modify existing regulations under § 1.103–8(f)(2) of the Income Tax Regulations and § 17.1 of the temporary Income Tax Regulations (together, the Existing Regulations) on this subject. Public comments on the Proposed Regulations were received and a public hearing was held on January 5, 2010.

After consideration of the public comments, the IRS and the Treasury Department adopt the Proposed Regulations, with revisions, as final regulations by this Treasury decision (the Final Regulations). Significant aspects of the public comments and the revisions made in the Final Regulations are discussed in this preamble.

Explanation of Provisions

1. Introduction

In general, interest on State or local bonds is excludable from gross income under section 103(a). Under section 103(b), however, interest on private activity bonds is excludable from gross income under section 103 only if the bond meets the requirements for a qualified bond under section 141(e) and other applicable requirements under section 103. Section 141(e) defines a qualified bond to include an *exempt facility bond* that meets certain requirements. Section 142(a) defines an exempt facility bond to mean any bond that is issued as part of an issue 95 percent or more of the net proceeds of which are to be used to provide an exempt facility specified in section 142(a). Section 142(a)(6) includes a solid waste disposal facility as one specified type of qualified exempt facility.

In general, the Proposed Regulations addressed the requirements for solid waste disposal facilities under section 142(a)(6) for purposes of eligibility for tax-exempt private activity bond financing. The Proposed Regulations provided that a facility qualifies as a solid waste disposal facility if it processes solid waste in a qualified solid waste disposal process, performs preliminary functions, or is a functionally related or subordinate facility. The Proposed Regulations focused on eligible processes to dispose of solid waste, including a final disposal process, an energy conversion process, and a recycling process. The Proposed Regulations also provided a more developed definition of solid waste which focused on used materials and residual materials, with certain specific exclusions. The Proposed Regulations eliminated a ''no-value'' test from the solid waste definition under § 1.103–8(f)(2)(ii)(b) of the Existing Regulations, which provides that material does not qualify as solid waste unless, on the issue date of the tax-exempt bonds used to provide the solid waste disposal facility, the property is useless, unused, unwanted, or discarded solid material ''that has no market or other value at the place where the property is located'' (No-Value Test). The Proposed Regulations also proposed various allocation and accounting rules based on existing principles for mixed-input facilities and mixed-use facilities. Overall, the Proposed Regulations implement a policy in favor of recycling through the use of solid waste disposal facilities.

Commentators generally supported the approach taken towards solid waste

disposal facilities under the Proposed Regulations. The Final Regulations retain the overall approach of the Proposed Regulations and make certain technical changes in response to public comments, as discussed further in this preamble.

2. Solid Waste Disposal Facility

The Proposed Regulations defined the term *solid waste disposal facility* to mean a facility that processes solid waste in a qualified solid waste disposal process, performs a preliminary function, or is a functionally related and subordinate facility. The Final Regulations retain this definition of a solid waste disposal facility.

3. Definition of Solid Waste

The Proposed Regulations defined the term *solid waste* to mean garbage, refuse, and other solid material derived from any agricultural, commercial, consumer, or industrial operation or activity, based largely on an existing definition under the Existing Regulations. The Proposed Regulations refined the existing definition to require that solid waste be either *used material* or *residual material.* The Proposed Regulations also eliminated the No-Value Test. Additionally, the Proposed Regulations required that the person who acquires the material must reasonably expect to introduce it into a qualified solid waste disposal process within a reasonable period of time after acquisition.

The Proposed Regulations defined *used material* to mean any material that has been used previously as an agricultural, commercial, consumer, or industrial product or as a component of any such product. The Proposed Regulations defined *residual material* to mean any residual byproduct or excess unused raw material that remains from the production of any agricultural, commercial, consumer, or industrial product, provided that material qualified as residual material only to the extent that it constituted less than five percent (5%) of the total material introduced into the production process and it had a fair market value that is reasonably expected to be lower than that of any product made in that production process.

The Final Regulations generally retain the core definition of solid waste from the Proposed Regulations but modify that definition in certain technical respects. The Final Regulations clarify that material is ''solid'' only if it is solid at ambient temperature and pressure. The Final Regulations also clarify that solid waste can result from governmental operations or activities. The Final Regulations expand the definition of solid waste to include animal waste.

With respect to the definition of *residual material,* commentators generally supported the analytic standard under the Proposed Regulations but recommended removing the five percent (5%) size limitation on residual material. Commentators recommended removing this size limit because it unduly restricts the scope of residual material in many circumstances and it arbitrarily treats various industries and activities differently because residual amounts vary widely by industry and activity. The Final Regulations adopt this comment to eliminate the five percent (5%) size limitation on residual material and otherwise generally retain the analytic standard for residual material. The Final Regulations also expand the definition of residual material to include material derived from providing a service in which no product is produced.

Further, for purposes of determining residual material when multiple production processes are operated on the same site, commentators recommended a separate evaluation of each process. Based on reasons associated with scope and administrability, the IRS and the Treasury Department intended to cover only residual material that remains at the end of integrated processes that are functionally interconnected or interdependent, based on all the facts and circumstances. Accordingly, the Final Regulations do not adopt this comment. Instead, the Final Regulations adopt an integrated process standard to limit residual material.

4. Specific Exclusions From the Definition of Solid Waste

In general, the Proposed Regulations excluded from the definition of solid waste the following items: (1) Virgin material; (2) solids within liquids and liquid waste; (3) precious metals; (4) hazardous material; and (5) radioactive material. The Final Regulations retain these exclusions with certain technical modifications.

The exclusion for virgin material aimed to distinguish solid waste disposal from manufacturing. The exclusion for certain precious metals aimed to recognize that recovery of these metals generally would take place without regard to a recycling industry. With respect to the exclusions for hazardous and radioactive waste, the statute and legislative history indicate that Congress intended to exclude hazardous waste and radioactive waste from solid waste. The statute treats qualified hazardous waste facilities as eligible exempt facilities under section 142(a)(10) separate and apart from solid waste disposal facilities under section 142(a)(6). In addition, the legislative history provides, in relevant part, that ''the conferees wish to clarify that solid waste does not include most hazardous waste (including radioactive waste).'' H.Rep. No. 99–841, at II–704 (1986), 1986–3 (Vol. 4) CB 704.

Some commentators expressed concern that the introduction of virgin material or precious metals into a final disposal process, such as a landfill (as contrasted with a recycling process), could disqualify a facility from treatment as a qualified solid waste disposal facility. The Final Regulations address this comment favorably and modify the definition of solid waste to allow the introduction of virgin materials and precious metals into a final disposal process. The Final Regulations also add a provision that allows the IRS to identify other excluded precious metals in future public administrative guidance.

Commentators also recommended treating hazardous waste and radioactive waste as solid waste. The Final Regulations generally do not adopt this comment. The IRS and the Treasury Department believe that Congress generally intended to exclude these materials from the definition of solid waste. Recognizing that only certain hazardous waste and radioactive waste are required to be disposed of at regulated facilities, however, the Final Regulations limit the exclusions for these two types of waste to the extent that they are required to be disposed of or contained at a regulated hazardous waste or radioactive waste disposal facility.

5. Qualified Solid Waste Disposal Process

The Proposed Regulations provided for three eligible types of solid waste disposal processes: A final disposal process, an energy conversion process, and a recycling process. To provide flexibility for future innovation, the Proposed Regulations provided that, absent an express restriction in the proposed regulations, a solid waste disposal function may employ any biological, engineering, industrial, or technological method.

The Final Regulations generally retain the eligible types of solid waste disposal processes from the Proposed Regulations, with technical clarifications. The Final Regulations clarify that a final disposal process includes the spreading of solid waste in an environmentally compliant and safe

manner. The Final Regulations also clarify that an energy conversion process ends at the point at which useful energy is first created or incorporated into the form of synthesis gas, heat, hot water, or other useful energy.

6. First Useful Product Principle

The Proposed Regulations provided guidance on the standard for determining the first useful product for purposes of establishing the end point of a solid waste disposal process. The first useful product principle has particular application to recycling. Under the Proposed Regulations, a useful product generally included a product useful for consumption, either as an ultimate end-use product or as an input to some stage of a manufacturing or production process, and that could be sold for such use (taking into account operational constraints on such sales for certain integrated processes), whether or not actually sold.

The Final Regulations generally retain the first useful product standard from the Proposed Regulations. Some commentators recommended that determinations under the first useful product rule take into account geographic location and transportation costs in certain situations. The Final Regulations adopt this comment.

7. Mixed-Input Facilities

The Proposed Regulations provided a mixed-input accounting rule, which treated a facility as a qualified solid waste disposal facility if at least 65 percent of all of the material introduced into such facility in each year consisted of solid waste. This proposed rule recognizes that recycling processes may require supplemental inputs besides solid waste to operate viably. This proposed rule is similar to an existing rule under § 1.103–8(f)(2)(ii)(c) of the Existing Regulations. This proposed rule requires annual testing for compliance with the requisite 65 percent solid waste threshold. Several commentators recommended reformulating this 65 percent test to require compliance based on an aggregate testing period measured over the life of the tax-exempt bonds instead of an annual testing period. These commentators expressed concerns about compliance with an annual test during start-up periods and aberrational years for various reasons.

The Final Regulations retain the annual 65 percent test for mixed-input facilities with modifications. In response to the public comments, the Final Regulations provide a special rule that allows a three-year curative period to address the impact of extraordinary events outside the control of the operator of the solid waste disposal facility (such as natural disasters, strikes, major utility disruptions, or governmental interventions). In addition, the Final Regulations provide that the annual testing does not begin until the facility is placed in service within the meaning of the special placed-in-service definition in § 1.150–2(c), which focuses on the point at which a facility is operational at substantially its design level.

8. Certain Other Changes

Several commentators recommended removal of the proposed concept of facilities that perform a preliminary function for a qualified solid waste disposal process and removal of the threshold limit on preliminary functions that requires more than 50 percent of the materials that result from preliminary functions to constitute solid waste. The Final Regulations retain the concept of a preliminary function, but remove the 50 percent threshold limit on preliminary functions. The Final Regulations also provide for application of a mixed-use accounting rule to facilities that perform preliminary functions.

One commentator expressed concern that *Example 2* in the Proposed Regulations was confusing, and the Final Regulations remove that example with no substantive inference intended by that removal. The Final Regulations also expand and clarify certain other examples.

Commentators recommended various transition rules for applicability of the Final Regulations to refunding bonds issued prior to the date of publication of the final regulations. The Final Regulations provide a transition rule for current refunding bonds the weighted average maturity of which is no longer than the remaining weighted average maturity of the refunded bonds.

Effective/Applicability Dates

The Final Regulations apply to bonds to which section 142 applies that are sold on or after October 18, 2011. Issuers may apply the Final Regulations to outstanding bonds sold before October 18, 2011. The Final Regulations need not be applied to bonds that are issued in a current refunding to refund bonds to which the Final Regulations do not apply if the weighted average maturity of the refunding bonds is no longer than the remaining weighted average maturity of the refunded bonds.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because the regulations are interpretative and do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the proposed regulations preceding these final regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these final regulations is Timothy L. Jones, Office of Associate Chief Counsel (Financial Institutions and Products). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 17

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, under the authority of 26 U.S.C. 7805, 26 CFR parts 1 and 17 are amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

§ 1.103–8 [Amended]

■ **Par. 2.** Section 1.103–8 is amended by removing paragraph (f)(2)(ii) and redesignating paragraph (f)(2)(iii) as (f)(2)(ii).

■ **Par. 3.** Section 1.142(a)(6)–1 is added to read as follows:

§ 1.142(a)(6)–1 Exempt facility bonds: solid waste disposal facilities.

(a) *In general.* This section defines the term solid waste disposal facility for purposes of section 142(a)(6).

(b) *Solid waste disposal facility.* The term *solid waste disposal facility* means a facility to the extent that the facility—

(1) Processes solid waste (as defined in paragraph (c) of this section) in a qualified solid waste disposal process (as defined in paragraph (d) of this section);

(2) Performs a preliminary function (as defined in paragraph (f) of this section); or

(3) Is functionally related and subordinate (within the meaning of § 1.103–8(a)(3)) to a facility described in paragraph (b)(1) or (b)(2) of this section.

(c) *Solid waste*—(1) *In general.* Except to the extent excluded under paragraph (c)(2) of this section, for purposes of section 142(a)(6), the term *solid waste* means garbage, refuse, and other solid material derived from any agricultural, commercial, consumer, governmental, or industrial operation or activity if the material meets the requirements of both paragraph (c)(1)(i) and paragraph (c)(1)(ii) of this section. For purposes of this section, material is solid if it is solid at ambient temperature and pressure.

(i) *Used material or residual material.* Material meets the requirements of this paragraph (c)(1)(i) if it is either used material (as defined in paragraph (c)(1)(i)(A)) of this section or residual material (as defined in paragraph (c)(1)(i)(B) of this section).

(A) *Used material.* The term *used material* means any material that is a product of any agricultural, commercial, consumer, governmental, or industrial operation or activity, or a component of any such product or activity, and that has been used previously. Used material also includes animal waste produced by animals from a biological process.

(B) *Residual material.* The term *residual material* means material that meets the requirements of this paragraph (c)(1)(i)(B). The material must be a residual byproduct or excess raw material that results from or remains after the completion of any agricultural, commercial, consumer, governmental, or industrial production process or activity or from the provision of any service. In the case of multiple processes constituting an integrated manufacturing or industrial process, the material must result from or remain after the completion of such integrated process. As of the issue date of the bonds used to finance the solid waste disposal facility, the material must be reasonably expected to have a fair market value that is lower than the value of all of the products made in that production process or lower than the value of the service that produces such residual material.

(ii) *Reasonably expected introduction into a qualified solid waste disposal process.* Material meets the requirements of this paragraph (c)(1)(ii) if it is reasonably expected by the person who generates, purchases, or otherwise acquires it to be introduced within a reasonable time after such generation, purchase or acquisition into a qualified solid waste disposal process described in paragraph (d) of this section.

(2) *Exclusions from solid waste.* The following materials do not constitute solid waste:

(i) *Virgin material.* Except to the extent that virgin material constitutes an input to a final disposal process or residual material, solid waste excludes any virgin material. The term *virgin material* means material that has not been processed into an agricultural, commercial, consumer, governmental, or industrial product, or a component of any such product. Further, for this purpose, material continues to be virgin material after it has been grown, harvested, mined, or otherwise extracted from its naturally occurring location and cleaned, divided into component elements, modified, or enhanced, as long as further processing is required before it becomes an agricultural, commercial, consumer, or industrial product, or a component of any such product.

(ii) *Solids within liquids and liquid waste.* Solid waste excludes any solid or dissolved material in domestic sewage or other significant pollutant in water resources, such as silt, dissolved or suspended solids in industrial waste water effluents, dissolved materials in irrigation return flows or other common water pollutants, and liquid or gaseous waste.

(iii) *Precious metals.* Except to the extent that a precious metal constitutes an input to a final disposal process and/or an unrecoverable trace of the particular precious metal, solid waste excludes gold, silver, ruthenium, rhodium, palladium, osmium, iridium, platinum, gallium, rhenium, and any other precious metal material as may be identified by the Internal Revenue Service in future public administrative guidance.

(iv) *Hazardous material.* Solid waste excludes any hazardous material that must be disposed of at a facility that is subject to final permit requirements under subtitle C of title II of the Solid Waste Disposal Act as in effect on the date of the enactment of the Tax Reform Act of 1986 (which is October 22, 1986). See section 142(h)(1) of the Internal Revenue Code for the definition of qualified hazardous waste facilities.

(v) *Radioactive material.* Solid waste excludes any radioactive material subject to regulation under the Nuclear Regulatory Act (10 CFR 1.1 *et. seq*), as in effect on the issue date of the bonds.

(d) *Qualified solid waste disposal process.* The term *qualified solid waste disposal process* means the processing of solid waste in a final disposal process (as defined in paragraph (d)(1) of this section), an energy conversion process (as defined in paragraph (d)(2) of this section), or a recycling process (as defined in paragraph (d)(3) of this section). Absent an express restriction to the contrary in this section, a qualified solid waste disposal process may employ any biological, engineering, industrial, or technological method.

(1) *Final disposal process.* The term *final disposal process* means the placement of solid waste in a landfill (including, for this purpose, the spreading of solid waste over land in an environmentally compliant and safe manner with no intent to remove such solid waste), the incineration of solid waste without capturing any useful energy, or the containment of solid waste with a reasonable expectation as of the date of issue of the bonds that the containment will continue indefinitely and that the solid waste has no current or future beneficial use.

(2) *Energy conversion process.* The term *energy conversion process* means a thermal, chemical, or other process that is applied to solid waste to create and capture synthesis gas, heat, hot water, steam, or other useful energy. The energy conversion process begins at the point of the first application of such process. The energy conversion process ends at the point at which the useful energy is first created, captured, or incorporated into the form of synthesis gas, heat, hot water, or other useful energy and before any transfer or distribution of such synthesis gas, heat, hot water or other useful energy, regardless of whether such synthesis gas, heat, hot water, or other useful energy constitutes a first useful product within the meaning of paragraph (e) of this section.

(3) *Recycling process*—(i) *In general.* The term *recycling process* means reconstituting, transforming, or otherwise processing solid waste into a useful product. The recycling process begins at the point of the first application of a process to reconstitute or transform the solid waste into a useful product, such as decontamination, melting, re-pulping, shredding, or other processing of the solid waste to accomplish this purpose. The recycling process ends at the point of completion of production of the first useful product from the solid waste.

(ii) *Refurbishment, repair, or similar activities.* The term *recycling process*

does not include refurbishment, repair, or similar activities. The term *refurbishment* means the breakdown and reassembly of a product if such activity is done on a product-by-product basis and if the finished product contains more than 30 percent of its original materials or components.

(e) *First useful product.* The term *first useful product* means the first product produced from the processing of solid waste in a solid waste disposal process that is useful for consumption in agricultural, consumer, commercial, governmental, or industrial operation or activity and that could be sold for such use, whether or not actually sold. A useful product includes both a product useful to an individual consumer as an ultimate end-use consumer product and a product useful to an industrial user as a material or input for processing in some stage of a manufacturing or production process to produce a different end-use consumer product. The determination of whether a useful product has been produced may take into account operational constraints that affect the point in production when a useful product reasonably can be extracted or isolated and sold independently. For this purpose, the costs of extracting, isolating, storing, and transporting the product to a market may only be taken into account as operational constraints if the product is not to be used as part of an integrated manufacturing or industrial process in the same location as that in which the product is produced.

(f) *Preliminary function.* A *preliminary function* is a function to collect, separate, sort, store, treat, process, disassemble, or handle solid waste that is preliminary to and directly related to a qualified solid waste disposal process.

(g) *Mixed-use facilities*—(1) *In general.* If a facility is used for both a qualified solid waste disposal function (including a qualified solid waste disposal process or a preliminary function) and a nonqualified function (a mixed-use facility), then the costs of the facility allocable to the qualified solid waste disposal function are determined using any reasonable method, based on all the facts and circumstances. See § 1.103–8(a)(1) for allocation rules on amounts properly allocable to an exempt facility. Facilities qualify as functionally related and subordinate to a qualified solid waste disposal function only to the extent that they are functionally related and subordinate to the portion of the mixed-use facility that is used for one or more qualified solid waste disposal functions (including a qualified solid waste disposal process or a preliminary function).

(2) *Mixed inputs*—(i) *In general.* Except as otherwise provided in paragraph (g)(2)(ii) of this section, for each facility (or a portion of a mixed-use facility) performing a qualified solid waste disposal process or a preliminary function, the percentage of the costs of the property used for such process that are allocable to a qualified solid waste disposal process or a preliminary function cannot exceed the average annual percentage of solid waste processed in that qualified solid waste disposal process or that preliminary function while the issue is outstanding. The annual percentage of solid waste processed in that qualified solid waste disposal process or preliminary function for any year is the percentage, by weight or volume, of the total materials processed in that qualified solid waste disposal process or preliminary function that constitute solid waste for that year.

(ii) *Special rule for mixed-input processes if at least 65 percent of the materials processed are solid waste*—(A) *In general.* Except as otherwise provided in paragraph (g)(2)(ii)(B) of this section, for each facility (or a portion of a mixed-use facility) performing a qualified solid waste disposal process or preliminary function, if the annual percentage of solid waste processed in that qualified solid waste disposal process or preliminary function for each year that the issue is outstanding (beginning with the date such facility is placed in service within the meaning of § 1.150–2(c)) equals at least 65 percent of the materials processed in that qualified solid waste disposal process or preliminary function, then all of the costs of the property used for such process are treated as allocable to a qualified solid waste disposal process. The annual percentage of solid waste processed in such qualified solid waste disposal process or preliminary function for any year is the percentage, by weight or volume, of the total materials processed in that qualified solid waste disposal process or preliminary function that constitute solid waste for that year.

(B) *Special rule for extraordinary events.* In the case of an extraordinary event that is beyond the control of the operator of a solid waste disposal facility (such as a natural disaster, strike, major utility disruption, or governmental intervention) and that causes a solid waste disposal facility to be unable to meet the 65 percent test under paragraph (g)(2)(ii)(A) of this section for a particular year, the percentage of solid waste processed for that year equals—

(*1*) The sum of the amount of solid waste processed in the solid waste disposal facility for the year affected by the extraordinary event and the amount of solid waste processed in the solid waste disposal facility during the following two years in excess of the amount required to meet the general 65 percent threshold for the facility during each of such two years; divided by

(*2*) The total materials processed in the solid waste disposal facility during the year affected by the extraordinary event. If the resulting measure of solid waste processed for the year affected by the extraordinary event equals at least 65 percent, then the facility is treated as meeting the requirements of the 65 percent test under paragraph (g)(2)(ii)(A) of this section for such year.

(iii) *Facilities functionally related and subordinate to mixed-input facilities.* Except to the extent that facilities are functionally related and subordinate to a mixed-input facility that meets the 65 percent test under paragraph (g)(2)(ii) of this section, facilities qualify as functionally related and subordinate to a mixed-input facility only to the extent that they are functionally related and subordinate to the qualified portion of the mixed-input facility that is used for one or more qualified solid waste disposal functions (including a qualified solid waste disposal process or a preliminary function).

(h) *Examples.* The following examples illustrate the application of this section:

Example 1. Nonqualified Unused Material—Cloth. Company A takes wool and weaves it into cloth and then sells the cloth to a manufacturer to manufacture clothing. The cloth is material that has not been used previously as a product of or otherwise used in an agricultural, commercial, consumer, governmental, or industrial operation or activity, or as a component of any such product or activity. Accordingly, the cloth is not solid waste.

Example 2. Residual Material—Waste Coal. Company B mines coal. Some of the ore mined is a low quality byproduct of coal mining commonly known as waste coal, which cannot be converted to energy under a normal energy-production process because the BTU content is too low. Waste coal has the lowest fair market value of any product produced in Company B's coal mining process. Waste coal is solid waste because it is residual material within the meaning of paragraph (c)(1)(i)(B) of this section and Company B reasonably expects to introduce the waste coal into a solid waste disposal process.

Example 3. Virgin Material—Logs. Company C cuts down trees and sells the logs to another company, which further processes the logs into lumber. In order to facilitate shipping, Company C cuts the trees into uniform logs. The trees are not solid waste because they are virgin material within the meaning of paragraph (c)(2)(i) of this section

that are not being introduced into a final disposal process within the meaning of paragraph (d)(1) of this section. The division of such trees into uniform logs does not change the status of the trees as virgin material.

Example 4. Qualified Solid Waste Disposal Process—Landfill. Company D plans to construct a landfill. The landfill will not be subject to the final permit requirements under subtitle C of title II of the Solid Waste Disposal Act (as in effect on the date of enactment of the Tax Reform Act of 1986). As of the issue date, Company D expects that the landfill will be filled entirely with material that will qualify as solid waste within the meaning of paragraph (c) of this section. Placing solid waste into a landfill is a qualified solid waste disposal process. The landfill is a qualified solid waste disposal facility.

Example 5. Qualified Solid Waste Disposal Process—Recycling Tires. Company E owns a facility that converts used tires into roadbed material. The used tires are used material within the meaning of paragraph (c)(1)(i)(A) of this section that qualifies as solid waste. Between the introduction of the old tires into the roadbed manufacturing process and the completion of the roadbed material, the facility does not create any interim useful products. The process for the manufacturing of the roadbed material from the old tires is a qualified solid waste disposal process as a recycling process and the facility that converts the tires into roadbed material is a qualified solid waste disposal facility. This conclusion would be the same if the recycling process took place at more than one plant.

Example 6. Qualified Solid Waste Disposal Process—Energy Conversion Process. Company F receives solid waste from a municipal garbage collector. Company F burns that solid waste in an incinerator to remove exhaust gas and to produce heat. Company F further processes the heat in a heat exchanger to produce steam. Company F further processes the steam to generate electricity. The energy conversion process ends with the production of steam. The facilities used to burn the solid waste and to capture the steam as useful energy are qualified solid waste disposal facilities because they process solid waste in an energy conversion process. The generating facilities used to process the steam further to generate electricity are not engaged in the energy conversion process and are not qualified solid waste disposal facilities.

Example 7. Nonqualified Refurbishment. Company G purchases used cars and restores them. This restoration process includes disassembly, cleaning, and repairing of the cars. Parts that cannot be repaired are replaced. The restored cars contain at least 30 percent of the original parts. While the cars are used material, the refurbishing process is not a qualified solid waste disposal process. Accordingly, Company G's facility is not a qualified solid waste disposal facility.

Example 8. Qualified Solid Waste Disposal Facility—First Useful Product Rule—Paper Recycling. (i) Company H employs an integrated process to re-pulp discarded magazines, clean the pulp, and produce retail paper towel products. Operational constraints on Company H's process do not allow for reasonable extraction, isolation, and sale of the cleaned paper pulp independently without degradation of the pulp. Company H further processes the paper pulp into large industrial-sized rolls of paper which are approximately 12 feet in diameter. At this point in the process, Company H could either sell such industrial-sized rolls of paper to another company for further processing to produce retail paper products or it could produce those retail products itself. In general, paper pulp is a useful product that is bought and sold on the market as a material for input into manufacturing or production processes. The discarded magazines are used material within the meaning of paragraph (c)(1)(i)(A) of this section. Company H's facility is engaged in a recycling process within the meaning of paragraph (d)(3) of this section to the extent that it repulps and cleans the discarded magazines generally and further to the extent that it produces industrial-sized rolls of paper under the particular circumstances here. Specifically, taking into account the operational constraints on Company H's facility that limit its ability reasonably to extract, isolate, and sell the paper pulp independently, the first useful products within the meaning of paragraph (e) of this section from Company H's recycling process are the industrial-sized rolls of paper. The portion of Company H's facility that processes the discarded magazines and produces industrial-sized rolls of paper is a qualified solid waste disposal facility, and the portion of Company H's facility that further processes the industrial-sized rolls of paper into retail paper towels is not a qualified solid waste facility.

(ii) The facts are the same as in paragraph (i) of this *Example 8*, except that Company H is able reasonably to extract the cleaned paper pulp from the process without degradation of the pulp and to sell the cleaned paper pulp at its dock for a price that exceeds its costs of extracting the pulp from the process. Therefore, the paper pulp is the first useful product within the meaning of paragraph (e) of this section. As a result, the portion of Company H's facility that processes the discarded magazines is a qualified solid waste disposal facility, and the portion of Company H's facility that produces industrial-sized rolls of paper is not a qualified solid waste disposal facility. If, however, the only reasonable way Company H could sell the pulp was to transport the pulp to a distant market, then the costs of storing and transporting the pulp to the market may be taken into account in determining whether the pulp is the first useful product.

Example 9. Preliminary Function—Energy Conversion Process. (i) Company I owns a paper mill. At the mill, logs from nearby timber operations are processed through a machine that removes bark. The stripped logs are used to manufacture paper. The stripped bark has the lowest fair market value of any product produced from the paper mill. The stripped bark falls onto a conveyor belt that transports the bark to a storage bin that is used to store the bark briefly until Company I feeds the bark into a boiler. The conveyor belt and storage bin are used only for these purposes. The boiler is used only to create steam by burning the bark, and the steam is used to generate electricity. The stripped bark is solid waste because it is residual material within the meaning of paragraph (c)(1)(i)(B) of this section and Company I expects to introduce the bark into an energy conversion process within a reasonable period of time. The creation of steam from the stripped bark is an energy conversion process that starts with the incineration of the stripped bark. The energy conversion process is a qualified solid waste disposal process. The conveyor belt performs a collection activity that is preliminary and that is directly related to the solid waste disposal function. The storage bin performs a storage function that is preliminary and that is directly related to the solid waste disposal function. Thus, the conveyor belt and storage bin are solid waste disposal facilities. The bark removal process is not a preliminary function because it is not directly related to the energy conversion process and it does not become so related merely because it results in material that is solid waste.

(ii) The facts are the same as in paragraph (a) of this *Example 9*, except that the stripped bark represents only 55 percent by weight and volume of the materials that are transported by the conveyor belt. The remaining 45 percent of the materials transported by the conveyor belt are not solid waste and these other materials are sorted from the conveyor belt by a sorting machine immediately before the stripped bark arrives at the storage bin. Fifty-five percent of the costs of the conveyor belt and the sorting machine are allocable to solid waste disposal functions.

Example 10. Preliminary Function—Final Disposal Process. Company J owns a waste transfer station and uses it to collect, sort, and process solid waste. Company J uses its trucks to haul the solid waste to the nearest landfill. At least 65 percent by weight and volume of the material brought to the transfer station is solid waste. The waste transfer station and the trucks perform functions that are preliminary and directly related to the solid waste disposal function of the landfill. Thus, the waste transfer station and the trucks qualify as solid waste disposal facilities.

Example 11. Mixed-Input Facility. Company K owns an incinerator financed by an issue and uses the incinerator exclusively to burn coal and other solid material to create steam. Each year while the issue is outstanding, 40 percent by volume and 45 percent by weight of the solid material that Company K processes in the conversion process is coal. The remainder of the solid material is either used material or residual material within the meaning of paragraph (c)(1)(i) of this section. Sixty percent of the costs of the property used to perform the energy conversion process are allocable to a solid waste disposal function.

(i) *Effective/Applicability Dates*—(1) *In general.* Except as otherwise provided in this paragraph (i), this

section applies to bonds to which section 142 applies that are sold on or after October 18, 2011.

(2) *Elective retroactive application.* Issuers may apply this section, in whole, but not in part, to outstanding bonds to which section 142 applies and which were sold before October 18, 2011.

(3) *Certain refunding bonds.* An issuer need not apply this section to bonds that are issued in a current refunding to refund bonds to which this section does not apply if the weighted average maturity of the refunding bonds is no longer than the remaining weighted average maturity of the refunded bonds.

PART 17—[REMOVED]

■ **Par. 4.** Part 17 is removed.

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

Approved by: August 9, 2011.

Emily S. McMahon,

(Acting) Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2011–21154 Filed 8–18–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2011–0696]

Drawbridge Operation Regulation; Grassy Sound Channel, Middle Township, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Fifth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Grassy Sound/Ocean Drive Bascule Bridge across the Grassy Sound Channel, mile 1.0, at Middle Township, NJ. The deviation is necessary to accommodate racers in ''The Wild Half'' half marathon. This deviation allows the bridge to remain in the closed position to ensure safe passage for the half marathon racers.

DATES: This deviation is effective from 7:45 a.m. through 11 a.m. on August 28, 2011.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2011–0696 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0696 in the ''Keyword'' box and then clicking ''Search''. They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Lindsey Middleton, Coast Guard; telephone 757–398–6629, e-mail *Lindsey.R.Middleton@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: Cape May County Department of Public Works has requested a temporary deviation from the current operating regulations of the Grassy Sound/Ocean Drive Bascule Bridge across the Grassy Sound Channel, mile 1.0, at Middle Township, NJ. The route of ''The Wild Half'' half marathon crosses the bridge twice and the requested deviation is to accommodate the race participants. To facilitate this event, the draw of the bridge will be maintained in the closed-to-navigation position from 7:45 a.m. until 11 a.m. on Sunday August 28, 2011.

The vertical clearance for this bridge in the closed position is 15 feet at Mean High Water and unlimited in the open position. The operating regulations are set forth in 33 CFR 117.721 which states that during this time of year the bridge shall open on signal from 6 a.m. to 8 p.m.

Vessels that can pass through the bridge in the closed position may do so at any time. The Coast Guard will inform the waterway users of the closure through our Local and Broadcast Notices to Mariners to minimize any impact caused by the temporary deviation. The bridge will be able to open for emergencies. In the past 6 years there have been minimal openings for this bridge during the morning hours in August. Most vessel traffic consists of a few tugs and tows and recreational boaters. Vessels can use the Stone Harbor Bridge across the Great Channel as an alternate route to Hereford Inlet and the Atlantic Ocean.

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

Dated: August 2, 2011.

Waverly W. Gregory, Jr.,

Bridge Program Manager By direction of the Commander Fifth Coast Guard District.

[FR Doc. 2011–21187 Filed 8–18–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0718]

RIN 1625–AA00

Safety Zone; Thunder on Niagara, Niagara River, North Tonawanda, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on Niagara River, North Tonawanda, NY. This temporary safety zone is intended to restrict vessels from a portion of the Niagara River during the Thunder on Niagara powerboat races. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with powerboat races.

DATES: This rule is effective from 10 a.m. on August 20, 2011 until 6 p.m. on August 21, 2011.

ADDRESSES: Documents mentioned in this preamble as being available in the docket, are part of docket USCG–2011–0718 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0718 in the ''Keyword'' box, and then clicking ''Search.'' This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Lieutenant Chris Mercurio, Waterways Management Division Chief, U.S. Coast Guard Sector Buffalo; telephone 716–843–9573, e-mail *Chris.F.Mercurio@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior

notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable and contrary to the public interest. The permit application was not received in sufficient time for the Coast Guard to solicit public comments before the start of the event. Thus, waiting for a notice and comment period to run would inhibit the Coast Guard from protecting the public and vessels from the hazards associated with powerboat races on navigable waters.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying this rule would be impracticable and contrary to the public interest for the same reasons discussed in the preceding paragraph.

Background and Purpose

On August 20th and 21st of 2011, the Thunder on Niagara powerboat races will be held on the Niagara River near North Tonawanda, NY. Based on recent accidents that have occurred in other Captain of the Port zones, the Captain of the Port Buffalo, has determined that powerboat races present significant risks to public safety and property. The likely combination of large numbers of recreational vessels, congested waterways, and alcohol use, presents a significant risk of serious injuries or fatalities.

Discussion of Rule

Because of the aforementioned hazards, the Captain of the Port Buffalo has determined that this temporary safety zone is necessary to ensure the safety of spectators and vessels during the Thunder on Niagara event. The safety zone will be enforced from 10 a.m. on August 20, 2011 until 6 p.m. on August 21, 2011. The safety zone will encompass all waters of the Niagara River, North Tonawanda, NY starting at position 42° 03′36″ N, 078° 54′45″ W to 43° 03′09″ N, 078° 55′21″ W to 43° 03′00″ N, 078° 53′42″ W to 43° 02′42″ N, 078° 54′09″ W, then returning to the point of origin. (DATUM: NAD 83).

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this rule is not a significant regulatory action because we anticipate that during the short time this zone will be in effect, it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel or legal policy issue. The safety zone will be enforced for a relatively short amount of time, and vessels may still pass through the zone with permission of the Captain of the Port Buffalo.

Small Entities

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

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

This temporary final rule may affect the following entities, some of which might be small entities: The owners of operators of vessels intending to transit or anchor in a portion of the Niagara River near North Tonawanda, New York between 10 a.m. on August 20, 2011 to 6 p.m. on August 21, 2011.

This temporary final rule will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will be in effect for a relatively short amount of time and vessels may still transit through the safety zone with permission from the Captain of the Port Buffalo or his on-scene representative.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction because it involves the establishment of a safety zone. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T09–0718 to read as follows:

§ 165.T09–0718 Safety Zone; Thunder on Niagara, Niagara River, North Tonawanda, NY.

(a) *Location.* The safety zone will encompass all waters of the Upper Niagara River, North Tonawanda, NY starting at position 42° 03′36″ N, 078° 54′45″ W to 43° 03′09″ N, 078°55′21″ W to 43° 03′00″ N, 078° 53′42″ W to 43° 02′42″ N, 078° 54′09″ W. (DATUM:NAD 83).

(b) *Effective and Enforcement Period.* This regulation is effective and will be enforced from 10 a.m. on August 20, 2011 until 6 p.m. on August 21, 2011.

(c) *Regulations.*

(1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within the safety zone established by this section is prohibited unless authorized by the Captain of the Port Buffalo or his on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Buffalo or his on-scene representative.

(3) The ''on-scene representative'' of the Captain of the Port Buffalo, is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port Buffalo to act on his behalf.

(4) Vessel operators desiring to enter or operate within an enforced safety zone shall contact the Captain of the Port Buffalo or his on-scene representative to obtain permission to do so. The Captain of the Port Buffalo or his on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Buffalo, or his on-scene representative.

Dated: August 8, 2011.

S.M. Wischmann,

Captain, U.S. Coast Guard, Captain of the Port Buffalo.

[FR Doc. 2011–21186 Filed 8–18–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0426]

RIN 1625–AA00

Safety Zone; Patuxent River, Patuxent River, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone during the ''NAS Patuxent River Air Expo '11,'' which consists of aerial practices, performance demonstrations and air shows, to be held over certain waters of the Patuxent River adjacent to Patuxent River, Maryland from September 1, 2011 through September 4, 2011. This rule is necessary to provide for the safety of life on navigable waters during the event. This action is intended to temporarily restrict vessel traffic in portions of the Patuxent River during the event.

DATES: This rule is effective from September 1, 2011 through September 4, 2011.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2011–0426 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0426 in the ''Keyword'' box, and then clicking ''Search.'' This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Mr. Ronald Houck, U.S. Coast Guard Sector Baltimore, MD; telephone 410–576–2674, e-mail *Ronald.L.Houck@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On June 22, 2011, we published a notice of proposed rulemaking (NPRM) entitled ''Safety Zone; Patuxent River, Patuxent River, MD'' in the **Federal Register** (76 FR 36447). We received no comments on the proposed rule. No public meeting was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Due to the need for immediate action, the restriction of vessel traffic is necessary to protect life, property and the environment; therefore, a 30-day notice is impracticable. Delaying the effective date would be contrary to the safety zone's intended objectives of protecting persons and vessels, and enhancing public and maritime safety.

Background and Purpose

U.S. Naval Air Station Patuxent River, Maryland is hosting the ''NAS Patuxent River Air Expo '11'' on September 3, 2011 and September 4, 2011. The public event will consist of military and civilian aircraft performing low-flying, high-speed precision maneuvers and aerial stunts over both the airfield at Naval Air Station Patuxent River and the waters of the Patuxent River. Federal Aviation Administration restrictions require that portions of the Blue Angels and aerobatic performance boxes take place over the waters of the Patuxent River. In addition to the air show dates, on September 3, 2011 and September 4, 2011, military and civilian aircraft performing in the air show will conduct practice and demonstration maneuvers and stunts over both the airfield at Naval Air Station Patuxent River and specified waters of the Patuxent River. To provide for the safety of participants, spectators, and transiting vessels, the Coast Guard proposes to temporarily restrict vessel traffic on specified waters of the Patuxent River in the vicinity of the air shows, practices and demonstrations, and during other scheduled activities related to the air show. To address safety concerns during the event, the Captain of the Port, Baltimore is establishing a safety zone upon certain waters of the Patuxent River.

Discussion of Comments and Changes

The Coast Guard received no comments in response to the NPRM. No public meeting was requested and none was held.

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. Although this safety zone restricts vessel traffic through the affected area, the effect of this regulation will not be significant due to the limited size and duration that the regulated area will be in effect. In addition, notifications will be made to the maritime community via marine information broadcasts so mariners may adjust their plans accordingly.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which might be small entities: The owners or operators of vessels intending to operate or transit through or within the safety zone during the enforcement period. The safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. The safety zone is of limited size and duration. Smaller vessels not constrained by their draft, which are more likely to be small entities, may transit around the safety zone. Maritime advisories will be widely available to the maritime community before the effective period.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), in the NPRM we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves establishing a temporary safety zone. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add temporary § 165.T05–0426 to read as follows:

§ 165.T05–0426 Safety Zone; Patuxent River, Patuxent River, MD.

(a) *Regulated area.* The following locations are regulated areas:

(1) All waters of the lower Patuxent River, near Patuxent River, Maryland, located between Fishing Point and the base of the break wall marking the entrance to the East Patuxent Basin at Naval Air Station Patuxent River, within an area bounded by a line connecting position latitude 38°17′39″ N, longitude 076°25′47″ W; thence to latitude 38°17′47″ N, longitude 076°26′00″ W; thence to latitude 38°18′09″ N, longitude 076°25′40″ W; thence to latitude 38°18′00″ N, longitude 076°25′25″ W, located along the shoreline at U.S. Naval Air Station Patuxent River, Maryland.

(2) All waters of the lower Patuxent River, near Patuxent River, Maryland, located north of the West Patuxent Basin at Naval Air Station Patuxent River, within an area bounded by a line drawn from a position at latitude 38°18′04″ N, longitude 076°27′35″ W; to latitude 38°18′09″ N, longitude 076°27′33″ W; thence to latitude 38°17′51″ N, longitude 076°26′22″ W; thence to latitude 38°17′46″ N, longitude 076°26′23″ W; thence to point of origin, located adjacent to the shoreline at U.S. Naval Air Station Patuxent River, Maryland. All coordinates reference Datum NAD 1983.

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

(1) *Captain of the Port Baltimore* means the Commander, U.S. Coast Guard Sector Baltimore, Maryland.

(2) *Designated representative* means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Baltimore to assist in enforcing the safety zone described in paragraph (a) of this section.

(c) *Regulations.* (1) All persons are required to comply with the general regulations governing safety zones found in 33 CFR 165.23.

(2) Entry into or remaining in this zone is prohibited unless authorized by the Coast Guard Captain of the Port Baltimore. Vessels already at berth, mooring, or anchor at the time the safety zone is implemented do not have to depart the safety zone. All vessels underway within this safety zone at the time it is implemented are to depart the zone.

(3) Persons desiring to transit the area of the safety zone must first request authorization from the Captain of the Port Baltimore or his designated

representative. To seek permission to transit the area, the Captain of the Port Baltimore and his designated representatives can be contacted at telephone number 410–576–2693 or on Marine Band Radio, VHF–FM channel 16 (156.8 MHz). The Coast Guard vessels enforcing this section can be contacted on Marine Band Radio, VHF–FM channel 16 (156.8 MHz). Upon being hailed by a U.S. Coast Guard vessel, or other Federal, State, or local agency vessel, by siren, radio, flashing lights, or other means, the operator of a vessel shall proceed as directed. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port Baltimore or his designated representative and proceed at the minimum speed necessary to maintain a safe course while within the zone.

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

(d) *Enforcement periods.* This section will be enforced as follows:

(1) During the air show practice from 8 a.m. until 6 p.m. on September 1, 2011.

(2) Air show practice and modified show from 9 a.m. until 6 p.m. on September 2, 2011.

(3) Twilight performance from 4:30 p.m. until 8:30 p.m. on September 2, 2011.

(4) Air show performances from 8 a.m. until 7 p.m. on September 3, 2011 and from 8 a.m. until 7 p.m. on September 4, 2011.

Dated: August 4, 2011.

Mark P. O'Malley,

Captain, U.S. Coast Guard, Captain of the Port Baltimore.

[FR Doc. 2011–21185 Filed 8–18–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 1 and 2

RIN 2009–AN72

Release of Information From Department of Veterans Affairs Records

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) regulations governing the submission and processing of requests for information under the Freedom of Information Act (FOIA) in order to implement provisions of the OPEN Government Act of 2007, and to reorganize and clarify existing regulations.

DATES: *Effective Date:* This final rule is effective September 19, 2011.

FOR FURTHER INFORMATION CONTACT: Catherine Nachmann, Staff Attorney, Office of General Counsel (024), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7684. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On October 14, 2010, VA published a proposed rule in the **Federal Register** (75 FR 63120). We proposed to amend VA's regulations pertaining to release of information under 5 U.S.C. 552 and implementation of the FOIA, which are codified at 38 CFR 1.550 through 1.562. In addition, we proposed to update VA's FOIA regulations to implement FOIA amendments in Open Government Act of 2007, Public Law 110–175. We also proposed to accommodate various means of communication with VA, streamline existing procedures, incorporate changes in the procedural requirements of the FOIA and make VA's procedures easier for the public to understand, and generally reorganize and renumber the applicable provisions. VA provided a 60-day comment period, which ended on December 13, 2010.

We received comments from one commenter, which generally expressed support for the proposed rule. The comments included five recommendations for modification of the proposed-rule provisions. We address each of those recommendations below.

First, the commenter suggested that VA modify proposed § 1.561(h)(2) to direct VA's FOIA professionals to provide requesters with a breakdown of the total fee estimate for their FOIA request. Proposed § 1.561(h)(2) prescribed that under circumstances in which the requester owes a fee, the FOIA Officer will provide the requester with an estimate of the fee. We agree with the commenter that, particularly under certain circumstances, such as where the estimated fee is substantial, a breakdown of the fee would provide more clarification for the requester. We believe that as written, however, § 1.561(h)(2) adequately addresses the needs of the public in receiving an estimate of the fee owed while allowing necessary flexibility. Providing the appropriate detail in a particular estimate will be addressed through training and internal procedural guidance for FOIA Officers. The procedural guidance will be a subject covered by VA's FOIA Handbook. In our view, the level of detail required for any estimate provided under this final rule will depend upon the complexity of the request. Accordingly, we decline to prescribe a specific standard for the estimates required by § 1.561(h)(2).

Second, while the commenter supported proposed § 1.559(a), which would allow for informal resolution of a request before an appeal in appropriate cases, the commenter recommended that VA add language to this section that also directs requesters to work with VA's FOIA public liaisons to resolve disputes.

We note that VA referred to the availability of FOIA public liaisons in proposed § 1.552(b) in order to advise requesters that public liaisons would be available to assist in the resolution of requests and to refer requesters to VA's FOIA internet home page for additional information. VA intends to provide information regarding public liaisons, as necessary, on its FOIA home page. We also intend to address the role of VA's public liaison personnel in internal guidance. Overall, we are satisfied that the proposal for providing notice regarding public liaisons, without actually requiring requesters to work with liaisons, is consistent with the FOIA, as amended.

Third, proposed § 1.559 addressed appeals of initial agency determinations under the FOIA. The commenter suggested adding language to § 1.559(e) directing VA to work with the Office of Government Information Services (OGIS) to resolve disputes between FOIA requesters and VA as a non-exclusive alternative to litigation. In a related comment, the commenter recommended that the Office of the General Counsel (OGC) provide notice regarding the OGIS mediation program in its final appeal determinations.

The FOIA, as revised, establishes OGIS's authority to provide mediation services. The proposed rule concerned VA's administration of the FOIA. VA proposed to establish binding rules for the public regarding FOIA requests and for VA personnel responsible for processing such requests. Accordingly, the commenter's suggestion in this regard is beyond the scope of this rulemaking.

Regarding the commenter's recommendation that OGC provide notice concerning OGIS mediation, we note that DOJ provided guidance to agencies recommending the inclusion of notice of OGIS mediation services in final agency decisions. VA follows DOJ's guidance and includes OGIS's recommended language in its final agency determinations. Accordingly, we

believe that VA fully addresses OGIS's concerns in this regard.

Finally, the commenter suggested that VA include language in its FOIA regulations directing agency personnel to coordinate collaboratively with OGIS in its review of agencies' policies and procedures, as established in 5 U.S.C. 552(h). However, as described above, the proposed rule concerned VA's administration of the FOIA; it addressed the agency's practices and procedures to implement the FOIA. VA's compliance with OGIS policies and collaboration with OGIS in FOIA matters, therefore, is beyond the scope of this rulemaking.

In summary, we appreciate the commenter's review of VA's proposed rule. VA is committed to providing service to FOIA requesters that is in keeping with current law and policy pertaining to the release of information. We believe that as written, VA's proposed rule reflected this commitment and addressed the commenter's concerns.

We proposed to clarify in § 1.559(b) that appeals regarding FOIA requests for Office of Inspector General (OIG) records should be referred to OIG for review. However, we neglected to propose a corresponding change to VA's delegations of authority in 38 CFR part 2. Accordingly, consistent with § 1.559(b), we are amending 38 CFR 2.6(g) to add a new paragraph (3) regarding OIG's authority to decide appeals involving OIG records. This is not a substantive change. The amendment is for the limited purpose of providing notice that the Secretary of Veterans Affairs has delegated authority to make decisions regarding these appeals to OIG.

In the proposed rule, we included a definition of ''sensitive medical or mental health records.'' We do not use the term, however, in the regulatory text. Accordingly, we determined that the definition was unnecessary and we removed it from the final rule. This is not a substantive change. The revision merely eliminates an unnecessary definition from the final rule.

In addition, as noted above, we amended 38 CFR 2.6(g) to reflect a delegation of authority to OIG to decide appeals involving OIG records; we included 38 U.S.C. 552a as authority for this delegation of authority. Citation to 38 U.S.C. 552a was erroneous; accordingly, we deleted it from the authority section following 38 CFR 2.6(g). This is not a substantive change; it merely eliminates an erroneous citation.

With regard to OIG appeal authority, as indicated above, we proposed in § 1.559(b) that FOIA appeals regarding requests for OIG records should be referred to OIG for review. By using the phrase ''should be referred'' however, we may have inadvertently implied that the requester has the option of sending the appeal to OGC or to OIG; we did not intend the language to appear to provide that option. For clarification, therefore, we changed the language in the final rule to ''must be sent'' to eliminate any potential for confusion or misunderstanding and to clarify VA's intended procedure.

We have also made minor, non-substantive changes to the proposed rule to correct typographical or grammatical errors and to make the language of the text more consistent.

Based on the rationale provided in the preamble to the proposed rule and in this preamble, VA adopts the proposed rule as a final rule with the minor changes noted above.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any year. This final rule would have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

The Secretary of Veterans Affairs hereby certifies that the final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This final rule concerns the procedures for requesting information from VA and the payment of certain fees for processing such requests. The fees prescribed by this final rule will generally comprise only an insignificant portion of a small entity's expenditures. Therefore, this final rule is exempt, pursuant to 5 U.S.C. 605(b), from the final regulatory flexibility analysis requirements of section 604.

Executive Order 12866

Executive Order 12866, Regulatory Planning and Review, directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a ''significant regulatory action,'' requiring review by the Office of Management and Budget (OMB) unless OMB waives such review, as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined and it has been determined not to be a significant regulatory action under Executive Order 12866.

Catalog of Federal Domestic Assistance

There is no Catalog of Federal Domestic Assistance number for the program affected by this final rule.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on August 1, 2011, for publication.

List of Subjects

38 CFR Part 1

Administrative practice and procedure, Archives and records, Cemeteries, Claims, Courts, Crime, Flags, Freedom of information, Government contracts, Government employees, Government property, Infants and children, Inventions and patents, Parking, Penalties, Privacy, Reporting and recordkeeping requirements, Seals and insignia, Security measures, Wages.

38 CFR Part 2

Authority delegations (Government agencies).

Dated: August 11, 2011.

Robert C. McFetridge,

Director, Regulation Policy and Management, Office of the General Counsel, Department of Veterans Affairs.

For the reasons stated in the preamble, VA amends 38 CFR parts 1 and 2 as follows:

PART 1—GENERAL PROVISIONS

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

Authority: 38 U.S.C. 501(a), and as noted in specific sections.

■ 2. In Part 1, revise the undesignated center heading immediately preceding § 1.550 to read as follows:

Procedures for Disclosure of Records Under the Freedom of Information Act

* * * * *

■ 2a. In Part 1, following the newly revised undesignated center heading remove the Note and authority citation preceding § 1.550.

■ 3. Revise § 1.550 to read as follows:

§ 1.550 Purpose.

(a) Sections 1.550 through 1.562 contain the rules followed by VA in processing requests for records under the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended. These regulations should be read together with the FOIA, which provides the underlying legal basis for the regulations and other information regarding requests for records in the custody of a Federal agency. The regulations also should be read together with VA's FOIA Reference Guide, available on VA's FOIA home page (see § 1.552(a) for the pertinent Internet address) and FOIA fee guidance provided by the Office of Management and Budget (OMB), Uniform Freedom of Information Act Fee Schedule and Guidelines, available at *http://www.whitehouse.gov/sites/default/files/omb/assets/omb/inforeg/foia_fee_schedule_1987.pdf.*

(b) Requests for records about an individual protected by the Privacy Act, 5 U.S.C. 552a, including one's own records and records that pertain to an individual and that may be sensitive, will be processed under the FOIA and the Privacy Act. In addition to the following FOIA regulations, see §§ 1.575 through 1.584 for regulations applicable to Privacy Act records.

(c) Requests for records relating to a claim administered by VA pursuant to 38 U.S.C. 5701 will be processed under the FOIA and 38 U.S.C. 5701. In addition to the following FOIA regulations, see §§ 1.500 through 1.527 for regulations implementing 38 U.S.C. 5701.

(d) Requests for records relating to healthcare quality assurance reviews pursuant to 38 U.S.C. 5705 will be processed under the FOIA and 38 U.S.C. 5705. In addition to the following FOIA regulations, *see* 38 CFR 17.500 through 17.511 for regulations implementing 38 U.S.C. 5705.

(e) Requests for records relating to treatment for the conditions specified in 38 U.S.C. 7332, such as drug abuse, alcoholism or alcohol abuse, infection with the Human Immunodeficiency Virus (HIV), or sickle cell anemia, will be processed under the FOIA and 38 U.S.C. 7332. In addition to the following FOIA regulations, *see* §§ 1.460 through 1.499 of this part for regulations implementing 38 U.S.C. 7332.

Authority: Sections 1.550 to 1.562 issued under 72 Stat. 1114; 38 U.S.C. 501, 552, 552a, 5701, 5705, 7332.

■ 4. Add § 1.551 to read as follows:

§ 1.551 Definitions.

As used in §§ 1.550 through 1.562, the following definitions apply:

Agency means any executive department, military department, government corporation, government controlled corporation, or other establishment in the executive branch of the Federal government, or independent regulatory entity.

Appeal means a requester's written disagreement with an adverse determination under the FOIA.

Beneficiary means a veteran or other individual who has received benefits (including medical benefits) or has applied for benefits pursuant to title 38, United States Code.

Benefits records means an individual's records, which pertain to programs under any of the benefits laws administered by the Secretary of Veterans Affairs.

Business day means the time during which typical Federal government offices are open for normal business. It does not include Saturdays, Sundays, or Federal legal public holidays. The term ''day'' means business day unless otherwise specified.

Business information means confidential or privileged commercial or financial information obtained by VA from a submitter that may be protected from disclosure under Exemption 4 of the FOIA, 5 U.S.C. 552(b)(4).

Component means each distinct VA entity, including Administrations, staff offices, services, or facilities.

Expedited processing means giving a FOIA request priority for processing ahead of other pending requests because VA has determined that the requester has shown an exceptional need or urgency for the records as provided in these regulations.

Fees. For fees and fee-related definitions, see § 1.561.

FOIA Officer means the individual within a VA component whose responsibilities include addressing and granting or denying requests for records under the FOIA.

Perfected request means a written FOIA request that meets the requirements set forth in § 1.554 of this part and for which there are no remaining issues about the payment of applicable fees or any other matter that requires resolution prior to processing.

Reading room means space made available, as needed, in VA components where records are available for review pursuant to 5 U.S.C. 552(a)(2). Ordinarily, the VA component providing a public reading room space will be the component that maintains the record.

Record means a document, a portion of a document, and information contained within a document, and can include information derived from a document or a database. Such documents may be maintained in paper, electronic, and other forms, but do not include objects, such as tissue slides, blood samples, or computer hardware.

Request means a written demand for records under the FOIA as described below. The term *request* includes any action emanating from the initial demand for records, including an appeal related to the initial demand.

Requester means, generally, any individual, partnership, corporation, association, or foreign or state or local government, which has made a demand to access an agency record.

Submitter means any person or entity (including corporations, state, local and tribal governments and foreign governments) from whom VA obtains trade secrets or confidential commercial or financial information either directly or indirectly.

VA means the Department of Veterans Affairs.

VA Central Office (VACO) means the headquarters of the Department of Veterans Affairs. The mailing address is 810 Vermont Avenue, NW., Washington, DC 20420.

Written or in writing means communications such as letters, photocopies of letters, electronic mail, and facsimiles (faxes), and does not include any form of oral communication.

■ 5. Revise §§ 1.552 and 1.553 to read as follows:

§ 1.552 General provisions.

(a) *Additional information.* The following Internet link will provide access to VA's information that is electronically available under the FOIA: *http://www.foia.va.gov/.*

(b) *Public Liaisons.* VA has made available FOIA Public Liaisons to assist in the resolution of disputes between the agency and the requester. Contact information for VA's FOIA Public Liaisons can be found on VA's FOIA home page. See § 1.552(a) for the pertinent Internet address.

(c) *FOIA Annual Report.* Under 5 U.S.C. 552(e), VA is required to prepare an annual report regarding its FOIA activities. The report includes information about FOIA requests and appeals. Copies of VA's annual FOIA report may be obtained from VA's Chief FOIA Officer or by visiting VA's FOIA Web site. See § 1.552(a) for the pertinent Internet address.

§ 1.553 Public reading rooms and discretionary disclosures.

(a) VA maintains a public reading room electronically at its FOIA home page on the Internet, which contains the records that the FOIA requires to be regularly made available for public inspection and copying. See § 1.552(a) for the pertinent Internet address. Information routinely provided to the public (press releases, for example) may be provided without following these sections. In addition, as a matter of policy, VA may make discretionary releases of records or information exempt from disclosure under the FOIA when permitted to do so in accordance with current law and governmental policy. Each VA component is responsible for determining which of its records are required to be made available and for making its records available electronically.

(b) VA may process, in accordance with the FOIA, records that it makes publicly available. Information in a public reading room record will be redacted, for example, if its release would be a clearly unwarranted invasion of an individual's personal privacy.

(c) Some VA components may also maintain physical public reading rooms. Information regarding these components and their contact information is available on VA's FOIA home page on the Internet. See § 1.552(a) for the pertinent Internet address. If the requester does not have access to the Internet and wishes to obtain information regarding publicly available information or components that have a physical reading room, he or she may write VA's Chief FOIA Officer at the following address: Department of Veterans Affairs, FOIA Service (005R1C), 810 Vermont Avenue, NW., Washington, DC 20420.

§ 1.553a [Removed]

■ 6. Remove § 1.553a.

■ 7. Revise § 1.554 to read as follows:

§ 1.554 Requirements for making requests.

(a) *Requests by letter and facsimile (fax).* The FOIA request must be in writing. VA accepts facsimiles (faxes) as written FOIA requests. If the request concerns documents involving a personal privacy interest or documents protected by another confidentiality statute, the request must contain an image of the requester's handwritten signature. To make a request for VA records, write directly to the FOIA Officer for the VA component that maintains the records. If requesting records from a particular medical facility or regional office, for example, the request should be sent to the FOIA Office at the address listed for that component. If requesting records from a component within VA's Central Office, the request should be sent to the Central Office address of the FOIA Office listed for that component. A list of FOIA contacts is available on the Internet. A legible return address must be included with the FOIA request; the requester may wish to include other contact information as well, such as a telephone number and electronic mail (e-mail) address. If the requester is not sure where to send the request, he or she should seek assistance from the FOIA Contact for the office believed to manage the programs whose records are being requested or send the request to the Director, FOIA Service (005R1C), 810 Vermont Avenue, NW., Washington, DC 20420, who will refer it for action to the FOIA contact at the appropriate component. For the quickest possible handling, the request letter and the envelope of any FOIA request should be marked ''Freedom of Information Act Request.'' The requester may find it helpful to refer to VA's FOIA home page on the Internet when making the request; available reference material includes VA's FOIA Reference Guide and the text of the FOIA. See § 1.552(a) for the pertinent Internet address.

(b) *Requests by e-mail.* VA will accept an e-mail request. If the request concerns documents protected by another confidentiality statute, the e-mail transmission must contain an image of the requester's handwritten signature, such as an attachment that shows the requester's handwritten signature. In order to assure prompt processing, e-mail FOIA requests must be sent to official VA FOIA mailboxes established for the purpose of receiving FOIA requests. An e-mail FOIA request that is sent to an individual VA employee's mailbox, or to any other entity, will not be considered a perfected FOIA request. Mailbox addresses designated to receive e-mail FOIA requests are available on VA's FOIA home page. See § 1.552(a) for the pertinent Internet address.

(c) *Making a request for another individual's records.* If the requester is making a request for records about another individual, it will be helpful under certain circumstances to provide proof that the requester is authorized to obtain the records, such as a legally sufficient prior written authorization for the release of information signed by that individual, proof that the individual is deceased (*e.g.,* a copy of a death certificate), or proof that the requester is the authorized representative of the individual or the individual's estate. This information will assist in determining whether and to what degree the records may be released.

(d) *Description of records sought.* (1) The requester must describe the records sought in enough detail to allow VA personnel to locate them with a reasonable amount of effort. To the extent possible, the requester should include specific information about each record sought, such as the date, title or name, author, recipient, and subject matter of the document. Generally, the more information the requester provides about the record sought, the more likely VA personnel will be able to locate any responsive records. Wide-ranging requests that lack specificity, or contain descriptions of very general subject matters, with no description of specific records, may be considered ''not reasonably described'' and thus not subject to further processing.

(2) Requests for voluminous amounts of records may be placed in a complex track of a multitrack processing system pursuant to § 1.556(b); such requests also may meet the criteria for ''unusual circumstances,'' which are processed in accordance with § 1.556(c) and may require more than twenty (20) business days to process despite the agency's exercise of due diligence.

(3) If the FOIA Officer determines that the request does not reasonably describe the records sought, the FOIA Officer will tell the requester why the request is insufficient. The FOIA Officer will also provide an opportunity to discuss the request by documented telephonic communication or written

correspondence in order to modify it to meet the requirements of this section.

(4) The time limit for VA to process the FOIA request will not start until the FOIA Officer determines that the requester has reasonably described the records sought in the FOIA request. If the FOIA Officer seeks additional clarification regarding the request and does not receive the requester's written response within thirty (30) calendar days of the date of its communication with the requester, he or she will conclude that the requester is no longer interested in pursuing the request and will close VA's files on the request.

(e) *Agreement to pay fees.* The time limit for processing the request will be tolled while any fee issue is unresolved. If the FOIA Officer anticipates that the fees for processing the request will exceed the amount that the requester has stated that he or she is willing to pay or will amount to more than $25.00 or the amount set by OMB fee guidelines, whichever is higher, the FOIA Officer will notify the requester. In such cases, the FOIA Officer may require the requester to agree in writing to pay the estimated fee. In addition, if the estimated fee amount exceeds $250.00 or the requester previously has failed to pay a FOIA fee in a timely manner, the FOIA Officer may require the requester to pay the FOIA fee in advance, before beginning to process the FOIA request. If the FOIA Officer does not receive a written response within ten (10) business days of the date of the FOIA Officer's communication with the requester, the FOIA Officer will conclude that the requester is no longer interested in pursuing the request and will close the request. If the requester seeks a fee waiver under § 1.561, he or she nonetheless may state a willingness to pay a fee up to an identified amount in the event that the fee waiver is denied; this will allow the component to process the requester's FOIA request while considering the fee waiver request. If the requester is required to pay a fee in advance, and pays the fee, and if VA later determines that the requester overpaid or is entitled to a full or partial fee waiver, a refund will be made. (For more information on the collection of fees under the FOIA, see § 1.561.)

(f) The requester must meet all of the requirements of this section in order for the request to be perfected.

§ 1.554a [Removed]

■ 8. Remove § 1.554a.

■ 9. Revise §§ 1.555 through 1.557 to read as follows:

§ 1.555 Responsibility for responding to requests.

(a) *General.* Except as stated in paragraphs (c) and (d) of this section, the FOIA Officer of the component that first receives a request for records is responsible for either processing the request or referring it to the designated FOIA Officer for the appropriate component. Offices that are within the component responsible for processing the FOIA request shall provide the component FOIA Officer all documents responsive to the request that are in their possession as of the date the search for responsive records begins.

(b) *Authority to grant or deny requests.* Each component shall designate a FOIA Officer who is responsible for making determinations pursuant to the FOIA.

(c) *Consultations and referrals.* When a component FOIA Officer determines that the component maintains responsive records that either originated with another component or agency, or which contain information provided by, or of substantial interest to, another component or agency, then the FOIA Officer shall either:

(1) Respond to the request, after consulting with the component or the agency that originated or has a substantial interest in the records involved; or

(2) Refer the responsibility for responding to the request or portion of the request to the component best able to determine whether to disclose the relevant records, or to the agency that created or initially acquired the record as long as that agency is subject to the FOIA. Ordinarily, the component or agency that created or initially acquired the record will be presumed to be best able to make the disclosure assessment. The referring component shall document the referral and maintain a copy of the records that it refers.

(d) *Classified information.* The FOIA Officer will refer requests for records containing classified information to the component or agency that classified the information for processing.

(e) *Notice of referral.* Whenever a FOIA Officer refers all or part of a request and responsibility for processing the request to another component or agency, the FOIA Officer will notify the requester in writing of the referral and provide the requester the name and contact information of the entity to which the request has been referred, after consulting with the entity to which the request is to be referred to ensure that the request is being referred to the correct entity. If only part of the request was referred, the FOIA Officer will inform the requester and identify the referred part at the time of the referral or in the final response.

§ 1.556 Timing of responses to requests.

(a) *General.* Components ordinarily shall respond to requests according to their order of receipt and within the time frames established under the FOIA. If a request for expedited processing is granted in accordance with paragraph (d) of this section, such request will be processed prior to requests in either of the tracks described in paragraph (b) of this section.

(b) *Multitrack processing.* (1) VA will use two processing tracks in addressing a request for records: Simple and complex, based upon the amount of work and/or time needed to process the request, including consideration of the number of pages involved.

(2) The FOIA Officer shall advise the requester of the track into which the request has been placed and of the criteria of the faster track. The FOIA Officer will provide requesters in the slower track the opportunity to limit the scope of their requests in order to qualify for processing in the faster track. The FOIA Officer may contact the requester either by telephone or in writing, whichever the FOIA Officer determines is most efficient and expeditious; telephonic communication will be documented.

(c) *Unusual circumstances.* (1) FOIA Officers may encounter ''unusual circumstances,'' where it is not possible to meet the statutory time limits for processing the request. In such cases, the FOIA Officer will extend the twenty (20)-business day time limit for ten (10) more business days and notify the requester in writing of the unusual circumstances and of the date by which it expects to complete processing of the request. Where the extension is for more than ten (10) business days, the FOIA Officer will provide the requester with an opportunity to either modify the request so that it may be processed within the time limits or to arrange an alternative time period with the FOIA Officer for processing the request or a modified request. Unusual circumstances consist of the following:

(i) The need to search for and collect the requested records from field facilities or other components other than the office processing the request;

(ii) The need to search for, collect and examine a voluminous amount of separate and distinct records that are the subject of a single request; or

(iii) The need for consultation with two or more components or another agency having a substantial interest in the subject matter of a request.

(2) Where the FOIA Officer reasonably believes that certain requests from the same requester, or a group of requesters acting in concert, actually constitute the same request that would otherwise satisfy the unusual circumstances specified in this paragraph, and the requests involve clearly related matters, the FOIA Officer may aggregate those requests. Multiple requests involving unrelated matters will not be aggregated.

(d) *Expedited processing.* (1) Requests will be processed out of the order in which they were received by the component responsible for processing the FOIA request and given expedited treatment when VA determines that:

(i) The failure to obtain the requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(ii) There is an urgency to inform the public concerning actual or alleged Federal government activity, if the request is made by a person primarily engaged in disseminating information;

(iii) In the discretion of the FOIA Officer, the request warrants such treatment; or

(iv) There is widespread and exceptional interest in which possible questions exist about the government's integrity which affect public confidence.

(2) A requester who is seeking expedited processing must submit a statement, certified to be true to the best of the requester's knowledge and belief, providing a detailed basis for how there is a compelling need. VA may waive the requirement for certification of the statement of compelling need as a matter of administrative discretion.

(3) Within ten (10) calendar days of its receipt of a request for expedited processing, the FOIA Officer shall determine whether to grant the request and will provide the requester written notice of the decision. If the FOIA Officer grants a request for expedited processing, the FOIA Officer shall give the request priority and process it as soon as practicable. If the FOIA Officer denies the request for expedited processing, the requester may appeal the denial, which appeal shall be addressed expeditiously.

§ 1.557 Responses to requests.

(a) *Acknowledgement of requests.* When a request for records is received by a component designated to receive requests, the component's FOIA Officer will assign a request number for future reference and send the requester a written acknowledgement of receipt.

(b) *Processing of requests.* Upon receipt of a perfected request by the appropriate component, the FOIA Officer will make a reasonable effort to search for records responsive to the request. The FOIA Officer ordinarily will include as responsive those records in its possession and control as of the date the search for responsive records began. This includes searching for records in electronic form or format, unless to do so would interfere significantly with the agency's automated information systems. If fees for processing the request are due under § 1.561, the FOIA Officer shall inform the requester of the amount of the fee as provided in § 1.554(e) and § 1.561. When a request is granted in part, the FOIA Officer shall mark, redact, or annotate the records to be released to show the amount of information deleted and, where technically feasible, indicate the exemption at the place of redaction unless doing so would harm an interest protected by an applicable exemption. The FOIA Officer will provide the records in the form or format sought by the requester, if readily reproducible in that form or format.

(c) *Time limits for processing requests.* Ordinarily, a component will have twenty (20) business days from the date of VA's receipt of the request to make a determination whether to grant the request in its entirety, grant the request in part, or deny the request in its entirety. If the request must be referred to another component, the response time will begin on the date that the request was received by the appropriate component, but in any event not later than ten (10) business days after the referring office receives the FOIA request.

(d) *Adverse determinations of requests.* Whenever a component makes an adverse determination denying the request in any respect, the component FOIA Officer shall promptly notify the requester of the adverse determination in writing. Adverse determinations include the following: A determination to withhold a requested record in whole or in part; a determination that the requested record does not exist or cannot be located; a determination that a record is not readily reproducible in the form or format sought by the requester; a determination that what has been sought is not a record subject to the FOIA; a determination on any disputed fee matter, including the denial of a fee waiver; and a denial of a request for expedited treatment. The adverse determination notice must be signed by the component head or the component's FOIA Officer, and will include the following:

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

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

(3) The amount of information withheld in number of pages or other reasonable form of estimation; an estimate is not necessary if the volume is indicated on redacted pages disclosed in part or if providing an estimate would harm an interest provided by an applicable exemption; and

(4) Notice that the requester may appeal the adverse determination and a description of the requirements for an appeal under § 1.559 of this part.

■ 10. Add §§ 1.558 through 1.562 to read as follows:

* * * * *

Sec.

1.558 Business information.
1.559 Appeals.
1.560 Maintenance and preservation of records.
1.561 Fees.
1.562 Other rights and services.

* * * * *

§ 1.558 Business information.

(a) *General.* Business information received by VA from a submitter will be considered under the FOIA pursuant to this section and in accordance with the requirements set forth in § 1.557 of this part.

(b) *Designation of business information.* The submitter of business information may designate that specific records or portions of records submitted are business information, at the time of submission or within a reasonable time thereafter. The submitter must use good faith efforts in designating records that the submitter claims could be expected to cause substantial competitive harm and thus warrant protection under Exemption 4 of the FOIA, 5 U.S.C. 552(b)(4). The submitter may mark the record submission as confidential or use the words ''business information'' or describe the specific records that contain business information. Such designation will be considered, but will not control, the FOIA Officer's decision on disclosing the material. A designation will remain in effect for a period of not more than 10 years after receipt by VA, unless the submitter provides acceptable justification for a longer period. The submitter may designate a shorter period by including an expiration date.

(c) *Notices to submitters.* (1) The FOIA Officer shall promptly notify the submitter in writing of a FOIA request seeking the submitter's business information whenever the FOIA Officer has reason to believe that the information may be protected under

FOIA Exemption 4, 5 U.S.C. 552(b)(4), regarding business information. The written notice will provide the submitter an opportunity to object to disclosure of any specified portion of the records within the reasonable time period specified in the notice. The notice will either describe in detail the business information requested (*e.g.,* an entire contract identified by a unique number) or shall provide copies of the requested record(s) or record portions containing the business information. When notification of a voluminous number of submitters is required, the FOIA Officer may notify the submitters by posting or publishing the notice in a place reasonably likely to accomplish notification.

(2) If the FOIA Officer determines to release business information over the objection(s) of the submitter, the FOIA Officer will notify the submitter pursuant to paragraph (e) of this section.

(3) Whenever the FOIA Officer notifies the requester of a final decision, the FOIA Officer will also notify the submitter by separate correspondence. This notification may be contained in VA's FOIA decision.

(4) Exceptions to this notice provision are contained in paragraph (f) of this section.

(d) *Opportunity to object to disclosure.* When notification to a submitter is made pursuant to paragraph (c)(1) of this section, the submitter may object to the disclosure of any specified portion(s) of the record(s). The submitter's objection(s) must be in writing, addressed to the FOIA Officer, and must be received by the reasonable date specified in the FOIA Officer's notice in order for VA to consider such objections. If the submitter has any objection to disclosure of the record(s) requested, or any specified portion(s) thereof, the submitter must identify the specific record(s) or portion(s) of records for which objection(s) are made. The objection will specify in detail all grounds for withholding any record(s) or portion(s) of the record(s) upon which disclosure is opposed under any exemption of the FOIA. In particular, if the submitter is asserting that the record is protected under Exemption 4, 5 U.S.C. 552(b)(4), it must show why the information is a trade secret or commercial or financial information that is privileged or confidential. The submitter must explain in detail how and why disclosure of the specified records would likely cause substantial competitive harm in the case of a required submission or state whether the records would customarily be disclosed by the submitter upon a request from the public in the case of a voluntary submission. The submitter's objections must be contained within a single written response; oral responses or subsequent, multiple responses generally will not be considered. If the submitter does not respond to the notice described in paragraph (c)(1) of this section within the specified time limit, the submitter will be considered to have no objection to disclosure of the information.

(e) *Consideration of objection(s) and notice of intent to disclose.* The FOIA Officer will consider all pertinent factors, including but not limited to the submitter's timely objection(s) to disclosure and the specific grounds provided by the submitter for non-disclosure in deciding whether to disclose business information. Information provided by the submitter after the specified time limit and after the component has made its disclosure decision generally will not be considered. In addition to meeting the requirements of § 1.557, when a FOIA Officer decides to disclose business information over the objection of the submitter, the FOIA Officer will provide the submitter with written notice, which includes:

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

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

(3) A specified disclosure date of not less than ten (10) days from the date of the notice (to allow the submitter time to take necessary legal action).

(f) *Exceptions to notice requirements.* The notice requirements set forth in paragraphs (c) and (g) of this section will not apply if:

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

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

(3) Disclosure of the information is required by statute, other than the FOIA, or by a regulation issued in accordance with the requirements of Executive Order 12600 or any other Executive Order.

(g) *Notice to requesters.* When VA receives a request for records that may contain confidential commercial information protected by FOIA Exemption 4, 5 U.S.C. 552(b)(4), regarding business information, the requester will be notified that the request is being processed under the provisions of this regulation and, as a consequence, there may be a delay in receiving a response. The notice to the requester will not include any of the specific information contained in the records being requested.

§ 1.559 Appeals.

(a) *Informal resolution prior to appeal.* Before filing an appeal, the requester may wish to communicate with the contact person listed in the FOIA response or the component's FOIA Officer to see if the issue can be resolved informally. Informal resolution of the requester's concerns may be appropriate, for example, where additional details may be required for a search for responsive records. Communication with VA at this level does not toll the time limit for filing an administrative appeal.

(b) *How to file and address a written appeal.* The requester may appeal an adverse determination denying the request, in any respect, except for those concerning Office of Inspector General records, to the VA Office of the General Counsel (024), 810 Vermont Avenue, NW., Washington, DC 20420. Any appeals concerning Office of Inspector General records must be sent to the VA Office of Inspector General, Office of Counselor (50), 810 Vermont Avenue, NW., Washington, DC 20420. The FOIA appeal must be in writing. VA accepts facsimiles (faxes) as written FOIA appeals. If the appeal concerns documents protected by another confidentiality statute, the appeal must contain an image of the requester's handwritten signature, such as an attachment that shows the requester's handwritten signature. Information regarding where to fax the FOIA appeal is available on VA's FOIA home page on the Internet. See § 1.552(a) for the pertinent Internet address. A legible return address must be included with the FOIA appeal; the requester may include other contact information as well, such as a telephone number and electronic mail (e-mail) address.

(c) *How to file an e-mail appeal.* VA will accept a FOIA appeal by e-mail. If the appeal concerns documents protected by another confidentiality statute, the email transmission must contain an image of the requester's handwritten signature, such as an attachment that shows the requester's handwritten signature. In order to assure prompt processing, e-mail FOIA appeals must be sent to official VA FOIA mailboxes established for the purpose of receiving FOIA appeals; an e-mail FOIA appeal that is sent to an individual VA employee's mailbox, or to any other entity, will not be considered a perfected FOIA appeal. Mailbox addresses designated to receive e-mail FOIA appeals are available on VA's FOIA home page. See § 1.552(a) for the pertinent Internet address.

(d) *Time limits and content of appeal.* The appeal to the VA OGC (024), or VA

Office of Inspector General (50), as appropriate, must be postmarked no later than sixty (60) calendar days after the date of the adverse determination. The appeal must clearly identify the determination being appealed, including any assigned request number. Other information should also be included, such as the name of the FOIA officer, the address of the component, the date of the component's determination, if any, and the precise subject matter of the appeal. If appealing only a portion of the component's determination, the requester must specify which part of the determination he or she is appealing. Copies of the request and VA's response, if any, should be included with the appeal. An appeal is not perfected until VA either receives the information identified above or the appeal is otherwise sufficiently defined. Appeals should be marked ''Freedom of Information Act Appeal.'' The General Counsel, Deputy General Counsel, or Assistant General Counsel with jurisdiction over information disclosure matters (024) will act on behalf of the Secretary on all appeals under this section, except those pertaining to the Office of Inspector General. The designated official in the Office of Inspector General will act on all appeals pertaining to Office of Inspector General records. A determination by the General Counsel, Deputy General Counsel, or Assistant General Counsel, or designated official within the Office of Inspector General, will be the final VA action.

(e) *Responses to appeals.* The Office of the General Counsel or the Office of Inspector General, as applicable, will provide the requester a decision on the appeal in writing. The decision will include a brief statement of the reasons for the decision, including, if applicable, any FOIA exemptions applied and notice of the right to judicial review of the decision.

(f) *Court review.* Unless the requester has been deemed to have exhausted all administrative remedies, he or she must first appeal the adverse determination in accordance with this section before seeking review by a court.

§ 1.560 Maintenance and preservation of records.

(a) Each component will preserve all correspondence pertaining to FOIA requests as well as copies of pertinent records, until disposition is authorized under title 44, U.S.C., or the National Archives and Records Administration's General Records Schedule 14.

(b) The FOIA Officer must maintain copies of records that are the subject of a pending request, appeal, or lawsuit under the FOIA. A copy of all records shall be provided promptly to the Office of the General Counsel upon request.

§ 1.561 Fees.

(a) *General.* Components will charge for processing requests under the FOIA in accordance with paragraph (c) of this section, except where fees are limited under paragraph (e) of this section or where a waiver or reduction of fees is granted under paragraph (n) of this section. The FOIA Officer will collect all applicable fees before releasing copies of requested records to the requester. Requesters must pay fees by check or money order made payable to the Treasury of the United States. Note that fees associated with requests from VA beneficiaries, applicants for VA benefits, or other individuals, for records retrievable by their names or individual identifiers processed under 38 U.S.C. 5701 (records associated with claims for benefits) and 5 U.S.C. 552a (the Privacy Act), will be assessed fees in accordance with the applicable regulatory fee provisions relating to VA benefits and VA Privacy Act records.

(b) *Definitions.* For purposes of assessing or determining fees, the following definitions apply:

(1) *All other requests* means a request that does not fit into any of the categories in this section.

(2) *Commercial use request* means a request from or on behalf of one who seeks information for a use or purpose that furthers his or her commercial, trade, or profit interests, to include furthering those interests through litigation. To the extent possible, the FOIA Officer shall determine the use to which the requester will put the requested records. When the intended use of the records is unclear from the request or when there is reasonable cause to doubt the use to which the requester will put the records sought, the FOIA Officer will provide the requester a reasonable opportunity to submit further clarification.

(3) *Direct costs* mean expenses that VA incurs in responding to a FOIA request, including searching for and duplicating (and in the case of commercial use requesters, reviewing) records to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing the work (the basic rate of pay for the employee, plus 16 percent of that rate to cover benefits costs) and the cost of operating duplication machinery. Direct costs do not include overhead expenses, such as the costs of space or heating and lighting of the facility where the records are kept.

(4) *Duplication* means making a copy of a record necessary to respond to a FOIA request; copies may take the form of paper, microform, audiovisual materials or machine readable-documentation (*e.g.,* magnetic tape or disk), among others. The copy provided must be in a form that is reasonably usable by requesters.

(5) *Educational institution* means a pre-school, a public or private elementary or secondary school, an institution of undergraduate or graduate higher education, an institution of professional education, or an institution of vocational education, which operates a program or programs of scholarly research. To be in this category, the FOIA Officer must make a determination that the request is authorized by and made under the auspices of a qualifying institution and that the records are sought to further a scholarly research goal of the institution and not the individual goal of the requester or a commercial goal of the institution.

(6) *Non-commercial scientific institution* means an institution that is not operated on a ''commercial'' basis (as that term is defined in paragraph (b)(2) of this section) and that is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry. To be in this category, the requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are sought to further scientific research and are not sought for a commercial use.

(7) *Representative of the news media* means any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. The term *news* means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large and publishers of periodicals (but only if such entities qualify as disseminators of ''news'') who make their products available for purchase or subscription or free distribution to the general public. These examples are not all-inclusive. As methods of news delivery evolve (for example, the adoption of the electronic dissemination of newspapers through telecommunications services), such alternative media that otherwise meet the criteria for news media shall be considered to be news-media entities.

Freelance journalists may be regarded as working for a news-media entity if they can demonstrate a solid basis for expecting publication through that entity, even though not actually employed by it. A publication contract would be the clearest proof, but the requester's publication history may also be considered. To be in this category, the requester must not be seeking the requested records for a commercial use; a records request supporting the requester's news-dissemination function shall not be considered to be for a commercial use.

(8) *Review* means examining a record including audiovisual, electronic mail, data bases, documents and the like in response to a commercial use request to determine whether any portion of it is exempt from disclosure. Review includes the deletion of exempt material or other processing necessary to prepare the record(s) for disclosure. Review time includes time spent contacting any submitter and considering or responding to any objections to disclosure made by a submitter under § 1.558(d) but does not include time spent resolving general legal or policy issues regarding the application of exemptions. Review costs are recoverable even if, after review, a record is not disclosed.

(9) *Search* means the process of looking for and retrieving records that are responsive to a request, including line-by-line or page-by-page identification of responsive information within records. *Search* also includes reasonable efforts to locate and retrieve information from records maintained in electronic form or format. The component will conduct searches in the most efficient and least expensive manner reasonably possible. The FOIA Officer may charge for time spent searching even if he or she does not locate any responsive record(s) or if any record(s) located is withheld as entirely exempt from disclosure.

(c) *Categories of requesters and fees to be charged each category*. There are four categories of FOIA requesters: Commercial use requesters, educational and non-commercial scientific institutional requesters, representatives of the news media, and all other requesters. Unless a waiver or reduction of fees is granted under paragraph (n) of this section or is limited in accordance with paragraph (e) of this section, specific levels of fees will be charged for each category as follows:

(1) *Commercial use requesters*. Subject to the limitations in paragraph (e) of this section, commercial use requesters will be charged the full direct costs of the search, review, and duplication of records sought. Commercial use requesters are not entitled to 2 hours of free search time or the first 100 pages of reproduced documents free of charge.

(2) *Educational and non-commercial scientific institution requesters*. Subject to the limitations in paragraph (e) of this section, educational and non-commercial scientific institution requesters will be charged for the cost of reproduction only, excluding charges for the first 100 pages.

(3) *Representative of the news media*. Subject to the limitations in paragraph (e) of this section, representatives of the news media will be charged for the cost of reproduction only, excluding charges for the first 100 pages.

(4) *All other requesters*. Subject to the limitations in paragraph (e) of this section, a requester who does not fit into any of the categories in this section will be charged fees to recover the full, reasonable direct cost of searching for and reproducing records responsive to a request, except that the first 2 hours of search time and the first 100 pages of reproduction will be furnished without cost.

(d) *Fees to be charged*. The following fees will be used when calculating the fee owed pursuant to a request or appeal. The fees also apply to making documents available for public inspection and copying under § 1.553 of this part.

(1) *Search*. (i) *Search fees*. When a FOIA Officer determines that a search fee applies, the fee will be based on the hourly salary of VA personnel performing the search, plus 16 percent of the salary. The type and number of personnel involved in addressing the request or appeal depends on the nature and complexity of the request and responsive records. Fees are charged in quarter hour increments.

(ii) *Computer search*. In cases where a computer search is required, the requester will be charged the direct costs of conducting the search, although certain requesters (as provided in paragraph (e)(1) of this section) will be charged no search fee and certain other requesters (as provided in paragraph (e)(4) of this section) will be entitled to the cost of 2 hours of employee search time without charge. When a computer search is required, VA will combine the hourly cost of operating the computer with the employee's salary, plus 16 percent of the salary. When the cost of the search (including the employee time, to include the cost of developing a search methodology, and the cost of the computer to process a request) equals the dollar amount of 2 hours of the salary of the employee performing the search, VA will begin to assess charges for a computer search.

(2) *Duplication*. When a duplication fee applies, the FOIA Officer will charge a fee of 15 cents per one-sided page for a paper photocopy of a record; no more than one copy will be provided. For other forms of duplication, including electronic copies, the FOIA Officer will charge the direct costs of that duplication.

(3) *Review*. When review fees apply, review fees will be charged at the initial level of review only, when the component responsible for processing the request determines whether an exemption applies to a record or portion of a record. For review at the appeal level, no fee will be charged for an exemption that has already been applied and is determined to still apply. However, record or record portions withheld under an exemption that is subsequently determined not to apply may be reviewed again to determine whether any other exemption not previously considered applies; the costs of that review are chargeable. Review fees will be charged at the same rates as those charged for search under paragraph (d)(1) of this section.

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

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

(3) No search fee (or duplication fee, when records are not sought for commercial use and the request is made by an educational or noncommercial scientific institution whose purpose is scholarly or scientific research, or a representative of the news media) will be charged in accordance with this section if the agency fails to comply with the time limit under § 1.556(a), and if no unusual or exceptional circumstances apply to the processing of the request pursuant to § 1.556(c). Duplication and search fees may still be charged to commercial use requesters. Duplication fees may still be charged for ''all other'' requesters.

(4) Except for requesters seeking records for a commercial use, the following will be provided without charge:

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

(ii) The first 2 hours of search time (or the cost equivalent).

(5) Whenever a total fee calculated under paragraph (d) of this section is less than $25.00, no fee will be charged.

(6) VA may provide free copies of records or free services in response to an official request from other government agencies and Congressional offices and when a component head or designee determines that doing so will assist in providing medical care to a VA patient or will otherwise assist in the performance of VA's mission.

(f) The following table summarizes the chargeable fees for each category of requester.

Category	Search fees	Review fees	Duplication fees
(1) Commercial Use	Yes	Yes	Yes.
(2) Educational Institution	No	No	Yes (100 pages free).
(3) Non-Commercial Scientific Institution	No	No	Yes (100 pages free).
(4) News Media	No	No	Yes (100 pages free).
(5) All other	Yes (2 hours free)	No	Yes (100 pages free).

(g) *Fee schedule*. If it is determined that a fee will be charged for processing the FOIA request, VA will charge the requester to search for, review, and duplicate the requested records according to his or her fee category (see § 1.561(c)) and the following fee schedule. In addition, VA will charge the requester for any special handling or services performed in connection with processing the request and/or appeal. The following fees will be used by VA; these fees apply to services performed in making documents available for public inspection and copying under § 1.553 as well. The duplicating fees also are applicable to records provided in response to requests made under the Privacy Act. Fees will not be charged under either the FOIA or the Privacy Act where the total amount of fees for processing the request is $25.00 or less or where the requester has met the requirements for a statutory fee waiver.

(1) Search and review (review applies to commercial-use requesters only). Fees are based on the average hourly salary (base salary plus DC locality payment), plus 16 percent for benefits, of employees in the following three categories. Fees will be increased annually consistent with Congressionally approved pay increases. Fees are charged in quarter-hour increments.

(i) Clerical—Based on GS–6, Step 5, pay (all employees at GS–7 and below).

(ii) Professional—Based on GS–11, Step 7, pay (all employees at GS–8 through GS–12).

(iii) Managerial—Based on GS–14, Step 2, pay (all employees at GS–13 and above).

Note to paragraph (g)(1): Fees for the current fiscal year are posted on VA's FOIA home page (see § 1.552(a) for the pertinent Internet address).

(2) Schedule of fees:

Activity	Fees
(i) Duplication of standard size (8½″ x 11″; 8½″ x 14″; 11″ x 14″) paper records.	$0.15 per page.
(ii) Duplication of non-paper items (e.g., x-rays), paper records which are not of a standard size (e.g., architectural drawings/construction plans or EKG tracings), or other items which do not fall under category (1), in paragraph (c)(1) of this section.	Direct cost to VA.
(iii) Record search by manual (non-automated) methods	Basic hourly salary rate of the employee(s), plus 16 percent. **Note*—If a component uses a single class of personnel for a search, e.g., all clerical or professional, an average rate for the grades of employees involved in the search may be used.
(iv) Record search using automated methods, such as by computer	Direct cost to perform search.
(v) Record review (for Commercial Use Requesters only)	Basic hourly rate of employees performing review to determine whether to release records and to prepare them for release, plus 16 percent.
(vi) Other activities, such as: Attesting under seal or certifying that records are true copies; sending records by special methods; forwarding mail; compiling and providing special reports, drawings, specifications, statistics, lists, abstracts or other extracted information; generating computer output; providing files under court process where the federal government is not a party to, and does not have an interest in, the litigation.	Direct cost to VA.

(h) *Notification of fee estimate or other fee issues*. (1) Threshold for charging fees: VA will not charge the requester if the fee is $25.00 or less.

(2) When a FOIA Officer determines or estimates that the fees to be charged under this section will amount to more than $25.00 or the amount set by OMB fee guidelines, whichever is higher, the FOIA Officer will notify the requester in writing of the actual or estimated amount of the fees, and ask the requester to provide written assurance of the payment of all fees or fees up to a designated amount, unless he or she has indicated a willingness to pay fees as high as those anticipated. Any such agreement to pay the fees shall be memorialized in writing. In addition, when the requester does not provide sufficient information upon which VA can identify a fee category (see paragraphs (c)(1) through (4) of this section), or an issue otherwise arises regarding fee assessment, the FOIA Officer may seek clarification from the requester. In either case, the timeline for responding to the request will be tolled and no further work will be done on it until the fee issue has been resolved. If VA does not receive a written response within ten (10) days after contacting the requester regarding a fee issue, it will assume that the requester no longer wishes to pursue the request and will close the file on the request.

(i) *Charges for other services*. Apart from the other provisions of this section, when special service, such as certifying that records are true copies or sending them by other than ordinary mail, is requested, and the FOIA Officer chooses

to provide such a service as a matter of administrative discretion, the direct costs of providing the service ordinarily will be charged.

(j) *Charging interest.* The FOIA Officer may charge interest on any unpaid bill starting on the 31st day following the date of billing the requester. Interest charges will be assessed at the rate provided in 31 U.S.C. 3717 and will accrue until payment is received by the component. Components will follow the provisions of the Debt Collection Act of 1982 (Pub. L. 97–365, 96 Stat. 1749), as amended, and its administrative procedures, including the use of consumer reporting agencies, collection agencies, and offset.

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

(l) *Advance payments.* (1) For requests other than those described in paragraphs (l)(2) and (l)(3) of this section, a FOIA Officer shall not require the requester to make an advance payment—in other words, a payment made before work is begun or continued on a request. Payment owed for work already completed (*i.e.,* a prepayment before copies are sent to the requester) is not an advance payment.

(2) Where a FOIA Officer determines or estimates that a total fee to be charged under this section will be more than $250.00, the FOIA Officer may require the requester to make an advance payment of an amount up to the amount of the entire anticipated fee before beginning to process the request.

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

(4) When the requester has a history of prompt payment, the FOIA Officer may accept a satisfactory assurance of full payment from the requester rather than an advance payment.

(5) In cases in which a FOIA Officer requires advance payment or payment is due under this section, the timeline for responding to the request will be tolled and further work will not be done on it until the required payment is received.

(m) *Other statutes specifically providing for fees.* The fee schedule of this section does not apply to fees charged under any statute that specifically requires an agency to set and collect fees for particular types of records. Where records responsive to requests are maintained for distribution by agencies operating such statutorily-based fee schedule programs, the FOIA Officer will inform requesters of the steps for obtaining records from those sources so that they may do so most economically.

(n) *Requirements for waiver or reduction of fees.* (1) Waiving or reducing fees. Fees for processing the request may be waived if the requester meets the criteria listed in this section. The requester must submit adequate justification for a fee waiver; without adequate justification, the request will be denied. The FOIA Officer may, at his or her discretion, communicate with the requester to request additional information, if necessary, regarding the fee waiver request. If such additional information is not received within ten (10) business days, VA will assume that the requester does not agree to pay the required fees and the file will be closed pending receipt of the requester's notice that he or she will pay the required fee. Requests for fee waivers are decided on a case-by-case basis; receipt of a fee waiver in the past does not establish entitlement to a fee waiver each time a request is submitted.

(2) Records responsive to a request will be furnished without charge or at a charge reduced below that established under paragraph (d) of this section where a FOIA Officer determines, based on all available evidence, that the requester has demonstrated that:

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

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

(3) To determine whether the fee waiver requirement under paragraph (n)(2)(i) of this section is met, the FOIA Officer will consider the following factors:

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

(ii) *The informative value of the information to be disclosed: Whether the disclosure is ''likely to contribute'' to an understanding of government operations or activities.* The disclosable portions of the requested records must be meaningfully informative about government operations or activities in order to be ''likely to contribute'' to an increased public understanding of those operations or activities. The disclosure of information that already is in the public domain, in either a duplicative or a substantially identical form, would not be as likely to contribute to such understanding where nothing new would be added to the public's understanding.

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

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

(4) To determine whether the fee waiver requirement under paragraph (n)(2)(ii) of this section is met, the FOIA Officer will consider the following factors:

(i) *The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure.* The FOIA Officer shall consider any commercial interest of the requester (with reference to the definition of ''commercial use'' in paragraph (b)(2) of this section), or of any person on whose behalf the requester may be acting, that would be furthered by the requested disclosure. Requesters shall be given an opportunity in the administrative process to provide explanatory information regarding this consideration.

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

(5) Where only some of the records to be released satisfy the requirements for a waiver of fees, a fee waiver will be granted only for those records which so qualify.

(6) Requests for the waiver or reduction of fees should address the factors listed in paragraph (n)(3) and (4) of this section, insofar as they apply to each request. FOIA Officers will exercise their discretion to consider the cost-effectiveness of their investment of administrative resources in this decision-making process, however, in deciding to grant waivers or reductions of fees.

(7) An appeal from an adverse fee determination will be processed in accordance with § 1.559.

(8) When considering a request for fee waiver, VA may require proof of identity.

§ 1.562 Other rights and services.

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

Authority: Sections 1.550 to 1.562 issued under 72 Stat. 1114; 38 U.S.C. 501.

PART 2—DELEGATIONS OF AUTHORITY

■ 11. The authority citation for part 2 continues to read as follows:

Authority: 5 U.S.C. 302, 552a; 38 U.S.C. 501, 512, 515, 1729, 1729A, 5711; 44 U.S.C. 3702, and as noted in specific sections.

■ 12. Amend § 2.6 by:
■ a. Revising paragraph (e)(10).
■ b. Adding paragraph (g)(3).
■ c. Revising the authority citation at the end of paragraph (g).

The revisions and addition read as follows:

§ 2.6 Secretary's delegations of authority to certain officials (38 U.S.C. 512).

* * * * *

(e) * * *

(10) Except as prescribed in paragraph (g)(3) of this section, the General Counsel, Deputy General Counsel, and the Assistant General Counsel for Professional Staff Group IV are authorized to make final Departmental decisions on appeals under the Freedom of Information Act, the Privacy Act, and 38 U.S.C. 5701, 5705 and 7332.

(Authority: 38 U.S.C. 512)

* * * * *

(g) * * *

(3) The Office of Inspector General is authorized to make final decisions on appeals submitted pursuant to the Freedom of Information Act concerning any Office of Inspector General records.

(Authority: 38 U.S.C. 512)

[FR Doc. 2011–20774 Filed 8–18–11; 8:45 am]

BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2008–0514; FRL–9451–1]

Approval and Promulgation of Air Quality Implementation Plans; Ohio; Control of Emissions of Organic Materials That Are Not Regulated by Volatile Organic Compound Reasonably Available Control Technology Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving, as part of Ohio's State Implementation Plan (SIP) under the Clean Air Act (CAA), a revised rule 3745–21–07, ''Control of emissions of organic materials from stationary sources (*i.e.,* emissions that are not regulated by rule 3745–21–09, 3745–21–12, 3745–21–13, 3745–21–14, 3745–21–15, 3745–21–16, or 3745–21–18 of the Administrative Code).'' This rule has been revised because the prior version of 3745–21–07, in Ohio's SIP, has inadequate compliance test methods and definitions. On February 8, 2008, the previously existing rule 3745–21–07, which was part of Ohio's SIP, was rescinded by Ohio EPA. The most significant problem with the prior version is the definition of ''photochemically reactive material,'' which is different than the definition of ''volatile organic compounds'' (VOC), upon which EPA's reasonably available control technology (RACT) regulations are based. The revised rule is approvable because it satisfies the applicable requirements for VOC sources under the CAA. EPA proposed this rule for approval on April 13, 2011, and received no comments.

DATES: This final rule is effective on September 19, 2011.

ADDRESSES: EPA has established a docket for this action under Docket ID EPA–R05–OAR–2008–0514. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Steven Rosenthal, Environmental Engineer, at (312) 886–6052 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Steven Rosenthal, Environmental Engineer, Air Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6052.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. What public comments were received on the proposed approval?
II. What action is EPA taking today and what is the basis of this action?
III. Statutory and Executive Order Reviews

I. What public comments were received on the proposed approval?

EPA proposed to approve Ohio's revised rule Ohio Administrative Code (OAC) 3745–21–07 on April 13, 2011, at 76 FR 20598. This rule consists of VOC control requirements for sources not subject to a VOC RACT regulation. No comments were received on the proposed approval.

II. What action is EPA taking today and what is the basis of this action?

EPA is taking final action to approve into Ohio's SIP revised rule OAC 3745–21–07, ''Control of emissions of organic materials from stationary sources.'' This rule regulates emissions that are not regulated by rule 3745–21–09, 3745–21–12, 3745–21–13, 3745–21–14, 3745–21–15, 3745–21–16, or 3745–21–18 of the Administrative Code. This rule was submitted by the Ohio Environmental Protection Agency (Ohio EPA) to EPA on April 7, 2008, but was not approvable at that time because both sheet molding compound (SMC) manufacturing operations and new or modified sources after February 18, 2008, were exempted from that version of the rule. However, on November 10, 2010, Ohio EPA submitted to EPA a new Rule 3745–21–25 ''Control of VOC emissions from reinforced plastic composites production operations,'' which adequately regulates SMC manufacturing operations and was approved on July 13, 2011. Also, on October 25, 2010, Ohio EPA submitted a demonstration that the new 3745–21–07 does not violate the requirements of Section 110(l) of the CAA by not applying to new or modified sources after February 18, 2010. This demonstration is discussed in detail in the April 13, 2011 notice of proposed rulemaking.

In conclusion, and as discussed in more detail in the April 13, 2011 notice of proposed rulemaking, this rule satisfies RACT requirements and is consistent with the CAA and EPA regulations.

III. Statutory and Executive Order Reviews

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

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

In addition, this rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 18, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 4, 2011.

Susan Hedman,

Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart KK—Ohio

■ 2. Section 52.1870 is amended by revising paragraph (c)(114)(i)(A) and by adding paragraph (c)(154) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(114) * * *

(i) * * *

(A) Rule 3745–21–07 of the Ohio Administrative Code, adopted October 7, 1996, effective October 31, 1996, as certified by Donald R. Schregardus, Director of the Ohio Environmental Protection Agency. Rescinded in 2008; see paragraph 154 of this section.

* * * * *

(154) On April 7, 2008, the Ohio Environmental Protection Agency (Ohio EPA) submitted revised rule ''Control of emissions of organic materials from

stationary sources (*i.e.,* emissions that are not regulated by rule 3745–21–09, 3745–21–12, 3745–21–13, 3745–21–14, 3745–21–15, 3745–21–16, or 3745–21–18 of the Administrative Code).'' On February 8, 2008, the previously existing rule 3745–21–07 was rescinded by Ohio EPA.

(i) Incorporation by reference.

(A) Ohio Administrative Code Rule 3745–21–07 ''Control of emissions of organic materials from stationary sources (*i.e.,* emissions that are not regulated by rule 3745–21–09, 3745–21–12, 3745–21–13, 3745–21–14, 3745–21–15, 3745–21–16, or 3745–21–18 of the Administrative Code),'' effective February 18, 2008.

(B) February 18, 2008, ''Director's Final Findings and Orders'', signed by Chris Korleski, Director, Ohio Environmental Protection Agency.

(ii) Additional material.

(A) An October 25, 2010, letter from Robert F. Hodanbosi, Chief Division of Air Pollution Control of the Ohio Environmental Protection Agency to Susan Hedman, Regional Administrator, containing documentation of noninterference, under section 110(l) of the Clean Air Act, of the less stringent applicability cutoff for sheet mold compound machines.

[FR Doc. 2011–21225 Filed 8–18–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2011–0340; FRL–9454–3]

Approval and Promulgation of Air Quality Implementation Plans; Colorado; Revised Definitions; Construction Permit Program Fee Increases; Regulation 3

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving the two State Implementation Plan (SIP) revision packages submitted by the State of Colorado on August 1, 2007. EPA is approving the August 1, 2007 submittal revisions to Regulation 3, Part A, Section I where the State expanded on the definition of nitrogen dioxide (NO_2) to include it as a precursor to ozone. An increase in the amount of the fees charged for pollutant emissions and minor wording additions as specified in Regulation 3, Part A, Section VI.D.1 is approved. EPA is also approving one grammatical change the State made to Regulation 3 in the August 1, 2007 submittal. In addition, EPA is taking no action on several revisions to Colorado's Regulation 3 regarding New Source Review (NSR), that are contained in this submittal, where previously proposed, pending, or future actions by EPA have addressed or will address these revisions. EPA is also not acting on three provisions in the submittals that are not in Colorado's SIP and revisions to the State's requirements to file Air Pollution Emission Notices (APENs). This action is being taken under section 110 of the Clean Air Act (CAA).

DATES: EFFECTIVE DATE: This final rule is effective September 19, 2011.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R08–OAR–2011–0340. All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mark Komp, Air Program, U.S. Environmental Protection Agency, Region 8, Mail Code 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129, telephone number (303) 312–6022, fax number (303) 312–6064, *komp.mark@epa.gov.*

SUPPLEMENTARY INFORMATION:

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

(iii) The initials *SIP* mean or refer to State Implementation Plan.

(iv) The words *State* or Colorado mean the State of Colorado, unless the context indicates otherwise.

(v) The initials *APEN* mean or refer to Air Pollutant Emission Notice.

(vi) The initials *NSR* mean or refer to New Source Review, the initials PSD mean or refer to Prevention of Significant Deterioration and the initials *NAAQS* mean or refer to National Ambient Air Quality Standards.

(vii) The initials NO_2 mean Nitrogen Dioxide.

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I. Background Information

The State's August 1, 2007 submittal consisted of two packages of revisions to the State's Regulation 3. The first package of revisions was adopted by the State on August 17, 2006 and corrected minor issues EPA had identified regarding Colorado's NSR program. The State adopted the revisions in order to ensure that the State would continue to have Federal approval of its NSR program. In the definitions section of Regulation 3, Part A, Section I.B.16, Colorado adopted language to treat NO_2 as an ozone precursor. The State added in Part A, Section II.C.2.b(ii) under its APEN requirements that an increase of one ton per year or greater of nitrogen oxides emissions from a source with annual actual emissions less than one hundred tons and located in an ozone nonattainment area constituted a significant change. A significant change meant that a new APEN must be submitted to the State.

In the same revision, Methyl Ethyl Ketone was removed as a reportable compound from Appendix B of Regulation 3. The State added T-Butyl Acetate as a non-criteria reportable pollutant in Regulation 3, Appendix B.

The second package of revisions adopted on December 14, 2006 contained annual emission fee increases in Part A, Section VI.D.1 of Regulation 3. The increase in fees is used to pay for the State's increased workload from the processing of APENs and permits.

One grammatical change was made by the State in Part A, Section I.B.9.d. in their Regulation 3. The grammatical change is listed as follows:

- Section I.B.9.d. Applicable Requirement.

The right double parenthesis around the wording ''Regulation No. 8'' was removed and replaced with a single right parenthesis.

II. Response to Comments

EPA did not receive comments regarding our proposed rule for Colorado's Regulation 3 revisions.

III. Section 110(l) of the CAA

Section 110(l) of the CAA states that a SIP revision cannot be approved if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress toward attainment of the National Ambient Air Quality Standards (NAAQS) or any other applicable requirement of the Act. The Colorado SIP revisions being approved that are the subject of this action do not interfere with attainment of the NAAQS or any other applicable requirement of the Act. In regard to the August 1, 2007 submittals, EPA is approving several revisions to the State's Regulation Number 3. These portions do not relax the stringency of the Colorado SIP since they are housekeeping in nature. Therefore, the portions of the revisions proposed for approval satisfy section 110(l) requirements because they do not relax existing SIP requirements.

IV. Final Action

What EPA Is Approving

On May 27, 2011 (76 FR 30894), we proposed approval of the revisions to the State's Regulation Number 3 as identified above. In this action we are approving the State's adding of the definition within Part A, Section I.B.16. as it pertains to NO_2 as a precursor to ozone. We are also approving the increase in the amount of the fees charged for pollutant emissions and minor wording additions as specified in Regulation 3, Part A, Section VI.D.1.

One minor grammatical revision made to Section I.B.9.d., as identified above, is also being approved.

Where EPA Is Taking No Action

The August 1, 2007 submittal included three revisions that are not approved as part of the SIP. First, changes to Appendix B of Regulation 3 where the State removed Methyl Ethyl Ketone as a reportable compound. Second, the State added T-Butyl Acetate as a non-criteria reportable pollutant in Regulation 3, Appendix B. Third, changes made to Part C, Concerning Operating Permits (Part C. X.A.5). These revisions are not part of the EPA-approved SIP and these Appendices are not incorporated by reference into 40 CFR 52.320.

The State corrected minor issues EPA had identified regarding Colorado's NSR program. The State adopted the revisions in order to ensure that the State would continue to have Federal approval of its NSR program. EPA has proposed to approve Colorado's NSR program in a separate action on December 7, 2005 (70 FR 72744). Therefore, we are not taking action on Colorado's NSR program within the context of today's action rather we will act on these revisions in a future action.

The State's submittal also contains minor corrections to its APEN requirements that we have proposed to approve in a separate action on January 25, 2011 (76 FR 4271); therefore, we are not acting on those here.

V. 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 provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

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 October 18, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: July 14, 2011.

Stephen S. Tuber,

Acting Regional Administrator, Region 8.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart G—Colorado

■ 2. Add paragraph (d) to § 52.329 as follows:

§ 52.329 Rules and regulations.

* * * * *

(d) On August 7, 2007, the Colorado submitted two packages with revisions to Colorado's Regulation 3 Regulation, 5 CCR 1001–5, Part A. One change adopts language to treat nitrogen dioxide as an ozone precursor. The State also adopted an increase in fees used to pay for the State's increased workload from the processing of Air Pollutant Emission Notices (APENs) and permits. Annual and permit processing fees shall be $16.54 for regulated pollutants and $114.96 for Hazardous Air Pollutants. One grammatical change was made to the text of Part A, Section 1.B.9.d:

(1) Regulation 3, 5 CCR 1001–5, Air Contaminant Emissions Notices, Part A, Concerning General Provisions Applicable to Reporting and Permitting, Section I, Applicability, Section I.B.9.d, Applicable Requirement, effective October 2006: Any standard or other requirement under section 112 of the Federal Act (hazardous air pollutants, including any requirement concerning accident prevention under section 112(r)(7) of the Federal Act) (Regulation No. 8) but not including the contents of any risk management plan required under section 112(r) of the Federal Act.

(2) Regulation 3, 5 CCR 1001–5, Air Contaminant Emissions Notices, Part A, Concerning General Provisions Applicable to Reporting and Permitting, Section I, Applicability, Section I.B.16, Criteria Pollutants, effective October 2006:

(i) Those pollutants for which the U.S. EPA has established national ambient air quality standards, including: carbon monoxide, nitrogen dioxide (direct emissions and as a precursor to ozone), sulfur dioxide, PM10, total suspended particulate matter, ozone, volatile organic compounds (as a precursor to ozone), and lead.

(ii) For the purpose of Air Pollutant Emission Notice reporting, criteria pollutants shall also include nitrogen oxides, fluorides, sulfuric acid mist, hydrogen sulfide, total reduced sulfur, reduced sulfur compounds, municipal waste combustor organics, municipal waste combustor metals, and municipal waste combustor acid gases.

(3) Regulation 3, 5 CCR 1001–5, Air Contaminant Emissions Notices, Part A, Concerning General Provisions Applicable to Reporting and Permitting, Section VI Fees; Section VI.D.1, Fee Schedule, effective February 2007: Annual and permit processing fees shall be charged in accordance with and in the amounts specified in the provisions of Colorado Revised Statues section 25–7–114.7. Annual fees for regulated pollutants shall be $16.54. Annual fees for hazardous air pollutants shall be $114.96.

[FR Doc. 2011–21233 Filed 8–18–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 040205043–4043–01]

RIN 0648–XA592

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Gulf of Mexico Reef Fish Fishery; 2011 Commercial Quota and 2011 Commercial Fishing Season for Greater Amberjack

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

ACTION: Temporary rule; reopening.

SUMMARY: NMFS implements this temporary final rule to increase the commercial quota for greater amberjack in the Gulf of Mexico (Gulf) for the 2011 fishing year and reopen the 2011 commercial fishing season for greater amberjack for a limited time period. These actions are necessary to achieve the optimum yield for the fishery, thus enhancing social and economic benefits to the fishery.

DATES: This rule is effective August 19, 2011 through December 31, 2011, except for the reopening of the commercial sector for Gulf greater amberjack. The commercial sector for Gulf greater amberjack will reopen at 12:01 a.m., local time, September 1, 2011, and close at 12:01 a.m., local time, October 31, 2011.

ADDRESSES: Electronic copies of the final rule for Amendment 30A, the Final Supplemental Environmental Impact Statement (FSEIS) for Amendment 30A, and other supporting documentation may be obtained from Rich Malinowski, NMFS, Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701; telephone: 727–824–5305.

FOR FURTHER INFORMATION CONTACT: Rich Malinowski, telephone: 727–824–5305, e-mail *Rich.Malinowski@noaa.gov.*

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf is managed under the Fishery Management Plan for Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council (Council) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Background

The 2006 reauthorization of the Magnuson-Stevens Act implemented new requirements that annual catch limits (ACLs) and accountability measures (AMs) be established to end overfishing and prevent overfishing from occurring. AMs are management controls to prevent ACLs from being exceeded, and correct or mitigate overages of the ACL if they occur. Section 303(a)(15) of the Magnuson-Stevens Act mandates the establishment of ACLs at a level such that overfishing does not occur in the fishery, including measures to ensure accountability.

On July 3, 2008, NMFS issued a final rule (73 FR 38139) to implement Amendment 30A to the FMP (Amendment 30A). Amendment 30A established a commercial quota for Gulf greater amberjack of 503,000 lb (228,157 kg) and an AM that would go into effect if the commercial quota for greater amberjack is exceeded. In accordance with regulations at 50 CFR 622.49(a)(1)(i), when the applicable commercial quota is reached, or projected to be reached, the Assistant Administrator for Fisheries, NOAA, (AA), will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year. If despite such closure, commercial landings exceed the quota, the AA will reduce the quota the year following an overage by the amount of the overage of the prior fishing year.

Landings data for 2010, provided by the Southeast Fisheries Science Center (SEFSC) in April, 2011, indicated 562,172 lb (254,997 kg) were landed by the commercial sector, for an overage of 189,100 lb (85,774 kg). Therefore, for 2011, NMFS published a rule in the **Federal Register** (76 FR 23909, April 29, 2011) announcing the 503,000-lb commercial quota would be adjusted to 313,900 lb (142,383 kg) to account for the overage. However, recently updated

landings data, provided by the SEFSC, indicate the commercial harvest for 2010 was 533,981 lb (242,210 kg), 28,191 lb (12,787 kg) less than was previously reported. This temporary rule will establish a new 2011 quota of 342,091 lb (155,170 kg).

The commercial sector was closed on June 18, 2011, when NMFS estimated the 313,900-lb (142,383-kg) adjusted quota would be reached. Landings data available to date, indicate the quota was not met by the closing date and that 58,254 lbs of the adjusted quota remain available. When combined with the 28,191 lb (12,787 kg) erroneously deducted for 2010, this results in 86,452 lb (39,214 kg) of quota available for 2011. Based on historical catch rates, NMFS projects the remaining 86,452 lb (39,214 kg) of quota will be harvested in 61 days. Therefore, this temporary rule will reopen the commercial greater amberjack fishing season beginning at 12:01 a.m., local time, September 1, 2011, and close the commercial sector at 12:01 a.m., local time, on October 31, 2011. The fishery will remain closed until 12:01 a.m., local time, on January 1, 2012.

During the closure, all commercial harvest or possession of greater amberjack in or from the Gulf Exclusive Economic Zone (EEZ), and the sale or purchase of greater amberjack taken from the EEZ is prohibited. The prohibition on sale or purchase does not apply to sale or purchase of greater amberjack that were harvested, landed ashore, and sold prior to 12:01 a.m., local time, October 31, 2011, and were held in cold storage by a dealer or processor. In addition to the Gulf EEZ closure, a person on board a vessel for which a commercial vessel permit for Gulf reef fish has been issued must comply with these closure provisions regardless of where the Gulf greater amberjack are harvested, i.e., in state or Federal waters.

The 2012 commercial quota for greater amberjack will return to the quota specified at 50 CFR 622.42(a)(1)(v) unless accountability measures are implemented due to a quota overage and a reduced quota is specified through notification in the **Federal Register**, or subsequent regulatory action is taken to adjust the quota.

Classification

The Administrator, Southeast Region, NMFS, (RA) has determined this temporary rule is necessary for the conservation and management of the Gulf greater amberjack component of the Gulf reef fish fishery and is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is taken under 50 CRF 622.43(a) and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without opportunity for prior notice and comment.

NMFS prepared a FSEIS for Amendment 30A. A notice of availability for the FSEIS was published on April 18, 2008 (73 FR 21124). An electronic copy of the FSEIS and the Record of Decision are available from NMFS (see **ADDRESSES**).

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive the requirements to provide prior notice and opportunity for public comment on this temporary rule. Such procedures are unnecessary because the commercial AM established by Amendment 30A and located at 50 CFR 622.49(a)(1)(i) authorizes the AA to file a notification with the Office of the Federal Register to adjust the commercial quota the following fishing year. The final rule for Amendment 30A implementing this AM was subject to notice and comment and all that remains is to notify the public of the adjusted 2011 commercial quota and the reopening of the commercial fishing season for Gulf greater amberjack to allow fishermen to catch the remaining quota.

Also, providing prior notice and opportunity for public comment on this action would be contrary to the public interest. Delaying the announcement of the commercial fishing season reopening date to accommodate prior notice and comment would result in a delayed reopening date. Fishermen have indicated that a summer reopening will allow them to take advantage of the increased summer tourists that would be purchasing fish in restaurants and retail markets. This should allow fishermen to obtain higher prices and more easily sell their product. Further, better weather conditions exist in the summer than would be expected in a fall or winter reopening. This would be expected to improve safety at sea conditions in the fishery. Taking time to solicit public comment prior to reopening harvest would result in delaying the reopening until sometime in the early fall. This would result in foregoing the benefits discussed above.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

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

Dated: August 16, 2011.

Galen R. Tromble,

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

[FR Doc. 2011–21251 Filed 8–18–11; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 76, No. 161
Friday, August 19, 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

Food and Nutrition Service

7 CFR Parts 272 and 273

RIN 0584–AE01

Clarification of Eligibility of Fleeing Felons

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Proposed rule.

SUMMARY: Section 6(k) of the Food and Nutrition Act of 2008 (''the Act'') provides that certain individuals are not eligible for Supplemental Nutrition Assistance Program (SNAP) benefits. Such individuals include an individual fleeing to avoid prosecution, custody or confinement after conviction for committing a crime or attempting to commit a crime that is a felony under the law of the place from which the individual is fleeing (or a high misdemeanor in New Jersey) or is violating a condition of probation or parole under Federal or State law. Section 4112 of the Food, Conservation, and Energy Act of 2008, Public Law 110–246, amended Section 6(k) of the Act to require the Secretary of Agriculture to define the terms ''fleeing'' and ''actively seeking'' to ensure State agencies use consistent procedures to disqualify individuals. This rule proposes to define the terms ''fleeing'' and ''actively seeking'' and to establish procedures State agencies are to use in determining fleeing felon status. This rule also proposes criteria to identify a parole violator, verification procedures to establish an individual's status, and time frames for disqualifying an individual determined to be a fleeing felon or a parole violator.

DATES: Comments must be received on or before October 18, 2011 to be assured of consideration.

ADDRESSES: FNS invites interested persons to submit comments on this proposed rule. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Send comments to Angela Kline, FNS, Program Development Division, SNAP, FNS, USDA, Room 812, 3101 Park Center Drive, Alexandria, Virginia 22302.
- All comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identity of the individuals or entities submitting the comments will be subject to public disclosure. FNS will make the comments publicly available on the Internet via *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Angela Kline, Certification Policy Branch, Program Development Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302, (703) 305–2495.

Background

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104–193 (PRWORA) amended Section 6 of the Food Stamp Act of 1977 (now entitled The Food and Nutrition Act of 2008) (the Act) to disqualify fleeing felons from SNAP. To be disqualified under the fleeing felon provisions of PRWORA, an individual must be either: fleeing to avoid prosecution, custody or confinement after conviction for committing a crime or attempting to commit a crime that is a felony under the law of the place from which the individual is fleeing (or a high misdemeanor in New Jersey); or violating a condition of probation or parole imposed under Federal or State law. The intent of the law was to prohibit individuals who were intentionally fleeing to avoid prosecution or imprisonment from receiving SNAP benefits and to aid law enforcement officials actively seeking to apprehend those fleeing to avoid prosecution or custody. The disqualification provisions were codified in the SNAP regulations on January 17, 2001 at 66 FR 4438. For simplicity, throughout the balance of this preamble we will use the term felony to encompass both felonies and New Jersey's high misdemeanors.

The current regulations do not define ''fleeing felon'' or ''probation or parole violation'' and do not prescribe specific procedures for verifying or the time frames for denying and/or terminating individuals identified as either a fleeing felon or a parole violator. As a result, State agencies have not uniformly administered these provisions. Some State agencies rely solely on computer data matches to determine if an individual is fleeing or violating a condition of probation or parole. Other State agencies work directly with law enforcement officials prior to imposing a fleeing felon disqualification. Still others put the burden of proof of fleeing felon status on the individual in question, which may create a burden to program access for those who have little or no resources to gather the information needed, particularly if the felony record is in another State.

In addition, there is no centralized, nationwide law enforcement database or data match system that States can access to verify whether an individual is a fleeing felon. Although the FBI's National Crime Information Center (NCIC) is the only Federal database system that compiles Federal, State, and local warrant information, the NCIC may contain only a fraction of local and State warrants issued across the nation. According to the Government Accountability Office's (GAO) September 2002 report on strengthening the implementation of the fleeing felon provisions, the NCIC data base contained only approximately 30 percent of State and local warrants in August 2000. Affected SNAP recipients and program advocates have expressed concerns that data match systems are unreliable as the information within the systems may not be accurate or current. For example, a data match may show there is an outstanding or active warrant, but may not specify whether the warrant is for a felony or a misdemeanor. In cases where there are similar names, aliases, or stolen identities, the outstanding or active warrant may not belong to the SNAP recipient. Because of the difficulty in establishing whether an individual is actually a fleeing felon, there are anecdotal statements that State agencies have erroneously denied or terminated benefits based solely on outdated,

inaccurate, or incomplete information obtained from a data match system.

Finally, cooperation between State agencies and law enforcement agencies vary widely by jurisdiction and organizational structure. Some law enforcement agencies may allow a State agency to verify an individual's felon status with a simple phone call whereas other law enforcement agencies may require a more formal, written request detailing the specifics needed to determine eligibility for SNAP. If the felony occurred in a State where the recipient no longer resides, it may be even more difficult and time-consuming for a State agency to obtain information needed from law enforcement to determine if the individual is a fleeing felon.

In an effort to enforce the fleeing felon provisions, a law enforcement initiative, Operation Talon, was established by the USDA Office of the Inspector General (OIG) with FNS concurrence on December 18, 1997. Information from law enforcement agencies was matched with SNAP (Food Stamp Program at the time of Operation Talon initiation) caseload data to detect and apprehend individuals who were fleeing felons. FNS issued a memo in April 1998, providing that fleeing felon status was typically determined by the existence of an outstanding warrant for an individual's arrest and the individual is assumed to be fleeing as of the date the warrant is issued. The memo encouraged States and local agencies to work with law enforcements agencies to ascertain how State law defines fleeing felon and parole/probation violators. The memo also clarified that State agencies must resolve questionable information pursuant to 7 CFR 273.2 when computer matches indicated that an individual might be a fleeing felon or parole/probation violator. In conjunction with Operation Talon, FNS issued policy on November 9, 2001 to address what constitutes ''fleeing'' that stated ''Even though a fleeing felon is usually determined by the existence of an outstanding warrant for the individual's arrest and the individual is assumed to be fleeing as of the date the warrant is issued, this may vary from State to State. Therefore, we encourage the State and local SNAP office to work with State and local law enforcement agencies to ascertain how State law defines fleeing felon and parole/probation violators.'' The memorandum also encouraged State agencies to give the individual an opportunity to submit documentation that the warrant has been Satisfied. Most recently, FNS has notified State agencies that this proposed rulemaking will clarify client rights and responsibilities and state administrative procedures. In developing proposed definitions for ''fleeing'' and ''actively seeking,'' we took into consideration the legislative history, from the debate on the Conference report for H.R. 2419, which later became the FCEA. As recorded on page H3815 of the Congressional Record, on May 14, 2008, Representative Baca expressed concern that innocent people have been ensnared in the disqualification provision and denied benefits in an inappropriate way. According to his statement, the provision has disqualified innocent people who had their identities stolen, or who have outstanding warrants for minor infractions that are many years old and where the police have no interest in apprehending and prosecuting the case. According to Senator Harkin's floor statement, 154 Congressional Record S4752 (May 22, 2008), there is no public purpose served by denying food assistance to individuals whose offense were so minor or so long ago that law enforcement has no interest in pursuing them. He further stated that inadequate guidance to the States has resulted in exactly that and that Section 4112 would correct this by making the Department clarify the terms used and make sure that States are not incorrectly disqualifying needy people not being actively pursued by law enforcement authorities.

Section 202 of PRWORA established similar provisions for Supplemental Security Income (SSI). The Social Security Administration (SSA) developed more rigorous standards than FNS in implementing the legislative provision. SSA's Social Security Program Operations Manual (POMS) provided that an individual is ineligible to receive SSI benefits beginning any month in which a warrant, court order or decision, or an order of decision by an appropriate agency is issued which finds that individual is wanted in connection with a crime that is a felony. SSA was sued in multiple courts on its policy. On September 24, 2009, the United States District Court for the Northern District of California approved a settlement agreement in the case of *Martinez* v. *Astrue,* Civ. No. 08–cv–04735 cw. Under that settlement, SSA will suspend or deny benefits to an individual only if a law enforcement officer presents an outstanding felony arrest warrant for any of three categories of NCIC Uniform Offense Classification Codes: Escape (4901), Flight to Avoid (prosecution, confinement, *etc.*) (4902), and Flight-Escape (4999).

In developing these proposed procedures, FNS considered the settlement in the Martinez case and determined not to follow the provisions of that settlement in formulating either the definitions or the procedures. Although the initial PRWORA provisions are similar, FNS implemented the PRWORA provision in a much less rigorous form and now has additional legislation guiding the disqualification provisions. The FCEA preceded the decision in *Martinez* reached in August 2009, and provided specific direction for the agency to follow to amend its existing procedures. FNS maintains that the intent of the FCEA in requiring the defining of ''fleeing'' and ''actively seeking'' was for the agency to adopt more uniform and clear standards while preserving the basic intent of the original legislation—persons who are fleeing and are actively sought by law enforcement for felony charges should not get program benefits. The legislative direction essentially was to provide consistent treatment of fleeing felons, not to limit it to a very small class of felons. Accordingly, we believe that the limitation imposed by SSA on the types of warrants that are subject to the disqualification provisions is not appropriate for SNAP. However, we would be interested in hearing from commenters whether they disagree with our decision and believe that SNAP should follow the Martinez settlement in defining a fleeing felon.

The regulations governing the fleeing felon and parole and probation violators are found at 7 CFR 272.1(c)(1)(vii) Disclosure, 7 CFR 273.1(b)(7)(ix) Special household requirements, 7 CFR 273.2(b)(4)(ii) Privacy Act Statement, and 7 CFR 273.11(n) Fleeing Felons and probation or parole violators. In this rulemaking, we are proposing to revise 273.11(n) in its entirety. A conforming amendment is proposed for 272.1(c)(1)(vii) Disclosure. We do not believe the remaining sections require revision.

Fleeing Felons

In 273.11(n), we are proposing that, before a State agency determines an individual to be a ''fleeing'' felon, the following four criteria must be met: (1) There has to be a felony warrant for an individual; (2) the individual has to be aware of, or should reasonably have been able to expect that, a warrant has or would have been issued; (3) the individual has to have taken some action to avoid being arrested or jailed; and (4) a law enforcement agency must be actively seeking the individual. The first and fourth criteria are under the control of law enforcement and will be

addressed later in this preamble discussion. The second criterion, having knowledge of a warrant or should have reasonably anticipated a warrant, is primarily under the control of the individual. The third criterion, taking an action to avoid being arrested or jailed, is an action taken by the individual. In this rule, we are proposing that all four items have to be present and verified to determine that an individual is a fleeing felon (*i.e.,* there is an outstanding felony warrant, the State agency has documented evidence that the individual knew about the warrant or could reasonably have anticipated a warrant was going to be issued, the State agency has documentation that the individual took an action to avoid arrest or jail for the felony, and a law enforcement agency is actively seeking the individual). There is only one exception to meeting these four criteria: FNS would consider an individual to be a fleeing felon if a law enforcement officer presents an outstanding felony arrest warrant for any of three categories of NCIC Uniform Offense Classification Codes: Escape (4901), Flight to Avoid (prosecution, confinement, *etc.*) (4902), and Flight-Escape (4999) to a State agency to obtain information on the location of and other information about the individual named in the warrant, in accordance with the provisions of Section 11(e)(8)(E) of the Act.

Surrounding the issues of who is a ''fleeing felon,'' what is ''actively seeking,'' and who is a parole violator (for purposes of this disqualification provision) are questions about how the State agency discovers an individual's ''fleeing'' felon or probation or parole violation status, how this information is to be verified, and the time frames for acting on a denial or termination.

There are three basic ways a State agency may become aware of a household's potential ''fleeing'' felon or probation or parole status:

- Through a statement by the household, such as checking off a block on an application or report form that a household member is a fleeing felon or violating parole;
- Through a data match with the FBI's data base NCIC or another data base of outstanding warrants; or
- Through a law enforcement officer who comes to a State agency specifically seeking information on a particular individual for whom he or she has a warrant, in accordance with the provisions of Section 11(e)(8)(E) of the Act.

Each of these ways of learning about a potential fleeing felon raise issues about what constitutes ''fleeing'' and ''actively seeking'' and how they should be verified. We are proposing that primary responsibility for verifying fleeing felon status rests with the State agency, not the household. Although generally verification is the responsibility of the household, there are multiple sensitivities surrounding the disqualification of fleeing felons and probation and parole violators. This prohibition exists for two distinct goals, one, to keep fleeing felons off the program and two, to assist law enforcement officials in capturing individuals who are being actively sought and are participating or attempting to participate in SNAP. When the State agency is approached by a law enforcement agency seeking information about a specific individual, it would be counterproductive to ask a household to verify information that could result in a household member's capture. Further, a State agency may be more likely than a household to obtain information from a law enforcement officer about the status of an existing warrant. Also, data matches frequently reveal warrants that are old and/or from distant jurisdictions. Results from data match activities have shown that households often find it difficult or impossible to resolve these warrants. Some State agencies have denied or terminated individuals in these situations when there is no reasonable way for the individual to resolve the warrant and the law enforcement agency has not taken any action to execute the warrant.

If a household reports that a member of the household is a ''fleeing'' felon or probation or parole violator, FNS does not believe the State agency should make a determination that the person is indeed a fleeing felon or probation or parole violator and act to deny or terminate the individual based solely on the household's statement. Individuals may not understand the legal distinctions in this area or be certain about whether law enforcement is pursuing an action. Prior to determining that an individual is a fleeing felon, the State agency needs to obtain as much information as possible from the household about the household's knowledge of any outstanding warrant, the applicable time frames, the appropriate jurisdiction or law enforcement agency responsible for the warrant, the address of the potential fleeing felon at the time the warrant was issued, and any other information the household can provide about the warrant and the individual's actions. The State agency may obtain this information during the interview, or if an interview is not conducted, as part of its request for verification of other items included in the household's application. The State agency needs to verify with the appropriate law enforcement agency that there is an outstanding warrant, that the warrant is for a felony, and that the law enforcement agency is actively seeking the individual. If the household reported that the individual has tried to avoid the warrant, such a statement would be considered documentation that the individual took an action to avoid being arrested or jailed. Such a statement has to be more than a check-off box on application or report form, however, so that it is clear that the recipient understands to what they are attesting. It needs to be an affirmative statement by the household that the individual in question did indeed attempt to avoid being arrested or jailed and what the individual did to attempt to evade arrest or being jailed. Absent such a statement, the State agency will need to evaluate the specific circumstances of each case to determine if there is documented evidence that the individual in question took action to avoid being arrested or jailed.

It is important to note that the section 6(k) of the Act being addressed in this rulemaking does not prohibit participants who have committed a felony; it addresses individuals who are fleeing related to committing or possibly having committed a felony. It is important, therefore, that the State agency document one or more actions that indicate the individual was aware of the warrant and acted to avoid arrest. Knowledge of awareness of an existing warrant could include being interviewed by law enforcement officers about the felony in question or a statement from another household member, relative, or collateral contact, such as a landlord, that the individual was aware an officer had attempted to serve a warrant. Actions indicating avoidance of arrest could include moving to a new residence after the warrant has been issued, particularly a residence for which the individual is not the owner or holder of the lease, or using a different name, particularly not a normal name change such as a marriage or divorce. Such actions are not independent grounds for considering an individual as fleeing, however, these actions, when considered in conjunction with other factors, may indicate fleeing felon status. The household would retain its right to a fair hearing in the event the individual is denied or terminated based on a determination of fleeing felon status.

Section 273.2(f)(5) provides that primary responsibility for verification rests with the household. It also provides that the State agency must assist the household in obtaining verification provided the household is cooperating. Given the difficulty individuals may have obtaining the necessary documentation from law enforcement agencies and the need to provide law enforcement with time to apply a warrant where appropriate, we have determined that the State agency shall bear primary responsibility for verifying and documenting fleeing felon status. State agencies engaging in data matching with outstanding warrant lists are already doing this, without the clear definitions of ''fleeing'' and ''actively seeking.'' For households that report a fleeing felon as a household member on an application, the provisions for verification proposed in this rule are consistent with the requirement that the State agency verify and document all aspects of a household's eligibility and/or benefit level that are questionable.

We are proposing to define ''actively seeking'' as:

- A law enforcement agency stating that it intends to enforce an outstanding warrant within 20 days of submitting a request to a State agency for information about a specific individual, in accordance with the provisions of Section 11(e)(8)(E) of the Act; or
- A law enforcement agency stating that it intends to enforce an outstanding warrant within 30 days of the date of a request from a State agency about a specific warrant.

Absent a statement from the law enforcement agency that it will attempt to enforce the warrant within the time frame, we propose that the State agency determine that the law enforcement agency is not actively seeking the individual if no response from the law enforcement agency is received within the 20 day time frame provided in the notice from the State agency. A State agency usually has 30 days to act on a new application that is not subject to expedited service provisions. For new applicants, this should give State agencies sufficient time to request, receive a response, and act on the information provided by the law enforcement agency. We believe that 20 days is a sufficient amount of time for a law enforcement agency to make a determination whether to act on the warrant using the information available from the State agency and to respond to the State agency's request for information. We are interested in hearing from law enforcement agencies about whether they believe that this amount of time is sufficient for them to evaluate and act on information provided by a State agency.

Some State agencies have conducted data matches with various law enforcement databases to ascertain if an individual participating in the program is a potential fleeing felon. As we described earlier in this preamble, data matches do not always indicate whether a warrant is for a misdemeanor or felony offense, the warrant may be old, and the applicable law enforcement agency may not be interested in pursuing the warrant, or the warrant may actually misidentify the SNAP recipient as the person being sought. Thus, the mere existence of a warrant naming an individual who is a SNAP recipient or applicant does not provide sufficient information to determine that the individual is actually a fleeing felon who is being actively sought by a law enforcement agency. Rather, it is a possible source for information about an individual who could, through additional verification, be determined to be a fleeing felon. In this rule we are proposing that such data matches are not considered verification that an individual is a fleeing felon or a probation or parole violator. We are proposing that a positive hit in such a data match be verified by the State agency in the same way that it verifies a household reporting that a member may be a fleeing felon. That means that the State agency must verify with the appropriate law enforcement agency that the warrant is for a felony and that the law enforcement office is actively seeking the individual. This is consistent with how other matches are treated in SNAP where the information cannot be considered verified upon receipt. The State agency must request sufficient information from the law enforcement agency to verify that the individual being sought by the warrant is actually the individual SNAP participant. Such information may include, but is not limited to, social security number, birthday date, race and/or nationality, and place of birth.

We propose that the State agency give the law enforcement agency 20 days to respond to a request for information about the conditions of the warrant and whether the law enforcement agency intends to actively pursue the individual. If the warrant is not for a felony or if the law enforcement agency does not indicate that it intends to enforce the warrant within 30 days of the date of the State's request for information about the warrant, we are proposing that the State agency determine that the individual is not a fleeing felon and document the household's case file accordingly. We are proposing that if the law enforcement agency indicates that it does intend to enforce the warrant within 30 days of the date of the request for information on the warrant, the State agency will postpone taking any action on the case until the 30-day period has expired. Once the 30-day period has expired, we are proposing that the State agency verify with the law enforcement agency whether it has attempted to execute the warrant. If it has, the State agency would take appropriate action to deny an applicant or terminate a participant who has been determined to be a fleeing felon (that is, a case in which the law enforcement agency attempted to enforce the warrant but was unable to do so and intends to pursue enforcement) or who has been apprehended. The individual retains the right to request a fair hearing. If the law enforcement agency has not taken any action, we are proposing that the State agency not consider the individual a potential fleeing felon and take no further action in the matter.

Finally, information about fleeing felon status could come to the attention of a State agency if a law enforcement agency comes to the State agency seeking information about an applicant for whom it holds an outstanding warrant. Section 11(e)(8)(E) of the Act requires that the State agency provide the information being requested by the law enforcement agency. The State agency may provide the address, social security number and photo of the participant or applicant, if it has one. In this rule, we are proposing that the State agency must:

- Provide the law enforcement agency with the information it requests;
- Request that the law enforcement agency notify the State agency if and when it attempts to enforce the warrant; and
- Take no action to contact or disqualify the individual for 20 days.

At the end of the 20 days, we are proposing that the State agency verify with the law enforcement agency whether it has attempted to execute the warrant. If it has, we are proposing that the State agency take appropriate action to deny an applicant or terminate a participant who has been determined to be a fleeing felon or who has been apprehended. If the law enforcement agency has not taken any action, we are proposing that the State agency not consider the individual a potential fleeing felon and take no further action in the matter.

We recognize that the time frames for determining fleeing felon status may extend beyond the time frames allowed under 7 CFR 273.2(g) and 7 CFR

273.2(i)(3) for State agencies to process applications. Therefore, we are proposing in 273.11(n) that if a State agency needs to act on an application without determining fleeing felon status in order to comply with these time frames, the State agency shall process the application without consideration of the individual's fleeing felon status.

Probation and Parole Violators

Section 6(k) of the Act prohibits any individual from participating in SNAP during any period during which the individual is violating a condition of probation or parole imposed under a Federal or State law. Neither the term ''fleeing'' nor ''felony'' are referenced in the prohibition from participating based on probation or parole violation. Additionally, the Act and the legislative history of the Act provide no guidance about what constitutes a probation or parole violation. The Act does not limit such violations to felony charges only. Therefore, we are proposing that the disqualification apply to all identified probation or parole violations. However, Section 6(k)(2) of the Act requires the Department to ensure that ''actively seeking'' is defined and that consistent procedures are established that disqualify individuals whom law enforcement authorities are actively seeking for the purpose of holding criminal proceedings against the individual. We are interpreting Section 6(k)(2) to require the application of the term ''actively seeking'' to probation and parole violators. We are proposing in 7 CFR 273.11(n) that State agencies shall follow the same procedures for verifying through law enforcement whether an applicant or participant is a probation or parole violator as those used to determine if an individual is a fleeing felon. This would ensure that there are consistent procedures in place for establishing if a law enforcement office is actively seeking an individual, whether that individual is a fleeing felon or a probation or parole violator. It would make following the procedures easier for State agencies as there would be only one procedure to follow for each of these types of individuals disqualified under section 6(k) of the Act.

Privacy Act, Simplified Reporting, and Transitional Benefits

It should be noted that the Privacy Act provisions and confidentiality provisions found at Section 11(e)(8) of the Act remain intact for individuals subject to the fleeing felon and parole or probation violator provisions of the Act. Therefore, we want to remind the reviewers of this rule that the provisions regarding the process of providing information to law enforcement officials only applies to legitimate law enforcement officers. Information about potential fleeing felons or parole or probation violators must not be released to bounty hunters or other individuals reporting possible violations by recipients or applicants.

Under 7 CFR 273.12(a)(5) State agencies are permitted to place households under a simplified reporting system. Under such a system, the State agency may choose to act on all changes in household circumstances (7 CFR 273.12(a)(5)(vi)(A)) or to act on any change if it would increase the household's benefits and only act on any change that would decrease the household's benefits if the household has voluntarily requested that its case be closed, the State agency has information about the household's circumstances considered verified upon receipt, or there has been a change in the household's public assistance grant (7 CFR 273.12(a)(5)(vi)(B)). If an individual has been determined to be a fleeing felon or a probation or parole violator in accordance with 7 CFR 273.11(n), the Act prohibits this individual from participating in SNAP. In order to ensure that the individual is removed from the program in accordance with the requirements of the Act, we are proposing to add a requirement to 7 CFR 273.12(a)(5)(vi)(B) that the State agency act to remove the individual even though it might result in a decrease in benefits.

Subpart H of Part 273, which was promulgated in accordance with Section 4115 of the Farm Security and Rural Investment Act of 2002, Public Law 107–17, (''FSRIA''), permits households leaving the Temporary Assistance for Needy Families (TANF) program to receive transitional benefits for households. Section 4115 refers to ineligible households rather than ineligible household members. State agencies have the option to provide transitional benefits to a household that contains members who are not in the TANF unit as well as a household that contains ineligible members or members who are under TANF sanction. Households in which all members are disqualified for being fleeing felons, or probation or parole violators are excluded from receiving transitional benefits. Once approved for transitional benefits, the benefit amount cannot be changed unless the State agency has opted to adjust the benefit in accordance with 7 CFR 273.27. We believe that, in order to conform to the intent of section 4115 of the Farm Security and Rural Investment Act concerning ineligible households rather than ineligible household members, the State agency shall not take action to adjust a household's transitional benefit amount because an individual in that household has been determined to be a fleeing felon or a probation or parole violator unless the provisions of 7 CFR 273.27 are applicable.

However, because section 6(k) of the Act prohibits an individual who is a fleeing felon or a probation or parole violator from receiving SNAP benefits, we are interested in hearing whether commenters believe that it is necessary, in order to conform with section 6(k) of the Act, that SNAP benefits are not provided to an individual found to be a fleeing felon or a probation or parole violator, in accordance with the provisions being proposed in this rulemaking, during the transitional benefit period.

SUPPLEMENTARY INFORMATION:

Procedural Matters

Executive Orders 13563 and 12866

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed 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 Impact Analysis

Need for Action

This action is required to implement Section 6(k) of the Food and Nutrition Act of 2008. Section 6(k) provides that certain individuals are not eligible for Supplemental Nutrition Assistance Program benefits. Such individuals include an individual fleeing to avoid prosecution, custody or confinement after conviction for committing a crime or attempting to commit a crime that is a felony under the law of the place from which the individual is fleeing (or a high misdemeanor in New Jersey) or is violating a condition of probation or parole under Federal or State law. Section 4112 of the FCEA, amended Section 6(k) of the Act to require the

Food and Nutrition Service to define the terms ''fleeing'' and ''actively seeking'' to ensure State agencies use consistent procedures to disqualify individuals. This action is not expected to have an effect on Federal Program costs.

In developing the proposed procedures we considered the concerns expressed by representatives of Congress about individuals being disqualified based on mistaken identities or for older minor infractions that law enforcement no longer has an interest in pursuing. Further, based on experience with the implementation of the provision, we have determined that the responsibility for verification should rest with the State agency, not the recipient. The State agency is more likely to obtain cooperation from law enforcement in ascertaining if the law enforcement agency intends to enforce a warrant against a specific individual. Also, if law enforcement comes to the State agency, the State agency may delay taking action to give law enforcement time to act. Finally, recipients are frequently unable to resolve warrants from jurisdictions outside of the immediate area because of lack of funds to travel. State agencies can better ascertain if a distant law enforcement agency is interested in pursuing an identified individual. State agencies will be affected by this rule making to the extent they identify individuals who may be fleeing felons or probation or parole violators.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (RFA) of 1980, (5 U.S.C. 601–612). Pursuant to that review, it has been certified that this rule would not have a significant impact on a substantial number of small entities. Individuals identified as fleeing felons or parole violators will be affected by having their participation in the program terminated. The requirement to terminate such individuals' participation already exists. This rule only clarifies what participants will be determined to be fleeing. It is anticipated that potentially fewer participants will be terminated than under the previous requirements. State and local welfare agencies will be the most affected to the extent that they administer the program.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and Tribal governments and the private sector. Under section 202 of the UMRA, the Department generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local or Tribal governments, in the aggregate, or the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, Section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the most cost effective or least burdensome alternative that achieves the objectives of the rule.

This proposed rule does not contain any Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and Tribal governments or the private sector of $100 million or more in any one year. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

The Supplemental Nutrition Assistance Program is listed in the Catalog of Federal Domestic Assistance Programs under 10.551. For the reasons set forth in the final rule in 7 CFR part 3015, subpart V, and related Notice (48 FR 29115, June 24, 1983), this program is excluded in the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have Federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under Section (6)(b)(2)(B) of Executive Order 13122. FNS has considered this rule's impact on State and local agencies and has determined that it does not have Federalism implications under Executive Order 13132.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with this rule's provisions or which would otherwise impede its full and timely implementation. This rule is not intended to have retroactive effect unless so specified in the Effective Dates section of the final rule. Prior to any judicial challenge to the provisions of the final rule, all applicable administrative procedures must be exhausted.

Civil Rights Impact Analysis

FNS has reviewed this proposed rule in accordance with the Department Regulation 4300–4, ''Civil Rights Impact Analysis,'' to identify and address any major civil rights impacts the rule might have on minorities, women, and persons with disabilities.

Section 821 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104–193 (PRWORA) amended Section 6 of the Act to prohibit fleeing felons and parole violators from participating in the program. This prohibition was codified in SNAP regulations by the final rule ''Food Stamp Program; Personal Responsibility Provisions of the Personal Responsibility and Work opportunity Reconciliation Act of 1996'' (66 FR 4438). SNAP regulations at 7 CFR 273.11(n) addresses the prohibition for participation by an individual identified as a fleeing felon or a probation or parole violator. The existing regulations do not define ''fleeing'' and do not provide procedures for the State agency to use in disqualifying an individual identified as a fleeing felon or a probation or parole violator. Section 6(k) of the Act requires the Secretary of Agriculture to define the terms ''fleeing'' and ''actively seeking'' to ensure SNAP State agencies use consistent procedures to disqualify individuals. After a careful review of the rule's intent and provisions, FNS has determined that there is no way to determine whether the rule would have any impact on minorities, women, and person with disabilities. FNS does not collect information on persons disqualified under the fleeing felon and parole violation provisions. Such a new collection would be difficult information to capture and cause an unnecessary burden on State agencies. Therefore, we are unable to determine whether a disproportionate number of minorities, women, and persons with disabilities are disqualified. This rule proposes to provide greater direction on what constitutes a fleeing felon or parole violator, what constitutes actively seeking, and more uniform procedures among the States. The impact of the rule may be to lower the number of individuals disqualified, but without information on the number currently being disqualified or information on the number of warrants that will be applicable under the proposed procedures, there is no way to

determine if there actually will be a reduction. Nor, without such data being available is there a way to determine if the new provisions affect minorities, women, and persons with disabilities more than the general SNAP caseload.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35; see 5 CFR 1320) requires the Office of Management and Budget (OMB) approve all collections of information by a Federal agency before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. This rule does not contain information collection requirements subject to approval by OMB under the Paperwork Reduction Act of 1995.

E-Government Act Compliance

The Food and Nutrition Service is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Executive Order 13175

USDA will undertake, within 6 months after this rule becomes effective, a series of Tribal consultation sessions to gain input by elected Tribal officials or their designees concerning the impact of this rule on Tribal governments, communities and individuals. These sessions will establish a baseline of consultation for future actions, should any be necessary, regarding this rule. Reports from these sessions for consultation will be made part of the USDA annual reporting on Tribal Consultation and Collaboration. USDA will respond in a timely and meaningful manner to all Tribal government requests for consultation concerning this rule and will provide additional venues, such as webinars and teleconferences, to periodically host collaborative conversations with Tribal leaders and their representatives concerning ways to improve this rule in Indian country.

We are unaware of any current Tribal laws that could be in conflict with the proposed rule. We request that commenters address any concerns in this regard in their responses.

List of Subjects

7 CFR Part 272

Alaska, Civil rights, Supplemental Nutrition Assistance Program, Grant programs—social programs, Penalties, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedures, Aliens, Claims, Supplemental Nutrition Assistance Program, Fraud, Grant programs—social programs, Penalties, Reporting and recordkeeping requirements, Social Security, Students.

Accordingly, 7 CFR parts 272 and 273 are proposed to be amended as follows:

1. The authority citation for Parts 272 and 273 continues to read as follows:

Authority: 7 U.S.C. 2011–2036.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. Paragraph 272.1(c)(1)(vii) is amended by revising the fourth and fifth sentences.

The revision reads as follows:

§ 272.1 General terms and conditions.

* * * * *

(c) * * *

(1) * * *

(vii) * * * If a law enforcement officer provides documentation indicating that a household member is fleeing to avoid prosecution or custody for a felony, or has violated a condition of probation or parole, the State agency shall follow the procedures in § 273.11(n) to terminate the member's participation. A request for information that does not comply with the requirements in § 273.11(n) would not be sufficient to terminate the member's participation. * * *

* * * * *

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

3. Paragraph 273.11(n) is revised to read as follows:

§ 273.11 Action on households with special circumstances

* * * * *

(n) * * *

(1) *Fleeing felon.* To designate an individual as a fleeing felon, the State agency must verify that an individual is a fleeing felon or a law enforcement official must have provided the State agency with an appropriate warrant.

(i) The State agency must verify that:

(A) There is an outstanding felony warrant (or high misdemeanor warrant in New Jersey) for the individual;

(B) The individual is aware of, or should reasonably have been able to expect that, a warrant has or would have been issued;

(C) The individual has taken some action to avoid being arrested or jailed; and

(D) A law enforcement agency is actively seeking the individual; or

(ii) A law enforcement officer presents an outstanding felony arrest warrant, identified by one of the following National Crime Information Center Uniform Offense Classification Codes, to a State agency to obtain information on the location of and other information about the individual named in the warrant:

(A) Escape (4901);

(B) Flight to Avoid (prosecution, confinement, *etc.*) (4902); or

(C) Flight-Escape (4999).

(2) *Probation and parole violators.* Any individual discovered to be a parole or probation violator shall not be considered to be an eligible household member. To be considered a probation or parole violator, the individual must have violated a condition of his or her probation or parole and law enforcement must be actively seeking the individual to enforce the conditions of the probation or parole.

(3) ''Actively seeking'' is defined for paragraphs (n)(1) and (n)(2) of this section as:

(i) A law enforcement agency stating that it intends to enforce an outstanding warrant or arrest an individual for a probation or parole violation within 20 days of submitting a request to a State agency for information about a specific individual;

(ii) A law enforcement agency presents a felony arrest warrant listed in paragraph (n)(1)(ii) of this section; or

(iii) A law enforcement agency stating that it intends to enforce an outstanding warrant or arrest an individual for a probation or parole violation within 30 days of the date of a request from a State agency about a specific warrant or violation.

(4) The State agency shall give the law enforcement agency 20 days to respond to a request for information about the conditions of the warrant or a probation or parole violation and whether the law enforcement agency intends to actively pursue the individual. If the law enforcement agency does not indicate that it intends to enforce the warrant within 30 days of the date of the State's request for information about the warrant, the State agency shall determine that the individual is not a fleeing felon or a probation or parole violator and document the household's case file accordingly. If the law enforcement agency indicates that it does intend to enforce the warrant within 30 days of the date of the request for information on the warrant, the State agency will postpone taking any action on the case until the 30-day period has expired. Once the 30-day period has

expired, the State agency shall verify with the law enforcement agency whether it has attempted to execute the warrant. If it has, the State agency shall take appropriate action to deny an applicant or terminate a participant who has been determined to be a fleeing felon or a probation or parole violator or who has been apprehended. If the law enforcement agency has not taken any action within 30 days, the State agency shall not consider the individual a potential fleeing felon or probation or parole violator, shall document the case file accordingly, and take no further action.

(5) *Application processing.* The State agency shall continue to process the application while awaiting verification of fleeing felon or probation or parole violator status. If the State agency is required to act on the case without being able to determine fleeing felon or probation or parole violator status in order to meet the time standards in § 273.2(g) or § 273.2(i)(3), the State agency shall process the application without consideration of the individual's fleeing felon or probation or parole violator status.

* * * * *

4. Paragraph 273.12(a)(5)(vi)(B) is amended by redesignating paragraph (a)(5)(vi)(B)(*3*) as paragraph (a)(5)(vi)(B)(*4*) and adding a new paragraph (a)(5)(vi)(*3*) to read as follows:

§ 273.12 Reporting requirements.

(a) * * *

(5) * * *

(vi) * * *

(B) * * *

(3) A household member has been identified as a fleeing felon or probation or parole violator in accord with § 273.11(n);

Dated: August 11, 2011.

Kevin Concannon,

Under Secretary, Food, Nutrition, and Consumer Services.

[FR Doc. 2011–21194 Filed 8–18–11; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Parts 10 and 163

[USCBP–2011–0030]

RIN 1515–AD75

Duty-Free Treatment of Certain Visual and Auditory Materials

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the U.S. Customs and Border Protection (CBP) regulations pertaining to the filing of documentation related to free entry of certain merchandise under Chapter 98 of the Harmonized Tariff Schedule of the United States (HTSUS). The proposed amendment would permit an applicant to file the documentation required for duty-free treatment of certain visual and auditory materials of an educational, scientific, or cultural character under subheading 9817.00.40, HTSUS, at any time prior to the liquidation of the entry. The regulation currently requires the filing of this documentation within 90 days of the date of entry. The proposed change would provide more time for the importer to provide the necessary certification documentation to CBP and would serve to align the filing of required certification documentation with a change in CBP policy that extended the liquidation cycle for entries in the ordinary course of business from 90 days to 314 days after the date of entry. The change is consistent with other regulations that govern the duty-free treatment of merchandise under Chapter 98, HTSUS.

DATES: Written comments must be received on or before October 18, 2011.

ADDRESSES: You may submit comments, identified by *docket number,* by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments via Docket No. USCBP 2011–0030.
- *Mail:* Trade and Commercial Regulations Branch, Regulations and Rulings, U.S. Customs and Border Protection, 799 9th Street, NW., (Mint Annex), Washington, DC 20229–1179.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* Submitted comments may also be inspected during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, 799 9th Street, NW., 5th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Joseph Clark at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT: Robert Dinerstein, Valuation and Special Programs Branch, Regulations and Rulings, Office of International Trade, (202) 325–0132.

SUPPLEMENTARY INFORMATION:

Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this proposed rule. U.S. Customs and Border Protection (CBP) also invites comments that relate to the economic, environmental, or federalism effects that might result from this proposed rule. Comments that will provide the most assistance to CBP in developing these procedures will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that supports such recommended change. See **ADDRESSES** above for information on how to submit comments.

Background

The United States signed the ''Agreement for Facilitating the International Circulation of Visual and Auditory Materials of an Educational, Scientific, and Cultural Character'' made at Beirut, Lebanon (also referred to as the ''Beirut Agreement'') in 1948. By Public Law 89–634, 80 Stat. 879, 19 U.S.C. 2501 (October 8, 1966), which amended the Tariff Schedules of the United States, and Executive Order 11311, 31 FR 13413 (Oct. 18, 1966), the United States implemented its obligations under the Agreement to

allow certain qualifying visual and auditory materials to be imported into the United States duty-free. The provision for duty-free treatment for these materials is now set forth under subheading 9817.00.40 of the Harmonized Tariff Schedule of the United States (HTSUS).

CBP coordinates with the U.S. Department of State in administering the obligations of the United States under the Beirut Agreement. The Department of State is the agency responsible for determining whether articles qualify under the Agreement for duty-free treatment under subheading 9817.00.40 of the HTSUS, and CBP is responsible for ensuring that duty-free treatment for merchandise entered under that HTSUS subheading is provided only if the Department of State has certified that the articles qualify. The relevant regulations of the Department of State are set forth in 22 CFR part 61 and the regulation detailing the Department of State's issuance of the certification document is set forth at 22 CFR 61.8. The relevant CBP regulation is 19 CFR 10.121. As the program currently is administered, an applicant is required to file the Department of State's certification document in connection with an entry covering articles for which duty-free treatment is sought. *See* 19 CFR 10.121(a).

This document proposes to amend the CBP regulation regarding the time period in which a party seeking duty-free treatment under subheading 9817.00.40 of the HTSUS must provide certification from the Department of State. If the required documentation has not been filed with CBP at the time of entry for merchandise entered under subheading 9817.00.40, HTSUS, section 10.121(b) of the CBP regulations permits liquidation to be suspended for 90 days after entry to allow an applicant time to obtain the certifying Department of State document. This proposed amendment would permit more time for the importer to provide the necessary certification documentation to CBP.

This document proposes to amend 19 CFR 10.121(b) by removing the language which provides for the suspension of liquidation of an entry for 90 days and to provide, instead, that the required documentation may be filed with CBP any time prior to liquidation. This 90-day suspension provision was promulgated in 1966 and section 10.121(b) does not reflect the subsequent amendments to 19 U.S.C. 1504 or changes to CBP policy regarding liquidation. Under current law, CBP has up to one year to liquidate an entry before it is deemed liquidated by operation of law. *See* 19 U.S.C. 1504. Historically, the majority of entries were liquidated within 90 days in the ordinary course of business; however, this policy was changed by the agency when the volume of trade increased by extending the liquidation cycle from 90 days after entry to 314 days after entry. *See* 314-Day Liquidation Cycle-Trade Notice, CSMS #97–000727 (Aug. 3, 1997). It is noted that there is no statutory provision preventing CBP from liquidating an entry at any time during the one-year period after entry of the merchandise and prior to the conclusion of the 314-day liquidation cycle if all the required documentation has been filed.

Section 10.112 of title 19 CFR (19 CFR 10.112) permits the filing of documentation related to free entry of merchandise under Chapter 98, HTSUS, at any time prior to liquidation of an entry or, if liquidated, before the liquidation becomes final. Section 10.121(b) is proposed to be amended to be consistent with 19 CFR 10.112 and the change in CBP's current liquidation practice. Therefore, the suspension of liquidation of an entry for a period of 90 days from the date of entry to allow an applicant to file the required documentation in order to qualify for an exemption from duty under subheading 9817.00.40, HTSUS, would be replaced with a suspension of liquidation of an entry for a period of 314 days from the date of entry.

Lastly, we note that this proposed change to 19 CFR 10.121(b) is also consistent with other CBP regulations that govern the duty free treatment of merchandise under Chapter 98, HTSUS. For instance, the regulations implementing the Florence Agreement on scientific instruments and apparatus were amended to merely required that the Department of Commerce's certifying documentation be submitted to CBP prior to liquidation. *See* 19 CFR 10.112 and 15 CFR 301.8 (74 FR 30462, June 26, 2009).

Other Changes

This document also proposes to make a non-substantive change to a listing in the Appendix to part 163—Interim (a)(1)(A) List. The listing ''§ 10.121 Certificate from USIA for visual/auditory materials'' currently references USIA (United States Information Agency). Since USIA was abolished in 1999 by the Foreign Affairs Reform and Restructuring Act of 1998, and its functions were transferred to the U.S. Department of State, this listing is outdated. This document will amend the listing in the Appendix to Part 163 to reflect the State Department rather than USIA.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), we have considered whether this proposed rule would have a significant impact on a substantial number of small entities. A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people).

As this proposed amendment would provide more time for an importer to obtain the State Department certificate, CBP certifies under 5 U.S.C. 605(b) that the proposed amendments, if adopted, will not have a significant economic impact on a substantial number of small entities. CBP welcomes any comments regarding this finding.

Executive Order 12866

This proposed rule is not a ''significant regulatory action'' as defined by Executive Order 12866.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), an agency may not conduct, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by Office of Management and Budget (OMB). The information collected under 19 CFR 10.121 is included under OMB control number 1651–0067. There are no new collections of information proposed in this document.

Signing Authority

This regulation is being issued in accordance with 19 CFR 0.1(a)(1) pertaining to the authority of the Secretary of the Treasury (or his/her delegate) to approve regulations pertaining to certain customs revenue functions.

List of Subjects

19 CFR Part 10

Customs duties and inspection, Entry, Imports, Preference programs, Reporting and recordkeeping requirements, Trade agreements.

19 CFR Part 163

Administrative practice and procedure, Customs duties and inspection, Exports, Imports, Reporting and recordkeeping requirements, Trade agreements.

Proposed Amendments to the CBP Regulations

For the reasons set forth above, it is proposed to amend parts 10 and 163 of title 19 of the Code of Federal Regulations as set forth below.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for part 10 continues to read and a specific authority is added for § 10.121 as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314.

* * * * *

Section 10.121 also issued under 19 U.S.C. 2501;

* * * * *

2. Section 10.121(b) is revised to read as follows:

§ 10.121 Visual or auditory materials of an educational, scientific, or cultural character.

* * * * *

(b) Articles entered under subheading 9817.00.40, HTSUS, will be released from CBP custody prior to submission of the document required in paragraph (a) of this section only upon the deposit of estimated duties with the port director. Liquidation of an entry which has been released under this procedure will be suspended for a period of 314 days from the date of entry or until the required document is submitted, whichever comes first. In the event that documentation is not submitted before liquidation, the merchandise will be classified and liquidated in the ordinary course, without regard to subheading 9817.00.40, HTSUS.

PART 163—RECORDKEEPING

3. The authority citation for part 163 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1484, 1508, 1509, 1510, 1624.

* * * * *

Appendix to Part 163—[Amended]

4. Section IV is amended by removing the listing ''§ 10.121 Certificate from USIA for visual/auditory materials'' and adding in its place the listing ''§ 10.121 Certificate from the U.S. Department of State for visual/auditory materials''.

Alan D. Bersin,

Commissioner, U.S. Customs and Border Protection.

Approved: August 16, 2011.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 2011–21275 Filed 8–18–11; 8:45 am]

BILLING CODE 9111–14–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

22 CFR Part 228

[Aid Reg. 228]

RIN 0412–AA70

Procurement of Commodities and Services Financed by USAID

AGENCY: Agency for International Development (USAID).

ACTION: Proposed rule.

SUMMARY: This proposed rule implements the statutory requirement that funds made available by the United States Congress (Congress) to USAID under the authority of the Foreign Assistance Act of 1961, as amended (FAA), be used for procurement in the United States (U.S.), the recipient country, or developing countries. It does so by revising USAID's current source, origin and nationality (S/O/N) regulation to track more closely the statutory procurement authority provided under the FAA and referenced above; by establishing a single code for procurements from the U.S., recipient country and developing countries; by deleting the concept of ''origin,'' which is increasingly obsolete and difficult to apply in today's globalized economy; and by simplifying the concepts of ''source'' and ''nationality'' in order to reflect better Congress's directive to procure from the U.S., recipient or developing countries.

DATES: Comments must be received by close of business October 3, 2011.

ADDRESSES: You may submit comments, identified by Regulatory Information Number, RIN 0412–AA70, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: jniemeyer@usaid.gov.* Include RIN number 0412–AA70 in the subject line of the message.
- *Mail:* U.S. Agency for International Development, Office of the General Counsel, Room 6.07–105, 1300 Pennsylvania Ave., NW., Washington, DC 20523, Attention: John R. Niemeyer, *Esq.*
- *Instructions:* All submissions received must include the Agency name and docket number or Regulatory Information Number (RIN 0412–AA70) for this rulemaking. All comments received will be included in the public docket without change and will be made available online at *http://www.regulations.gov,* including any personal information provided. *Public Participation:* Because security screening precautions have slowed the delivery and dependability of surface mail and hand delivery to USAID/Washington, USAID recommends sending all comments to the Federal eRulemaking Portal. The e-mail address listed above is provided in the event that submission to the Federal eRulemaking Portal is not convenient (all comments must be in writing to be reviewed). You may submit comments by electronic mail, avoiding the use of any special characters and any form of encryption.

USAID will consider all comments in response to the proposed rule as USAID determines how to revise its S/O/N regulation, and will reconcile all comments (similar comments by category) in any published, final rule. All comments will be posted at the portal for Federal rulemaking, *regulations.gov*, under Regulatory Information Number, RIN 0412–AA70.

FOR FURTHER INFORMATION CONTACT: John Niemeyer (or designee), Attorney Advisor, Office of the General Counsel, USAID, Rm. 6.07–105, 1300 Pennsylvania Ave., NW., Washington, DC 20523; telephone: (202) 712–5053 (this is not a toll-free number); *jniemeyer@usaid.gov.*

SUPPLEMENTARY INFORMATION:

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- Part II: The Proposed Rule
  - Purpose of the Rule
  - USAID Regulations Amended by This Rule
  - Summary of Changes to the Existing Rule
  - Regulatory Planning and Review: Findings and Certifications of Impact Assessment
  - List of Subjects in 22 CFR Part 228
  - Proposed Rule: Part 228, Rules on Procurement of Commodities and Services Financed by USAID

I. Background

On February 16, 2011, USAID published in the **Federal Register** (76 FR 8961) an Advanced Notice of Public Rulemaking (ANPRM), notifying the public that USAID intended to review

and revise its S/O/N regulation found at 22 CFR part 228, which in turn implements section 604(a) of the FAA. The Agency provided a forty-five (45)-day public comment period on the ANPRM, which ended Monday, April 4, 2011. The Agency also offered the public the opportunity to submit comments by surface mail, e-mail or fax.

The ANPRM invited comments and suggestions on the existing S/O/N rules in 22 CFR part 228. In particular, USAID inquired

- What, if any, sections of 22 CFR part 228 lead to inefficiencies and ineffectiveness in implementing USAID development assistance activities and programs? What are the efficiency impacts to contractors and grantees from provisions reflecting the concept of ''origin'' and ''source'' (essentially, the country where a commodity is produced and the country from which a commodity is shipped to the cooperating country, respectively, see 22 CFR 228.01), given the difficulty of determining with specificity the origin and source of many commodities in an increasingly globalized economy?
- Should the regulatory guidance concerning ''nationality'' (the place of incorporation, ownership, citizenship, residence, *etc.* of suppliers of USAID-financed goods and services) be modified, and if so, in what manner to improve efficacy of the rule, particularly as applied to suppliers of services and goods in the recipient country?
- Should USAID modify the ''special source rules,'' FAA 604(b), (c), (e), (f), and (g), and reflected in 22 CFR 228.13, for procurement of agricultural commodities, vehicles or pharmaceuticals within limitations set forth in the FAA; and, if so, in what manner?
- Should references in 22 CFR part 228 to other statutory requirements, such as the Fly America Act (49 U.S.C. 40118) be removed or changed? Specifically is it useful for USAID to include Agency-specific policy and procedures in 22 CFR part 228, when separate statutes and prevailing regulatory systems are already in place and publicly available from other sources?

What difficulties do contractors and grantees encounter when requesting a waiver to procure in any country other than those in the approved geographic code for each USAID-funded agreement (contract or grant)? How can USAID's waiver guidance be modified or improved for more clear and cost effective application of the statutory and regulatory waiver requirements? If commenters suggest modification, USAID requests specific proposals for what elements of 22 CFR part 228 should be modified.

USAID also sought comments in the ANPRM concerning the potential costs of modifying the existing regulation, and the potential, quantifiable efficiency benefits of modifying the regulation.

USAID received twenty-one comments in response to the ANPRM, all strongly in favor of substantial simplification of the regulation to reflect the globalization of the economy. Comments also urged revision of the existing regulation due to the growing obsolescence of concepts like ''origin'' in the globalized economy; and stressed the difficulty of applying the geographic codes established in the current rule, and in particular, of finding United States ''origin'' commodities and services, as defined by the current regulation, for procurement in support of USAID funded aid programs. Comments received in response to the ANPRM are discussed and addressed in greater detail, below in ''Background.''

The proposed rule, below, reflects comments received in response to the ANPRM, and has been reviewed by the Office of Management and Budget's Office of Information and Regulatory Affairs. The period for comments concerning the proposed rule has been established at forty-five (45) days, due to the high visibility of United States Government assistance programs in response to current and anticipated political, humanitarian and natural disaster crises, and the shortness and lack of complexity of the proposed rule.

The initial version of the FAA procurement provision in Section 604(a) provided that funds made available under the FAA could be used for procurement outside the United States only if the President made a determination that such procurement would not have adverse effects upon the economy of the U.S., or that any such harm was outweighed by the benefits of ''less costly government procurement outside the United States.'' USAID implemented this directive by adapting the concepts of ''source, origin and nationality'' developed under USAID's commodity import program (CIP),[1], to all its procurements under the FAA. USAID also adapted the ''geographic source codes'' developed under the CIP to apply to all USAID financed procurements, in part in order to address Congress's concern that U.S. taxpayer funded foreign assistance not provide any direct benefits to the governments of communist countries during the Cold War.

In 1993, Congress amended the FAA procurement authorities in Section 604(a) to provide that funds made available to USAID may be used for procurement from the U.S., the recipient country, or developing countries (but not advanced developing countries). However, USAID did not change its procurement regulations to reflect the change in statutory procurement authorities, but instead self-imposed a policy to continue to follow the same limits on procurement in the recipient and developing countries as if the 1993 statutory amendments had not occurred. The concepts of source, origin and nationality were maintained in USAID's procurement regulations at 22 CFR part 228, as were the geographic source codes, none of which captured in any single code Congress's clear 1993 directive to procure from the U.S., recipient country, or developing countries.

Because of the end of the Cold War and the subsequent globalization of the economy, this approach has become increasingly difficult to administer and in some respects obsolete. In an era of tightening budgets, the costs of compliance with the now needlessly complex regulation, and of the self-imposed and unnecessary restrictions on procurement in recipient and developing countries means that the foreign assistance dollar does not go as far as it would with a more straightforward regulation that reflects the statutory authority to procure in the recipient country and other developing countries, in addition to the U.S.

Comments received in response to the ANPRM detail the mounting inefficiencies and costs of the current regulation. Comments generally fell into the following categories: Strongly supportive of review and revision; eliminate the regulation entirely and rely instead on USAID's statutory procurement authority (FAA Section 604(a), above); replace the authorized geographic codes in the current regulation with a simpler approach; Geographic Code 000 (procure from United States source, origin and nationality) is not relevant in today's globalized economy; adherence to Code 000 slows implementation and costs resources better devoted to development; commodities of Code 000 are ineffective in achieving development impact due to warranty and servicing problems abroad; services are frequently needed from non-Code 000 suppliers abroad; source requirements should be eliminated; origin requirements should be

[1] A CIP is a program in which USAID provides foreign exchange to a host country that, by the terms of the applicable agreement between USAID and the host country, is used to finance particular commodity import transactions of the host country.

eliminated; and waiver procedures should be reduced and streamlined. There were also many specific recommendations about particular types of commodity procurements, such as modifying the regulations concerning procurement of used or leased commodities. While USAID did not receive any cost-specific data, several commenters estimated that the time for processing of waivers needed when Code 000 (United States) commodities and services were unavailable ranges from 10–90 days, depending on circumstances such as the length of time needed to complete a market survey, draft the waiver documents, and process the waiver according to implementing partner and USAID procedures.

Several commenters made the point that because of the development of a world or globalized economy since the end of the Cold War, it is difficult to determine with any accuracy where a commodity is produced, due to the myriad sources of components that go into manufacture of many commodities and the movement overseas of the manufacturing operations of many U.S. producers (for example, one commenter commented that little if any computer hardware is manufactured in the United States). Other commodities, such as much information technology and office equipment, certain types of vehicles, and copiers, are not generally available from U.S. origin producers. Because of these challenges, USAID and its implementing partners are frequently required to process waivers to the current S/O/N requirements, costing (based on the data of one commenter) an average of 55 days delay and processing time per waiver. While USAID attempts to expedite such waivers, especially in response to natural or other foreign disasters requiring an emergency response, the waiver process can still slow USAID's emergency responses.

Other commenters note that because of their complexity (for example, the current regulation requires a ''systems determination'' to determine where the components that make up a system, rather than single commodity, are produced, as part of the determination of a commodity's ''origin''), the regulations are sometimes inconsistently applied by USAID missions across the world. Additional concerns about the unavailability of servicing and repairs, spare parts, warranty enforcement, voltage and video format incompatibility, and suitability of some U.S. origin commodities for use in the underdeveloped economies and countries in which USAID works, when taken together present a critique of a regulation in need of revision and updating.

Additional specific comments proposed revisions to the waiver provisions of the current regulation, and many advocated for increased local procurements as both good development and a spur for economic growth in underdeveloped countries. Several comments argued for revision of the restricted commodities provisions in the current regulation, and one urged a clarification that commodities from the General Service Administration supply schedule should be considered to be U.S. source commodities. USAID reviewed and considered all comments, which informed the proposed rule.

II. The Proposed Rule

A. Purpose of Rule

The purpose of this rule is to bring USAID regulations into full alignment with section 604(a) of the Foreign Assistance Act of 1961, as amended, which directs that funds made available under the FAA may be used for procurement ''in the United States, the recipient country, or developing countries.''

B. USAID Regulations Amended by This Rule

The proposed rule amends in its entirety 22 CFR part 228, Rules on Source, Origin and Nationality for Commodities and Services Financed by USAID. The proposed, amended rule applies to all commodities and services financed by USAID.

C. Summary of Changes to the Existing Rule

The proposed rule revises the existing regulation to track more closely the statutory procurement authority provided under the FAA by establishing a single code for procurements from the U.S., recipient country, and developing countries. The proposed rule also deletes the concept of ''origin,'' which is increasingly obsolete and difficult to apply in today's globalized economy, and in place of the concept of ''origin,'' simplifies and strengthens the concepts of ''source'' and ''nationality'' in order to reflect better Congress's directive to procure from the U.S., recipient or developing countries. Section 228.02 preserves statutory procurement authority that augments FAA 604(a), such as Support for Economic and Democratic Development of the Independent States of the Former Soviet Union, 22 U.S.C. 2295b, and Development Fund for Africa, 22 U.S.C 2293 *et seq.* The proposed rule clarifies that waivers to permit procurements beyond the United States, recipient, or developing countries will be to Code 935—any area or country but excluding countries to which assistance is prohibited by law (such prohibited countries were formerly referred to as ''foreign policy restricted countries''). USAID will maintain a list of countries to which assistance is prohibited by law, which will be available in USAID's Automated Directives System, ADS 310. The proposed rule also proposes to raise the amount, from $5 million to $10 million, for which foreign owned local firms will be eligible for construction procurement, 22 CFR 228.13, because that amount has not been raised in over fifteen years. Finally, the proposed rule also clarifies that case by case waivers can be approved by commodity or service type or category (for example, a category of medical equipment like diagnostic machinery, or of services like translation services), to obviate the need for repeat or serial waivers for the same type or category of commodity or service.

D. Regulatory Planning and Review: Findings and Certifications of Impact Assessment

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.

This rule is not a major rule under 5 U.S.C. 804. However, in order to ensure compliance with Executive Branch rulemaking policy and priorities, this rule has been reviewed by the Office of Information and Regulatory Affairs of the Office of Management and Budget.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), USAID has considered the economic impact of the proposed rule and has determined that its provisions would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 22 CFR Part 228

Foreign aid, Procurement, USAID contractors, Grantees and non-governmental recipients.

For the reasons set forth above and based on the comments received in response to the ANPRM, USAID proposes to revise 22 CFR part 228 as follows:

PART 228—RULES FOR PROCUREMENT OF COMMODITIES AND SERVICES FINANCED BY USAID

Subpart A—Definitions and Scope of This Part

Sec.
228.01 Definitions.
228.02 Scope and application.
228.03 Identification of the principal geographic code.

Subpart B—Conditions Governing Source and Nationality of Commodity and Service Procurement Transactions for USAID Financing

228.10 Purpose.
228.11 Source of commodities.
228.12 Nationality of suppliers of commodities and services.
228.13 Foreign government-owned organizations.
228.14 Construction services from foreign-owned local firms.
228.15 Nationality of employees under contracts or subcontracts for services.
228.16 Miscellaneous service transactions.
228.17 Special procurement rules for construction and engineering services.
228.18 Long-term leases.
228.19 Special source rules requiring procurement from the United States.

Subpart C—Conditions Governing the Eligibility of Commodity-Related Services for USAID Financing

228.20 Purpose.
228.21 Ocean transportation.
228.22 Air transportation.
228.23 Other delivery services.
228.24 Incidental services.

Subpart D—Waivers

228.30 General.
228.31 Authority to approve waivers.

Authority: Sec. 621, Pub. L. 87–195, 75 Stat. 445 (22 U.S.C. 2381), as amended, E.O. 12163, Sept. 29, 1979, 44 FR 56673: 3 CFR 1979 Comp., p. 435.

Subpart A—Definitions and Scope of This Part

§ 228.01 Definitions.

As used in this part, the following terms shall have the following meanings:

Advanced developing countries mean those countries that are categorized by the World Bank as upper middle income countries according to its gross national income per capita, except for those countries in which USAID provides assistance. USAID will maintain a list of advanced developing countries primarily based on the most recent World Bank determinations, and which will be available in USAID's Automated Directives System, ADS 310.

Available for purchase means that there have been documented, multiple sales of a commodity or service by the supplier of the commodity or service in an authorized country during the past calendar year. Additionally, for commodities, the commodity is located in such country at the time of purchase from the supplier, and if applicable, can be serviced, and if warrantied, has a warranty valid, in the recipient country. Recipients and contractors must document in their project files that the commodities and services to be procured are available for purchase according to the standards set forth in this definition. There is a *de minimis* exception to the documentation requirement for procurements in the amount of up to $5,000 per procurement, primarily intended for procurements of office supplies or other frequently recurring procurements.

Commodity means any material, article, supply, goods, or equipment. Commodity-related services means delivery services and/or incidental services.

Cooperating country or *recipient country* means the country receiving the USAID assistance subject to this part 228, and includes all the countries receiving assistance under a regional program or project.

Delivery means the transfer to, or for the account of, an importer of the right to possession of a commodity, or, with respect to a commodity-related service, the rendering to, or for the account of, an importer of any such service.

Delivery service means any service customarily performed in a commercial export or import transaction which is necessary to affect a physical transfer of commodities to the cooperating/recipient country. Examples of such services are the following: Export packing, local drayage in the source country (including waiting time at the dock), ocean and other freight, loading, heavy lift, wharfage, tollage, switching, dumping and trimming, lighterage, insurance, commodity inspection services, and services of a freight forwarder. ''Delivery service'' may also include work and materials necessary to meet USAID marking requirements.

Developing countries means those countries that are categorized by the World Bank as low or middle income according to its gross national income per capita, and also including all countries to which USAID provides assistance. USAID will maintain a list of developing countries primarily based on the most recent World Bank determinations, and which will be available in USAID's Automated Directives System, ADS 310.

Implementing document means any document, such as a contract, grant, or letter of commitment issued by USAID, which authorizes the use of USAID funds for the procurement of services or commodities and/or commodity related services, and which specific conditions apply to such procurement.

Incidental services means services such as installation, erection, maintenance, or upgrading of USAID-financed equipment, or the training of personnel in the maintenance, operation and use of such equipment, or similar services provided for the authorized disposition of such commodities.

Mission means the USAID Mission, office or representative in a cooperating/recipient country. *Nationality* refers to the place of legal organization, ownership, citizenship, or lawful permanent residence of suppliers of goods and services.

Recipients and contractors. Recipient has the same meaning as defined in 22 CFR 226.02. *Contractors* mean those entities which enter into a contract, as the term is defined in 48 CFR part 2, with the U.S. Government.

Services mean the performance of identifiable tasks, rather than the delivery of an end item of supply.

Source means the country from which a commodity is shipped to the cooperating/recipient country or the cooperating/recipient country itself if the commodity is located therein at the time of the purchase. Where, however, a commodity is shipped from a free port or bonded warehouse in the form in which received therein, ''source'' means the country from which the commodity was shipped to the free port or bonded warehouse. For a commodity to have a country as its source, it must also be available for purchase in that country.

Supplier means any person or organization, governmental or otherwise, who furnishes services, commodities and/or commodity related services, including delivery or incidental services, financed by USAID.

United States means the United States of America, any State(s) of the United States, the District of Columbia, and areas of U.S. associated sovereignty, including commonwealths, territories and possessions.

USAID means the United States Agency for International Development or any successor agency, including when applicable, each USAID Mission or office abroad.

USAID Geographic Code means a code in the USAID Geographic Code Book which designates a country, a group of countries, or an otherwise defined area. The USAID geographic code for purposes of procurement is described in § 228.03 of this part.

§ 228.02 Scope and application.

(a) This part is applicable to commodities and services financed directly with program funds appropriated under the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2151 *et seq*. If additional authorities and conditions that apply to a USAID-financed procurement are otherwise provided by statute, regulation, or related administrative authorities, those authorities and conditions shall be incorporated in the implementing document and shall prevail in the event of any conflict with this part 228. The authorities and conditions applicable to procurement of commodities or services shall be those in effect on the date of the issuance by USAID of an implementing document for procurement of commodities or services, and include any directives, prohibitions, restrictions or other statutory and related requirements by the United States Congress that govern the funds appropriated to fund the specific procurement, including those on types of assistance and recipients of assistance.

(b) This part is not applicable to commodities purchased under General Services Administration (GSA) supply schedules. Nor is it applicable to procurements with donated funds received under USAID's gift authority, Section 635(d), Foreign Assistance Act of 1961, as amended.

§ 228.03 Identification of the principal geographic code.

(a) The USAID Geographic Code Book sets forth the official description of all geographic codes used by USAID in authorizing or implementing documents, the principal codes of which are used to designate authorized source countries or areas. This regulation establishes one geographic code for procurement of commodities and services under implementing documents unless otherwise specified, the specific number of which is to be determined but hereafter referred to in this regulation as Code xxx for all USAID financed procurements. Code xxx is defined as the United States, the recipient country, and developing countries other than advanced developing countries and countries to which assistance is prohibited by law. USAID will maintain a list of advanced developing countries and a list of countries to which assistance is prohibited by law, which will be available in USAID's Automated Directives System, ADS 310.

(b) For purposes of any waivers authorized under subpart D of this part, the authorized procurement code shall be Code 935, any area or country but excluding those countries to which assistance is prohibited by law.

Subpart B—Conditions Governing Source and Nationality of Commodity and Service Procurement Transactions for USAID Financing

§ 228.10 Purpose.

Sections 228.11 through 228.18 of this part set forth the rules governing the eligible source of commodities and nationality of commodity and service suppliers for USAID financing. The provisions in these sections may be waived in accordance with the provisions in subpart D of this part.

§ 228.11 Source of commodities.

The source of all commodities financed with program funds appropriated under the Foreign Assistance Act of 1961, as amended, shall be Code xxx. Certain commodities must also comply with the special procurement rules in § 228.18 of this part.

§ 228.12 Nationality of suppliers of commodities and services.

The suppliers of all commodities and services financed with program funds appropriated under the Foreign Assistance Act of 1961 shall:

(a) If an individual, be a citizen or lawful permanent resident of a country in Code xxx,

(b) If a for-profit organization,

(1) Be organized under the laws of a country in Code xxx;

(2) Have its principal place of business in a country in Code xxx; and

(3) Be majority [directly] owned, or majority beneficially owned, by individuals who are citizens or lawful permanent residents of countries in Code xxx, or

(c) If a not-for-profit organization performing as a contractor or subcontractor,

(1) Be organized under the laws of a country in Code xxx;

(2) Have its principal place of business in a country in Code xxx; and

(3) Be managed by a governing body, the majority of whom are citizens or lawful permanent residents of countries in Code xxx.

§ 228.13 Foreign government-owned organizations.

Firms operated as commercial companies or other organizations (including nonprofit organizations other than public educational institutions) in which foreign governments or their agents or agencies have a controlling interest are not eligible for financing by USAID, including in a subcontractor or subgrantee capacity, except if their eligibility has been established by a waiver approved by USAID in accordance with the procedures set forth in Subpart D. Foreign government ministries or agencies are eligible for financing by USAID.

§ 228.14 Construction procurement with foreign-owned local firms.

(a) When the estimated cost of a contract for construction is $10 million or less and only local firms will be solicited, a local corporation or partnership which is a foreign-owned local firm will be eligible, see paragraph (b) of this section, if it is determined by USAID to be an integral part of the local economy. However, such a determination is contingent on first ascertaining that no United States construction company with the required capability is currently operating in the cooperating/recipient country or, if there is such a company, that it is not interested in bidding for the proposed contract.

(b) A foreign-owned local firm is an integral part of the local economy provided:

(1) It has done business in the cooperating/recipient country on a continuing basis for at least three years prior to the issuance date of invitations for bids or requests for proposals to be financed by USAID;

(2) It has a demonstrated capability to undertake the proposed activity;

(3) All, or substantially all, of its directors of local operations, senior staff and operating personnel are lawfully resident in the cooperating/recipient country; and

(4) Most of its operating equipment and physical plant are in the cooperating/recipient country.

§ 228.15 Nationality of employees under contracts or subcontracts for services.

The rules set forth in §§ 228.10 through 228.13 do not apply to the employees or individual technical or professional consultants providing personal services to recipients or contractors (consistent with the applicable cost principles for the type of organization). Citizens or lawful permanent residents of countries to which assistance is prohibited by law

are not eligible for USAID financing under this section. USAID will maintain a list of countries to which assistance is prohibited by law, which will be available in USAID's Automated Directives System, ADS 310.

§ 228.16 Miscellaneous service transactions.

This section sets forth rules governing certain miscellaneous services.

(a) *Commissions.* The nationality rules of this part do not apply to the payment of commissions by suppliers. A commission is defined as any payment or allowance by a supplier to any person for the contribution which that person has made to secure the sale or contract for the supplier or which that person makes to securing on a continuing basis similar sales or contracts for the supplier.

(b) *Bonds and guarantees.* The nationality rules of this part do not apply to sureties, insurance companies or banks who issue bonds or guarantees under USAID-financed contracts.

(c) *Liability insurance under construction contracts.* The nationality rules of this part do not apply to firms providing liability insurance under construction contracts.

§ 228.17 Special procurement rules for construction and engineering services.

Advanced developing countries which have attained a competitive capability in international markets for construction services or engineering services, are not eligible to furnish USAID-financed construction and engineering services unless approved to do so under the wavier provisions set forth under subpart D of this part.

§ 228.18 Long-term leases.

Any commodity obtained under a long-term lease agreement, including motor vehicles, is subject to the source and nationality requirements of this subpart B. For purposes of this subpart B, a long-term lease is defined as a single lease of more than 180 days, or repetitive or intermittent leases, including vehicle leases, under a single activity or program within a one-year period totaling more than 180 days, for the same type of commodity.

§ 228.19 Special procurement rules requiring procurement from the United States.

(a) Agricultural commodities and products thereof must be procured in the United States if the domestic price is less than parity, unless the commodity cannot reasonably be procured in the United States in fulfillment of the objectives of a particular assistance program under which such commodity procurement is to be financed. (22 U.S.C. 2354). USAID will maintain a list of affected agricultural commodities, which will be available in USAID's Automated Directives System, ADS 310.

(b) Motor vehicles must be manufactured in the United States to be eligible for USAID financing. Also, any vehicle to be financed by USAID under a long-term lease or where the sale is to be guaranteed by USAID must be manufactured in the United States. (22 U.S.C. 2396). For purposes of this section, motor vehicles are defined as self-propelled vehicles with passenger carriage capacity, such as highway trucks, passenger cars and buses, motorcycles, scooters, motorized bicycles, ATVs and utility vehicles. Excluded from this definition are ambulances, snowmobiles, industrial vehicles for materials handling and earthmoving, such as lift trucks, tractors, graders, scrapers, off-the-highway trucks (such as off-road dump trucks), and other vehicles that are not designed for travel at normal road speeds (40 kilometers per hour and above). Procurement or leasing of motor vehicles must comply with United States law, see 22 U.S.C. 2396.

(c) USAID shall not finance any pharmaceutical product manufactured outside the United States if the manufacture of such product in the United States would involve the use of, or be covered by, a valid patent of the United States, unless such manufacture is expressly authorized by the owner of such patent. (22 U.S.C. 2356). In addition, USAID shall not finance non-contraceptive pharmaceuticals without prior written approval as provided in USAID's Automated Directives System Chapter 310. Contraceptives may be financed in accordance with the procedures in ADS 310.

Subpart C—Conditions Governing the Eligibility of Commodity-Related Services for USAID Financing

§ 228.20 Purpose.

This subpart C governs the eligibility of commodity-related services, both delivery services and incidental services, for USAID financing. These rules, except for those in § 228.21, may be waived in accordance with the provisions in subpart D of this part. The rules on delivery services apply whether or not USAID is also financing the commodities being transported. In order to be identified and eligible as incidental services, such services must be connected with a USAID-financed commodity procurement.

§ 228.21 Ocean transportation.

When transporting commodities subject to the provisions of the Cargo Preference Act, 46 U.S.C. 55305, USAID will administer its programs in accordance with that act and its implementing regulations in 46 CFR part 381 (and any waivers applicable thereto). Subpart D of 22 CFR part 228 does not apply to this provision.

§ 228.22 Air transportation.

The Fly America Act, Title 49 of the United States Code, Subtitle VII, Part A, subpart I, Chapter 401, 40118—Government-Financed Air Transportation, is applicable to all travel subject to this part.

§ 228.23 Other delivery services.

No source or nationality rules apply to other delivery services, such as export packing, loading, commodity inspection services, and services of a freight forwarder. Such services are eligible when provided as part of a commodity procurement financed by USAID.

§ 228.24 Incidental services.

Source and nationality rules do not apply to suppliers of incidental services specified in a purchase contract relating to equipment.

Subpart D—Waivers

§ 228.30 General.

USAID may waive the rules contained in Subparts A, B and C of this part, except for those in § 228.21, in order to accomplish project or program objectives. All waivers must be in writing, and where applicable, are limited to the term established by the waiver.

(a) Waivers to permit procurement outside of Code xxx must be based on a case by case determination that

(1) The provision of assistance requires commodities or services of the type that are not produced in and available for purchase in Code xxx;

(2) It is important to permit procurement from a country not specified in Code xxx to meet unforeseen circumstances;

(3) To promote efficiency in the use of United States foreign assistance resources, including to avoid impairment of foreign assistance objectives

(b) Case by case waivers under paragraph (a) of this section may be made on the basis of a commodity or service type or category, rather than processing repeat, individual waivers for an identical or substantially similar commodity or service. A waiver under paragraph (a)(1) of this section may be

based on a determination that the commodities or services are of a type not produced in and available for purchase in Code xxx and may also be based on a factual finding that a commodity is not mined or grown in Code xxx, or if produced, any substantial part of manufacturing, assembly or processing of a commodity takes place in a country other than in Code xxx. A waiver under paragraph (a)(1) of this section may also be based on the fact that a commodity is not available for purchase in Code xxx in sufficient, reasonable and available quantities or sufficient and reasonable quality that is fit for the intended purpose.

(c) A waiver to authorize procurement from outside the United States of agricultural commodities, motor vehicles, and pharmaceuticals (see § 228.18) must also meet the requirements established in USAID directives on commodity eligibility. USAID will maintain a list of current requirements for commodity eligibility, which will be available in USAID's Automated Directives System, ADS 310.

(d) Any individual transaction not exceeding $25,000 (excluding those covered by special procurement rules in § 228.18) does not require a waiver.

§ 228.31 Authority to approve waivers.

The authority to approve waivers of established policies on source and nationality are delegated authorities within USAID. Contractors or recipients of assistance agreements shall request any necessary waivers through the USAID contracting or agreement officer.

John R. Niemeyer,

Office of the General Counsel.

[FR Doc. 2011–20773 Filed 8–18–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–109006–11]

RIN 1545–BK13

Modifications of Certain Derivative Contracts; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document contains corrections to a notice of proposed rulemaking by cross-reference to temporary regulations (REG–109006–11) relating to whether an exchange for purposes of § 1.1001–1(a) occurs for the nonassigning counterparty when there is an assignment of certain derivative contracts. It was published in the **Federal Register** on Friday, July 22, 2011 (76 FR 43957).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Andrea M. Hoffenson, (202) 622–3920 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The correction notice that is the subject of this document is under section 1001 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking by cross-reference to temporary regulations (REG–109006–11) contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking by cross-reference to temporary regulations (REG–109006–11), which was the subject of FR Doc. 2011–18531, is corrected as follows:

1. On page 43957, column 2, in the preamble, under the caption **FOR FURTHER INFORMATION CONTACT**:, second line, the language ''Andrea Hoffenson, (202) 622–3920'' is corrected to read ''Andrea M. Hoffenson, (202) 622–3920;''.

2. On page 43957, column 4, in the preamble, under the paragraph heading ''Drafting Information'', third line, the language ''Office of Associate Chief Council'' is corrected to read ''Office of Associate Chief Counsel''.

LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 2011–21182 Filed 8–18–11; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2011–0600; FRL–9453–3]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Adoption of Plastic Parts and Business Machines Coating Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Maryland (Maryland). This SIP revision includes amendments to the Code of Maryland (COMAR) 26.11.19.07, Volatile Organic Compounds from Specific Processes, Paper, Fabric, Film and Foil Coating, and adds new COMAR 26.11.19.07–2, Plastic Parts and Business Machines Coating. Maryland's SIP revision meets the requirement to adopt Reasonably Available Control Technology (RACT) for sources covered by EPA's Control Techniques Guidelines (CTG) for Miscellaneous Metal and Plastic Parts Coatings and will help Maryland attain and maintain the National Ambient Air Quality Standard (NAAQS) for ozone. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before September 19, 2011.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2011–0600 by one of the following methods:

A. *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *E-mail: fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2011–0600, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2011–0600. EPA's policy is that all comments received will be included in the public docket without change, and may be

made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Irene Shandruk, (215) 814–2166, or by e-mail at *shandruk.irene@epa.gov.*

SUPPLEMENTARY INFORMATION: On June 22, 2011, the Maryland Department of the Environment (MDE) submitted to EPA a SIP revision concerning the adoption of the plastic parts and business machines coating standards found in the Miscellaneous Metal and Plastic Parts CTG.

I. Background

Section 172(c)(1) of the CAA provides that SIPs for nonattainment areas must include reasonably available control measures (RACM), including RACT for sources of emissions. Section 182(b)(2)(A) provides that for certain nonattainment areas, states must revise their SIPs to include RACT for sources of volatile organic compound (VOC) emissions covered by a CTG document issued after November 15, 1990 and prior to the area's date of attainment.

CTGs are intended to provide state and local air pollution control authorities information that should assist them in determining RACT for VOCs from various sources, including plastic parts and business machines coatings. In developing these CTGs, EPA, among other things, evaluated the sources of VOC emissions from this industry and the available control approaches for addressing these emissions, including the costs of such approaches. Based on available information and data, EPA provided recommendations for RACT for VOCs from plastic parts and business machines coatings.

In June 1978, EPA published a CTG for controlling VOC emissions from surface coating of miscellaneous metal and plastic products (EPA–450/2–78–015), which includes plastic parts and business machines coatings. This CTG discusses the nature of VOC emissions from this industry, available control technologies for addressing such emissions, the costs of available control options, and other items. EPA promulgated national standards of performance for new stationary sources New Source Performance Standards for miscellaneous metal and plastic products industry and EPA also published a national emission standard for hazardous air pollutants (NESHAP) for this industry.

In 2008, after conducting a review of currently existing state and local VOC emission reduction approaches for the plastic parts and business machines industry, reviewing the 1978 CTG and the NESHAP for this industry, and taking into account the information that has become available since then, EPA developed a new CTG for miscellaneous metal and plastic parts, entitled *Control Techniques Guidelines for Miscellaneous Metal and Plastic Parts Coatings* (Publication No. EPA 453/R–08–003).

The miscellaneous metal product and plastic parts surface coatings categories under section 183(e) of the CAA includes the coatings that are applied to the surfaces of a varied range of metal and plastic parts and products. Such parts or products are constructed either entirely or partially from metal or plastic. The VOC emissions from miscellaneous metal product and plastic parts surface coating processes result from the evaporation of the volatile components of the coatings and cleaning materials used in these operations.

II. Summary of SIP Revision

On June 22, 2011, MDE submitted to EPA a SIP revision (#11–03) concerning the adoption of the emission limits for plastic parts and business machines coatings, part of the EPA miscellaneous metal and plastic parts coatings CTG. EPA develops CTGs as guidance on control requirements for source categories. States can follow the CTGs or adopt more restrictive standards. Maryland has adopted EPA's CTG standards for plastic parts and business machine coating processes. These regulations are in COMAR 26.11.19, Volatile Organic Compounds from Specific Processes. Specifically, this revision amends the existing regulation in Section 26.11.19.07 by moving existing VOC coating standards for plastic parts and vinyl from this section to new a Section, COMAR 26.11.19.07–2, Plastic Parts and Business Machines Coating. Additionally, coating standards for plastic parts and business machines from EPA's CTG are being adopted into COMAR 26.11.19.07–2, as well as new definitions and application methods. Tables 1–3 below outline the emission standards adopted by Maryland for plastic parts coatings, business machines coatings, and printing standards. A detailed summary of EPA's review of and rationale for proposing to approve this SIP revision may be found in the Technical Support Document (TSD) for this action which is available on line at *http://www.regulations.gov,* Docket number EPA–R03–OAR–2011–0600.

TABLE 1—PLASTIC PARTS COATING STANDARDS

Coating installation	Applicability (pounds of VOC per day)	Pounds of VOC per gallon of coating (as applied minus water)	Kilograms of VOC per liter of coating (as applied minus water)
Decorative coating of other plastic parts	20	5.9	0.70
General, one-component	15	2.3	0.28
General, multi-component	15	3.5	0.42
Electric dissipating coatings and shock-free coatings	15	6.7	0.80
Extreme performance	15	3.5	0.42
Metallic	15	3.5	0.42
Military specification, one-component	15	2.8	0.34
Military specification, multi-component	15	3.5	0.42
Mold seal	15	6.3	0.76
Multi-colored coatings	15	5.7	0.68
Optical coatings	15	6.7	0.80
Plastic vehicle parts	20	3.0	0.36
Vacuum-metalizing	15	6.7	0.80
Vinyl	20	3.8	0.45

TABLE 2—BUSINESS MACHINES COATING STANDARDS

Coating installation	Applicability (lbs of VOC per day)	Pounds of VOC per gallon of coating (as applied minus water)	Kilograms of VOC per liter of coating (as applied minus water)
Prime coat	15	2.9	0.35
Topcoat	15	2.9	0.35
Texture coat	15	2.9	0.35
Fog coat	15	2.9	0.26
Touchup and repair	15	2.9	0.35

TABLE 3—PRINTING STANDARDS

Printing installation	Applicability (lbs of VOC per day)	Pounds of VOC per gallon of coating (as applied minus water)	Kilograms of VOC per liter of coating (as applied minus water)
Plastic other than vinyl	Non-major source	5.8	0.69
Plastic other than vinyl	Major source as defined in COMAR 26.11.19.01B(4)	3.8	0.45
Vinyl	20	3.8	0.45

III. Proposed Action

EPA is proposing to approve Maryland's SIP revision for adoption of the CTG standards for plastic parts and business machines coatings. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Statutory and Executive Order Reviews

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

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

health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule concerning Maryland's adoption of CTG standards for plastic parts and business machines coatings does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: August 3, 2011.

W.C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2011–21279 Filed 8–18–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2011–0491; EPA–R03–OAR–2011–0570; FRL–9453–5]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Adhesives and Sealants Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve State Implementation Plan (SIP) revisions submitted by the State of Maryland. These SIP revisions pertain to amendments to Maryland's rule for the control of volatile organic compound (VOC) emissions from chemical production and polytetrafluoroethylene (PTFE) operations, from paint, resin, and adhesive manufacturing, and from adhesive and sealant application. These SIP revisions also pertain to an addition of a new regulation for the control of VOC emissions from adhesives and sealants. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before September 19, 2011.

ADDRESSES: Submit your comments, identified by Docket ID Numbers EPA–R03–OAR–2011–0491 and EPA–R03–OAR–2011–0570 by one of the following methods:

A. *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *E-mail: fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2011–0491 and EPA–R03–OAR–2011–0570, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID Nos. EPA–R03–OAR–2011–0491 and EPA–R03–OAR–2011–0570. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by e-mail at *quinto.rose@epa.gov.*

SUPPLEMENTARY INFORMATION: On April 18, 2008, the Maryland Department of the Environment (MDE) submitted revisions to its SIP (Maryland SIP #08–02) regarding the control of VOC emissions from PTFE operations (amending Regulation .30 under COMAR 26.11.19) and from adhesives and sealants operations (adding Regulations .01–.07 under a new chapter, COMAR 26.11.35). On May 28, 2009, MDE submitted another revision to its SIP (Maryland SIP #09–01) amending Regulation .01 under COMAR 26.11.35. In addition, on April 23, 2010, EPA received a SIP revision (Maryland SIP #10–06) amending the control of VOC emissions from paint, resin, and adhesive manufacturing and adhesive and sealant application (Regulations .15A and .15C(4) under COMAR 26.11.19).

The SIP revisions consist of the following:

A. Amendments to Regulation .30, Control of Volatile Organic Compounds From Chemical Production and Polytetrafluoroethylene Operations Under COMAR 26.11.19 (Volatile Organic Compounds From Specific Processes)

COMAR 26.11.19.30 (Control of Volatile Organic Compounds from Chemical Production and Polytetrafluoroethylene Operations) is in the Maryland SIP. (See 40 CFR 52.1070(c) and 68 FR 33000, June 3, 2003). COMAR 26.11.19.30 sets reasonably available control technology (RACT) for: (1) Organic chemical installations which are process equipment that operate independently or in combination with other equipment reactors, distillation columns, evaporators, strippers and other similar

chemical processing equipment to produce a single chemical intermediate or final product; (2) process equipment for the production of inorganic chemicals when associated with drying or product treatment equipment that involves the use of VOCs; and (3) installations that treat PTFE so that its shape or form is permanently changed and that result in VOC emissions into the air but excluding installations that apply a coating to PTFE or a PTFE product.

The amendments change the definition of PTFE to fluoropolymer material (FPM), and therefore replacing PTFE to FPM throughout COMAR 26.11.19.30. The amendments also specify that a person who owns or operates an installation subject to the requirements of COMAR 26.11.19.30 will not be subject to COMAR 26.11.35 (Control of VOC Emissions from Adhesives and Sealants) provided that monthly records are maintained which demonstrate that VOC emissions from the application of all adhesives, sealants, adhesive primers, and sealant primers do not exceed 400 pounds per year; and adhesive manufacturing does not exceed 200 pounds per year.

B. Addition of COMAR 26.11.35 (Control of VOC Emissions From Adhesives and Sealants)

The Ozone Transport Commission (OTC) States developed a Model Rule ''OTC Model Rule For Adhesives and Sealants'' dated 2006 which was based on the 1998 California Air Resources Board (CARB) RACT determination. This RACT determination applied to both the manufacture and use of adhesives, sealants, adhesive primers or sealant primers, in both industrial and manufacturing facilities and in the field. California Air Districts used this determination to develop regulations for this category. EPA addressed this source category with a Control Techniques Guideline (CTG) document for Miscellaneous Industrial Adhesives dated September 2008. This CTG was developed in response to section 183(e) of the CAA requirement for EPA to study and regulate consumer and commercial products, which is included in EPA's Report to Congress, ''Study of Volatile Organic Compound Emissions from Consumer and Commercial Products—Comprehensive Emissions Inventory.'' The section 183(e) miscellaneous industrial adhesives category was limited to adhesives and adhesive primers used in industrial and manufacturing operations and did not include products applied in the field. Therefore, the OTC Model Rule and State efforts in developing individual regulations preceded EPA's CTG for this source category and were broader in applicability.

The new Chapter COMAR 26.11.35 adds new regulations that: (a) Set standards for the application of adhesives, sealants, adhesive primers, and sealant primers by providing options for appliers either to use a product with a VOC content equal to or less than a specified limit or to use add-on controls; (b) establish standards for cleanup solvents; (c) establish a VOC limit for surface preparation solvents; (d) provide for an alternative add-on control system requirement of at least 85 percent overall control efficiency (capture and destruction), by weight; (e) provide exemptions for certain operations such as medical and defense equipment manufacturing and for small containers; (f) require simplified records of materials used and VOC content to be maintained for 5 years, with more detailed records required for noncompliant products on material usage from persons who qualify for exemptions; (g) require that VOC-containing materials must be stored or disposed of in closed containers; (h) content limits; (i) require manufacturers to label containers with the maximum VOC content as supplied, as well as the maximum VOC content on an as-applied basis when used in accordance with the manufacturer's recommendations regarding thinning, reducing, or mixing with any other VOC containing material; and (j) prohibit the specification of any adhesive, primer, or sealant that violates the provisions of the proposed regulations.

C. Amendments to Regulation .01 Under COMAR 26.11.35

These amendments exempt single-ply roof membrane installation and repair adhesives, single-ply roof membrane sealants, and single-ply roof membrane adhesive primers from standards for VOC content during non-ozone seasons for the years 2009, 2010 and 2011. In 2012, the standards for VOC content for these materials are applicable throughout the year.

D. Amendments to Regulation .15 (Paint, Resin, and Adhesive Manufacturing and Adhesive and Sealant Application) Under COMAR 26.11.19, Regulations .15A and .15C(4)

The following definitions were added to Regulation .15A: sealant, sealant application, and specialty electronic systems and subsystems for defense and homeland security. Amendments to Regulation .15C(4) repeal the general emission standard for adhesives, and establishes a RACT emission limitation for specialty electronic systems and subsystems for defense and homeland security. The amendments limit the discharge into the atmosphere to not more than 25 pounds per day of VOC from adhesive and sealant application, averaged over a monthly period.

A detailed summary of EPA's review of and rationale for proposing to approve this SIP revision may be found in the Technical Support Document (TSD) for this action which is available on line at *http://www.regulations.gov,* Docket numbers EPA–R03–OAR–2011–0491 and EPA–R03–OAR–2011–0570.

III. Proposed Action

EPA is proposing to approve the Maryland SIP revision amending COMAR 26.11.19.30 ''Control of Volatile Organic Compounds from Chemical Production and Polytetrafluoroethylene Operations'' and adding COMAR 26.11.35 ''Control of VOC Emissions from Adhesives and Sealants.'' EPA is also proposing to approve the Maryland SIP revisions amending Regulation .01 under COMAR 26.11.35 and Regulations .15A and .15C(4) under COMAR 26.11.19.15 ''Paint, Resin, and Adhesive Manufacturing and Adhesive and Sealant Application.'' EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule, pertaining to Maryland's control of VOCs from adhesives and sealants, does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: August 8, 2011.

W.C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2011–21272 Filed 8–18–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2011–0474; FRL–9453–4]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Determination of Clean Data for the 2006 Fine Particulate Standard for the Charleston Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to determine that the Charleston, West Virginia nonattainment area for the 2006 fine particulate matter ($PM_{2.5}$) National Ambient Air Quality Standard (NAAQS) has clean data for the 24-hour 2006 $PM_{2.5}$ NAAQS. This proposed determination is based upon quality assured, quality controlled, and certified ambient air monitoring data showing that this area has monitored attainment of the 2006 $PM_{2.5}$ NAAQS based on the 2007–2009 data and data available to date for 2010 in EPA's Air Quality System (AQS) database that show the area continues to attain. If this proposed determination is made final, the requirements for this area to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning State Implementation Plans (SIPs) related to attainment of the standard shall be suspended for so long as the area continues to meet the 24-hour 2006 $PM_{2.5}$ NAAQS.

DATES: Written comments must be received on or before September 19, 2011.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2011–0474 by one of the following methods:

A. *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *E-mail: fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2011–0474, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2011–0474. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: Asrah Khadr, (215) 814–2071, or by e-mail at *Khadr.Asrah@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

The following outline is provided to aid in locating information in this preamble.

I. What action is EPA taking?
II. What is the effect of this action?
III. What is the Background for this action?
IV. What is EPA's analysis of the relevant air quality data?
V. Proposed Action
VI. Statutory and Executive Order Reviews

I. What action is EPA taking?

EPA is proposing to determine that Charleston, West Virginia $PM_{2.5}$ nonattainment area has clean data for the 24-hour 2006 $PM_{2.5}$ NAAQS. This

determination is based upon quality assured, quality controlled, and certified ambient air monitoring data showing that these areas have monitored attainment of the 2006 $PM_{2.5}$ NAAQS based on the 2007–2009 data and data available to date for 2010 in EPA's AQS database.

II. What is the effect of this action?

If this determination is made final, under the provisions of EPA's $PM_{2.5}$ implementation rule (see 40 CFR section 51.1004(c)), the requirements for the Charleston nonattainment area to submit an attainment demonstration, associated reasonably available control measures (RACM) (including reasonably available control technology (RACT)), a reasonable further progress (RFP) plan, contingency measures, and any other planning SIPs related to attainment of the 2006 $PM_{2.5}$ NAAQS would be suspended for so long as the area continues to meet the 24-hour 2006 $PM_{2.5}$ NAAQS. Furthermore, as described below, a final clean data determination would not be equivalent to the redesignation of this area to attainment of the 24-hour 2006 $PM_{2.5}$ NAAQS.

If this rulemaking is finalized and EPA subsequently determines, after notice-and-comment rulemaking in the **Federal Register**, this area has violated the 24-hour 2006 $PM_{2.5}$ NAAQS, the basis for the suspension of the specific requirements, set forth at 40 CFR 51.1004(c), would no longer exist and this area would thereafter have to address the pertinent requirements.

This clean data determination that EPA proposes with this **Federal Register** notice, that the air quality data shows attainment of the 24-hour 2006 $PM_{2.5}$ NAAQS, is not equivalent to the redesignation of this area to attainment. This proposed action, if finalized, will not constitute a redesignation to attainment under section 107(d)(3) of the Clean Air Act (CAA), because we would not yet have an approved maintenance plan for this area as required under section 175A of the CAA, nor a determination that this area has met the other requirements for redesignation. The designation status of this area would remain nonattainment for the 2006 $PM_{2.5}$ NAAQS until such time as EPA determines that this area meets the CAA requirements for redesignation to attainment.

III. What is the background for this action?

The 2006 $PM_{2.5}$ NAAQS set forth at 40 CFR 50.13 became effective on December 18, 2006 (71 FR 61144) and promulgated a 24-hour standard of 35 micrograms per cubic meter ($\mu g/m^3$) based on a 3-year average of the 98th percentile of 24-hour concentration. On December 14, 2009, (74 FR 58688), EPA made designation determinations, as required by CAA section 107(d)(1), for the 24-hour 2006 $PM_{2.5}$ NAAQS. The Charleston area is designated as nonattainment for the 24-hour 2006 $PM_{2.5}$ NAAQS.

IV. What is EPA's analysis of the relevant air quality data?

EPA has reviewed the ambient air monitoring data, consistent with the requirements contained in 40 CFR part 50 and recorded in EPA's AQS database for the Charleston $PM_{2.5}$ nonattainment area from 2007 through the present time. On the basis of that review, EPA has concluded that this area meets the 24-hour 2006 $PM_{2.5}$ NAAQS based on the 2007–2009 data and data available to date for 2010 in EPA's AQS database.

Under EPA regulations in 40 CFR part 50, section 50.13 and in accordance with Appendix N, the 24-hour primary and secondary $PM_{2.5}$ standards are met when the 98th percentile 24-hour concentration is less than or equal to 35 $\mu g/m^3$. Table 1 shows the design values for the 2006 24-hour $PM_{2.5}$ NAAQS for the years 2007–2009 and Table 2 shows the preliminary design values for the 2006 24-hour $PM_{2.5}$ NAAQS for the year 2010. EPA's review of the data indicates that the Charleston, West Virginia $PM_{2.5}$ nonattainment area meets the 2006 $PM_{2.5}$ NAAQS.

TABLE 1—2007–2009 DAILY AVERAGE CONCENTRATIONS IN THE CHARLESTON AREA[1]

Site name	County	Site No.	Design value ($\mu g/m^3$)
Charleston	Kanawha	54–039–0010	29
South Charleston	Kanawha	54–039–1005	32

[1] The publicly available $PM_{2.5}$ AQS data and information is available as part of EPA's AirTrends Site at: *http://www.epa.gov/airtrends/values.html.*

TABLE 2—2010 DAILY AVERAGE CONCENTRATIONS IN THE CHARLESTON AREA

Site name	County	Site No.	Preliminary design value ($\mu g/m^3$)
Charleston	Kanawha	54–039–0010	25
South Charleston	Kanawha	54–039–1005	28

V. What's EPA's proposed action?

EPA is proposing to determine that the Charleston nonattainment area has clean data for the 24-hour 2006 $PM_{2.5}$ NAAQS. As provided in 40 CFR 51.1004(c), if EPA finalizes this determination, it will suspend the requirements for this area to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and any other planning SIPs related to the attainment of the 2006 $PM_{2.5}$ NAAQS, so long as these areas continues to meet the standard. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

VI. What are the statutory and executive order reviews?

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

• Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);

• Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

• Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rulemaking that the Charleston, West Virginia $PM_{2.5}$ nonattainment area has clean data for the 24-hour 2006 $PM_{2.5}$ standard does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian Country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

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

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

Dated: August 8, 2011.

W.C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2011–21224 Filed 8–18–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2011–0063; 92220–1113–0000–C5]

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To Delist the Valley Elderberry Longhorn Beetle

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding and initiation of status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to delist the valley elderberry longhorn beetle *(Desmocerus californicus dimorphus)* under the Endangered Species Act of 1973, as amended (Act). Based on our review, we find that the petition presents substantial scientific or commercial information indicating that delisting the valley elderberry longhorn beetle may be warranted. Therefore, with the publication of this notice, we are initiating a status review of the species to determine if delisting is warranted. To ensure that this status review is comprehensive, we are requesting scientific and commercial data and other information regarding the valley elderberry longhorn beetle. Based on this status review, we will issue a 12-month finding on the petition, which will address whether the petitioned action is warranted under section 4(b)(3)(B) of the Act.

DATES: To allow us adequate time to conduct this review, we request that we receive information on or before October 18, 2011. Please note that if you are using the Federal eRulemaking Portal (see **ADDRESSES**, below), the deadline for submitting an electronic comment is Eastern Standard Time on this date.

ADDRESSES: You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Keyword box, enter Docket No. FWS–R8–ES–2011–0063, which is the docket number for this rulemaking. Then, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rules link to locate this document. You may submit a comment by clicking on ''Send a Comment or Submission.''

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R8–ES–2011–0063; 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-mail or faxes. We will post all information we receive on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Request for Information below for more details).

FOR FURTHER INFORMATION CONTACT: Karen Leyse, Listing Coordinator, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Suite W–2605, Sacramento, CA 95825; telephone 916–414–6600; facsimile 916–414–6712. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Request for Information

When we make a finding that a petition presents substantial information indicating that delisting a species may be warranted, we are required to promptly review the status of the species (status review). For the status review to be complete and based on the best available scientific and commercial information, we request information on the valley elderberry longhorn beetle from governmental agencies, Native American Tribes, the scientific community, industry, and any other interested parties. We seek information on:

(1) The species' biology, range, and population trends, including:

(a) Habitat requirements for feeding, breeding, and sheltering;

(b) Genetics and taxonomy;

(c) Historical and current range, including distribution patterns;

(d) Historical and current population levels, and current and projected trends; and

(e) Past and ongoing conservation measures for the species, its habitat, or both.

(2) The factors that are the basis for making a listing/delisting/downlisting determination for a species under section 4(a) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), which are:

(a) The present or threatened destruction, modification, or curtailment of its habitat or range;

(b) Overutilization for commercial, recreational, scientific, or educational purposes;

(c) Disease or predation;

(d) The inadequacy of existing regulatory mechanisms; or

(e) Other natural or manmade factors affecting its continued existence.

Please include sufficient information with your submission (such as references to scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, cannot be considered in making a determination. Section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or threatened species must be made ''solely on the basis of the best scientific and commercial data available.''

You may submit your information concerning this status review by one of the methods listed in **ADDRESSES**. If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the Web site. If you submit a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this personal identifying information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.*

Information and supporting documentation that we received and used in preparing this finding is available for you to review at *http://www.regulations.gov,* or you may make an appointment during normal business hours at the U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

Section 4(b)(3)(A) of the Act (16 U.S.C. 1533(b)(3)(A)) requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of the finding promptly in the **Federal Register**.

Our standard for substantial scientific or commercial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (50 CFR 424.14(b)). If we find that substantial scientific or commercial information was presented, we are required to promptly conduct a species status review, which we subsequently summarize in our 12-month finding.

Section 4(c)(2)(A) of the Act requires that we conduct a review of listed species at least once every 5 years. We are then, under section 4(c)(2)(B), to determine, on the basis of such a review, whether or not any species should be removed from the List (delisted), or reclassified from endangered to threatened, or threatened to endangered. Our regulations at 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing those species currently under active review. This notice announces our active review of the valley elderberry longhorn beetle.

Petition History

On September 10, 2010, we received a petition dated September 9, 2010, from The Pacific Legal Foundation, requesting the Service to delist the valley elderberry longhorn beetle *(Desmocerus californicus dimorphus)* based on the analysis and recommendation contained in the most recent 5-year review for the species. The petition clearly identified itself as such and included the requisite identification information for the petitioner, as required by 50 CFR 424.14(a). This finding addresses the petition.

Previous Federal Actions

The valley elderberry longhorn beetle was proposed as a threatened subspecies with critical habitat on August 10, 1978 (43 FR 35636). A rule re-proposing critical habitat was issued on May 2, 1980 (45 FR 29373), to comply with amendments made to the Act. A final rule listing the beetle as threatened and designating critical habitat was published in the **Federal Register** on August 8, 1980 (45 FR 52803). On June 28, 1984, a final recovery plan was approved for the beetle (Service 1984, pp. 1–62). On July 7, 2005, we announced in the **Federal Register** that we were initiating 5-year reviews for 31 listed species, including the beetle (70 FR 39327). Information from the public was accepted until September 6, 2005. On November 3, 2005, we announced in the **Federal Register** an extension of the period for submitting information to be considered in the 5-year review to January 3, 2006 (70 FR 66842). A 5-year review was completed for the beetle on September 26, 2006 (Service 2006), and was announced in the **Federal Register** on February 14, 2007 (72 FR 7064). Additional information regarding previous Federal actions for the beetle can be obtained by consulting the species' regulatory profile found at: *http://ecos.fws.gov/species* or the Sacramento Fish and Wildlife Office Web site at: *http://fws.gov/sacramento/.*

Species Information

The valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*) is a medium-sized red and dark green (to red and black) insect approximately 0.8 inches (in.) (2 centimeters (cm)) long. It is endemic to the Central Valley of California (Fisher 1921, p. 207; Doane *et al.* 1936, p. 178; Linsley and Chemsak 1972, p. 7). The similar-looking California elderberry longhorn beetle (*Desmocerus californicus californicus*) is primarily known from coastal regions of California (Collinge *et al.* 2001, p. 104). The ranges of the two subspecies may abut or overlap along the foothills of the eastern Coast Range and the southern San Joaquin Valley (Talley *et al.* 2006, p. 5). Beetles meeting the description of the California elderberry longhorn beetle have also been recorded in the Sierra Nevada foothills as far north as Mariposa County (Halstead and Oldham 2000, p. 74–75), suggesting that the ranges of the two subspecies may also abut or overlap in that area.

The beetle is a wood borer, dependent on, and found only in association with, its host plant, the elderberry (Sambucus species of the Caprifoliaceae [honeysuckle] family) (Barr 1991, p. 4; Collinge *et al.* 2001, p.104). The elderberry is a common shrub component of riparian forests and adjacent uplands along river corridors of the Central Valley (Hickman 1993, pp. 474–475; Sawyer and Keeler-Wolf 1995, pp. 171, 229; Halstead and Oldham 2000, p. 74). Adult beetles feed on elderberry nectar, flowers, and foliage, and are generally active from March through June (Eng 1984, p. 916; Barr 1991, p. 4; Collinge *et al.* 2001, p. 105). They are uncommon (see discussion of population sizes, below) and rarely observed, despite their relatively large size and conspicuous coloration.

The females lay eggs, singly or in small groups, on the leaves or stems of living elderberry shrubs (Barr 1991, p. 4). The larvae hatch in a few days and bore into living stems that are at least 2.5 cm (1 in.) in diameter. The larvae remain within the elderberry stem, feeding on the pith (dead woody material) until they complete their development. Each larva creates its own gallery (set of tunnels) within the stem

by feeding (Talley *et al.* 2006, pp. 8–9). The larva eventually cuts an exit hole out of the stem, but plugs the hole up again from within using wood shavings. This will allow the beetle to eventually exit the stem after it has become an adult, since the adults are not wood borers. The larva remains within the stem, becomes a pupa, and finally emerges from its single exit hole as an adult between mid-March and mid-June (Lang *et al.* 1989, p. 242; Barr 1991, p. 5; Talley *et al.* 2006, p. 9). There is thus one exit hole per larva. The complete life cycle is thought to take either 1 or 2 years (depending on the amount of time the larva stays in the elderberry stem), with adults always emerging in the spring. Adults live from a few days to a few weeks after emerging, during which time they mate and lay their eggs (Talley *et al.* 2006, p. 7).

Evaluation of Information for This Finding

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations at 50 CFR part 424 set forth the procedures for adding a species to, or removing a species from, the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

We must consider these same five factors in delisting a species. We may delist a species according to 50 CFR 424.11(d) if the best available scientific and commercial data indicate that the species is neither endangered nor threatened for the following reasons:

(1) The species is extinct;

(2) The species has recovered and is no longer endangered or threatened; or

(3) The original scientific data used at the time the species was classified were in error.

In making this 90-day finding, we evaluated whether information regarding threats to the valley elderberry longhorn beetle, as presented in the petition and other information available in our files, is substantial, thereby indicating that the petitioned action may be warranted. Our evaluation of this information is presented below.

Information Provided in the Petition

The petitioner requested the Service to delist the valley elderberry longhorn beetle based on the analysis and recommendation contained in the most recent 5-year review of the species. The petitioner cited the 5-year review as supporting information for the petition.

Evaluation of Information Provided in the Petition and Available in Service Files

The 2006 5-year review for the valley elderberry longhorn beetle contains general background and life-history information, overview of recovery criteria, an analysis of threats specific to the species based on the five listing factors in section 4 the Act. The petitioner cited the 5-year review as supporting information for the petition, but provided no other information. In the 5-year review conducted for the species, we analyzed the threats based on the five listing factors in section 4 of the Act; we hereby cite and incorporate by reference the data and recommendation in the 5-year review for the species (Service 2006, entire). Accordingly, we have already previously evaluated information regarding threats as presented in the petition (see the 2006 5-year review for the species on *http://www.regulations.gov* or *http://www.fws.gov/endangered/*). Based on the analysis and recommendation contained in the 5-year review for the valley elderberry longhorn beetle, we conclude that the petition and information in our files represent substantial information indicating that the petitioned action may be warranted.

The primary rationale for the recommendation in the 2006 5-year review to delist the valley elderberry longhorn beetle was that the number of known occupied localities had increased from less than 10 at the time of listing in 1980 to more than 190 in 2006. Loss of riparian habitat slowed throughout the Central Valley, and there were a number of programs and regulatory mechanisms in existence to protect habitat. Specifically, protection of more than 50,000 acres (ac) (20,234 hectares (ha)) had been accomplished, and restoration of habitat had occurred on more than 5,100 ac (2,064 ha). Therefore, the Service recommended delisting the valley elderberry longhorn beetle.

Any additional information we receive in response to this finding will be incorporated into our status review.

Finding

On the basis of our determination under section 4(b)(3)(A) of the Act, we have determined that the petition presents substantial scientific or commercial information indicating that delisting the valley elderberry longhorn beetle may be warranted. This finding is based on information provided in our analysis of the threats to the species contained in the 2006 5-year review for the species.

Because we have found that the petition presents substantial information indicating that delisting may be warranted, we are initiating a status review for the valley elderberry longhorn beetle to determine whether the petitioned action of delisting is warranted.

The ''substantial information'' standard for a 90-day finding differs from the Act's ''best scientific and commercial data'' standard that applies to a status review to determine whether a petitioned action is warranted. A 90-day finding does not constitute a status review under the Act. We will complete a thorough status review of the species following a substantial 90-day finding. In the resulting 12-month finding, we will determine whether a petitioned action is warranted. Because the Act's standards for 90-day and 12-month findings are different, as described above, a substantial 90-day finding does not mean that the 12-month finding will result in a warranted finding.

References Cited

A complete list of references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Author

The primary authors of this notice are the staff members of the Sacramento Fish and Wildlife Offices (see **FOR FURTHER INFORMATION CONTACT**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: August 4, 2011.

David Cottingham,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2011–21201 Filed 8–18–11; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 76, No. 161

Friday, August 19, 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

Submission for OMB Review; Comment Request

August 15, 2011.

The Department of Agriculture will submit the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Comments regarding (a) 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; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (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 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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, Washington, DC; *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602.

Dates: Comments regarding these information collections are best assured of having their full effect if received by September 19, 2011. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Agricultural Marketing Service

Title: Grain Market News Reports.

OMB Control Number: 0581–0005.

Summary of Collection: The Agricultural Marketing Act of 1946 (7 U.S.C. 1621) Section 203(g), directs and authorizes the collection and dissemination of marketing information including adequate outlook information, on a market area basis, for the purpose of anticipating and meeting consumer requirements aiding in the maintenance of farm income and to bring about a balance between production and utilization. Livestock and Grain News provides a timely exchange of accurate and unbiased information on a current marketing conditions (supply, demand, prices, trends, movement, and other information) affecting trade in livestock, meats, grain, and wool. Administered by the U.S. Department of Agriculture's Agricultural Marketing Service (AMS), this nationwide market news program is conducted in cooperation with approximately 25 state departments of agriculture. The up-to-the-minute reports collected and disseminated by professional market reporters are intended to provide both buyers and sellers with the information necessary for making intelligent, informed marketing decisions, thus putting everyone in the marketing system in an equal bargaining position. AMS will collect information using market new reports.

Need and Use of the Information: AMS will collect information on various aspects of the grain and feed industry in determining available supplies and current pricing. Industry traders use market news information to make marketing decisions on when and where to buy and sell. In addition, the reports are used by other Government agencies to evaluate market conditions and calculate price levels used for the Farmer-owned Reserve Program. The reports must be collected and disseminated by an impartial third party. Since the Government is a large holder of grain, some type of system would have to be established to monitor the collection and reporting data.

Description of Respondents: Business or other for-profit; farms.

Number of Respondents: 160.

Frequency of Responses: Reporting: On occasion; weekly; monthly.

Total Burden Hours: 56.

Agricultural Marketing Service

Title: Recordkeeping Requirements for Certified Applicators of Federally Restricted Use Pesticides (7 CFR part 110).

OMB Control Number: 0581–0164.

Summary of Collection: The Food, Agriculture, Conservation, and Trade (FACT) Act of 1990 (Subtitle H, Sec. 1491) mandates the Department of Agriculture (USDA) in consultation with the Administrator of the Environmental Protection Agency (EPA), ''shall require certified applicators of federally restricted use pesticides to maintain records comparable to records maintained by commercial applicators in each state.'' In addition, USDA and the Administrator of EPA are required under Section 1491(f) of the FACT Act to survey the records and develop and maintain a data base so USDA and the Administrator of EPA can prepare and publish annual pesticide use reports, copies of which must be transmitted to Congress. Agricultural Marketing Service (AMS) is charged with administering the Federal Pesticide Recordkeeping Program. AMS requires certified private applicators of federally restricted use pesticides to maintain records of all restricted use pesticide applications for a period of two years.

Need and Use of the Information: AMS will collect information using the ST–8, Pesticide Recordkeeping Inspection Form. In order to properly administer the Pesticide Recordkeeping Program, AMS needs to monitor and determine to what extent private applicators are complying with the program's requirements and identify the reasons for non/or partial compliance. AMS has the responsibility to assure records are kept to provide information to be utilized by licensed health care professionals for possible medical treatment. In addition, the statute requires USDA to submit annual reports to Congress pertaining to the use of restricted use pesticides in agricultural production.

Description of Respondents: Farms; State, Local or Tribal Government.

Number of Respondents: 499,440.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 1,418,058.

Agricultural Marketing Service

Title: Specified Commodities Imported into the United States Exempt from Import Requirements, 7 CFR Part 944, 980, and 999.

OMB Control Number: 0581–0167.

Summary of Collection: Agricultural Marketing Agreement Act of 1937 (AMAA), as amended (7 U.S.C. 601–674) provides that when certain domestically produced commodities are regulated under a Federal marketing order, imports of the commodity must meet the same or comparable requirements. Import regulations apply only during those periods when domestic marketing order regulations are in effect. No person may import products for processing or other exempt purposes unless an executed Importers Exempt Commodity Form (FV–6) accompanies the shipment. The Civil Penalty Stipulation Agreement (FV–7) is a ''volunteer'' form that provides the Agricultural Marketing Service (AMS) with an additional tool to obtain resolution of certain cases without the cost of going to a hearing.

Need and Use of the Information: AMS utilizes the information to ensure that imported goods destined for exempt outlets are given no less favorable treatment than afforded to domestic goods destined for such exempt outlets. The importers wishing to import commodities will use form FV–6, ''Importer's Exempt Commodity'', which requires a minimum amount of information.

Description of Respondents: Business or other for-profit; not-for-profit institutions.

Number of Respondents: 345.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 511.

Agricultural Marketing Service

Title: Laboratory Approval Programs.

OMB Control Number: 0581–0251.

Summary of Collection: The Agricultural Marketing Act (AMA) of 1946, as amended, provides analytical testing services that facilitate marketing and allow products to obtain grade designations or meet marketing or quality standards. Pursuant to this authority, AMS develops and maintains laboratory certification verification and approval programs as needed by the agricultural industry, to support domestic and international marketing of U.S. products. To ensure that a laboratory is capable of accurately performing the specified analyses, it must adhere to certain good laboratory practice and show technical proficiency in the required areas.

Need and Use of the Information: Checklist and form have been developed that ask the laboratory for information concerning procedures, the physical facility, employees, and their training. The laboratory must also provide Standard Operating Procedures for the analyses and quality assurance. The laboratory certification and approval programs are voluntary, fee for service, and for admission into one of these programs a laboratory must have a client who requires the specific testing. It is necessary to collect and require the laboratory to attest to the performance elements necessary to determine the credibility of the laboratory. To do less would be a disservice to the agricultural community.

Description of Respondents: Business or other for-profit; farms.

Number of Respondents: 83.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 6,010.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2011–21145 Filed 8–18–11; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

August 15, 2011.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) 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; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (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 those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques and other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Forest Service

Title: Small Business Timber Set-Aside Program: Appeal Procedures on Recomputation of Shares.

OMB Control Number: 0596–0141.

Summary of Collection: The Conference Report accompanying the 1997 Omnibus Appropriation Act (Pub L. 104–208) requires that the Forest Service (FS) establish a process by which purchasers may appeal decisions concerning recomputations of Small Business Set-aside (SBA) shares or structural recomputations of SBA shares, or changes in policies impacting the Small Business Timber Sale Set-Aside Program. FS adopted the Small Business Timber Sale Set-Aside Program on July 26, 1990. FS administers the program in cooperation with the Small Business Administration under the authorities of the Small Business Act of 1988, the National Forest Management Act of 1976, and SBA's regulations at part 121 of Title 13 of the Code of Federal Regulations. The program is designed to ensure that small business timber purchasers have the opportunity to purchase a fair proportion of National Forest System timber offered for sale.

Need and Use of the Information: Under the program, the FS must recompute the shares of timber sales to be set aside for qualifying small businesses every five years based on the actual volume of saw timber purchased by small businesses. Recomputation of shares must occur if there is a change in manufacturing capability, if the purchaser size class changes, or if certain purchaser(s) discontinue operations. The appeal information is collected in writing and is possible, in most locations to be sent via e-mail and attached documents to a Forest Service Officer. The collected information is

reviewed by FS officials who use the information to render decisions related to re-computations of timber sale share to be set-aside for small business timber purchasers.

Description of Respondents: Business or other for-profit.

Number of Respondents: 40.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 320.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2011–21147 Filed 8–18–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2010–0032]

Determination of Pest-Free Areas in Mendoza Province, Argentina; Request for Comments

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that we have received a request from the Government of Argentina to recognize additional areas as pest-free areas for South American fruit fly (*Anastrepha fraterculus)* and all other economically important species of *Anastrepha.* After reviewing the documentation submitted in support of this request, the Administrator of the Animal and Plant Health Inspection Service has determined that these areas meet the criteria in our regulations for recognition as pest-free areas. We are making that determination, as well as the evaluation document we have prepared in connection with this action, available for review and comment.

DATES: We will consider all comments that we receive on or before October 18, 2011.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2010-0032-0005.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2010–0032, 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-2010-0032* 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: Ms. Meredith C. Jones, Regulatory Coordination Specialist, Regulatory Coordination and Compliance, APHIS, 4700 River Road Unit 156, Riverdale, MD 20737; (301) 734–7467.

SUPPLEMENTARY INFORMATION: Under the regulations in ''Subpart-Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–51, 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. One of the designated phytosanitary measures is that the fruits or vegetables are imported from a pest-free area in the country of origin that meets the requirements of § 319.56–5 for freedom from that pest and are accompanied by a phytosanitary certificate stating that the fruits or vegetables originated in a pest-free area in the country of origin.[1]

Under the regulations in § 319.56–5, APHIS requires that determinations of pest-free areas be made in accordance with the criteria for establishing freedom from pests found in International Standards for Phytosanitary Measures (ISPM) No. 4, ''Requirements For the Establishment of Pest Free Areas.'' The international standard was established by the International Plant Protection Convention of the United Nations' Food and Agriculture Organization and is incorporated by reference in our regulations in 7 CFR 300.5. In addition, APHIS must also approve the survey protocol used to determine and maintain pest-free status, as well as protocols for actions to be performed upon detection of a pest. Pest-free areas are subject to audit by APHIS to verify their status.

APHIS received a request from the Government of Argentina to recognize an additional area of that country as being free of *Ceratitis capitata,* Mediterranean fruit fly (Medfly). Specifically, the Government of Argentina asked that we recognize the Southern and Central Oases in the southern half of Mendoza Province as an area that is free of Medfly.

In accordance with our process, we published a notice[2] in the **Federal Register** on June 25, 2010 (75 FR 36347–36348, Docket No. APHIS–2010–0032), in which we announced the availability, for review and comment, of a commodity import evaluation document (CIED) that evaluates the information presented by Argentina in support of its request to recognize additional areas as pest-free areas for Mediterranean fruit fly (*Ceratitis capitata*) in Argentina. We solicited comments on the notice for 60 days ending on August 24, 2010. We received two comments by that date, one from a State agricultural official and the other from an official of Argentina's national plant protection organization (NPPO). The first commenter acknowledged Argentina's history of successful Medfly control efforts, but stated that APHIS should not relax its fruit fly-related restrictions until it can confirm that no other pest fruit flies–notably *Anastrepha* species fruit flies–are present in the area. The second commenter provided information to support a finding that the Mendoza Province is free of the South American fruit fly (*Anastrepha fraterculus*). As a result of these comments, APHIS contacted the Argentine NPPO, which requested that, in addition to the pest-free status for *Ceratitis capitata,* the Mendoza province of Argentina also be recognized as free of *A. fraterculus.*

In accordance with our regulations and the criteria set out in ISPM No. 4, we have reviewed and approved the survey protocols and other information provided by Argentina relative to its system to establish *A. fraterculus* freedom, phytosanitary measures to maintain freedom, and system for the verification of the maintenance of freedom. Because this action concerns the expansion of a currently recognized pest-free area in Argentina from which fruits and vegetables are authorized for

[1] A list of pest-free-areas currently recognized by APHIS can be found at *http://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/DesignatedPestFreeAreas.pdf.*

[2] To view the notice and the comments we received, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2010-0032.*

importation into the United States, our review of the information presented by Argentina in support of its subsequent request to recognize the Mendoza province of Argentina as free of *A. fraterculus* is examined in a CIED titled ''Recognition of additional Provinces as *Anastrepha fraterculus* Pest-Free Areas (PFA) for Argentina.''

The CIED 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 CIED by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**.

Therefore, in accordance with § 319.56–5(c), we are announcing the Administrator's determination that the Southern and Central Oases in the southern half of Mendoza Province meet the criteria of § 319.56–5(a) and (b) with respect to freedom from the South American fruit fly and all other economically important species of *Anastrepha*. After reviewing the comments we receive on this notice and taking into consideration the comments we received on our June 2010 notice regarding the areas' Medfly status, we will announce our decision regarding the status of these areas with respect to their freedom from Medfly and South American fruit fly. If the Administrator's determination remains unchanged, we will amend the list of pest-free areas to list Southern and Central Oases of the Mendoza Province of Argentina as free of Medfly and South American fruit fly.

Done in Washington, DC, this 15th day of August 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–21213 Filed 8–18–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Availability to School Food Authorities of Nutrition Information and Ingredient Lists for Foods Used in School Food Service: Request for Information

AGENCY: Food and Nutrition Service, USDA.

ACTION: Request for information from the public.

SUMMARY: Schools participating in the National School Lunch Program and the School Breakfast Program (''SMPs'') need nutrition information and ingredient lists for menu planning and to assess foods to be used in meeting meal pattern requirements of the SMPs. The U.S. Department of Agriculture's Food and Nutrition Service (FNS) is interested in examining what nutrition information and ingredient lists are made available to schools, the manner and scope of the information's accessibility, and how that information and accessibility compare with the information schools may be seeking. FNS would like to better understand what information sources, such as the Child Nutrition Database, USDA Foods nutrition fact sheets, and information directly from the manufacturer, are used by schools to both procure foods and plan menus for the SMPs. FNS has received numerous inquiries from schools seeking assistance in locating and assessing nutrition information and ingredient lists for USDA Foods as well as commercially selected foods. A better understanding of what nutrition information and ingredients lists are provided, the source of the information and the medium in which the information is received are all necessary components to fully understand what resources schools need to successfully plan SMPs meals. In addition, we anticipate this information will provide FNS with key insights in our implementation of Section 9(a)(4)(C) of the Richard B. Russell National School Lunch Act, 42 U.S.C. 1758(a)(4)(C) as amended by Section 242 of the Healthy, Hunger-Free Kids Act of 2010, Public Law 111–296.

DATES: Information must be received on or before November 17, 2011.

ADDRESSES: Information may be submitted through the Federal eRulemaking portal: *http://www.regulations.gov.* Follow online instructions for submitting comments. Information may also be submitted by mail to: Alexandra Lewin, Nutritionist, 3101 Park Center Drive, Room 500, Alexandria, VA 22302. Respondents are strongly encouraged to submit comments through *http://www.regulations.gov*, as it will simplify the review of their input and help to ensure that it receives full consideration. All information submitted in response to this notice will be included in the record and will be made available to the public. Please be advised that the substance of the information and the identity of the individuals or entities submitting the information will be subject to public disclosure. All information will be made available publicly on the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Alexandra Lewin, Nutritionist, at *Alexandra.lewin@fns.usda.gov* or 703–305–2705.

SUPPLEMENTARY INFORMATION:

1. Background

Schools that participate in the SMPs must meet Federal meal pattern requirements and compliance assessments. Selecting and ordering foods commercially and through the USDA Foods program involves a number of factors that include an understanding of both the nutritional content of and ingredients contained in food offered to schools and ultimately served to students. In addition, as schools look to increase the nutritional quality of the meals served, meet revised meal pattern requirements, apply for HealthierUS School Challenge certification, and/or detect allergens that may affect their students, access to relevant, timely and comprehensive nutrition information and ingredient lists is essential.

FNS would like to better understand what, where, and how nutrition information and ingredient lists are provided to schools—and what information schools are seeking—when ordering and receiving products to prepare as part of a school meal.

2. Key Issues on Which Public Input is Requested

This document requests the public to inform FNS on the following statements as they relate to foods served in school meal programs:

a. How schools obtain nutrition information and ingredient lists about foods used in school food service, including commercially selected foods and USDA Foods, when ordering food for a school (*e.g.,* computerized ordering system, contacting the manufacturer directly, searching the manufacturer's Web site, *etc.*).

b. How schools obtain nutrition information and ingredient lists about commercially selected foods and USDA Foods when food gets delivered to a school (*e.g.,* fact sheet, label on institutional pack, vendor Web site, *etc.*).

c. Whether nutrition information and ingredient lists are easily accessible prior to ordering food.

d. Whether nutrition information and ingredient lists are easily accessible when food gets delivered to a school.

e. Whether nutrition information and ingredient lists available to schools prior to ordering food are adequate.

f. Whether nutrition information and ingredient lists provided upon delivery to schools are adequate.

g. Challenges food manufacturers, processors, distributors, brokers and others in food service may face when providing nutrition information and ingredient lists to schools.

h. Most desirable method to obtain nutrition information and ingredient lists when ordering food for a school.

i. Most desirable method to obtain nutrition information and ingredient lists when food gets delivered to a school.

j. Whether a school food authority's solicitation for food items contains clear statements regarding the need for nutrition information and/or ingredient lists.

k. Schools' whole-grain ordering needs, including:

(1) Whether schools receive adequate ingredient information to determine whether foods are whole-grain.

(2) What specific documentation, if any, a school is looking for when purchasing whole-grain products.

l. Whether schools tend to use previously developed specifications or develop new specifications to reflect nutritional and ingredient needs of the program/students.

m. The frequency with which schools write specifications using ingredient lists or nutrition information from previously ordered products.

Dated: August 12, 2011.

Audrey Rowe,

Administrator, Food and Nutrition Service.

[FR Doc. 2011–21148 Filed 8–18–11; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Coconino and Kaibab National Forests, Arizona, Four-Forest Restoration Initiative

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement; Correction.

SUMMARY: On January 25, 2011, the Notice of Intent (NOI) to prepare an environmental impact statement (EIS) was published in the **Federal Register** (76 FR 4279–4281). From January, 2011 to June, 2011, six public meetings and workshops were held for the purposes of receiving comments and recommendations that would inform the development of a refined proposed action. As a result, the Forest Service revised the NOI document, **Federal Register** of January 25, 2011 (76 FR 4279–4281) to incorporate the changes to the proposed action. On August 12, 2011, a corrected NOI was published in the **Federal Register** (76 FR 50168–50170).

Due to a need to incorporate an edit in the proposed action and reschedule the public open houses, the Forest Service has revised the NOI document to read:

Revision: The Forest Service is preparing an environmental impact statement (EIS) that proposes to conduct restoration activities on approximately 600,000 acres on the Coconino NF and Kaibab NF. Of this total, approximately 361,379 acres would be treated on the Coconino NF and 233,991 acres would be treated on the Kaibab NF. Restoration actions would be focused on the Flagstaff district with fewer acres included on the Mogollon Rim and Red Rock districts of the Coconino NF. On the Kaibab NF, activities would occur on the Williams and Tusayan districts. The objective of the project is to re-establish forest structure, pattern and composition, which will lead to increased forest resiliency and function. Resiliency increases the ability of the ponderosa pine forest to survive natural disturbances such as insect and disease, fire and climate change (FSM 2020.5). This project is expected to put the project area on a trajectory towards comprehensive, landscape-scale restoration with benefits that include improved vegetation biodiversity, wildlife habitat, soil productivity, and watershed function.

DATES: Comments concerning the scope of the analysis must be received by September 2, 2011. The draft environmental impact statement is expected by January of 2012 and the final environmental impact statement is expected in the summer of 2012.

ADDRESSES: Send written comments to Coconino National Forest, Attention: 4FRI, 1824 S. Thompson Street, Flagstaff, Arizona 86001. Comments may also be sent via e-mail to *4FRI_comments@fs.fed.us,* or via facsimile to (928) 527–3620.

FOR FURTHER INFORMATION CONTACT: Henry Provencio, 4 FRI Team Leader at (928) 226–4684 or via e-mail at *hprovencio@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

Extensive research has demonstrated that current ponderosa pine forests of the Southwest are greatly altered in terms of forest structure, density, and ecological function. Most pine forests in the Southwest are at much higher risk of high intensity and severe fire than they were prior to European settlement (Covington 1993, Moore *et al.* 1999). A century ago the pine forests had widely-spaced large trees with a more open, herbaceous forest floor (Cooper 1960). These conditions were maintained by fairly frequent low-severity surface fires that did not kill the large trees (Fiedler *et al.* 1996). These fires occurred every 2 to 21 years and maintained an open canopy structure (Moir et al. 1997). Fire suppression, cattle grazing, timber production, and general human habitation in and near the forests over the last 100 years interrupted fire's natural role in these fire-adapted ponderosa pine forests. As a result, the forests have shifted from naturally open conditions to high densities of small diameter trees (Covington and Moore 1994) dramatically increasing the size and severity of wildland fires (Swetnam and Betancourt 1998). The forests have become less resilient to natural disturbances and are vulnerable to large-scale disturbances such as changing climatic conditions (drought), fire, insect, and disease.

Purpose and Need for Action

In contrast to having a ponderosa pine ecosystem consisting of groups of trees with an open tree canopy density mixed with interspaces, approximately 75 percent of the ponderosa pine forest type within the project area has a moderately closed to closed tree canopy density. An open tree canopy mixed with interspaces which mimic historical spatial patterns and provide for tree regeneration and the development of grass and forbs are lacking. There is a need to use management strategies that promote tree regeneration and understory vegetation. There is a need to move towards the historic range of variability for tree canopy density and patterns of tree groups and interspaces. Forest resiliency and diversity is dependent on the distribution of age and size classes.

Currently, over 50 percent of the project area lacks age and size class diversity and is in an even-aged structure. The desired condition is to have a forest structure that represents all age classes necessary for a sustainable balance of regeneration, growth, mortality and decomposition. There is a need to implement un-even aged management strategies where appropriate. In goshawk habitat, habitat components such as an intermix of vegetation structural stages are lacking or limited in most stands. There is a

need to manage for a balanced interspersion of age classes in goshawk foraging and PFA/nest stand habitat. Forest structure in Mexican spotted owl (MSO) habitat has an excess of the smaller size classes (12″ to 18″) and is deficit in trees 18″ to 24″ dbh in restricted habitat and in target/threshold, a component of restricted habitat. There is a need to implement uneven-aged management strategies and manage for high-density, relatively uneven-aged stands in MSO restricted habitat, including target/threshold habitats.

In both goshawk and MSO habitat, stand conditions are on a trajectory towards density-related mortality. The desired condition is to improve forest health by reducing the potential for density-related mortality and move towards forest plan desired conditions for snags and course woody debris. There is a need to reduce stand densities in all habitats except MSO restricted and target threshold.

Approximately 25 percent to 35 percent of the project area has some level of infection ranging from light to extreme. The desired condition is to have a varied level of mistletoe across the landscape that is comparable with historic reference conditions. There is a need to use management strategies that would reduce stand densities in order to reduce (but not eliminate) the level of dwarf mistletoe infection.

Vegetation diversity throughout the project area has declined (USDA 2009). A lack of fire, which ultimately allowed for increased stand densities, has allowed Gambel oak to become overtopped by fast growing ponderosa pine. The desired condition is to develop and maintain a variety of oak size classes and forms, where they occur, that range from shrubby thickets and pole-sized clumps to large trees across the landscape. There is a need to use management strategies that stimulate new growth and maintain growth in large diameter trees.

There are approximately 7,700 acres of aspen in the project area. Aspen is dying or rapidly declining on both forests due to the combined effects of conifer encroachment, browsing, insect, disease, severe weather events, and lack of fire disturbance (USDA 2008 2009). The desired condition is to maintain and/or regenerate aspen. Where possible, there is a need to stimulate growth and increase individual recruitment of aspen. On the Coconino NF, grasslands have decreased from approximately 8 percent to 3 percent since historic conditions (generally pre-1900). On the Kaibab NF, grasslands have decreased from approximately 15 to 7 percent (USDA 2008) (USDA 2009). The desired condition is to move towards the historic range of variability of tree canopy cover that ranges from 0 to 9 percent. Fire should function as a natural disturbance across the landscape without causing loss to ecosystem function or to human safety, lives, and values. There is a need to reduce (and in some cases remove) tree encroachment which has reduced the size and function of landscapes that were historically grasslands.

Big sage and ponderosa pine co-occur on approximately 6,094 acres of the Tusayan district portion of the project area. The desired condition for the pine/sage understory community is a shifting mosaic of sagebrush with a mix of age classes averaging from 3 to 5 percent cover. With other shrub canopies combined, the percent cover would average around 9 to 14 percent under a 25 to 30 percent canopy of ponderosa pine. The mosaic pattern would be largely regulated by low intensity fires. On approximately 40 percent of the pine-sage cover type, there is a need to retain vegetation age class diversity in big sage and promote a shifting mosaic of shrub cover.

Approximately 41 percent of the project area has the potential to sustain crown fire and about 58 percent has the potential for surface fire. Dense forest conditions (numerous trees with interlocking crowns) are common within the project area and would support active crown fire. Even without crown fire, a high intensity surface fire burning though this area could scorch the canopy sufficiently to cause widespread mortality. The current fire return interval is approximately 43 years, about four times longer than the desired fire return interval which is between 2 and 21 years. The desired condition is to have fire, as a disturbance process, maintain a mosaic of diverse native plant communities. No more than 10 percent of the analysis area should be prone to crown fire. When crown fire does occur, it would be mostly passive crown fire, occurring in single trees, groups, or clumps, or areas where there had been mortality (wind throw, insects, etc.). There is a need to reduce the potential for crown and high intensity surface fire.

Across the entire analysis area, 75 percent is currently rated as condition class 3 which indicates the fire regime is significantly departed from historical ranges. In a condition class 3, the risk of losing key ecosystem components is high. Fire frequencies have departed from historical frequencies by multiple return intervals resulting in dramatic alterations to fire size, intensity, severity, landscape patterns, and/or vegetation attributes. The desired condition is to have 99 percent of the analysis area in FRCC 1. There is a need to reduce the percent of area in FRCC 3 and move the fire regimes towards FRCC 1.

Springs and seeps play an important role on the landscape for hydrological function of watersheds and they are very important for wildlife and plant diversity. Fifty-one developed springs on the Coconino NF are not functioning at or near potential and 27 springs on the Kaibab NF have reduced function. The desired condition is to have the necessary soil, water, and vegetation attributes to be healthy and functioning at or near potential. Ephemeral streams are important for hydrological function of watersheds and provide important seasonal habitat for a variety of wildlife, in particular, migratory birds and dispersing amphibians. On the Coconino NF, approximately 36 miles of channels are heavily eroded with excessive bare ground, denuded vegetation, and head cuts. Of the total miles, approximately 6 miles are riparian streams and 30 miles are non-riparian streams. The Kaibab NF has approximately 7 miles of channels in this condition and all are non-riparian reaches. The desired condition is to restore the functionality of both springs and ephemeral streams. On all springs and streams and channels, there is a need to return fire, a natural disturbance processes, to the system.

Both forests have identified the needed road system for public and administrative motorized use through the Travel Management Rule (TMR) process. As a precursor to the TMR process, the Coconino NF identified roads that should be closed to public travel, decommissioned, or considered for other uses because they were no longer needed to meet resource management objectives (USDA 2010). A review of 2010 data indicates there is a need to decommission approximately 941 miles of existing system and unauthorized roads on the Coconino NF. Similar to the Coconino process, the Kaibab NF identified resource risks and access benefits associated with all roads. A review of Kaibab NF data indicates approximately 170 miles of unauthorized roads are recommended for decommissioning. The desired condition is to have soils in satisfactory condition so that the soil can resist erosion, recycle nutrients and absorb water. There is a need to decommission the roads that have been identified.

In addition to the need for decommissioning roads, there is a need to have adequate access to the project

area for implementation. There is a need to upgrade road segments which have resource or health and human safety concerns, construct temporary roads that could be used for access, and temporarily open existing closed roads. Once the project is completed, there is a need to decommission the temporary roads and closed roads.

Proposed Action

In response to the purpose and need, the Coconino and Kaibab National Forests propose to conduct approximately 595,370 acres of restoration activities (within the 988,764 acre project area) over approximately 10 years or until objectives are met. Approximately 20,000 to 30,000 acres of vegetation would be treated annually and up to 60,000 acres prescribed burned annually across the two forests. Restoration activities would: (1) Mechanically cut trees and prescribe burn on approximately 389,993 acres, (2) cut trees by hand and prescribe burn on slopes greater than 40 percent on approximately 99 acres, (3) prescribe burn only on approximately 205,278 acres, (4) decommission 941 miles of roads designated ''closed'', (5) decommission 170 miles of unauthorized roads, (6) construct 46 miles of temporary roads for haul access and obliterate when treatments are finished, (7) reconstruct 27 miles of existing open roads for natural resource, health and human safety concerns, (8) open 183 miles of existing closed roads in order to conduct treatments and close and rehabilitate as needed when treatments are finished, (9) restore 78 springs, (10) restore 43 miles of ephemeral channels, and, (11) construct 82 miles of protective (aspen and springs) fencing. An old tree implementation strategy, that is integral to the proposed action, is included in appendix B in the proposed action document. A large tree implementation strategy, that is not part of the proposed action, is included in appendix C. Appendix C has been included for comment purposes only.

Forest plan amendments are integral to the proposed action. Three non-significant forest plan amendments would be required on the Coconino NF to implement the proposed action. One non-significant forest plan amendment would be required on the Kaibab NF. The proposed amendments are located at appendix F in the proposed action document.

Possible Alternatives

A full range of alternatives to the proposed action, including a no-action alternative, will be considered. The no-action alternative represents no change and serves as the baseline for the comparison among the action alternatives.

Responsible Official

The Responsible Officials are the Coconino Forest Supervisor and Kaibab Forest Supervisor.

Nature of Decision To Be Made

Given the purpose and need of the project, the forest supervisors will review the proposed action, other alternatives and the environmental consequences in order to make the following decisions including determining: (1) Whether to select the proposed action or another alternative; (2) the location, design, and scheduling of proposed restoration activities; (3) the estimated products, if any, to be made available from the project; (4) mitigation measures, monitoring requirements and adaptive management actions; and, (5) whether forest plan amendments are needed.

Scoping Process

This corrected notice of intent initiates the scoping process, which guides the development of the environmental impact statement. Two open houses are planned during the comment period. The first open house will be held on August 25, 2011 at the Williams Ranger District, 742 South Clover Road, Williams, Arizona, from 4 p.m. to 7:30 p.m. The second open house will be held on August 27, 2011 at the Coconino National Forest Supervisor's Office, 1824 S. Thompson Street, Flagstaff, AZ 86101, from 10 a.m. to 2 p.m. Please contact Paula Cote at (928) 226–4686 for additional information.

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered, however.

Dated: August 12, 2011.

Michael R. Williams,

Forest Supervisor, Kaibab National Forest.

[FR Doc. 2011–21051 Filed 8–18–11; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Southwest Mississippi Resource Advisory Committee; Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Southwest Mississippi Resource Advisory Committee will meet in Meadville, MS. 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 review and select proposed projects.

DATES: The meeting will be held September 15, 2011, 6:00 p.m

ADDRESSES: The meeting will be held at Homochitto District Work Center, 3085 Hwy 98 East, Meadville, MS. 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 the Homochitto District office, 1200 Hwy 184E, Meadville, MS. Please call ahead to 601–384–5876 to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: Bruce Prudhomme, District Ranger, 601–384–5876, *bprudhomme@fs.fed.us* or Dave Chabreck, Operations Leader, 601–384–5876, *dochabreck@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 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday. Requests for reasonable accomodation for access to the facility or proceedings may be made by contacting the person listed under **FOR FURTHER INFORMATION.**

SUPPLEMENTARY INFORMATION: The following business will be conducted: General business, previous project status updates, project funding, review and selection of proposed projects. Full agenda may be previewed at Homochitto District office during regular business hours or on the Web at *https://fsplaces.fs.fed.us/fsfiles/unit/wo/secure_rural_schools.nsf/RAC/*

Southwest+Mississippi. 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 14, 2011 to be scheduled on the agenda. Written comments and requests for time for oral comments must be sent to 1200 Hwy 184 East, Meadville, MS 39653, or by email to *dochabreck@fs.fed.us,* or via facsimile to 601–384–2172. A summary of the meeting will be posted at *https://fsplaces.fs.fed.us/fsfiles/unit/wo/secure_rural_schools.nsf/RAC/Southwest+Mississippi* within 21 days of the meeting.

Dated: August 10, 2011.

Bruce Prudhomme,

District Ranger.

[FR Doc. 2011–21178 Filed 8–18–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: 2012 Survey of Income and Program Participation Event History Calendar (SIPP–EHC) Field Test.

OMB Control Number: 0607–0957.

Form Number(s): SIPP–EHC 105(L)2012—Director's Letter; SIPP–EHC–105(L)(SP) 2012—Director's Letter Spanish; SIPP–EHC 4006A Brochure ''SIPP You Represent Your Nation;'' SIPP/CAPI Automated Instrument.

Type of Request: Revision of a currently approved collection.

Burden Hours: 5,460.

Number of Respondents: 5,460.

Average Hours per Response: 1 hour.

Needs and Uses: The U.S. Census Bureau requests authorization from the Office of Management and Budget (OMB) to conduct the 2012 Survey of Income and Program Participation Event History Calendar (SIPP–EHC) Field Test. The Census Bureau's SIPP–EHC computer-assisted personal interviewing (CAPI) will use an Event History Calendar (EHC) interviewing method and a 12-month, calendar-year reference period in place of the current SIPP questionnaire approach that uses a sliding 4-month reference period. The Census Bureau is re-engineering the SIPP to accomplish several goals including re-engineering the collection instrument and processing system, development of the EHC in the instrument, use of the administrative records data where feasible, and increased stakeholder interaction.

The main objective of the SIPP has been, and continues to be, to provide accurate and comprehensive information about the income and program participation of individuals and households in the United States. The survey's mission is to provide a nationally representative sample for evaluating: (1) Annual and sub-annual income dynamics, (2) movements into and out of government transfer programs, (3) family and social context of individuals and households, and (4) interactions among these items. The re-engineering of SIPP pursues these objectives in the context of several goals—cost reduction and improved accuracy, relevance, timeliness, reduced burden on respondents, and accessibility.

A key component of the re-engineering process involves the proposed shift from the every-four-month data collection schedule of traditional SIPP to an annual data collection schedule for the re-engineered survey. To accomplish this shift with minimal impact on data quality, the Census Bureau proposes employing the use of an event history calendar to gather SIPP data. The EHC is intended to help respondents recall information in a more natural ''autobiographical'' manner by using life events as triggers to recall other economic events. For example, a residence change can in many cases occur contemporaneously with a change in employment. The entire process of compiling the calendar focuses, by its nature, on consistency and sequential order of events, and attempts to correct for otherwise missing data. For example, if the respondents are unemployed, they may then look for a job, and then become employed. The 2012 SIPP–EHC Field Test will continue the EHC methodology implemented in the 2011 Field Test instrument.

The 2012 SIPP–EHC Field Test will re-interview respondents interviewed in 2011, collecting data for the previous calendar year as the reference period. The content of the 2012 SIPP–EHC will closely match that of the 2011 Re-engineered SIPP. As in the 2010 and 2011 SIPP–EHC field interviews, a portion of traditional SIPP topical module content is integrated into the 2012 SIPP–EHC. The 2012, as in 2010 and 2011, SIPP–EHC will not contain free-standing topical modules. The EHC allows recording dates of events and spells of coverage and should provide measures of monthly transitions of program receipt and coverage, labor force transitions, health insurance transitions, and others. The 2012 SIPP–EHC will be the first test of using dependent data (collected in 2011 SIPP–EHC) in conjunction with calendar methods to reduce burden and improve quality.

The 2012 SIPP–EHC Field Test will be conducted in all 12 Census Regional Offices from January 2012 to March 2012. Approximately 2,600 households (based on response and coverage estimates derived from the 2011 Re-engineered SIPP field work) are selected for the 2012 SIPP–EHC. We estimate that each household contains 2.1 people aged 15 and above, yielding approximately 5,460 person-level interviews in the field test. Interviews take one hour on average. The total annual burden for the 2012 SIPP–EHC interviews will be 5,460 hours in FY 2012.

Results from the 2010, 2011 and 2012 Field Tests, and the 2008 SIPP Panel will be used to inform final decisions regarding the design, content, and implementation of the Re-engineered SIPP for its production beginning in 2014.

Affected Public: Individuals or households.

Frequency: One time.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Section 182.

OMB Desk Officer: Brian Harris-Kojetin, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Brian Harris-Kojetin, OMB Desk Officer either by fax (202–395–7245) or e-mail (*bharrisk@omb.eop.gov*).

Dated: August 15, 2011.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–21149 Filed 8–18–11; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–893]

Administrative Review of Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On February 14, 2011, the Department of Commerce (''Department'') published in the **Federal Register** the *Preliminary Results* of the fifth administrative review of the antidumping duty order on certain frozen warmwater shrimp from the People's Republic of China (''PRC'').[1] We gave interested parties an opportunity to comment on the *Preliminary Results.* Based upon our analysis of the comments and information received, we continue to find that Hilltop [2] has not sold subject merchandise at less than normal value (''NV'') during the period of review (''POR''), February 1, 2009, through January 31, 2010.

DATES: *Effective Date:* August 19, 2011.

FOR FURTHER INFORMATION CONTACT: Bob Palmer and Kabir Archuletta, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–9068 and (202) 482–2593, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 9, 2010, the Department initiated an administrative review of 92 producers/exporters of subject merchandise from the PRC.[3] Subsequently, pursuant to 19 CFR 351.213(d)(1), the Department rescinded the administrative review with respect to Allied Pacific Aquatic Products Zhanjiang Co., Ltd. and Allied Pacific Food (Dalian) Co., Ltd. based on upon Petitioner's timely withdrawal of its review request.[4] As noted above, on February 14, 2011, the Department published the *Preliminary Results* of this administrative review.[5] In those *Preliminary Results,* the Department preliminarily rescinded the review with respect to several companies that submitted no shipment certifications and for which we have not found any information to contradict these claims. These companies are Yangjiang City Yelin Hoitat Quick Frozen Seafood Co., Ltd., Fuqing Yihua Aquatic Food Co., Ltd., Fuqing Minhua Trade Co., Ltd., and Shantou Yelin Frozen Seafood Co., Ltd. (d.b.a. Shantou Yelin Quick-Freeze Marine Products Co., Ltd.).

On March 3, 2011, we extended the deadline for parties to submit the case briefs and rebuttal briefs to March 21, 2011, and March 28, 2011, respectively.[6] On March 7, 2011, the Petitioner,[7] Domestic Processors,[8] and Hilltop submitted additional surrogate value information. On March 17, 2011, Domestic Processors submitted rebuttal surrogate value information.

On March 21, 2010, Domestic Processors and Hilltop filed case briefs. On March 21, 2010, we received new factual information contained within Petitioner's case brief. On March 24, 2011, we rejected Petitioner's new factual information as being untimely filed, removed the new factual information from the record of this review and provided Petitioner until March 28, 2011 to re-file its case brief. Additionally, we extended the deadline for rebuttal briefs until March 30, 2011.[9] On March 28, 2011, Petitioner resubmitted its case brief. On March 30, 2010, Petitioner, Domestic Processors, and Hilltop filed rebuttal briefs. On May 24, 2011, the Department extended the deadline for the completion of the final results of this review until August 13, 2011.[10] On June 21 and July 11, 2011, the Department place on the record, information pertaining to the Department's recently revised labor rate methodology.[11] Between July 7 and July 14, 2011, interested parties submitted comments regarding the Department's recently revised surrogate labor methodology.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this review are addressed in the ''Fifth Administrative Review of Frozen Warmwater Shrimp from the People's Republic of China: Issues and Decision Memorandum for the Final Results,'' which is dated concurrently with this notice (''*I&D Memo''*). A list of the issues that parties raised and to which we respond in the *I&D Memo* is attached to this notice as an Appendix. The *I&D Memo* is a public document and is on file in the Central Records Unit (''CRU''), Main Commerce Building, Room 7046, and is accessible on the Department's website at *http://www.trade.gov/ia.* The paper copy and electronic version of the memorandum are identical in content.

Changes Since the Preliminary Results

Based on a review of the record as well as comments received from parties regarding our *Preliminary Results,* we made two revisions to Hilltop's margin calculation for the final results. First, we have revised the surrogate value source for shrimp larvae. For the *Preliminary Results,* we used Sharat Industries Limited (''Sharat'') 2008–2009 financial statements to value shrimp larvae.[12] For the final results, the Department has determined to use Sharat's 2009–2010 financial statements as a surrogate value source for shrimp larvae. For further information *see I&D Memo* at Comment 3.

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[1] *See Certain Frozen Warmwater Shrimp From the People's Republic of China: Preliminary Results and Preliminary Partial Rescission of Fifth Antidumping Duty Administrative Review,* 76 FR 8338 (February 14, 2011) (''*Preliminary Results''*).

[2] Hilltop International (''Hilltop'').

[3] *See Notice of Initiation of Administrative Reviews and Requests for Revocation in Part of the Antidumping Duty Orders on Frozen Warmwater Shrimp from the Socialist Republic of Vietnam and the People's Republic of China,* 75 FR 18154 (April 9, 2010) for a list of these companies.

[4] *See Certain Frozen Warmwater Shrimp From the People's Republic of China: Partial Rescission of Antidumping Duty Administrative Review,* 75 FR 42070 (July 20, 2010).

[5] *See Preliminary Results.*

[6] *See* Letter from the Department to Interested Parties, dated March 3, 2011.

[7] Petitioner is the Ad Hoc Shrimp Trade Action Committee (hereinafter referred to as ''Petitioner'').

[8] These domestic parties are the American Shrimp Processors Association and Louisiana Shrimp Association (hereinafter referred to as ''Domestic Processors'').

[9] *See* Letter from the Department to Petitioner dated March 24, 2011.

[10] *See Certain Frozen Warmwater Shrimp from the People's Republic of China: Extension of Final Results of the Fifth Antidumping Duty Administrative Review,* 76 FR 30100 (May 24, 2011).

[11] *See* Memorandum to the File, through Catherine Bertrand, Program Manager, Office 9, AD/CVD Operations, from Bob Palmer, Case Analyst, Office 9, AD/CVD Operations, re: ''Fifth Administrative Review of the Antidumping Duty Order on Certain Frozen Warmwater Shrimp from the People's Republic of China: Industry-Specific Surrogate Labor Rate and Surrogate Financial Ratio Adjustments,'' dated June 21, 2011 (''Labor Memo''); *see also,* Memorandum to the File, through Catherine Bertrand, Program Manager, Office 9, AD/CVD Operations, from Bob Palmer, Case Analyst, Office 9, AD/CVD Operations, re: ''Fifth Administrative Review of the Antidumping Duty Order on Certain Frozen Warmwater Shrimp from the People's Republic of China: Revision to Surrogate Wage Rate Methodology and Financial Ratio Adjustments,'' dated July 11, 2011 (''Revised Labor Memo'').

[12] *See* ''Memorandum to the File through Catherine Bertrand, Program Manager, Office 9, from Kabir Archuletta, Case Analyst, Office 9, re; Fifth Administrative Review of Certain Frozen Warmwater Shrimp from the People's Republic of China: Surrogate Factor Valuations for the Preliminary Results,'' dated February 7, 2011 (''Prelim SV Memo'') at 3–4 and Exhibit 3.

Additionally, we have revised the surrogate labor calculation methodology. For further information *see I&D Memo* at Comment 5; *see also,* ''Memorandum to the File through Catherine Bertrand, Program Manager, Office 9 from Kabir Archuletta, Case Analyst, Office 9; Fifth Administrative Review of Certain Frozen Warmwater Shrimp from the People's Republic of China: Surrogate Factor Valuations for the Final Results,'' (''Final SV Memo'') dated concurrently with this notice. Because of the change in the surrogate labor calculation methodology noted above, the antidumping duty margin calculation for Hilltop has changed since the *Preliminary Results.* For further details on Hilltop's changes, see the company specific analysis memorandum.

Labor Cost Methodology

Pursuant to the Department's recent decision regarding it final labor methodology,[13] we have calculated a revised hourly labor rate to use in valuing Hilltop's reported labor. The revised surrogate value for labor is calculated by using India's, the primary surrogate country, labor cost data from ''Chapter 6A: Labor Cost in Manufacturing'' from the International Labor Organization (''ILO'') Yearbook of Labor Statistics. Additionally, because the Department is now using Chapter 6A to calculate labor costs, the Department made certain adjustments in the surrogate financial ratio calculations regarding labor. *See I&D Memo* at Comment 5; *see also,* Labor Memo and Revised Labor Memo, for the details of the calculation and supporting data.

Scope of the Order

The scope of this order includes certain frozen warmwater shrimp and prawns, whether wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,[14] deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

The frozen warmwater shrimp and prawn products included in the scope of this *Order,* regardless of definitions in the Harmonized Tariff Schedule of the United States (''HTS''), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the *Penaeidae* family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, white-leg shrimp (*Penaeus vannemei*), banana prawn (*Penaeus merguiensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp (*Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope of this order. In addition, food preparations, which are not ''prepared meals,'' that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of this order.

Excluded from the scope are: (1) Breaded shrimp and prawns (HTS subheading 1605.20.1020); (2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; (3) fresh shrimp and prawns whether shell-on or peeled (HTS subheadings 0306.23.0020 and 0306.23.0040); (4) shrimp and prawns in prepared meals (HTS subheading 1605.20.0510); (5) dried shrimp and prawns; (6) Lee Kum Kee's shrimp sauce; (7) canned warmwater shrimp and prawns (HTS subheading 1605.20.1040); (8) certain dusted shrimp; and (9) certain battered shrimp. Dusted shrimp is a shrimp-based product: (1) That is produced from fresh (or thawed-from-frozen) and peeled shrimp; (2) to which a ''dusting'' layer of rice or wheat flour of at least 95 percent purity has been applied; (3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; (4) with the non-shrimp content of the end product constituting between four and 10 percent of the product's total weight after being dusted, but prior to being frozen; and (5) that is subjected to individually quick frozen (''IQF'') freezing immediately after application of the dusting layer. Battered shrimp is a shrimp-based product that, when dusted in accordance with the definition of dusting above, is coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products covered by this *Order* are currently classified under the following HTS subheadings: 0306.13.0003, 0306.13.0006, 0306.13.0009, 0306.13.0012, 0306.13.0015, 0306.13.0018, 0306.13.0021, 0306.13.0024, 0306.13.0027, 0306.13.0040, 1605.20.1010 and 1605.20.1030. These HTS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope of this order is dispositive.[15]

Final Partial Rescission

In the *Preliminary Results,* the Department preliminarily rescinded this review with respect to the following companies: Shantou Yelin Frozen Seafood Co., Ltd. (d.b.a. Shantou Yelin Quick-Freeze Marine Products Co., Ltd.); Yangjiang City Yelin Hoitat Quick Frozen Seafood Co., Ltd., Fuqing Yihua Aquatic Food Co., Ltd., and Fuqing Minhua Trading Co., Ltd. The Department determined that they had no shipments of subject merchandise to the United States during the POR.

Subsequent to the *Preliminary Results,* no information was submitted on the record indicating that the above companies made sales to the United States of subject merchandise during the POR and no party provided written arguments regarding this issue. Thus, in accordance with 19 CFR 351.213(d)(3), and consistent with our practice, we are rescinding this review with respect to the above-named companies.

Affiliation/Single Entity

In the *Preliminary Results,* we found Hilltop, Yelin Enterprise Co., Ltd., Ocean Beauty Corporation, and Ever Hope International Co., Ltd. to be a single entity for purposes of this

[13] *See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor,* 76 FR 36092 (June 21, 2011) (''*Labor Methodologies*'').

[14] ''Tails'' in this context means the tail fan, which includes the telson and the uropods.

[15] On April 26, 2011, the Department amended the antidumping duty order to include dusted shrimp, pursuant to the U.S. Court of International Trade (''CIT'') decision in *Ad Hoc Shrimp Trade Action Committee* v. *United States, 703 F. Supp. 2d 1330 (CIT 2010)* and the U.S. International Trade Commission (''ITC'') determination, which found the domestic like product to include dusted shrimp. Because the amendment of the antidumping duty order occurred after this POR, dusted shrimp continue to be excluded in this review. *See Certain Frozen Warmwater Shrimp From Brazil, India, the People's Republic of China, Thailand, and the Socialist Republic of Vietnam: Amended Antidumping Duty Orders in Accordance with Final Court Decision,* 76 FR 23227 (April 26, 2011); *see also, Ad Hoc Shrimp Trade Action Committee* v. *United States*, 703 F. Supp. 2d 1330 (CIT 2010) (''*Ad Hoc*'') and Frozen Warmwater Shrimp from Brazil, China, India, Thailand, and Vietnam (Investigation Nos. 731–TA–1063, 1064, 1066–1068 (Review), USITC Publication 4221, March 2011 (''ITC Review Final'').

administrative review.[16] Because we have not received any information on the record that contradicts our preliminary finding, we continue to find Hilltop, Yelin Enterprise Co., Ltd. Ocean Beauty Corporation, and Ever Hope International Co., Ltd. to be a single entity for these final results.

Separate Rates

In our *Preliminary Results,* we preliminarily determined that Hilltop and Zhanjiang Regal Integrated Marine Resources Co., Ltd. (''Regal'') met the criteria for the application of a separate rate.[17] We have not received any information since the issuance of the *Preliminary Results* that provides a basis for the reconsideration of these determinations. Therefore, the Department continues to find that Hilltop and Regal meet the criteria for a separate rate.

Rate for Non-Selected Companies

In the *Preliminary Results,* we stated that the Department employed a limited examination methodology, as it did not have the resources to examine all companies for which a review request was made, and selected Hilltop as a mandatory respondent in this review.[18] Additionally, Regal submitted timely information as requested by the Department and remained subject to review as a cooperative separate rate respondent. In the *Preliminary Results,* the Department assigned Regal its rate calculated in the previous administrative review.[19] As we stated in the *Preliminary Results,* the rate for the individually examined respondent, Hilltop, continues to be *de minimis* and accordingly, the Department will determine a reasonable method for assigning a rate to Regal.

The statute and the Department's regulations do not address the establishment of a rate to be applied to individual companies not selected for examination when the Department limited its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally we have looked to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for respondents we did not examine in an administrative review. Section 735(c)(5)(A) of the Act articulates a preference that we are not to calculate an all-others rate using any zero or *de minimis* margins or any margins based entirely on facts available. Accordingly, the Department's usual practice has been to average the rates for the selected companies, excluding zero, *de minimis* and rates based entirely on facts available. *See Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Review in Part,* 73 FR 52823, 52824 (September 11, 2008) and accompanying Issues and Decision Memorandum at Comment 16. Section 735(c)(5)(B) of the Act also provides that, where all margins are zero, *de minimis,* or based entirely on facts available, we may use ''any reasonable method'' for assigning the rate to non-selected respondents, including ''averaging the estimated weighted-average dumping margins determined for the exporters and producers individually investigated.''

In previous cases, the Department has determined that a ''reasonable method'' to use when, as here, the rates of the mandatory respondents are zero and *de minimis,* is to apply to those companies not selected for individual review (but eligible for a separate rate in NME cases) the average of the most recently determined rates that are not zero, *de minimis* or based entirely on facts available (which may be from a prior administrative review or a new shipper review).[20] However, if any such nonselected company had its own calculated rate that is contemporaneous with or more recent than such prior determined rates, the Department has applied such individual rate to the nonselected company in the review in question, including when that rate is zero or *de minimis.*[21] In this case, there is only one nonselected company under review that is eligible for a separate rate, and this company received its own calculated rate that is contemporaneous with or more recent than the most recent rates determined for other companies that are not zero, *de minimis* or based entirely on facts available. Accordingly, the Department has concluded that in this case a reasonable method for determining the rate for the non-selected company, Regal, is to apply its most recent individually calculated rate.

PRC-Wide Entity

In the *Preliminary Results,* the Department determined that those companies, which did not demonstrate eligibility for a separate rate, are properly considered part of the PRC-wide entity.[22] Since the *Preliminary Results,* no interested parties submitted comments regarding these findings. Therefore, we continue to treat such entities as part of the PRC-wide entity.

Final Results of Review

The weighted-average dumping margins for the POR are as follows:

Manufacturer/Exporter	Weighted-average margin (percent)
Hilltop International	0.04
Zhanjiang Regal Integrated Marine Resources Co., Ltd.	0.00
PRC-Wide Entity[23]	112.81

Assessment

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b), the

[16] *See Preliminary Results* at 8339 and 8340; *see* 19 CFR 351.401(f).

[17] *See Preliminary Results* at 8341.

[18] *See Preliminary Results* at 8338.

[19] *See Preliminary Results* at 8342; *see also, Administrative Review of Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 75 FR 49460, 49463 (August 13, 2010) (''*PRC Shrimp AR4*'').

[20] *See id.; cf. Amanda Foods (Vietnam) Ltd.* v. *United States,* 2011 WL 1423126 (CIT April 14, 2011).

[21] *Certain Fish Fillets from the Socialist Republic of Vietnam: Notice of Preliminary Results of the New Shipper Review and Fourth Antidumping Duty Administrative Review and Partial Rescission of the Fourth Administrative Review,* 73 FR 52015 (September 8, 2008) (changed in final results as final calculated rate for mandatory respondent was above *de minimis,* which remained unchanged in the amended final results). Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 74 FR 47191, 47195 (September 15, 2009) and accompanying Issues and Decision Memorandum.

[22] *See Preliminary Results* at 8340.

[23] The PRC-wide entity includes the 80 companies currently under review that have not established their entitlement to a separate rate. Those companies are: Asian Seafoods (Zhanjiang) Co., Ltd.; Beautiful Lighting Co., Ltd.; Beihai Qinguo Frozen Foods Co., Ltd.; Capital Prospect; Century Distribution Systems (Shenz); Dafu Foods Industry; Daishan Baofa Aquatic Product Co.; Elaite Group Co., Ltd.; Everflow Ind. Supply; Flags Wins Trading Co., Ltd.; Fuchang Aquatic Products; Fujian Haiding Global Foods; Fujian Provincial Meihua Aquat.; Fuqing Maowang Seafood Development; Fuqing Xuhu Aquatic Food Trdg.; Gallant Ocean (Nanhai), Ltd.; Geelong Sales; Guangdong Jiahuang Foods; Guangdong Jinhang Foods Co., Ltd.; Guangdong Wanya Foods Fty. Co., Ltd.; Hai Li Aquatic Co., Ltd.; Hainan Hailisheng Food Co., Ltd.; Hainan Seaberry Seafoods; Hainan Siyuan Foods Co., Ltd.; Hainan Zhongyu Seafood Co., Ltd.; Huasheng Aquatic Pro. Factory; Huian County Import & Export and Trading Co.; Innovative Aluminum; Intecs Service; Jet Power International Ltd.; JetStar Co.; Leizhou Yunyuan Aquatic Products Co., Ltd.; Liang Hsin Lighting Shenzhen; Maoming Changxing Foods; Maoming Jiahui Foods Co., Ltd.; New Peak Service; North Seafood Group Co.; Panasonic Mfg. Xiamen Co.; Phoenix Intl.; Rizhao Smart Foods; Ruian Huasheng Aquatic Products Fac.; Savvy Seafood Inc.; Sea Trade International Inc.; Second Aquatic Food; Shandong Huashijia Foods; Shanghai Apa International Trading; Shanghai Smiling Food Co., Ltd.; Shantou Jin Cheng Food Co.; Shantou Longfen Foodstuff Co.; Shantou Longsheng Aquatic Product Foodstuff Co.,

Department will determine, and U.S. Customs and Border Protection shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. For assessment purpose, we calculated importer (or customer)-specific assessment rates for merchandise subject to this review. Where appropriate, we calculated an ad valorem rate for each importer (or customer) by dividing the total dumping margins for reviewed sales to that party by the total entered values associated with those transactions. For duty-assessment rates calculated on this basis, we will direct CBP to assess the resulting *ad valorem* rate against the entered customs values for the subject merchandise. Where appropriate, we calculated a per-unit rate for each importer (or customer) by dividing the total dumping margins for reviewed sales to that party by the total sales quantity associated with those transactions. For duty-assessment rates calculated on this basis, we will direct CBP to assess the resulting per-unit rate against the entered quantity of the subject merchandise. Where an importer (or customer)-specific assessment rate is *de minimis* (*i.e.,* less than 0.50 percent), the Department will instruct CBP to assess that importer (or customer's) entries of subject merchandise without regard to antidumping duties, in accordance with 19 CFR 351.106(c)(2). The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review.

Cash Deposit Requirements

The following cash-deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For the exporters listed above, the cash deposit rate will be established in the final results of this review (except, if the rate is zero or *de minimis, i.e.,* less than 0.5 percent, no cash deposit will be required for that company); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 112.81 percent; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties has occurred and the subsequent assessment of doubled antidumping duties.

Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this administrative review and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: August 12, 2011.

Christian Marsh,

Acting Deputy Assistant Secretary for Import Administration.

Appendix I—Issues & Decision Memorandum

Comment 1: Respondent Selection Methodology
Comment 2: Surrogate Country
Comment 3: Shrimp Larvae
Comment 4: Shrimp Feed
Comment 5: Labor Surrogate Value
Comment 6: North Korean Import Data
Comment 7: Surrogate Financial Ratio Adjustments
Comment 8: Identify Taiwanese Resellers on Custom's Instructions

[FR Doc. 2011–21259 Filed 8–18–11; 8:45 am]

BILLING CODE 3510–DS–P

Ltd.; Shantou Red Garden Foodstuff Co., Ltd. and/or Shantou Red Garden Food Processing Co., Ltd.; Shantou Wanya Foods Fty. Co., Ltd. (Branch Factory); Shantou Xinwanya Aquatic Product Ltd.; Shantou Yue Xiang Commercial Trading Co., Ltd.; Shenzhen Pingyue Trading Co., Ltd.; SLK Hardware; Sysgration; Thai Royal Frozen Food Zhanjiang Co., Ltd.; Tianjin Dongjiang Food Co., Ltd.; Tongwei Hainan Aquatic Products Co., Ltd.; Top One Intl.; Wenling Xingdi Aquatic Product; Yangcheng Seahorse Foods; Yangjiang Wanshida Seafood Co., Ltd.; Zhangjiang Bo Bo Go Ocean; Zhanjiang Evergreen Aquatic Products; Zhanjiang Fuchang Aquatic Product Freezing Plant; Zhanjiang Go-harvest Aquatic Products Co., Ltd.; Zhanjiang Haizhou Aquatic Product; Zhanjiang Huibaoye Trading Co., Ltd.; Zhanjiang Jebshin Seafood; Zhanjiang Jinguo Marine Foods Company Limited; Zhanjiang Longwei Aquatic Product; Zhejiang Daishan Baofa Aquatic Products Co., Ltd.; Zhejiang Industrial Group Co., Ltd.; Zhj Jinguo Marine Foods; Zhoushan Corp. for Intl. Economic and Technical Cooperation; Zhoushan Haohai Aquatic Products; Zhoushan Putuo Huafa Sea Products Co., Ltd.; and Zhoushan Qiangren Imp. & Exp.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; International Dolphin Conservation Program

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before October 18, 2011.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Sarah Wilkin, (562) 980–3230 or *sarah.wilkin@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

National Oceanic and Atmospheric Administration (NOAA) collects information to implement the International Dolphin Conservation Program Act (Act). The Act allows entry of yellowfin tuna into the United States (U.S.), under specific conditions, from

nations in the International Dolphin Conservation Program that would otherwise be under embargo. The Act also allows U.S. fishing vessels to participate in the yellowfin tuna fishery in the eastern tropical Pacific Ocean (ETP) on terms equivalent with the vessels of other nations. NOAA collects information to allow tracking and verification of ''dolphin safe'' and ''non-dolphin safe'' tuna products from catch through the U.S. market.

The regulations implementing the Act are at 50 CFR parts 216 and 300. The recordkeeping and reporting requirements at 50 CFR parts 216 and 300 form the basis for this collection of information. This collection includes permit applications, notifications, tuna tracking forms, reports, and certifications that provide information on vessel characteristics and operations in the ETP, the origin of tuna and tuna products, and certain other information necessary to implement the Act.

II. Method of Collection

Paper applications, other paper records, electronic and facsimile reports, and telephone calls are required from participants. Methods of submittal include transmission of paper forms via regular mail and facsimile as well as electronic submission via e-mail or an ETP site (password protected).

III. Data

OMB Control Number: 0648–0387.

Form Number: None.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: Business or other for-profit organizations; individuals or households.

Estimated Number of Respondents: 101.

Estimated Time per Response: 35 minutes for a vessel permit application; 10 minutes for an operator permit application, a notification of vessel arrival or departure, a change in permit operator; a notification of a net modification or a monthly tuna storage removal report; 30 minutes for a request for a waiver to transit the ETP without a permit (and subsequent radio reporting) or for a special report documenting the origin of tuna (if requested by the NOAA Administrator); 10 hours for an experimental fishing operation waiver; 15 minutes for a request for a Dolphin Mortality Limit; 35 minutes for written notification to request active status for a small tuna purse seine vessel; 5 minutes for written notification to request inactive status for a small tuna purse seine vessel or for written notification of the intent to transfer a tuna purse seine vessel to foreign registry and flag; 60 minutes for a tuna tracking form; 60 minutes for a monthly tuna receiving report.

Estimated Total Annual Burden Hours: 328.

Estimated Total Annual Cost to Public: $950.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 15, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–21181 Filed 8–18–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Southeast Region Bycatch Reduction Device Certification Family of Forms

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before October 18, 2011.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Rich Malinowski, (727) 824–5305 or *Rich.Malinowski@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

National Marine Fisheries Service (NMFS) Southeast Region manages the United States (U.S.) fisheries of the exclusive economic zone (EEZ) off the South Atlantic, Caribbean, and Gulf of Mexico under the Fishery Management Plans (FMP) for each Region. The Regional Fishery Management Councils prepared the FMPs pursuant to the Magnuson-Stevens Fishery Conservation and Management Act. The regulations implementing the FMPs that have reporting requirements are at 50 CFR part 622.

The recordkeeping and reporting requirements at 50 CFR part 622 form the basis for this collection of information. NMFS Southeast Region requests information from the shrimp fishery participants to certify individual Bycatch Reduction Devices (BRDs). This information, upon receipt, results in an increasingly more efficient and accurate database for management and permitting of the fisheries of the EEZ off the South Atlantic, Caribbean, and Gulf of Mexico.

This request is for an extension of a currently approved information collection.

II. Method of Collection

Paper applications, electronic reports, and telephone calls are required from participants, and methods of submittal include Internet, electronic forms, and facsimile transmission of paper forms.

III. Data

OMB Control Number: 0648–0345.

Form Number: None.

Type of Review: Regular submission (extension of a currently approved collection).

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 32.

Estimated Time per Response: Station Sheet BRD Form, Species Characterization Form, Length Frequency Form, Condition and Fate Form, and Trip Report/Cover Sheet, one minute; Independent BRD Test Form, 5 minutes; Vessel Information

Application and the Gear Specification Form, 20 minutes.

Estimated Total Annual Burden Hours: 71.

Estimated Total Annual Cost to Public: $640 in recordkeeping/reporting costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 15, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–21183 Filed 8–18–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA648

Endangered Species; File No. 16548

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that the Springfield Science Museum, 21 Edwards Street, Springfield, Massachusetts 01103 [David J. Stier, Responsible Party], has applied in due form for a permit to hold and transport shortnose sturgeon (*Acipenser brevirostrum*) for the purposes of enhancement.

DATES: Written, telefaxed, or e-mail comments must be received on or before September 19, 2011.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the *Features* box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 16548 from the list of available applications.

These documents are also available upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376; and

Northeast Region, NMFS, 55 Great Republic Drive, Gloucester, MA 01930; phone (978) 281–9328; fax (978) 281–9394.

Written comments on this application should be submitted to the Chief, Permits, Conservation and Education Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by email to *NMFS.Pr1Comments@noaa.gov.* Please include the File No. 16548 in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits, Conservation and Education Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Jennifer Skidmore or Colette Cairns, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The Springfield Science Museum is requesting a permit to continue enhancement activities previously authorized under Permit No. 1555. Activities would include the acquisition of up to five captive-bred, non-releasable shortnose sturgeon. The display would be used to increase public awareness of the shortnose sturgeon and its status by educating the public on shortnose sturgeon life history and the reasons for the species decline. The proposed project to display endangered cultured shortnose sturgeon responds directly to a recommendation from the NMFS recovery plan outline for this species. The permit would not authorize any takes from the wild, nor would it authorize any release of captive sturgeon into the wild. The permit is requested for a duration of five years.

Dated: August 16, 2011.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–21253 Filed 8–18–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XZ21

Notice of Availability of a Draft Programmatic Environmental Impact Statement for Hawaiian Monk Seal Recovery Actions

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

ACTION: Notice of Availability of a Draft Programmatic Environmental Impact Statement; request for comments.

SUMMARY: NMFS announces the availability of the ''Draft Programmatic Environmental Impact Statement (PEIS) for Hawaiian monk seal Recovery Actions.'' Publication of this notice begins the official public comment period for the Draft PEIS. The purpose of the Draft PEIS is to evaluate, in compliance with the National Environmental Policy Act (NEPA), the potential direct, indirect, and cumulative impacts of implementing the alternative approaches for funding, undertaking, and permitting the management, research and enhancement activities on Hawaiian monk seals, as well as other components of the marine ecosystem and human environment.

DATES: See **SUPPLEMENTARY INFORMATION.**

ADDRESSES: Written comments on the Draft PEIS must be postmarked by October 17, 2011. Comments on the Draft PEIS for this action may be submitted by:

- E-mail: *monkseal@noaa.gov.*
- Mail: 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814.
- Public Hearings: Oral and written comments will be accepted during the upcoming public hearings. See **SUPPLEMENTARY INFORMATION, PUBLIC HEARINGS** (below) for dates and locations of public hearings for this issue.

The draft PEIS is available on the following Web site: *http://www.nmfs.noaa.gov/pr/permits/eis/hawaiianmonkseal.htm.* To be included on a mailing list and receive newsletters and copies of the Draft and Final PEIS, please e-mail *monkseal@noaa.gov* or send your mailing or email address to

the Marine Mammal Branch Chief, Protected Resources Division, NOAA NMFS Pacific Islands Regional Office, 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814.

FOR FURTHER INFORMATION CONTACT: Jeff Walters (phone: 808–944–2200); or via the following email address: *monkseal@noaa.gov.*

SUPPLEMENTARY INFORMATION: NMFS is the Federal agency responsible for management and recovery of Hawaiian monk seals under the Endangered Species Act (ESA; 16 U.S.C. 1531 *et seq.*) and the Marine Mammal Protection Act (MMPA; 16 U.S.C. 1361 *et seq.*). In 1976, NMFS listed Hawaiian monk seals as ''endangered'' under the ESA and ''depleted'' under the MMPA. As required under section 4 of the ESA, NMFS published a Recovery Plan for the species in 1983, which was revised in 2007.

NMFS administers funds that have been appropriated by Congress and allocated within NMFS' annual budget for the purpose of carrying out recovery actions for Hawaiian monk seals. This PEIS would satisfy the NEPA compliance requirements for funding and undertaking recovery actions for Hawaiian monk seals, including the requirements for obtaining MMPA and ESA permits.

Background

The Hawaiian monk seal (*Monachus schauinslandi*) is a critically endangered species found only in the U.S., within the Hawaiian Archipelago and at Johnston Atoll. The population is estimated to have 1,125 individuals remaining and is declining by roughly 4.5% each year.

Since the 1980's, NMFS has conducted research to understand, and enhancement activities to mitigate, threats to the survival of monk seals. Most of this work has been in the Northwestern Hawaiian Islands (NWHI) where the majority of seals live and breed. More recently, a natural increase in the number of seals in the Main Hawaiian Islands (MHI) has prompted researchers and managers to begin studying and aiding seals in the MHI.

Despite measures taken to save the monk seal, the species is not showing signs of recovery. In the NWHI, young seals are continuing to starve to death, nursing and newly weaned pups are being killed by sharks, seals are getting entangled in marine debris, and sea level rise threatens terrestrial habitats. Low juvenile survival over the past two decades is the primary cause of the population's decline. There is insufficient recruitment into the breeding population, and the population decline will likely continue without intervention.

On October 1, 2010, NMFS provided public notice (75 FR 60721) that it would prepare a PEIS to assess the impacts of implementing specific management actions and administering a research and enhancement program to improve survival of Hawaiian monk seals. The 45 day public scoping period was extended 15 days (75 FR 69398), and the comment period ended November 30, 2010.

Scoping was the first step in this NEPA process (as required under 40 CFR 1501.7). Scoping provided an opportunity for the public and agencies to express their views and identify issues to be addressed in the Draft PEIS regarding activities that may be performed on Hawaiian monk seals in an effort to recover the species.

As part of scoping, NMFS hosted public meetings to introduce the project proposal, describe the PEIS process, and solicit input on the issues and alternatives to be evaluated. Public scoping meetings were held in October 2010 on the islands of O'ahu, Hawai'i, Maui, Moloka'i, and Kaua'i. During the scoping comment period, 139 public comments were received. A report summarizing these comments is available on the project Web site: *http://www.nmfs.noaa.gov/pr/permits/eis/hawaiianmonkseal.htm.*

Issues identified by the public during the scoping process include, but are not limited to, concerns regarding bringing young seals to the MHI and returning them to the NWHI, Native Hawaiian beliefs and culture, fisheries interactions, and human-seal encounters. Substantive comments received during the scoping period have been addressed in the Draft PEIS.

Alternatives

NMFS has evaluated a preferred alternative and three other alternatives in the Draft PEIS. These are summarized as follows:

Alternative 1: Status Quo Alternative: Under the Status Quo Alternative, research and enhancement activities would be carried out as currently permitted under the MMPA and ESA. New permits could be issued in the future to maintain the current levels of research and enhancement activities. Some elements of this alternative include:

- Population assessment (e.g., counting, marking for identification);
- Health and disease studies (e.g., tissue sampling, taking measurements);
- Foraging studies (e.g., telemetry, scat collection);
- De-worming research (e.g., fecal samples, testing anti-parasite treatments);
- Translocation of weaned pups within the NWHI to improve juvenile survival;
- Mitigation of fishery interactions (e.g., disentanglement, removal of hooks); and
- Mitigation of adult male aggression (e.g., removal of aggressive males).

Alternative 2: No Action: Under this alternative, the above-mentioned permitted research and enhancement activities on Hawaiian monk seals would stop in 2014 when the current MMPA–ESA permit expires. No new permits would be issued.

Alternative 3: Limited Translocation: Alternative 3 would include all currently permitted activities and further address the recommendations of the Hawaiian Monk Seal Recovery Plan by including new research and enhancement activities. New activities would include, but would not be limited to:

- Expanding the scope and number of seal translocations, including (1) moving seals with unmanageable human interactions from the MHI to NWHI, (2) taking seals age three years and older from the MHI to NWHI to examine their subsequent survival, and (3) using a two-stage translocation program whereby weaned pups are taken from areas of lower survival to areas of higher survival. This would include the option of returning the seals to their birth island or nearby site at age three years and older, but would exclude moving seals from the NWHI to the MHI.
- Research and development of tools for modifying undesirable seal behavior related to interactions with humans and fishing gear in the MHI.
- Potential implementation of de-worming as a tool to improve juvenile survival.
- Supplementing monk seal diet using feeding stations in NWHI locations where seals are released after being cared for in captivity.
- Vaccination studies and potential use of vaccines to mitigate infectious diseases (West Nile Virus and Morbilliviruses).
- Chemical alteration of aggressive male monk seal behavior using a testosterone suppressant.
- Expanded surveys and use of new tools (such as remote cameras and unmanned remotely operated aircraft).

A distinctive feature of Alternative 3 is that translocations of young animals from the NWHI to the MHI would not be permitted.

Alternative 4: Enhanced Implementation (Preferred Alternative): Alternative 4, the enhanced implementation alternative, is the Preferred Alternative. This alternative would encompass all the activities under Alternative 3, with the additional option to temporarily translocate weaned pups from the NWHI to the MHI to improve survival. At age three years, surviving translocated seals would be returned to the NWHI.

Alternative 4 encompasses the range of actions considered most promising to prevent the extinction of the species. Before any translocation between the NWHI and MHI would be attempted, extensive outreach and engagement with local stakeholders would be conducted, and programs to reduce seal-human interactions, including interactions between seals and fishing gear, would be developed and implemented.

Public Involvement

Comments will be accepted at public hearings (see below) and during the public comment period, and must be submitted to NMFS by October 17, 2011 (see **FOR FURTHER INFORMATION CONTACT**). We request that you include in your comments: (1) Your name, address, and affiliation (if any); and (2) background documents to support your comments as appropriate.

Public hearings will take place on the following dates, times, and locations:

1. Monday, September 12, 2011, 5:30 p.m.–8:30 p.m., Central Union Church, 1660 South Beretania Street, Honolulu, O'ahu.
2. Tuesday, September 13, 2011, 6 p.m.–8:30 p.m., Hale Mahaolu Home Pumehana, 290 Kolapa Place, Kaunakakai, Moloka'i.
3. Wednesday, September 14, 2011, 6 p.m.–9 p.m., Mokupāpapa Discovery Center, 308 Kamehameha Avenue, Suite 109, Hilo, Hawai'i.
4. Thursday, September 15, 2011, 6 p.m.–9 p.m., Kīhei Community Center, 303 East Lipoa Street, Kīhei, Maui.
5. Saturday, September 17, 2011, 9 a.m.–12 p.m. and 4 p.m.–7 p.m., Wilcox Elementary School, 4319 Hardy Street, Līhu'e, Kaua'i.

Special Accommodations

These meetings are accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Rachel Sprague, (808) 944–2200 (phone) or (808) 973–2941 (fax), at least 5 days before the scheduled meeting date.

Authority: 16 U.S.C. 1361 *et seq.* and 16 U.S.C. 1531 *et seq.*

Dated: August 11, 2011.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2011–21274 Filed 8–18–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA289

Small Takes of Marine Mammals Incidental to Specified Activities; Pile Driving in the Columbia River, WA

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

ACTION: Notice; proposed incidental harassment authorization; request for comments.

SUMMARY: NMFS has received a complete and adequate application from the Port of Vancouver, USA (Port) for an Incidental Harassment Authorization (IHA) to take marine mammals, by harassment, incidental to pile driving during construction of the Terminal 5 Bulk Potash Handling Facility. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is proposing to issue an IHA to incidentally harass, by Level B harassment only, three species of marine mammals during the specified activity within a specific geographic area and is requesting comments on its proposal.

DATES: Comments and information must be received no later than September 19, 2011.

ADDRESSES: Comments on the application and this proposal should be addressed to Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225. The mailbox address for providing email comments is *ITP.Magliocca@noaa.gov.* NMFS is not responsible for e-mail comments sent to addresses other than the one provided here. Comments sent via e-mail, including all attachments, must not exceed a 10-megabyte file size.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.nmfs.noaa.gov/pr/permits/incidental.htm* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

A copy of the application containing a list of the references used in this document may be obtained by writing to the address specified above, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Michelle Magliocca, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specific geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) further established a 45-day time limit for NMFS' review of an application, followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny the authorization.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Summary of Request

On February 22, 2011, NMFS received an application from the Port of Vancouver, USA (Port), requesting an IHA for the take, by Level B harassment, of small numbers of Pacific harbor seals (*Phoca vitulina richardii*), California sea lions (*Zalophus californianus*), and Steller sea lions (*Eumatopius jubatus*) incidental to pile driving activities conducted during the construction of the Terminal 5 Bulk Potash Handling Facility. Upon receipt of additional information and a revised application (submitted May 6, 2011), NMFS determined the application complete and adequate on June 7, 2011.

The applicant proposes to lease part of Terminal 5, located at the Port of Vancouver, for the purposes of constructing and operating a bulk potash handling facility on the Columbia River. The facility would allow shipping of potash (salts containing potassium in water-soluble form) to global markets. The proposed project would require pile installation of up to 203 steel piles and removal of 177 wood piles. Because elevated sound levels from pile driving have the potential to result in marine mammal harassment, NMFS is proposing to issue an IHA for take incidental to the specified activity.

Description of the Specified Activity

The proposed project would involve construction of a potash handling facility along the Columbia River in Vancouver, Washington. The facility would accept potash shipped by rail from potash mines in Saskatchewan, Canada. On-site infrastructure is proposed to enable the unloading of rail cars into on-site storage, and the conveyance of potash to vessels at a new berth to be constructed on the Columbia River adjacent to the facility. The on-site infrastructure would include dedicated rail facilities and the construction and installation of materials handling equipment, storage structures, utilities, and internal access roads on the site, a marine berth with ship loaders, and other related ancillary infrastructure.

To support the new facility, a maximum of 203 steel piles would be installed at the proposed project site (specifically, Terminal 5) using vibratory and impact pile driving. These piles would be necessary for construction of a ship loading system, marine berthing facilities, and a new stormwater outfall system. A breakdown of pile size and associated activity are shown in Table 1.

TABLE 1—SUMMARY OF PILE INSTALLATION ACTIVITIES

Activity	Number of piles (maximum)	Location
Installation of permanent piles for ship loader and berth	100, 36- to 40-in (914- to 1,016-mm) steel pipe piles.	
Installation and removal of temporary piles during construction of ship loader and berth.	95, 18- to 24-in (457- to 610-mm) steel pipe piles	River mile 103.3.
Installation of permanent piles for stormwater outfall	8, 16-in steel H-piles.	
Removal of old piles	177, 16-in wood piles	River mile 105.

Of the 100, 36- to 40-in (914- to 1,016-mm) steel pipe piles, 36 would be used for quadrant beams and pivot supports, 42 would be used for the mooring and berthing dolphins and platform, 10 would be used for access trestles, and the remaining 12 would be intended as a contingency should additional piles be required. Approximately two piles would be installed per day over a four-month period. Although the exact duration of pile driving would vary depending on the installation procedures and geotechnical conditions, the applicant estimates that each permanent pile would require between two and three hours of vibratory installation and between one and two hours of impact driving to install. To the extent possible, all piles would be installed with an APE Model 200 (or similar) vibratory hammer; however, it may be necessary to seat a pile using an impact hammer. The temporary piles (18- to 24-in diameter) would be driven solely with a vibratory hammer. Should an impact hammer be necessary for finishing the installation of permanent piles, the Port would use a DELMAG D46–32 with 60–80 maximum blows per foot, a DELMAG D80 with 20–30 maximum blows per foot, or a similar model. Sound attenuation devices, such as a bubble curtain, would be used during any impact hammering.

In addition to pile installation, a total of 272 piles would also be removed using vibratory extraction or a crane. These consist of the 95 temporary piles and 177 old wood piles upstream of Terminal 5 (Table 1). The 177 wood piles are located at Terminal 2, about two miles upstream from Terminal 5, and do not have much structural capacity. A pneumatic underwater chainsaw may be used if a pile breaks in the process, but associated noise is expected to be negligible. Above-water work would also be necessary to complete construction of each project component. There could be barges in the water to support construction activities; however, these would be concentrated in the direct vicinity of Terminal 5. Because pile repair, pile removal, and use of barges do not release loud sounds into the environment, marine mammal harassment from these activities is not anticipated.

Region of Activity

The proposed activity would occur within the Lower Columbia River sub-basin. The Columbia River and its tributaries are the dominant aquatic system in the Pacific Northwest, originating in Canada's Rocky Mountains and flowing approximately 1,200 mi (1,931 km) to the Pacific Ocean. Saltwater intrusion from the Pacific Ocean extends approximately 23 mi (37 km) upstream from the river mouth at Astoria, Oregon and coastal tides influence the flow rate and river level up to the Bonneville Dam at river mile 146. The proposed construction would take place at 5701 NW Lower River Road in Vancouver, Washington, about 3 mi (4.8 km) northwest of downtown Vancouver, Washington. The area is composed of submerged, tidal, nearshore, and upland lands along a 2,300-ft (701-m) long section on the north bank of the Columbia River. The proposed project site is centered around river mile 103.3, a reach of the Columbia River that is about 3,000 ft (914 m) wide on average, but would also include additional pile removal at river mile 105. A heavy industrial site, this

area has been used since the 1940s for aluminum smelting as well as for the fabrication and outdoor storage of aluminum ingots, but is currently used for storage of windmill components.

Dates of Activity

The Washington Department of Fish and Wildlife's recommended in-water work window for this area is November 1 through February 28. Timing restrictions such as this are used to avoid in-water work when listed species are most likely to be present. Proposed pile installation and removal activities are scheduled to occur between November 1, 2012 and February 28, 2013, in agreement with the state's recommendation.

Sound Propagation

For background, sound is a mechanical disturbance consisting of minute vibrations that travel through a medium, such as air or water, and is generally characterized by several variables. Frequency describes the sound's pitch and is measured in hertz (Hz) or kilohertz (kHz), while sound level describes the sound's loudness and is measured in decibels (dB). Sound level increases or decreases exponentially with each dB of change. For example, 10 dB yields a sound level 10 times more intense than 1 dB, while a 20 dB level equates to 100 times more intense, and a 30 dB level is 1,000 times more intense. Sound levels are compared to a reference sound pressure (micro-Pascal) to identify the medium. For air and water, these reference pressures are ''re: 20 μPa'' and ''re: 1 μPa,'' respectively. Root mean square (RMS) is the quadratic mean sound pressure over the duration of an impulse. RMS is calculated by squaring all of the sound amplitudes, averaging the squares, and then taking the square root of the average (Urick, 1975). RMS accounts for both positive and negative values; squaring the pressures makes all values positive so that they may be accounted for in the summation of pressure levels (Hastings and Popper, 2005). This measurement is often used in the context of discussing behavioral effects, in part because behavioral effects, which often result from auditory cues, may be better expressed through averaged units rather than by peak pressures.

Data from a Washington Department of Transportation monitoring project at Port Townsend was used for the vibratory pile driving noise analysis (WSDOT, 2010b). There is a lack of information related to the size of the impact hammer and the resulting sound levels for 36- to 40-in (914- to 1,016-mm) pile installations; therefore, noise levels recorded for projects in Alameda, California and Port Townsend, Washington, using similar equipment were used to estimate sound levels (CalTrans, 2009; WSDOT, 2010b). Maximum sound levels for impact and vibratory pile driving are shown in Table 2. No reference underwater sound levels are available for this area, so 120 dB RMS (the lowest potential impact threshold for marine mammals) was used as a surrogate (WSDOT, 2010a). The Port applied a practical spreading loss model to calculate sound propagation, which assumes that noise attenuates at a rate of 4.5 dB per doubling distance, and this attenuation rate increases to 10 dB per doubling distance beyond 0.6 mile (1 km) (WSDOT, 2010a). Using this model, the largest noise impact zone is expected to result from vibratory pile driving of 36- to 40-in (914- to 1,016-mm) steel pipe piles. It may take up to 7 miles (11 km) for underwater sound to attenuate to below 120 dB. Because of the project area's location on a river bend and across from Hayden Island, sound transmission will be stopped by land masses much earlier in certain directions. In-air sound from pile driving also has the potential to affect marine mammals. However, in-air sound is not a concern here because there are no pinniped haul-out sites near the project area.

Table 2. Maximum sound levels for impact and vibratory installation of unattenuated steel piles.

Pile diameter	Sound level (single strike) [1]			Sound level (vibratory) [2]
36- to 40-inch (914- to 1,016-mm)	208 dB_{PEAK}	195 dB_{RMS}	180 dB_{SEL}	174 dB_{RMS}.

[1] CalTrans, 2009.
[2] WSDOT, 2010b.

Description of Marine Mammals in the Area of the Specified Activity

Three marine mammal species have known distribution ranges that include the proposed project area: Pacific harbor seal, California sea lion, and Steller sea lion. These species may use the proposed project area as a seasonal transit corridor to and from the Bonneville Dam.

Pacific Harbor Seals

Pacific harbor seals reside in coastal and estuarine waters off Baja, California, north to British Columbia, west through the Gulf of Alaska, and in the Bering Sea. Harbor seals in the Columbia River are part of the Oregon/Washington coastal stock. The most recent NMFS stock assessment report estimated this stock to be at least 22,380 individuals and the population is likely at carrying capacity and no longer increasing (NMFS, 2007). The Oregon/Washington stock is not listed under the Endangered Species Act (ESA) nor considered depleted under the MMPA.

Harbor seals are infrequently observed as far upstream in the Columbia River as Vancouver. The nearest known haul-out is approximately 60 miles (97 km) downstream of the proposed project area. Since 2002, the Army Corps of Engineers has documented less than four harbor seals at Bonneville Dam (approximately 40 miles [64 km] from the proposed project area) and harbor seals potentially within the proposed project area will likely be transiting to or from Bonneville Dam.

California Sea Lions

California sea lions reside throughout the Eastern North Pacific Ocean in shallow coastal and estuarine waters, ranging from Central Mexico to British Columbia, Canada. Their primary breeding range extends from Central Mexico to the Channel Islands in Southern California. The U.S. stock abundance is estimated at 238,000 sea lions (NMFS, 2007). This stock is approaching carrying capacity and is reaching ''optimum sustainable population'' limits, as defined by the MMPA. California sea lions are not listed under the ESA nor considered depleted under the MMPA.

Historically, California sea lions are the most frequently observed pinnipeds at Bonneville Dam, with the largest number (104) of individuals recorded in 2003. There are no California sea lion haul-outs within the action area, so individuals present during construction would likely be passing through the area.

Steller Sea Lions

Steller sea lions reside along the North Pacific Rim from northern Japan to California, with centers of abundance and distribution in the Gulf of Alaska and Aleutian Islands, respectively. Steller sea lions in the Columbia River are part of the eastern distinct population segment, which is listed as threatened under the ESA and designated as depleted under the MMPA. Since the 1970s, the average annual population growth rate has been three percent (NMFS, 2008a).

Since 2002, observers have rarely seen Steller sea lions at Bonneville Dam, with less than ten sea lions recorded in most years. However, since 2008, the numbers of Steller sea lions documented at the dam have increased steadily to 75 individuals in 2010. The most recent stock assessment (NOAA, 2010) cited 516 individuals as the population count for the entire state of Washington. No Steller sea lion haul-outs or haul-out habitat are known within the proposed project area and there are no Steller sea lion rookeries in Washington. Any Steller sea lions present during construction would likely be passing through the area.

All species of pinnipeds produce a wide range of social signals, most occurring at relatively low frequencies (Southall *et al.,* 2007), suggesting that hearing is keenest at these frequencies. Pinnipeds communicate acoustically both on land and underwater, but have different hearing capabilities dependent upon the medium (air or water). Based on numerous studies, as summarized in Southall *et al.* (2007), pinnipeds are more sensitive to a broader range of sound frequencies underwater than in air. Underwater, pinnipeds can hear frequencies from 75 Hz to 75 kHz. In air, pinnipeds can hear frequencies from 75 Hz to 30 kHz (Southall *et al.,* 2007).

Potential Effects on Marine Mammals

The proposed action consists of both upland and marine components, but the only project component with the potential to take marine mammals is impact and vibratory pile driving. Elevated in-water sound levels from pile driving in the proposed project area may temporarily impact marine mammal behavior. Elevated in-air sound levels are not a concern because the nearest pinniped haul-out is approximately 60 miles (97 km) away. Marine mammals are continually exposed to many sources of sound. For example, lightning, rain, sub-sea earthquakes, and animals are natural sound sources throughout the marine environment. Marine mammals produce sounds in various contexts and use sound for various biological functions including, but not limited to, (1) social interactions; (2) foraging; (3) orientation; and (4) predator detection. Interference with producing or receiving these sounds may result in adverse impacts. Audible distance or received levels will depend on the sound source, ambient noise, and the sensitivity of the receptor (Richardson *et al.,* 1995). Marine mammal reactions to sound may depend on sound frequency, ambient sound, what the animal is doing, and the animal's distance from the sound source (Southall *et al.,* 2007).

Hearing Impairment

Marine mammals may experience temporary or permanent hearing impairment when exposed to loud sounds. Hearing impairment is classified by temporary threshold shift (TTS) and permanent threshold shift (PTS). There are no empirical data for when PTS first occurs in marine mammals; therefore, it must be estimated from when TTS first occurs and from the rate of TTS growth with increasing exposure levels. PTS is likely if the animal's hearing threshold is reduced by ≥ 40 dB of TTS. PTS is considered auditory injury (Southall *et al.,* 2007) and occurs in a specific frequency range and amount. Irreparable damage to the inner or outer cochlear hair cells may cause PTS; however, other mechanisms are also involved, such as exceeding the elastic limits of certain tissues and membranes in the middle and inner ears and resultant changes in the chemical composition of the inner ear fluids (Southall *et al.,* 2007). Due to proposed mitigation measures and source levels in the proposed project area, NMFS does not expect marine mammals to be exposed to PTS levels.

Temporary Threshold Shift (TTS)

TTS is the mildest form of hearing impairment that can occur during exposure to a loud sound (Kryter, 1985). While experiencing TTS, the hearing threshold rises and a sound must be louder in order to be heard. TTS can last from minutes or hours to days, occurs in specific frequency ranges (i.e., an animal might only have a temporary loss of hearing sensitivity between the frequencies of 1 and 10 kHz), and can occur to varying degrees (e.g., an animal's hearing sensitivity might be reduced by 6 dB or by 30 dB). For sound exposures at or somewhat above the TTS-onset threshold, hearing sensitivity recovers rapidly after exposure to the sound ends. Few data on sound levels and durations necessary to elicit mild TTS have been obtained for marine mammals. Southall *et al.* (2007) considers a 6 dB TTS (i.e., baseline thresholds are elevated by 6 dB) sufficient to be recognized as an unequivocal deviation and thus a sufficient definition of TTS-onset. Because it is non-injurious, NMFS considers TTS as Level B harassment that is mediated by physiological effects on the auditory system; however, NMFS does not consider onset TTS to be the lowest level at which Level B harassment may occur. Southall *et al.* (2007) summarizes underwater pinniped data from Kastak *et al.* (2005), indicating that a tested harbor seal showed a TTS of around 6 dB when exposed to a non-pulse noise at SPL 152 dB re: 1 μPa for 25 minutes. In contrast, a tested sea lion exhibited TTS-onset at 174 dB re: 1 μPa under the same conditions as the harbor seal. Data from a single study on underwater pulses found no signs of TTS-onset in sea lions at exposures up to 183 dB re: 1 μPa (peak-to-peak) (Finneran *et al.,* 2003).

There are limited data available on the effects of non-pulse noise (for example, vibratory pile driving) on pinnipeds while underwater; however, field and captive studies to date collectively suggest that pinnipeds do not react strongly to exposures between 90 and 140 dB re: 1 microPa; no data exist from exposures at higher levels. Jacobs and Terhune (2002) observed wild harbor seal reactions to high-frequency acoustic harassment devices around nine sites. Seals came within 44 m of the active acoustic harassment devices and failed to demonstrate any behavioral response when received SPLs were estimated at 120–130 dB. In a captive study (Kastelein, 2006), scientists subjected a group of seals to non-pulse sounds between 8 and 16 kHz. Exposures between 80 and 107 dB did not induce strong behavioral responses; however, a single observation from 100 to 110 dB indicated an avoidance response. The seals returned to baseline conditions shortly following exposure. Southall *et al.* (2007) notes contextual differences between these two studies; the captive animals were not reinforced with food for remaining in the noise fields, whereas free-ranging animals may have been more tolerant of exposures because of motivation to return to a safe location or approach enclosures holding prey items. While most of the pile driving at the proposed project site would be vibratory, an impact hammer (pulse noise) may be used to complete installation and to verify the piles' strength. Vibratory and impact pile driving may result in

anticipated hydroacoustic levels between 174 and 195 dB root mean square. Southall *et al.* (2007) reviewed relevant data from studies involving pinnipeds exposed to pulse noise and concluded that exposures to 150 to 180 dB generally have limited potential to induce avoidance behavior.

Vibratory pile driving emits low-frequency broadband noise, which may be detectable by marine mammals within the proposed project area. The average value of 174 dB RMS from a Washington State Department of Transportation monitoring project of vibratory installation of a 36-inch (917-mm) steel pipe pile at Port Townsend was used in the noise analysis for vibratory pile installation (WSDOT, 2010b). There is a lack of information related to the size of the impact hammer and the resulting sound levels for 36- to 40-inch (914 to 1,016-mm) pile installations. Therefore, noise levels recorded for a project in Alameda, California that installed 40-inch (1,016-mm) steel pipe piles using a DELMAG D80 impact hammer were used in the noise attenuation analysis (Caltrans, 2009).

No impacts to pinniped reproduction are anticipated because there are no known haul-outs or rookeries within the proposed project area. NMFS expects any impacts to marine mammal behavior to be temporary, Level B harassment, for two reasons: first, animals may avoid the area around the hammer, thereby reducing their exposure to elevated sound levels; and second, pile driving does not occur continuously throughout the day; the vibratory hammer would operate for about 2–3 hours per pile and the impact hammer would operate for about 1–2 hours per pile. The applicant anticipates an average of two pilings to be driven per day, resulting in a total of 6–10 hours of pile driving within a 24-hour period. Disturbance to marine mammal behavior may be in the form of temporary avoidance or alteration of transiting near the pile driving location. In addition, because a vibratory hammer would be used as much as possible, and the 190 dB isopleth for the impact hammer is 70 ft (21 m), marine mammal injury or mortality is not likely. Impact pile driving would cease if a marine mammal is observed nearing or within the 190 dB isopleth. For these reasons, NMFS expects any changes to marine mammal behavior to be temporary and result in a negligible impact to affected species and stocks.

Anticipated Effects on Habitat

A small area of shallow water habitat with silt/sand substrate would be shaded by the proposed structure, but this was minimized by placing the structure at a height which would allow for some light penetration and by lessening the width of the structure. A deep water area and shallow water area with riprap substrate would also be shaded, but these habitats provide few functions and are plentiful in the surrounding ecosystem. Pile installation and removal would result in some disturbance of the river substrate; however, this disturbance is expected to be local and temporary. Pile driving activities (*i.e.,* temporary ensonification) may impact prey species and marine mammals by resulting in avoidance or abandonment of the area; however these impacts are also expected to be local and temporary. Overall, the proposed activity is not expected to cause significant or long-term impacts on marine mammal habitat.

Essential Fish Habitat consultation is ongoing between the Port and NMFS for the proposed IHA, but will be concluded before NMFS makes a final determination on the issuance of an IHA.

Proposed Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses.

The applicant has proposed the following mitigation measures to minimize adverse impacts to marine mammals:

Temporal Restrictions

The Washington Department of Fish and Wildlife recommends an in-water work window of November 1 through February 28, annually. This work window was designed to protect fish species, particularly salmonid eggs and fry. However, by limiting pile driving activities to this period of time, the peak sea lion run to and from the Bonneville Dam is also avoided.

Limited Use of an Impact Hammer

To the extent possible, a vibratory hammer would be used to drive all piles. In the event that an impact hammer is necessary, a bubble curtain or similar noise attenuation method would be used as an attenuation device to reduce hydroacoustic sound levels to avoid the potential for injury.

Establishment of an Exclusion Zone

During all in-water impact pile driving, the Port would establish a preliminary marine mammal exclusion zone of 70 ft (21 m) around each pile to avoid exposure to sounds at or above 190 dB. The exclusion zone would be monitored during all impact pile driving to ensure that no marine mammals enter the 70 ft (21 m) radius. The purpose of this area is to prevent Level A harassment (injury) of any marine mammal species. A safety zone for vibratory pile driving is unnecessary to prevent Level A harassment as source levels would not exceed the Level A harassment threshold.

Pile Driving Shut Down and Delay Procedures

If a protected species observer sees a marine mammal within or approaching the exclusion zone prior to start of impact pile driving, the observer would notify the on-site construction manager (or other authorized individual), who would then be required to delay pile driving until the marine mammal has moved outside of the exclusion zone or if the animal has not been resighted within 15 minutes. If a marine mammal is sighted within or on a path toward the exclusion zone during pile driving, pile driving would cease until that animal has cleared and is on a path away from the exclusion zone or 15 minutes has lapsed since the last sighting.

Soft-Start Procedures

A ''soft-start'' technique would be used at the beginning of each pile installation to allow any marine mammal that may be in the immediate area to leave before the pile hammer reaches full energy. For vibratory pile driving, the soft-start procedure requires contractors to initiate noise from the vibratory hammer for 15 seconds at 40–60 percent reduced energy followed by a 1-minute waiting period. The procedure would be repeated two additional times before full energy may be achieved. For impact hammering, contractors would be required to provide an initial set of three strikes from the impact hammer at 40 percent energy, followed by a 1-minute waiting period, then two subsequent three-strike sets. The soft-start procedure would be conducted prior to driving each pile if vibratory hammering ceases for more than 30 minutes.

NMFS has carefully evaluated the applicant's proposed mitigation measures and considered a range of other measures in the context of ensuring that NMFS prescribes the

means of effecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another: (1) The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals; (2) the proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and (3) the practicability of the measure for applicant implementation, including consideration of personnel safety, and practicality of implementation.

Based on our evaluation of the applicant's proposed measures, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable adverse impacts on marine mammals species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth ''requirements pertaining to the monitoring and reporting of such taking''. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for IHAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present.

The Port must designate at least one biologically-trained, on-site individual, approved in advance by NMFS, to monitor the area for marine mammals 20 minutes before, during, and 20 minutes after all impact pile driving activities and call for shut down if any marine mammal is observed within or approaching the designated exclusion zone (preliminarily set at 70 ft [21 m]). In addition, at least two NMFS-approved protected species observers would conduct behavioral monitoring at least two days per week to estimate take and evaluate the behavioral impacts pile driving has on marine mammals out to the Level B harassment isopleths. Note that for impact hammering, this distance is about 1.3 mi (2 km). For vibratory hammering, this estimated distance is about 7 mi (11 km); however, sound will dissipate before then (in about 6 mi [9.7 km]) due to the shape and configuration of the river. Protected species observers would be provided with the equipment necessary to effectively monitor for marine mammals (for example, high-quality binoculars, spotting scopes, compass, and range-finder) in order to determine if animals have entered into the exclusion zone or Level B harassment isopleth and to record species, behaviors, and responses to pile driving.

Protected species observers would be required to submit a report to NMFS within 120 days of expiration of the IHA or completion of pile driving, whichever comes first. The report would include data from marine mammal sightings (such as species, group size, and behavior), any observed reactions to construction, distance to operating pile hammer, and construction activities occurring at time of sighting.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as:

> Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Based on the application and subsequent analysis, the impact of the described pile driving operations may result in, at most, short-term modification of behavior by small numbers of marine mammals within the action area. Marine mammals may avoid the area or temporarily alter their behavior at time of exposure.

Current NMFS practice regarding exposure of marine mammals to anthropogenic noise is that in order to avoid the potential for injury (PTS), cetaceans and pinnipeds should not be exposed to impulsive sounds of 180 and 190 dB or above, respectively. This level is considered precautionary as it is likely that more intense sounds would be required before injury would actually occur (Southall *et al.,* 2007). Potential for behavioral harassment (Level B) is considered to have occurred when marine mammals are exposed to sounds at or above 160 dB for impulse sounds (such as impact pile driving) and 120 dB for non-pulse noise (such as vibratory pile driving), but below the aforementioned thresholds. These levels are also considered precautionary.

Based on empirical measurements taken by WSDOT and Caltrans (which are presented in the *Description of Specified Activities* section above), estimated distances to NMFS' current threshold sound levels from pile driving during the proposed construction activities are presented in Table 3. Effects from the removal of the 177 wood piles upstream from the main construction site are included in the 6-mi (9.7 km) Level B isopleth (based at Terminal 5) due to the river bend. The 70-ft distance to the Level A harassment threshold provides protected species observers plenty of time and adequate visibility to prevent marine mammals from entering the area during impact pile driving. This would prevent marine mammals from being exposed to sound levels that reach the Level A harassment threshold.

TABLE 3—MODELED UNDERWATER DISTANCES TO NMFS' MARINE MAMMAL HARASSMENT THRESHOLD LEVELS

	Level A (190/180 dB)	Level B harassment (160 dB)	Level B harassment (120 dB)
Impact hammering	21 m (70 ft) without sound attenuation device.	1.3 mi (2 km)	n/a.
Vibratory hammering	n/a	n/a	6 mi (9.7 km).

The estimated number of marine mammals that could be harassed was based on the Army Corps of Engineers' evaluation of pinniped predation on fish near the Bonneville Dam in 2010. Based on the 2010 Steller sea lion counts at Bonneville Dam, the Port requested a total take of 50 Steller sea lions. This number was reached based on the estimated 75 individuals that passed through the action area in 2010 during their migration to and from Bonneville Dam, for a total of 150 individual trips through the action area. Since all pile installation would occur between November 1 and February 28, the peak of the run in April and May would be avoided. Steller sea lion presence at the

dam in January and February 2010 represented (conservatively) less than a third of the total run for the year. Therefore, the Port estimated that no more than one-third of the total run of Steller sea lions (approximately 25 individuals) could be exposed to Level B harassment. Since each individual could potentially be exposed on both the upstream and downstream trip, a total of 50 takes of Steller sea lions could occur. Upon further consultation with NMFS Northwest Regional Office, and in consideration of steadily increasing numbers of Steller sea lions since 2008, NMFS is proposing to increase the number of Steller sea lions that could be exposed to Level B harassment. This is based on the fact that abundance estimates increased three-fold between 2009 and 2010, and may continue. Therefore, it is reasonable to assume that 2,025 individuals may make the trip to and from the dam during the proposed activity (based on a conservative three-fold increase in 2011, 2012, and again in 2013). Considering the avoidance of the peak run and potential exposure during the upstream and downstream migration, NMFS proposes to authorize the incidental take, by Level B harassment only, of 1,350 Steller sea lion exposures (accounting for one-third of the total run—about 675 animals—traveling to and from the dam). In addition, the Port requested take of 60 California sea lions (based on the same analysis that was applied for Steller sea lions) and six harbor seals (the maximum number of harbor seals documented at Bonneville Dam since 2002). These numbers take the proposed mitigation measures into consideration, but are conservative and represent the maximum number of animals expected to occur within the Level B harassment isopleth. The actual number of animals that may be harassed is likely to be significantly less.

Negligible Impact and Small Numbers Analysis and Determination

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''* * *an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' In making a negligible impact determination, NMFS considers a number of factors which include, but are not limited to, number of anticipated injuries or mortalities (none of which would be authorized here), number, nature, intensity, and duration of Level B harassment, and the context in which takes occur.

As described above, marine mammals would not be exposed to activities or sound levels which would result in injury (PTS), serious injury, or mortality. Pile driving would occur in shallow coastal waters of the Columbia River. The action area (waters around Terminal 5) is not considered significant habitat for pinnipeds. The closest haul-out is 50 mi (80 km) away, which is outside the project area's largest harassment zone. Marine mammals approaching the action area would likely be traveling or opportunistically foraging. The amount of take the Port requested for each species, and NMFS proposes to authorize, is considered small (less than five percent) relative to the estimated populations of 22,380 Pacific harbor seals, 238,000 California sea lions, and 30,403 Steller sea lions. Marine mammals may be temporarily impacted by pile driving noise. However, marine mammals are expected to avoid the area, thereby reducing exposure and impacts. Pile driving activities are expected to occur for approximately 101 days. Furthermore, this section of the Columbia River is a highly industrialized area, so animals are likely tolerant or habituated to anthropogenic disturbance, including low level vibratory pile driving operations, and noise from other anthropogenic sources (such as vessels) may mask construction related sounds. There is no anticipated effect on annual rates of recruitment or survival of affected marine mammals.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS preliminarily determines that the proposed pile driving would result in the incidental take of small numbers of marine mammals, by Level B harassment only, and that the total taking would have a negligible impact on the affected species or stocks.

Impact on Availability of Affected Species for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action.

Endangered Species Act (ESA)

The Steller sea lion is listed as endangered under the ESA with confirmed occurrence within the action area. NMFS is in the process of consulting with the Port and will consult internally on the issuance of an IHA under section 101(a)(5)(A) of the MMPA for the take of Steller sea lions incidental to the proposed activity. ESA consultation will be concluded prior to a determination on the issuance of a final IHA.

National Environmental Policy Act (NEPA)

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), as implemented by the regulations published by the Council on Environmental Quality (40 CFR parts 1500–1508), and NOAA Administrative Order 216–6, NMFS is preparing an Environmental Assessment (EA) to consider the direct, indirect, and cumulative effects to marine mammals and other applicable environmental resources resulting from issuance of a one-year IHA and the potential issuance of additional authorizations for incidental harassment for the ongoing project. Upon completion, this EA will be available on the NMFS website listed in the beginning of this document.

Dated: August 10, 2011.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–21248 Filed 8–18–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seats for the Stellwagen Bank National Marine Sanctuary Advisory Council

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: The ONMS is seeking applicants for the following seat on the Stellwagen Bank National Marine Sanctuary Advisory Council: (2) Research (Alternate) seats. Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of residence in the area affected by the sanctuary. Applicants who are chosen as members should expect to serve 3-year terms, pursuant to the Council's Charter. The Council consists also of three state and three federal non-voting ex-officio seats.

DATES: Applications are due by November 1, 2011.

ADDRESSES: Application kits may be obtained from *Elizabeth.Stokes@noaa.gov,* Stellwagen Bank National Marine Sanctuary, 175 Edward Foster Road, Scituate, MA 02066. Telephone 781–545–8026, ext. 201. Completed applications should be sent to the same address or email, or faxed to 781–545–8036.

FOR FURTHER INFORMATION CONTACT: Contact *Nathalie.Ward@noaa.gov,* External Affairs Coordinator, telephone: 781–545–8026, ext. 206.

SUPPLEMENTARY INFORMATION: The Council was established in March 2001 to assure continued public participation in the management of the Sanctuary. The Council's 23 members represent a variety of local user groups, as well as the general public, plus seven local, state and federal government agencies. Since its establishment, the Council has played a vital role in advising NOAA on critical issues and is currently focused on the sanctuary's final five-year Management Plan.

The Stellwagen Bank National Marine Sanctuary encompasses 842 square miles of ocean, stretching between Cape Ann and Cape Cod. Renowned for its scenic beauty and remarkable productivity, the sanctuary supports a rich diversity of marine life including 22 species of marine mammals, more than 30 species of seabirds, over 60 species of fishes, and hundreds of marine invertebrates and plants.

Authority: 16 U.S.C. Sections 1431, et seq.

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: August 12, 2011.

Daniel J. Basta,

Director, Office of National Marine Sanctuaries, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2011–21199 Filed 8–18–11; 8:45 am]

BILLING CODE 3510–NK–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions And Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the Procurement List.

SUMMARY: This action adds products and services to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes products and a service from the Procurement List previously furnished by such agencies.

DATES: *Effective Date:* September 19, 2011.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Patricia Briscoe, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On 6/17/2011 (76 FR 35415–35417), 6/24/2011 (76 FR 37069–37070), and 7/1/2011 (76 FR 38641–38642), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to furnish the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. The action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products and services are added to the Procurement List:

Products

NSN: 7045–00–NIB–0326—Glare Shield for iPhone
NSN: 7045–00–NIB–0327—Glare Shield for Blackberry Bold
NSN: 7045–00–NIB–0328—Glare Shield for Blackberry Storm2
NSN: 7045–00–NIB–0329—Universal PDA Glare Shield
NSN: 7045–00–NIB–0330—Privacy Shield for iPhone
NSN: 7045–00–NIB–0331—Privacy Shield for Blackberry Bold
NSN: 7045–00–NIB–0332—Privacy Shield for Blackberry Storm2
NSN: 7045–00–NIB–0333—Privacy Shield for PDA, Universal
NSN: 7045–00–NIB–0365—Privacy Shield for Blackberry Curve2
NSN: 7045–00–NIB–0366—Glare Shield for Blackberry Curve2
NSN: Wiscraft, Inc., Milwaukee, WI
Contracting Activity: General Services Administration, New York, NY
Coverage: B-List for the Broad Government Requirement as aggregated by the General Services Administration.

Duster Material, Easy Trap

NSN: 7920–00–NIB–0520—Roll, Large
NSN: 7920–00–NIB–0521—Dispenser Box, Large
NSN: 7920–00–NIB–0502—Roll, Standard Size
NSN: 7920–00–NIB–0503—Dispenser Box, Standard Size
NSN: New York City Industries for the Blind, Inc., Brooklyn, NY
Contracting Activity: General Services Administration, Fort Worth, TX
Coverage: B–List for the Broad Government Requirement as aggregated by the General Services Administration.

NSN: 7530–00–NIB–0982—Monthly Desk Planner, Wire Bound, Non-refillable, Black cover
NSN: 7530–00–NIB–1026—Weekly Planner Book, Dated, 5″ x 8″, Digital Camouflage
NSN: 7530–00–NIB–0986—Weekly Desk Planner, Wire Bound, Non-refillable, Black cover
NSN: 7530–00–NIB–0987—Daily Desk Planner, Wire bound, Non-refillable, Black Cover
NSN: 7530–00–NIB–1027—Monthly Wall Calendar, Dated, Jan–Dec, 8½ x 11″
NSN: 7510–00–NIB–1803—Wall Calendar, Dated, Wire Bound w/Hanger, 12″ x 17″
NSN: 7510–00–NIB–1804—Wall Calendar, Dated, Wire Bound w/hanger, 15.5″ x 22″
NSN: The Chicago Lighthouse for People Who Are Blind or Visually Impaired, Chicago, IL
Contracting Activity: General Services Administration, New York, NY
Coverage: A-List for the Total Government Requirement as aggregated by the General Services Administration.

NSN: 8465–01–580–1316—Hydration System, MOLLE Components, OCP
NSN: The Lighthouse for the Blind, Inc. (Seattle Lighthouse), Seattle, WA
NSN: 8465–01–580–1319—Carrier, Hydration System, MOLLE Components, Operation Enduring Freedom Camouflage Pattern (OCP) Multicam
NSN: Lions Services, Inc., Charlotte, NC
NSN: 8465–01–580–1303—Entrenching Tool

Carrier, MOLLE Components, OCP
NSN: Dallas Lighthouse for the Blind, Inc., Dallas, TX
Contracting Activity: Department of the Army Research, Development, & Engineering Command, Natick, MA
Coverage: C-List for 100% of the requirement of the Department of the Army, as aggregated by the Department of the Army Research, Development, & Engineering Command, Natick, MA

Services

Service Type/Locations: Custodial Services, Campbell Industrial Buildings FTEC 977 & FTEC Trailer, Oahu, HI
Makalapa Buildings 16, 57, 81, 117, 200, 250, 251, 258, 259, 261, 346, 352, 388, 391, 396, 396A, 400, 402, 404, 405, 406, S1734, T9B3331 & Trailer D Oahu, HI
Marine Corps Base Hawaii (MCBH) Building 6470 & HANGAR 105 Kaneohe Bay, HI
Wheeler Army Air Base Building 107 Oahu, HI
Ford Island Buildings 77, 87, 170, 171, 459, 510, Hangar 133 & 167 NUWC Oahu, HI
Naval Computer and Telecommunications Area Master Station (NCTAMS), Pacific Buildings 105, 108, 114 & 261 Wahiawa, HI
Pearl City Peninsula Buildings 987, 989, 992 & 995 Oahu, HI
Pearl Harbor Complex Oahu, HI
NPA: Opportunities and Resources, Inc., Wahiawa, HI
Contracting Activity: DEPT OF THE NAVY, NAVFAC ENGINEERING COMMAND HAWAII, PEARL HARBOR, HI.

Service Type/Location: Contact Center Service DOT Federal Motor Carrier Safety Administration, New Entrant Contact Center, Washington, DC (Offsite Location: 507 Kent Street, Utica, NY)
NPA: Central Association for the Blind & Visually Impaired, Utica, NY
Contracting Activity: Department of Transportation, Federal Motor Carrier Safety Administration, Washington, DC.

Deletions

On 5/27/2011 (76 FR 30923–30924) and 6/24/2011 (76 FR 37069–37070), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed deletions from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products and a service listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the products and service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and service deleted from the Procurement List.

End of Certification

Accordingly, the following products and service are deleted from the Procurement List:

Products

Inkjet Printer Cartridge

NSN: 7510–01–555–6166—compatible with Epson Part No. T041020 Tri-color.
NPA: Alabama Industries for the Blind, Talladega, AL
Contracting Activity: General Services Administration, New York, NY

Line, Tent

NSN: 8340–00–252–2268
NSN: 8340–00–252–2270
NSN: 8340–00–252–2271
NSN: 8340–00–252–2273
NSN: 8340–00–252–2280
NSN: 8340–00–252–2282
NSN: 8340–00–252–2293
NSN: 8340–00–252–2297
≤*NSN:* 8340–00–556–9689

Line, Tent, Manila

NSN: 8340–00–252–2285
NSN: 8340–00–252–2286
NSN: 8340–00–252–2299
NPA: ASPIRO, Inc., Green Bay, WI
Contracting Activity: Defense Logistics Agency Troop Support, Philadelphia, PA.

Highlighter, Biodegradable

NSN: 7520–01–578–9289
NPA: West Texas Lighthouse for the Blind, San Angelo, TX.
Contracting Activity: General Services Administration, New York, NY.

Detergent, Laundry

NSN: 7930–01–506–7081
NPA: East Texas Lighthouse for the Blind, Tyler, TX.
Contracting Activity: Defense Logistics Agency Troop Support, Philadelphia, PA.

Service

Service Type/Location: Grounds Maintenance, Naval & Marine Corps Reserve Center, 310 Troy Street, Dayton, OH.
NPA: Eastway Corporation, Dayton, OH.
Contracting Activity: Dept of the Navy, NSWC Crane, Crane, IN.

Patricia Briscoe,

Deputy Director, Business Operations (Pricing and Information Management).

[FR Doc. 2011–21243 Filed 8–18–11; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Proposed Addition and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed addition to and deletions from the Procurement List.

SUMMARY: The Committee is proposing to add a service to the Procurement List that will be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities and to delete services previously provided by such agencies.

Comments Must be Received on or Before: September 19, 2011.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION CONTACT: Patricia Briscoe, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Addition

If the Committee approves the proposed addition, the entities of the Federal Government identified in this notice will be required to procure the service listed below from the nonprofit agency employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will provide the service to the Government.

2. If approved, the action will result in authorizing small entities to provide the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following service is proposed for addition to Procurement List for production by the nonprofit agency listed:

Service

Service Type/Location: Distribution of USCG Promotional Materials, Coast Guard Recruiting Command, Washington DC (Off Site: 445 S. Curtis Rd., West Allis, WI).

NPA: Industries for the Blind, Inc., West Allis, WI.

Contracting Activity: DEPARTMENT OF HOMELAND SECURITY, U.S. COAST GUARD, HQ CONTRACT OPERATIONS (CG–912), WASHINGTON, DC.

Deletions

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. If approved, the action may result in authorizing small entities to provide the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for deletion from the Procurement List.

End of Certification

The following services are proposed for deletion from the Procurement List:

Services

Service Type/Locations: Administrative Services, Department of Agriculture: Rural Development Agency USDA. St. Louis, MO

NPA: St. Vincent DePaul Rehabilitation Services of Texas, Inc., Austin, TX, Department of Agriculture, Farm Service Agency, 6501 Beacon Drive, Kansas City, MO.

NPA: Independence and Blue Springs Industries, Inc., Independence, MO.

Contracting Activity: DEPARTMENT OF AGRICULTURE, FARM SERVICE AGENCY, KANSAS CITY ACQUISITION BRANCH, KANSAS CITY, MO.

Service Type/Location: Recycling Service, Goodfellow Air Force Base: Basewide, Goodfellow AFB, TX.

NPA: MHMR Services for the Concho Valley, San Angelo, TX.

Contracting Activity: DEPT. OF THE AIR FORCE, FA3030 17 CONS CC, GOODFELLOW AFB, TX.

Patricia Briscoe,

Deputy Director, Business Operations (Pricing and Information Management).

[FR Doc. 2011–21242 Filed 8–18–11; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Notice of Availability for the Draft Environmental Impact Statement/ Environmental Impact Report for a Permit Application for the Proposed Salton Sea Species Conservation Habitat Project at the Salton Sea, in Imperial County, CA

AGENCY: Department of the Army—U.S. Army Corps of Engineers, Los Angeles District, DoD.

ACTION: Notice of Availability.

SUMMARY: The U.S. Army Corps of Engineers, Los Angeles District (Regulatory Division), in coordination with the California Natural Resources Agency, has completed a Draft Environmental Impact Statement/ Environmental Impact Report (EIS/EIR) for the Salton Sea Species Conservation Habitat (SCH) Project. The Natural Resources Agency is requesting a permit from the Corps of Engineers to discharge dredged or fill material into the Salton Sea, a water of the United States subject to the Corps jurisdiction under section 404 of the Clean Water Act, including permanent impacts up to 24 acres and temporary impacts up to 1,760 acres for the construction of up to 3,770 acres of shallow ponds and associated infrastructure at the southern end of the Salton Sea in Imperial County, California. Compared to existing conditions, the SCH Project would result in a net increase in the extent of jurisdictional aquatic resources by up to 1,986 acres because the ponds would restore such resources located between elevation −228 feet and −231 feet previously lost by the receding Sea.

Draft EIS/EIR Comment Process. In an effort to follow sustainable business practices, the Draft EIS/EIR can be downloaded in electronic format from the Natural Resources Agency—Department of Water Resources' Web site: *http://www.water.ca.gov/saltonsea/.* A hardcopy of the Draft EIS/EIR and documents referenced in the Draft EIS/EIR can be viewed at the following location: California Department of Fish and Game, 78078 Country Club Drive, Suite 109, Bermuda Dunes, CA 92203. In addition, the hardcopy Draft EIS/EIR can be viewed at the following public locations: Brawley Public Library, 400 Main Street, Brawley, CA 92227; Calipatria Public Library, 225 West Main Street, Calipatria, CA 92233; Imperial Public Library, 200 West 9th Street, Imperial, CA 92251; El Centro Public Library, 375 South 1st Street, El Centro, CA 92243; Imperial County Free Library, 2098 Frontage Road, Salton City, CA 92275; Mecca-North Shore Public Library, 91–260 Avenue 66, Mecca, CA 92254; and Coachella Branch Library, 1538 7th Street, Coachella, CA 92236.

The Corps and the Natural Resources Agency invites interested parties to attend one of the jointly held public hearings to provide the agencies with their views and comments on the Draft EIS/EIR. Comments on the content of the Draft EIS/EIR by Federal, State, and local agencies, affected Indian tribes, and other interested organizations and persons are encouraged and will be considered by the Corps and the Natural Resources Agency and become part of the administrative record for the Corps' decision. The public hearings will be held at:

1. Calipatria—September 14, 2011 at 1 P.M. at the Calipatria Inn and Suites, 700 North Sorenson Avenue, Calipatria, CA 92233.

2. Brawley—September 14, 2011 at 6 P.M. at Elks Lodge #1420, 161 South Plaza, Brawley, CA 92227.

3. Palm Desert— September 15, 2011 at 1 P.M. at the University of California, 75–080 Frank Sinatra Drive, Room B200, Palm Desert, CA 92211.

In order for the Corps and the Natural Resources Agency to more accurately process and respond to comments, an online e-form is provided on the Natural Resources Agency—Department of Water Resources' Web site *http://www.water.ca.gov/saltonsea/* and is the preferred method of receiving comments from interested parties. Alternatively, written comment letters can be provided directly to Ms. Lanika Cervantes or Mr. David Elms at the addresses listed below.

FOR FURTHER INFORMATION CONTACT: Written comments concerning the Draft EIS/EIR should be directed to Ms. Lanika Cervantes, Project Manager, U.S. Army Corps of Engineers, Los Angeles District, Regulatory Division, San Diego Field Office, ATTN: CESPL–RG–S–2010–00142–LLC, 6010 Hidden Valley Road, Suite 105, Carlsbad, CA 92011, (760) 602–4838. Comments also can be directed to: Mr. David Elms, California Department of Fish and Game Project Manager, California Department of Fish

and Game, 78078 Country Club Drive, Suite 109, Bermuda Dunes, CA 92203, (760) 200–9372. For additional information, please call Rick Davis of the Davis Group at (760) 610–2072 or e-mail *CAFishandGame@davisgroupca.com.* Alternatively, you may contact the Corps and DFG project managers identified above.

SUPPLEMENTARY INFORMATION: This Draft EIS/EIR has been filed with the Environmental Protection Agency to be published in the **Federal Register**. The review period for the Draft EIS/EIR will begin from the date of publishing the Notice of Availability in the **Federal Register**, which is expected to be on August 17, 2011. Comments on the Draft EIS/EIR will be accepted 60 days later, until October 17, 2011.

Dated: August 8, 2011.

R. Mark Toy, P.E.,

Colonel, US Army, Commander and District Engineer.

[FR Doc. 2011–21239 Filed 8–18–11; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Prepare an Environmental Impact Statement for the Medical Facilities Development and University Expansion at Naval Support Activity Bethesda, Bethesda, Maryland and To Announce Public Scoping Meetings

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: Pursuant to section (102)(2)(c) of the National Environmental Policy Act (NEPA) of 1969, the regulations implemented by the Council on Environmental Quality (40 Code of Federal Regulations [CFR] parts 1500–1508), the Department of the Navy (DoN) announces its intent to prepare an Environmental Impact Statement (EIS) to evaluate the potential environmental effects associated with the proposed actions at Naval Support Activity (NSA) Bethesda to implement the Congressional mandate in the Fiscal Year (FY) 2010 National Defense Authorization Act (NDAA) to achieve the new statutory world-class standards for military medicine at the Walter Reed National Military Medical Center at Bethesda (WRNMMCB) by providing enduring facilities commensurate in quality, capability and condition as those provided by the Base Realignment and Closure (BRAC) investment and address the space and operational limitations at the Uniformed Services University of the Health Sciences (USUHS). The proposed actions, which will enhance and support but not add to the missions of the installation, medical center or USUHS, include: (1) The demolition of five (5) hospital buildings and reconstruction of a single 5-story facility and associated parking garage, utility capacity upgrades, and temporary medical facilities to provide uninterrupted patient care during construction (Medical Facilities Development) and (2) the expansion of the USUHS and associated parking garage.

These proposed actions are two components of the 2012 NSA Bethesda Master Plan that the DoN is currently updating and this EIS analyzes the implementation of these components. The 2012 NSA Bethesda Master Plan reflects ongoing projects previously considered under NEPA as well as potential future development opportunities at NSA Bethesda. The EIS will evaluate the cumulative effects of the proposed actions in the context of the known, ongoing activities and identify the potential programmatic effects of the proposed actions in the context of the potential future development opportunities. Therefore, the EIS will analyze the environmental effects of the 2012 NSA Bethesda Master Plan relative to the implementation of the proposed actions in this EIS. For the potential future development opportunities, the DoN will ensure the appropriate NEPA review is completed at such time as the projects are proposed for implementation.

The proposed actions at NSA Bethesda consist of: (1) The Medical Facilities Development, which includes demolition of Buildings 2, 4, 6, 7, and 8 and construction of a single, 5-story replacement building in the medical center core, construction of an associated parking garage, utility capacity upgrades, construction of temporary medical facilities to maintain uninterrupted patient care during construction, and internal renovations to Buildings 1, 3, 5, 9, and 10; and (2) the University Expansion, which includes construction of a new classroom/research facility and associated parking garage at USUHS. The proposed actions would not add to the existing missions at NSA Bethesda and would occur subsequent to the 2005 BRAC Law mandated relocation of the Walter Reed Army Medical Center's (WRAMC) tertiary (sub-specialty and complex care) medical services to National Naval Medical Center (NNMC) at NSA Bethesda in September 2011. With the relocation, the NNMC will be renamed the WRNMMCB.

NSA Bethesda is the action proponent and the DoN is the lead agency for the proposed actions. Joint Task Force National Capital Region Medical (JTF CapMed), NNMC, and USUHS, are tenants of NSA Bethesda and are the stakeholders for these activities.

The DoN is initiating a 45-day public scoping period to identify community interests and specific issues to be addressed in the EIS. The public scoping period starts with the publication of this Notice of Intent. The DoN will hold two public scoping meetings to inform the public of the proposed actions and receive comments.

Comments, both written and oral, will be collected at each of the two public scoping meetings. Each of the public scoping meetings will consist of an open house session followed by a live presentation and an opportunity for the public to present their comments. To ensure that the full range of issues related to the proposed actions will be addressed, representatives from the DoN will be available to solicit comments from all interested parties during the public scoping meetings. Following future publication of the draft EIS, at a time to be determined, further public meetings will be held to address comments on the draft document.

Dates and Addresses: The two public scoping meetings will be held on the following dates:

1. Wednesday, September 7, 2011, 5 p.m. to 9 p.m., Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

2. Monday, September 12, 2011, 1 p.m. to 5 p.m., Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

Additional information concerning meeting times and locations are available on the NSA Bethesda Web site at: *http://www.bethesda.med.navy.mil/nsa/eis.aspx.* Public scoping meeting schedules and locations will also be announced in local newspapers.

FOR FURTHER INFORMATION CONTACT: Sandy Dean, NSA Bethesda Public Affairs Office; e-mail: *NNMC.NSABETHESDAEIS@med.navy.mil;* telephone number: 301–295–5727.

SUPPLEMENTARY INFORMATION: NSA Bethesda is a 243-acre health care, medical education and research installation located in Bethesda in Montgomery County, Maryland and is the home of the world renowned NNMC. The installation provides logistical and service support to all of its tenant commands, including JTF

CapMed, NNMC, and USUHS. In September 2011, with the completion of 2005 BRAC mandated relocation of WRAMC tertiary medical services to NNMC and its transformation to WRNMMCB, the facility will become the premier DoD medical center offering intensive and complex specialty and subspecialty medical services for the most seriously injured personnel from all military services. WRNMMCB and USUHS will also provide training and post-graduate level education to the military medical community and serve as a critical medical research center.

The purpose of the Medical Facilities Development is to implement the Congressional mandate from the FY2010 National Defense Authorization Act to achieve the new statutory world-class standards for military medicine at the WRNMMCB by providing enduring facilities commensurate in quality, capability and condition as those provided by the BRAC investment. The Medical Facilities Development is needed because current space is insufficient to meet world class standards such as decompression to single occupancy patient rooms, a state-of-the-art simulation center, and a health innovation center. The purpose of, and need for, the Medical Facilities Development was identified subsequent to the programming for BRAC 2005, which was specifically designed to accommodate the transfer of WRAMC to WRNMMCB and was never intended to address the mission capability or functionality of the existing infrastructure.

The primary purpose of the University Expansion is to address the significant space and operational limitations that exist for education and research activities due to the fragmented, aging, and inefficient infrastructure and enable USUHS to serve as the core academic health research center at WRNMMCB. The University Expansion is needed because the USUHS operations are currently fragmented between off-site leased space in Montgomery County, Maryland and other dispersed buildings on NSA Bethesda. Additionally, the University Expansion will address the most recent Liaison Committee on Medical Education accreditation requirements, and provide adequate education and research space to meet Military Health System commitments to deliver training and post-graduate level education to the military medical community.

The Medical Facilities Development resulted from an iterative planning process which resulted in the Comprehensive Master Plan (CMP) developed by JTF CapMed in response to the FY10 NDAA Congressional mandate, which identified and evaluated alternatives based on the departmental needs anticipated at the WRNMMCB after the completion of the BRAC-mandated relocations in September 2011. The CMP development process identified the proposed action as the best approach to meet the Congressional mandate for world class facilities commensurate in quality, capability and condition with the BRAC investment. The Medical Facilities Development, as described in the CMP, entails demolition of Buildings 2, 4, 6, 7, and 8 (approximately 326,000 square feet (SF)) of and construction of a single, 5-story facility totaling approximately 563,000 SF in the same basic footprint. The Medical Facilities Development also proposes utilities and power capacity upgrades, internal renovations in Buildings 1, 3, 5, 9 and 10, and the use of the northwest parking lot for temporary medical facilities to maintain uninterrupted patient care during the construction period.

The Medical Facilities Development also proposes, in the lawn in front of Building 1, the construction of an approximately 203,000 SF, 500-space underground parking garage, which in addition to the medical center, will serve the overall parking needs at NSA Bethesda. The EIS will analyze three alternative sites at NSA Bethesda for the underground parking garage: The warehouse area in the northeast corner, the Taylor Road site in the northeast area, and H–Lot in the south area, respectively.

The EIS will consider two alternative sites for the University Expansion: Alternative 1 and Alternative 2 are south and west, respectively, of the existing USUHS campus. Under either of the alternative sites, the University Expansion would entail an approximately 341,000 SF education and research facility and an approximately 144,000 SF, 400-space parking structure that will serve USUHS and the overall parking needs across NSA Bethesda.

The EIS will also consider the No Action Alternative, which will evaluate the impact at NSA Bethesda in the event that the proposed actions do not occur.

The EIS will address the potential impacts of the proposed actions on the number of staff, patients, and visitors at NSA Bethesda. In addition, the EIS will evaluate the potential direct, indirect, short-term, long-term, and cumulative impacts to the human and natural environment, to include potential impacts to topography, geology, and soils; water resources, biological resources, air quality, noise, infrastructure and utilities, traffic and transportation, cultural resources, land use, socioeconomics, environmental justice, and public health and safety. Known areas of concern associated with proposed actions include providing the required space and facilities at NSA Bethesda in consideration of historic characteristics of the installation, and the impact to local traffic and on-base parking associated with personnel and patient visits. Other recent changes at, and in the vicinity of, NSA Bethesda will be evaluated to ensure consideration of the cumulative impacts of the proposed actions in the context of the ongoing and programmed projects as well as reasonably foreseeable projects identified in the 2012 Master Plan.

The EIS will also consider the 2012 NSA Bethesda Master Plan relative to the implementation of the Medical Facilities Development and University Expansion. The EIS will evaluate the cumulative impacts of the proposed actions in the context of the programmed projects already in progress and the programmatic effects of the potential future development opportunities identified in the 2012 NSA Bethesda Master Plan.

The DoN encourages agencies and the public to provide written comments in addition to, or in lieu of, oral comments at the public scoping meetings. To be most helpful, comments should clearly describe specific issues or topics that the EIS should address. Written comments must be postmarked within 45 days of the date of publication of this notice in the **Federal Register** and should be mailed to the address below. Comments may also be submitted via e-mail and/or the Web site listed below, within 45 days of the date of publication of this notice in the **Federal Register**. Requests for inclusion on the EIS mailing list may also be submitted to: Sandy Dean, NSA Bethesda Public Affairs Office, 8901 Wisconsin Avenue, Bethesda, Maryland 20889; via e-mail at *NNMC.NSABETHESDA EIS@med.navy.mil;* via telephone at 301–295–5727; or visit the project Web site at *http://www.bethesda.med.navy.mil/nsa/eis.aspx.*

Dated: August 15, 2011.

J.M. Beal,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2011–21216 Filed 8–18–11; 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 September 19, 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: August 16, 2011.

Darrin King,

Director, nformation Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title of Collection: Protection and Advocacy of Individual Rights (PAIR) Program Assurances.

OMB Control Number: 1820–0652.

Agency Form Number(s): N/A.

Frequency of Responses: Submitted once prior to FY 2007, and thereafter only upon the redesignation of the Protection &Advocacy.

Affected Public: Not-for-profit Institutions.

Total Estimated Number of Annual Responses: 57.

Total Estimated Annual Burden Hours: 9.

Abstract: Section 509 of the Rehabilitation Act of 1973, as amended (Act), and its implementing Federal Regulations at 34 CFR part 381, require the Protection and Advocacy of Individual Rights (PAIR) grantees to submit an application to the Rehabilitation Services Administration Commissioner in order to receive assistance under Section 509 of the Act. The Act requires that the application contain Assurances to which the grantee must comply. Section 509(f) of the Act specifies the Assurances. There are 57 PAIR grantees. All 57 grantees are required to be part of the protection and advocacy system in each State established under the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 6041 *et seq.*).

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 4638. 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. 2011–21252 Filed 8–18–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Comment Request.

SUMMARY: The Department of Education (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the reporting burden on the public and helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Director, Privacy, Information and Records Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 18, 2011.

ADDRESSES: Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the

respondents, including through the use of information technology.

Dated: August 16, 2011.

Darrin King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

Office of Elementary and Secondary Education

Type of Review: Extension.

Title of Collection: Consolidated State Performance Report.

OMB Control Number: 1810–0576.

Agency Form Number(s): N/A.

Frequency of Responses: Annually.

Affected Public: State, Local or Tribal Government.

Total Estimated Number of Annual Responses: 52.

Total Estimated Number of Annual Burden Hours: 38,532

Abstract: Title IX, Part C, Sections 9301–9306, of the Elementary and Secondary Education Act (ESEA), as amended (No Child Left Behind [NCLB] Pub. L. 107–110), authorizes the Secretary of Education to provide States the option of submitting consolidated applications to obtain funds for covered programs in which the State participates. The purpose of consolidated applications as defined in NCLB is to improve teaching and learning by encouraging greater cross-program coordination, planning, and service delivery; to enhance program integration; and to provide greater flexibility and less burden for State educational agencies.

The Department will use the information from the consolidated State application as the basis for approving funding under the covered ESEA, as amended programs (in which the State participates). The Department also will use the performance targets, baseline data, and other related information in the consolidated application to continue to assess the degree of progress States make over time in achieving ESEA goals. As with previous collections, the information in this collection will allow the Department to continue to monitor effectiveness of the use of program funds, and provide grantees with technical assistance

Copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 4691. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2011–21254 Filed 8–18–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC11–512–001]

Commission Information Collection Activities (FERC–512); Comment Request; Submitted for OMB Review

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the Federal Energy Regulatory Commission (Commission or FERC) has submitted the information collection described below to the Office of Management and Budget (OMB) for review of the information collection requirements. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission issued a Notice in the **Federal Register** (76 FR 30930, 05/27/2011) requesting public comments. FERC received no comments on the FERC–512 and has made this notation in its submission to OMB.

DATES: Comments in consideration of the collection of information are due September 19, 2011.

ADDRESSES: Comments may be filed either electronically (eFiled) or in paper format, and should refer to Docket No. IC11–512–000. Documents must be prepared in an acceptable filing format and in compliance with Commission submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* eFiling instructions are available at: *http://www.ferc.gov/docs-filing/efiling.asp.* First time users must follow eRegister instructions at: *http://www.ferc.gov/docs-filing/eregistration.asp,* to establish a username and password before eFiling. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of eFiled comments. Commenters making an eFiling should not make a paper filing. Commenters that are not able to file electronically must send an original of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

Users interested in receiving automatic notification of activity in this docket may do so through eSubscription at *http://www.ferc.gov/docs-filing/esubscription.asp.* In addition, all comments and FERC issuances may be viewed, printed or downloaded remotely through FERC's eLibrary at *http://www.ferc.gov/docs-filing/elibrary.asp,* by searching on Docket No. IC11–512. For user assistance, contact FERC Online Support by e-mail at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by e-mail at *DataClearance@FERC.gov,* telephone at (202) 502–8663, and fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC–512, ''Application for Preliminary Permit'' (OMB No. 1902–0073), is used by the Commission to implement the statutory provisions of Sections 4(f), 5 and 7 of the Federal Power Act (FPA), 16 U.S.C. sections 797, 798 & 800. The purpose of obtaining a preliminary permit is to maintain priority of the application for a license for a hydropower facility while the applicant conducts surveys to prepare maps, plans, specifications and estimates; conducts engineering, economic and environmental feasibility studies; and making financial arrangements. The conditions under which the priority will be maintained are set forth in each permit. During the term of the permit, no other application for a preliminary permit or application for a license submitted by another party can be accepted. The term of the permit is three years. The information collected under the designation FERC–512 is in the form of a written application for a preliminary permit which is used by Commission staff to determine an applicant's qualifications to hold a preliminary permit, review the proposed hydro development for feasibility and to issue a notice of the application in order to solicit public and agency comments. The Commission implements these mandatory filing requirements in the Code of Federal

Regulations (CFR) under 18 CFR 4.31–4.33, 4.81–4.83.

Action: The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

Burden Statement: Public reporting burden for this collection is estimated as:

Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)×(2)×(3)
200	1	37	7,400

Estimated cost burden to respondents is $508,000; [*i.e.,* (7 hours @$200 an hour (legal) × 200 respondents) + (30 hours @$38 an hour (technical) × 200 respondents)] per year equals $508,000)]. The average annual cost burden per respondent is $2,540 ($508,000/200 = $2,540).

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, or disclose or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than anyone particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information *technology, e.g.,* permitting electronic submission of responses.

Dated: August 15, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–21207 Filed 8–18–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 4784–082]

Brown Bear Power, LLC, Topsham Hydroelectric Generating Facility Trust No. 1, Topsham Hydro Partners Limited Partnership; Notice of Application for Partial Transfer of License, and Soliciting Comments and Motions To Intervene

On August 3, 2011, Brown Bear Power, LLC, Topsham Hydroelectric Generating Facility (Trust No. 1), and Topsham Hydro Partners Limited Partnership (THP), co-licensees of the Pejepscot Project No. 4784, filed an application for the partial transfer of license for the Pejepscot Project, located on the Androscoggin River in Sagadahoc, Cumberland, and Androscoggin Counties, Maine.

Applicants seek Commission approval for a partial transfer of the license for the Pejescot Project from Brown Bear, Trust No. 1, and THP, jointly, to THP, solely. As proposed, following the transfer THP will be the sole licensee of the Pejepscot Project.

Applicants' Contacts: Nicole Poole, Topsham Hydroelectric Generating Facilities Trust No. 1, 300 Delaware Avenue, 9th floor, Wilmington, DE 19801, (302) 576–3704; Christine M. Miller, Brown Bear Power LLC, 200 Clarendon Street 55th Floor, Boston MA 02116, (617) 531–6338; Christine M. Miller, Topsham Hydro Partners Limited Partnership, 200 Clarendon Street 55th Floor, Boston MA 02116.

FERC Contact: Krista Sakallaris (202) 502–6302, *krista.sakallaris@ferc.gov.*

Deadline for filing comments and motions to intervene: 15 days from the issuance date of this notice. Comments and motions to intervene may be filed electronically via the Internet. See 18 CFR 385.2001(a) (1) and the instructions on the Commission's Web site under *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original plus seven copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. More information about this project can be viewed or printed on the eLibrary link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–4784) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Dated: August 12, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–21160 Filed 8–18–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14235–000]

Oregon Department of Fish and Wildlife; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, Protests, Recommendations, and Terms and Conditions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Conduit Exemption.

b. *Project No.:* 14235–000.

c. *Date filed:* July 22, 2011.

d. *Applicant:* Oregon Department of Fish and Wildlife.

e. *Name of Project:* Oak Springs Hydroelectric Project.

f. *Location:* The proposed Oak Springs Hydroelectric Project would be located at the Oak Springs Fish Hatchery in Wasco County, Oregon. The land on which all the project structures is owned by the applicant.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Ms. Nancy Doran, Oregon Department of Fish and Wildlife, 61374 Parrell Road, Bend, OR 97702, phone (541) 633–1112, or Mr. Ken Homolka, Oregon Department of Fish and Wildlife, 3406 Cherry Avenue, NE., Salem, OR 97303, phone (503) 947–6090.

i. *FERC Contact:* Kelly Houff, (202) 502–6393, *Kelly.Houff@ferc.gov.*

j. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

k. *Deadline for filing responsive documents:* Due to the small size of the proposed project, as well as the resource agency consultation letters filed with the application, the 60-day timeframe specified in 18 CFR 4.34(b) for filing all comments, motions to intervene, protests, recommendations, terms and conditions, and prescriptions is shortened to 30 days from the issuance date of this notice. All reply comments filed in response to comments submitted by any resource agency, Indian tribe, or person, must be filed with the Commission within 45 days from the issuance date of this notice.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under *http://www.ferc.gov/docs-filing/efiling.asp.* The Commission strongly encourages electronic filings.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, it must also serve a copy of the document on that resource agency.

l. *Description of Project:* The Oak Springs Hydroelectric Project would consist of: (1) A proposed powerhouse containing one proposed generating unit with an installed capacity of 85 kilowatts; and (2) appurtenant facilities. The applicant estimates the project would have an average annual generation of 680 megawatt-hours.

m. This filing is available for review and reproduction at the Commission in the Public Reference Room, Room 2A, 888 First Street, NE., Washington, DC 20426. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number, P–14235, in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for review and reproduction at the address in item h above.

n. *Development Application*—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

o. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit a competing development application. A notice of intent must be served on the applicant(s) named in this public notice.

p. *Protests or Motions to Intervene*—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

q. All filings must (1) Bear in all capital letters the title ''PROTEST'', ''MOTION TO INTERVENE'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''COMMENTS'', ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and seven copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Office of Energy Projects, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

r. *Waiver of Pre-filing Consultation:* On June 9, 2011, the applicant requested the agencies to support the waiver of the Commission's consultation requirements under 18 CFR 4.38(c). The U.S. Fish and Wildlife Service, National Marine Fisheries Service, and Confederated Tribes of the Warm Springs agreed to waive consultation requirements on June 20, 2011, June 20, 2011, and June 28, 2011, respectively. Therefore, we intend to accept the

consultation that has occurred on this project during the pre-filing period and we intend to waive pre-filing consultation under section 4.38(c), which requires, among other things, conducting studies requested by resource agencies, and distributing and consulting on a draft exemption application.

Dated: August 15, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–21208 Filed 8–18–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–528–000]

Transcontinental Gas Pipe Line Company, LLC; Notice of Application

Take notice that on August 3, 2011, Transcontinental Gas Pipe Line Company, LLC (Tranco), Post Office Box 1396, Houston, Texas 77251 filed in Docket No. CP11–528–000 an application pursuant to section 7(b) of the Natural Gas Act (NGA) to abandon storage service provided to the City of Greenwood, South Carolina, under Transco's Rate Schedule LG–A, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Any questions concerning this application may be directed to Ingrid Germany, Staff Regulatory Analyst, Transcontinental Gas Pipe Line Company, LLC, P.O. Box 1393, Houston, Texas 77251–1396 at (713)-215–4015.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify Federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all Federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit original and 7 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: September 6, 2011.

Dated: August 15, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–21205 Filed 8–18–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR11–122–000]

Cobra Pipeline Ltd.; Notice of Baseline Filings

Take notice that on August 12, 2011, Cobra Pipeline Ltd. submitted a revised baseline filing of their Statement of Operating Conditions for services provided under Section 311 of the Natural Gas Policy Act of 1978 (NGPA).

Any person desiring to participate in this rate proceeding must file a motion to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party

must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 24, 2011.

Dated: August 12, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–21157 Filed 8–18–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2984–002.

Applicants: Merrill Lynch Commodities, Inc.

Description: Notice of Non-Material Change in Status of Merrill Lynch Commodities, Inc.

Filed Date: 08/10/2011.

Accession Number: 20110810–5175.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 31, 2011.

Docket Numbers: ER11–4274–000.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: NYISO tariff revisions related to Grandfathered Rights and Grandfathered TCC's to be effective 10/9/2011.

Filed Date: 08/10/2011.

Accession Number: 20110810–5048.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 31, 2011.

Docket Numbers: ER11–4275–000.

Applicants: CenterPoint Energy Houston Electric, LLC.

Description: CenterPoint Energy Houston Electric, LLC submits tariff filing per 35.13(a)(2)(iii: TFO Tariff Rate Revision to Conform with PUCT–Approved ERCOT Transmission Rate to be effective 9/1/2011.

Filed Date: 08/10/2011.

Accession Number: 20110810–5056.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 31, 2011.

Docket Numbers: ER11–4276–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii: PJM Queue No. P59/W2–057; Original Service Agreement No. 2987 to be effective 7/12/2011.

Filed Date: 08/10/2011.

Accession Number: 20110810–5084.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 31, 2011.

Docket Numbers: ER11–4277–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii: Queue No. V4–006, V4–007, V4–030 and V–031, Original Service Agreement No. 2986 to be effective 7/11/2011.

Filed Date: 08/10/2011.

Accession Number: 20110810–5127.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 31, 2011.

Docket Numbers: ER11–4278–000.

Applicants: Northern States Power Company, a Minnesota Corporation

Description: Northern States Power Company, a Minnesota corporation submits tariff filing per 35.13(a)(2)(iii: 2011–8–10_Ada_R–R_I–I_Agmt_Filing to be effective 10/9/2011.

Filed Date: 08/10/2011.

Accession Number: 20110810–5144.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 31, 2011.

Docket Numbers: ER11–4279–000.

Applicants: Northern States Power Company, a Minnesota Corporation.

Description: Northern States Power Company, a Minnesota corporation submits tariff filing per 35.13(a)(2)(iii: 2011–8–10_Kasota_R–R_I–I_Agmt_Filing to be effective 10/9/2011.

Filed Date: 08/10/2011.

Accession Number: 20110810–5146.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 31, 2011.

Docket Numbers: ER11–4280–000.

Applicants: Arizona Public Service Company.

Description: Arizona Public Service Company submits tariff filing per 35.13(a)(2)(iii: Open Access Transmission Tariff Revisions to Permit Intra-Hour Scheduling to be effective 10/9/2011.

Filed Date: 08/10/2011.

Accession Number: 20110810–5147.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 31, 2011.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF11–423–000.

Applicants: Rockingham County, NC.

Description: Form 556 of ROCKINGHAM County, NC.

Filed Date: 08/08/2011.

Accession Number: 20110808–5016.

Comment Date: None Applicable.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 11, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–21209 Filed 8–18–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–512–000]

National Fuel Gas Supply Corporation; Notice of Intent To Prepare an Environmental Assessment for the Proposed Line N 2012 Expansion Project, and Request for Comments on Environmental Issues

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment that will discuss the environmental impacts of the Line N 2012 Expansion Project (Project) involving construction and operation of facilities by National Fuel Gas Supply Corporation (National Fuel) in Washington County, Pennsylvania. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. Your input will help the Commission staff determine what issues need to be evaluated in the EA. Please note that the scoping period will close on September 15, 2011.

Comments may be submitted in written form or verbally. Further details on how to submit written comments are provided in the Public Participation section of this notice.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives are asked to notify their constituents of this planned project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings where compensation would be determined in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' was attached to the project notice National Fuel provided to landowners. This fact sheet addresses a number of typically-asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is also available for viewing on the FERC Web site (*http://www.ferc.gov*).

Summary of the Proposed Project

National Fuel proposes to construct and operate a 24-inch-diameter natural gas pipeline beginning at the existing Buffalo Compressor Station traveling north for approximately 4.85 miles in Washington County, Pennsylvania. The pipeline would replace National Fuel's existing 20-inch-diameter Line N and would be co-located adjacent to the existing Line N. The existing Line N will be placed into inactive status and held for future use as a transmission or gathering pipeline. The Project also involves the installation of two 10,280 horsepower gas-fired turbine-compression units at the Buffalo Compressor Station, the construction of a pig launcher/receiver [1] at milepost 4.85 and the replacement of pipeline at four road crossings south of the Buffalo Compressor Station.

The general location of the project facilities is shown in appendix 1.[2]

Land Requirements for Construction

Construction of the proposed facilities would disturb about 71.1 acres of land for the aboveground facilities and the pipeline. Following construction, about 39.6 acres would be maintained for permanent operation of the project's facilities; the remaining acreage would be restored and allowed to revert to former uses.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us [3] to discover and address concerns the public may have about proposals. This process is referred to as ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. All comments received will be considered during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils;
- land use;
- water resources, fisheries, and wetlands;
- cultural resources;
- vegetation and wildlife;
- air quality and noise;
- endangered and threatened species; and
- public safety.

We will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be presented in the EA. The EA will be placed in the public record and, depending on the comments received during the scoping process, may be published and distributed to the public. A comment period will be allotted if the EA is published for review. We will consider all comments on the EA before we make our recommendations to the Commission. To ensure your comments are considered, please carefully follow the instructions in the Public Participation section beginning on page 4.

With this notice, we are asking agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EA. These agencies may choose to participate once they have evaluated the proposal relative to their responsibilities. Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with applicable State Historic Preservation Office(s), and to solicit their views and

[1] A ''pig'' is a tool that is inserted into and moves through the pipeline, and is used for cleaning the pipeline, internal inspections, or other purposes.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of appendices were sent to all those receiving this notice in the mail and are available at *http://www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[3] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the Commission's Office of Energy Projects.

those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[4] We will define the project-specific Area of Potential Effects (APE) in consultation with the SHPO(s) as the project is further developed. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). Our EA for this project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send your comments so that they will be received in Washington, DC on or before September 15, 2011.

For your convenience, there are three methods which you can use to submit your comments to the Commission. In all instances please reference the project docket number (CP11–512–000) with your submission. The Commission encourages electronic filing of comments and has expert eFiling staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.*

(1) You may file your comments electronically by using the eComment feature, which is located on the Commission's Web site at *http://www.ferc.gov* under the link to *Documents and Filings.* An eComment is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You may file your comments electronically by using the *eFiling* feature, which is located on the Commission's Web site at *http://www.ferc.gov* under the link to *Documents and Filings.* With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister.*'' You will be asked to select the type of filing you are making. A comment on a particular project is considered a ''Comment on a Filing;'' or

(3) You may file a paper copy of your comments at the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If the EA is published for distribution, copies will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (appendix 2).

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an ''intervenor'' which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are included in the User's Guide under the ''e-filing'' link on the Commission's Web site.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Click on the eLibrary link, click on ''General Search'' and enter the docket number, excluding the last three digits in the Docket Number field (*i.e.*, CP11–512). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: August 15, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–21203 Filed 8–18–11; 8:45 am]

BILLING CODE 6717–01–P

[4] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Historic properties are defined in those regulations as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–508–000]

Texas Eastern Transmission, LP; Notice of Intent To Prepare an Environmental Assessment for the Proposed Philadelphia Lateral Expansion Project and Request for Comments on Environmental Issues

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the proposed Philadelphia Lateral Expansion Project involving construction and operation of facilities by Texas Eastern Transmission, LP (Texas Eastern) in Delaware County, Pennsylvania. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public

and interested agencies on the project. Your input will help the Commission staff determine what issues need to be evaluated in the EA. Please note that the scoping period will close on September 12, 2011. This is not your only public input opportunity; please refer to the Environmental Review Process flow chart in Appendix 1.[1]

Further details on how to submit written comments are provided in the Public Participation section of this notice.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives are asked to notify their constituents of this planned project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings where compensation would be determined in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' was attached to the project notice Texas Eastern provided to landowners. This fact sheet addresses a number of typically-asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is also available for viewing on the FERC Web site (*http://www.ferc.gov*).

Summary of the Proposed Project

Texas Eastern seeks authorization to construct and operate facilities in Delaware County, Pennsylvania.

Texas Eastern proposes expansion of its existing Philadelphia Lateral line by removing about 0.4 miles of 16-inch diameter pipeline and replacing with a 30-inch diameter pipeline in the same trench. In addition it would install a new pig[2] launcher and receiver. The facilities would provide additional firm transportation service of 27,000 dekatherms per day of natural gas.

The general location of the project is shown in Appendix 2 and 3.[3]

Land Requirements for Construction

Construction of the proposed facilities would disturb about 17.2 acres of land for the aboveground facilities and the pipeline. Following construction, about 3.2 acres would be maintained for permanent operation of the project's facilities; the remaining acreage would be restored and allowed to revert to former uses. Additionally, approximately 9.6 acres would be used for wareyards at existing Texas Eastern facilities.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[4] to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. All comments received will be considered during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils
- Water resources, fisheries, and wetlands
- Vegetation and wildlife
- Endangered and threatened species
- Cultural resources
- Air quality and noise
- Land use
- Public safety

We will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be presented in the EA. The EA will be placed in the public record and, depending on the comments received during the scoping process, may be published and distributed to the public. A comment period will be allotted if the EA is published for review. We will consider all comments on the EA before we make our recommendations to the Commission. To ensure your comments are considered, please carefully follow the instructions in the Public Participation section below.

With this notice, we are asking agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EA. These agencies may choose to participate once they have evaluated the proposal relative to their responsibilities. Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with applicable State Historic Preservation Office(s), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[5] We will define the project-specific Area of Potential Effects (APE) in consultation with the SHPO(s) as the project is further developed. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). Our EA for this project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

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[5] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Historic properties are defined in those regulations as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the Philadelphia Lateral Expansion Project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send your comments so that they will be received in Washington, DC on or before September 12, 2011.

For your convenience, there are three methods which you can use to submit your comments to the Commission. In all instances please reference the project docket number (CP11–508–000) with your submission. The Commission encourages electronic filing of comments and has expert eFiling staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.*

(1) You may file your comments electronically by using the *eComment* feature, which is located on the Commission's Web site at *http://www.ferc.gov* under the link to *Documents and Filings.* An eComment is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You may file your comments electronically by using the *eFiling* feature, which is located on the Commission's Web site at *http://www.ferc.gov* under the link to *Documents and Filings.* With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister.*'' You will be asked to select the type of filing you are making. A comment on a particular project is considered a ''Comment on a Filing''; or

(3) You may file a paper copy of your comments at the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426.

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Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an ''intervenor,'' which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are included in the User's Guide under the ''e-filing'' link on the Commission's Web site.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Click on the eLibrary link, click on ''General Search'' and enter the docket number, excluding the last three digits in the Docket Number field (CP11–508). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the text of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: August 12, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–21158 Filed 8–18–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2493–152]

Puget Sound Energy, Inc.; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-project use of project lands and waters.

b. *Project No.:* 2493–152.

c. *Date Filed:* July 15, 2011.

d. *Applicant:* Puget Sound Energy, Inc.

e. *Name of Project:* Snoqualmie Falls Hydroelectric Project.

f. *Location:* on the Snoqualmie River, in King, Washington.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Lynda Kupfer, Puget Sound Energy, Inc., M/S PSE–09N, P. O. Box 90868, Bellevue, WA 98009–0868, (425) 456–2047, e-mail: *lynda.kupfer@pse.com;* and Kendall Cammermeyer, Puget Sound Energy, Inc., M/S PSE–09N, P.O. Box 90868, Bellevue, WA 98009–0868, (425) 462–3372, e-mail: *kendall.cammermeyer@pse.com.*

i. *FERC Contact:* Jake Tung, (202) 502–8757, *hong.tung@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* August 26, 2011.

All documents may be filed electronically via the Internet. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and seven copies should be mailed to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Commenters

can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. Please include the project number (P–2493–152) on any comments or motions filed.

k. *Description of Application:* The applicant's license authorizes to construct a 0.15-mile-long, 13.8-kV, three-phase underground transmission line to transfer power from the Plant 1 powerhouse to a switching station located on the opposite bank of the Snoqualmie River. The applicant instead proposes to construct a 0.06-mile-long, 115-kV, three-phase overhead transmission line. The applicant indicates that: (1) The proposed overhead line will simplify construction, achieve operational economic efficiencies, and improve reliability; (2) the proposed transmission line will be located on the licensee's fee-owned property and easements that are currently within the project boundary; and (3) no federally-owned lands are involved with or affected by this amendment.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field (P–2493) to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to project works which are the subject of the amendment application. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: August 12, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–21159 Filed 8–18–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR09–18–001]

New Mexico Gas Company, Inc.; Notice of Motion for Extension of Rate Case Filing Deadline

Take notice that on August 12, 2011, New Mexico Gas Company, Inc. (NMGC) filed a request for an extension consistent with the Commission's revised policy of periodic review from a triennial to a five year period. The Commission in Order No. 735 modified its policy concerning periodic reviews of rates charges by section 311 and Hinshaw pipelines to extend the cycle for such reviews from three to five years.[1] Therefore, NMGC requests that the date for its next rate filing be extended to August 28, 2013, which is five years from the date of NMGC's most recent rate filing with this Commission.

Any person desiring to participate in this rate proceeding must file a motion to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 23, 2011.

[1] Contract Reporting Requirements of Intrastate Natural Gas Companies, Order No. 735, 131 FERC ¶ 61,150 (May 20, 2010).

Dated: August 15, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–21202 Filed 8–18–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–529–000]

Natural Gas Pipeline Company of America LLC; Notice of Request Under Blanket Authorization

Take notice that on August 5, 2011, Natural Gas Pipeline Company of America LLC (Natural), 3250 Lacey Road, Suite 700, Downers Grove, IL 60515, filed a prior notice request pursuant to sections 157.205 and 157.208 of the Commission's regulations under the Natural Gas Act (NGA) for authorization to increase the maximum allowable operating pressure (MAOP) from 945 pounds per square inch gauge (psig) to 985 psig of the gathering system at Natural's Sayre Storage field in Beckham County, Oklahoma by replacing various flange sets, ball valves, and check valves; and installing a high pressure discharge header. Natural avers that the proposed MAOP increase will allow Natural to operate more efficiently within certificated levels to the benefit of the market. Natural estimates the total cost of the proposed project to be $3.1 million, all as more fully set forth in the application, which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding the application should be directed to Bruce H. Newsome, Vice President, Regulatory Products and Services, Natural Gas Pipeline Company of America LLC, 3250 Lacey Road, 7th Floor, Downers Grove, Illinois 60515–7918, by telephone at (630) 725–3070, or by e-mail at *bruce_newsome@kindermorgan.com.*

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's regulations under the NGA (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the Internet in lieu of paper. See 18 CFR 385.2001(a) (1) (iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

Dated: August 15, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–21206 Filed 8–18–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP11–2253–000]

Columbia Gas Transmission, LLC; Notice of Technical Conference

On July 28, 2011, the Commission accepted and suspended the tariff records that Columbia Gas Transmission, LLC (Columbia) filed to update its Transportation Cost Rate Adjustment (TCRA) surcharge outside the usual annual filing schedule, subject to refund and to the outcome of a technical conference.[1] Pursuant to the Commission's order, the issues to be addressed at this conference include, but are not limited to: (1) The reduction in receipts in northern Ohio; (2) Columbia's proposed solution as well as other options that it may have considered, and; (3) Columbia's contracting for additional Millennium Pipeline capacity.

Take notice that a technical conference to discuss the issues raised by Columbia's filings will be held on Thursday, September 8, 2011 at 10 a.m. (E.S.T.), in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Federal Energy Regulatory Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–208–1659 (TTY), or send a FAX to 202–208–2106 with the required accommodations.

All interested persons, parties, and staff are permitted to attend. **FOR FURTHER INFORMATION CONTACT** Vince Mareino at (202) 502–6167.

Dated: August 12, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–21156 Filed 8–18–11; 8:45 am]

BILLING CODE 6717–01–P

[1] *Columbia Gas Transmission, LLC,* 136 FERC ¶ 61,062 (2011).

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2003–0017; FRL–9454–2]

Agency Information Collection Activities; Proposed Collection; Comment Request; Underground Injection Control (UIC) Program

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on December 31, 2011. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described in the **SUPPLEMENTARY INFORMATION** section.

DATES: Comments must be submitted on or before October 18, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OW–2003–0017 identified by the Docket ID numbers provided for each item in the text, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Mail:* Environmental Protection Agency, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* EPA Docket Center—Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue, NW., Washington, DC.

Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OW–2003–0017. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *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 *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.*

FOR FURTHER INFORMATION CONTACT: Robert E. Smith, Office of Ground Water and Drinking Water/Drinking Water Protection Division/Underground Injection Control Program, Mailcode: 4606M, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–564–3895; fax number: 202–564–3756; e-mail address: *smith.robert-eu@epa.gov.*

SUPPLEMENTARY INFORMATION:

How can I access the docket and/or submit comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OW–2003–0017, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Water 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 Water Docket is 202–566–2426.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

What information is EPA particularly interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) 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;

(ii) 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;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) 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. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What should I consider when I prepare my comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under **DATES**.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What information collection activity or ICR does this apply to?

Affected entities: Entities potentially affected by this action are owners and operators of underground injection wells, State Underground Injection Control (UIC) primacy agencies, and U.S. EPA Regional Offices with Direct Implementation (DI) UIC programs.

Title: Underground Injection Control (UIC) Program.

ICR numbers: EPA ICR No. 0370.24, OMB Control No. 2040–0042.

ICR status: This ICR is currently scheduled to expire on December 31, 2011. 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 Underground Injection Control (UIC) Program under the Safe Drinking Water Act established a Federal and State regulatory system to protect underground sources of drinking water (USDWs) from contamination by injected fluids. Injected fluids include trillions of gallons of various types of fluids each year such as hazardous waste, oil field brines or produced water, mineral processing fluids, various types of industrial fluids, automotive, sanitary and other wastes, and carbon dioxide injected for geologic sequestration. Owners/operators of underground injection wells must obtain permits, conduct environmental monitoring, maintain records, and report results to EPA or the State UIC primacy agency. States must report to EPA on permittee compliance, owners/operators of rule-authorized well compliance and related information.

The mandatory information is reported using standardized forms and annual reports, and the regulations are codified at 40 CFR Parts 144 through 148. The data are used by UIC authorities to ensure the protection of underground sources of drinking water.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 2.32 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 53,772.

Frequency of response: annual, semi-annual, and quarterly.

Estimated total average number of responses for each respondent: 10.39.

Estimated total annual burden hours: 1,296,167 hours.

Estimated total annual costs: $194,842,061. This includes an estimated burden cost of $54,384,103 and an estimated cost of $140,457,959 for capital investment or maintenance and operational costs.

Are there changes in the estimates from the last approval?

There is an increase of 233,836 hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This increase reflects a variety of adjustments and program changes. Most of the burden increase is due to increases in the inventory of injection wells and the number of permit applications and mechanical integrity tests submitted by operators and reviewed by permitting authorities. Other changes and adjustments relate to reduced activities associated with the Florida Class I Rule and the 1999 Class V Rule, addition of burden associated with the 2010 Class VI Rule, granting of primacy to two Tribes, and burden reduction associated with electronic reporting via the National UIC database.

What is the next step in the process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: August 15, 2011.

Ronald W. Bergman,

Acting Director, Office of Ground Water and Drinking Water.

[FR Doc. 2011–21228 Filed 8–18–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8999–6]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–1399 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed 08/08/2011 Through 08/12/2011

Pursuant to 40 CFR 1506.9.

Notice

In accordance with Section 309(a) of the Clean Air Act, EPA is required to make its comments on EISs issued by other Federal agencies public. Historically, EPA met this mandate by publishing weekly notices of availability of EPA comments, which includes a brief summary of EPA's comment letters, in the **Federal Register**. Since February 2008, EPA has included its comment letters on EISs on its Web site at: *http://www.epa.gov/compliance/nepa/eisdata.html.* Including the entire EIS comment letters on the Web site satisfies the Section 309(a) requirement to make EPA's comments on EISs available to the public. Accordingly, on March 31, 2010, EPA discontinued the publication of the notice of availability of EPA comments in the **Federal Register**.

EIS No. 20110259, Draft EIS, FHWA, FL, Crosstown Parkway Extension Project, New Bridge Crossing of the North Fork St. Lucie River Crosstown Parkway from Manth Lane to U.S. 1, St. Lucie County, FL, Comment Period Ends: 10/03/2011, Contact: Cathy Kendall 850–553–2225.

EIS No. 20110260, Draft EIS, NPS, FL, Biscayne National Park, General Management Plan, Implementation, Miami-Dade County, FL, Comment Period Ends: 10/17/2011, Contact: Morgan Elmer 303–969–2317.

EIS No. 20110261, Final EIS, USFS, NV, Mountain City, Ruby Mountains, and Jarbidge Ranger Districts, Combined Travel Management Project, Implementation, Humboldt-Toiyabe National Forest, Elko and White Pine Counties, NV, Review Period Ends: 10/03/2011, Contact: James Winfrey 775–355–5308.

EIS No. 20110262, Draft EIS, NPS, FL, Canaveral National Seashore Project, General Management Plan, Implementation, Brevard and Volusia Counties, FL, Comment Period Ends: 10/17/2011, Contact: Chris Church 303–969–2276.

EIS No. 20110263, Draft EIS, USACE, CA, Salton Sea Species Conservation Habitat Project, To Serve as a Proof of Concept for the Restoration of Shallow Water Habitat that Currently Support Fish and Wildlife Dependent Upon the Salton Sea, within the southern portion of the Salton Sea, Imperial County, CA, Comment Period Ends: 10/17/2011, Contact: Lanika Cervants 760–602–4838.

EIS No. 20110264, Final EIS, FHWA, MT, Russell Street/South 3rd Street Reconstruction Project, To Address Current and Projected Safety and Operational needs, Funding and U.S. Army COE Section 404 Permit, City of Missoula, Missoula County, MT, Review Period Ends: 09/20/2011, Contact: Brian Hasselbach 406–449–5302.

EIS No. 20110265, Draft EIS, ARS, ID, U.S. Sheep Experiment Station Grazing and Associated Activities Project 2010, To Develop Integrated Methods for Increasing Production Efficiency of Sheep, Dubois, ID, Comment Period Ends: 10/03/2011, Contact: Sue Wingate 603–569–3114.

EIS No. 20110266, Final EIS, BR, CA, Nimbus Hatchery Fish Passage Project, To Create and Maintain a Reliable System for Collecting Adult Fish to Allow Reclamation, Rancho Cordova, Gold River, CA, Review Period Ends: 09/19/2011, Contact: Dave Robinson 916–989–7179.

EIS No. 20110267, Final EIS, USFS, CA, Keddie Ridge Hazardous Fuels

Reduction Project, Implementation, Plumas National Forest, Mt. Hough District, Plumas County, CA, Review Period Ends: 09/19/2011, Contact: Katherine Carpenter 530–283–7619.

EIS No. 20110268, Second Final EIS (Tiering), NCPC, DC, Tier-2 FINAL—Smithsonian Institution National Museum of African American History and Culture (NMAAHC), Construction and Operation, Between 14th and 15th Streets NW. and Constitution Avenue, NW. and Madison Drive, NW., Washington, DC, Review Period Ends: 09/19/2011, Contact: Jane Passman 202–633–6549.

EIS No. 20110269, Draft Supplement, USN, 00, Surveillance Towed Array Sensor System Low Frequency Active (SURTASS LFA) Sonar Systems, Updated and Additional Information on Employment of Four SURTASS LFA Sonar Systems for Routine Training, Testing, and Military Operation, Implementation, Comment Period Ends: 10/17/2011, Contact: CDR Neil T. Smith 703–465–8404.

EIS No. 20110270, Draft EIS, NOAA, HI, PROGRAMMATIC—Hawaiian Monk Seal Recovery Actions, To Prevent the Extinction of the Species, HI, Comment Period Ends: 10/17/2011, Contact: Jeff Walters 808–944–2200.

EIS No. 20110271, Final EIS, FHWA, CO, North 1–25 Corridor, To Identify and Evaluate Multi-Modal Transportation Improvement along 61 miles from the Fort Collins-Wellington Area, Funding and U.S. Army COE Section 404 Permit, Denver, CO, Review Period Ends: 09/19/2011, Contact: Monica Pavlik 720–963–3012.

Amended Notices:

EIS No. 20110176, Draft EIS, BLM, NV, Clark, Lincoln, and White Pine Counties Groundwater Development Project, Construction and Operation of Pipeline System and Associated Infrastructure, Right-Of-Way Application, Clark, Lincoln, White Pine, NV, Comment Period Ends: 10/11/2011, Contact: Penny Woods 775–861–6466 Revision to FR Notice 06/10/2011: Extending comment period from 09/08/2011 to 10/11/2011.

Dated: August 16, 2011.

Cliff Rader,

Acting Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2011–21223 Filed 8–18–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9454–4]

Notice of Regional Waiver Pursuant to Section 1605 (Buy American Requirement) of the American Recovery and Reinvestment Act of 2009, to Mason County, WA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Regional Administrator of EPA Region 10 is hereby granting a waiver request from the Buy American requirements of ARRA Section 1605 under the authority of Section 1605(b)(1). This waiver request is being granted because EPA believes it is in the public interest to allow Mason County, Washington (the County) to utilize and install six specific turbo aeration blower units as part of the County's Belfair Wastewater and Water Reclamation Facilities project. This is a project specific waiver and only applies to the use of the specified product for the ARRA project being proposed. Any other ARRA recipient that wishes to use the same product must apply for a separate waiver based on project specific circumstances. The Membrane Bioreactor (MBR) system was selected and procured by the County in 2008 using non-ARRA funding and prior to enactment of ARRA. However, since the MBR equipment is being installed by an ARRA funded contract, the new Buy American requirements of ARRA apply. As ARRA was enacted after the County's procurement actions, the County could not be aware of the need to purchase and install a Buy American compliant MBR system and could not reasonably foresee the need for a waiver.

Requiring the installation of domestically manufactured turbo aeration blower units will extend the time frame of the project significantly (by at least four months), due to the redesign, procurement, submittal delivery, submittal review, fabrication, delivery, and replacement of the aeration blower installation at the construction site. Redesign, reconstruction, and replacement of the blowers will likely cost at least an additional $620,000 and could also void the three year manufacturer warranty for the MBR that is valid only if system components identified in the manufacturer's proposal are utilized. A significant delay in the project schedule could push the project past the anticipated September 2011 project completion into the fall rainy season, and could cause runoff over areas of failing septic systems and pose a risk to environmental and water quality protection. This additional cost and delay is inconsistent with the public interest, and a waiver of the Buy American provisions in these circumstances is justified. This action allows the installation of the six specified turbo aeration blower units that have already been delivered to the construction site as noted in Mason County's May 27, 2011, request and additional follow up documentation.

DATES: *Effective Date:* August 9, 2011.

FOR FURTHER INFORMATION CONTACT: Bryan Fiedorczyk, CWSRF ARRA Program Management Analyst, Grants and Strategic Planning Unit, Office of Water & Watersheds (OWW), (206) 553–0506, U.S. EPA Region 10 (OWW–137), 1200 Sixth Avenue, Suite 900, Seattle, WA 98101.

SUPPLEMENTARY INFORMATION: In accordance with ARRA Section 1605(c), the EPA hereby provides notice that it is granting a project waiver of the requirements of Section 1605(a) of Public Law 111–5, Buy American requirements, to Mason County, Washington, for the utilization and installation of six specific turbo aeration blower units as part of the County's Belfair Wastewater and Water Reclamation Facilities project. Based on the information provided by the County and its consultant project manager, EPA has determined that it is inconsistent with the public interest for the County to further delay the project and incur significant additional costs to pursue the purchase and installation of domestic manufactured turbo aeration blower units.

Section 1605 of the ARRA requires that none of the appropriated funds may be used for the construction, alteration, maintenance, or repair of a public building or a public works project unless all of the iron, steel, and manufactured goods used in the project are produced in the United States, or unless a waiver is provided to the recipient by the head of the appropriate agency, in this case, the EPA. A waiver may be provided under Section 1605(b) if EPA determines that (1) applying these requirements would be inconsistent with the public interest; (2) iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) inclusion of iron, steel, and the relevant manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.

Consistent with the direction of OMB's regulation at 2 CFR 176.120, the EPA will generally consider a waiver request with respect to components that were specified in the bid solicitation or in a general/primary construction contract or those made after obligating ARRA funds for a project to be a ''late'' request. However, in this case EPA has determined that the County's request, though made after the date the contract was signed, can be evaluated as timely because of the extenuating circumstances surrounding this on-going project.

The Membrane Bioreactor (MBR) system works using a combination of filtration and biological processes and is a critical component of the treatment process to remove nutrients (nitrogen) and other pollutants from the wastewater. The MBR system is comprised of MBR filtration cassettes, aeration and membrane scouring blowers, and several other auxiliary components integral to the efficient operation of the system. The County decided the MBR process was the most environmentally sound and cost effective solution to treat the wastewater to the ''Class A'' reuse standards in order to meet the County's water reuse goal and the anticipated regulatory and permit requirements. The MBR system was procured by the County for use at the new wastewater treatment plant prior to enactment of ARRA with non ARRA funding. The KUBOTA Submerged Membrane Unit® system and accompanying MBR components were selected and contracted with Enviroquip (now Ovivo USA) in March 2008 during the early phases of design. The design for the treatment plant was based on this pre-selected MBR equipment and continued until project construction went to bid in late 2009. As a result of a value engineering study during the design process, a change order was signed in October 2009 to incorporate specific components including energy-efficient blowers and feed pumps as part of the MBR system.

Though the MBR equipment was procured by a pre-ARRA contract before ARRA was enacted, the actual installation is being completed through Mason County's ARRA Clean Water State Revolving Fund (CWSRF) loan (#L100026). Due to EPA's ARRA Buy American implementation guidance dated April 28, 2009, that defines a project as all work ''closely related in purpose, time and place,'' this previously contracted MBR equipment needs to meet Buy American requirements as an integral component of the Belfair Wastewater and Water Reclamation Facilities project. There is not a mechanism authorizing previously contracted, purchased, or owned equipment as exempt from Buy American requirements. As context, the entire project cost is estimated at $28.8 million—$9.6 million is ARRA funded, $3.8 million is paid by an EPA Special Appropriations Act Project grant (for the MBR equipment), and $15.4 million is non-federally funded. The KTurbo blowers, which are the subject of this waiver, are estimated to cost approximately $345,900.

The initial procurement of the MBR system occurred well in advance of ARRA, and the fact that the MBR equipment was not being reimbursed by ARRA funds created a complex situation that State, EPA regional and EPA headquarters staff had to thoroughly review and research to determine the applicability of ARRA. Therefore, it is understandable that the County was unaware of the need to purchase and install a Buy American compliant MBR system and could not reasonably foresee the need for a waiver until recently. Also of note, KTurbo is currently suspended from participating in procurement and nonprocurement transactions pending the termination of the suspension or implementation of a debarment proceeding. However, this suspension does not invalidate transactions entered into prior the suspension date of April 19, 2011. The KTurbo blowers being utilized in the County project were clearly procured well in advance of April 19, 2011, thus the procurement transaction is not covered by the temporary suspension. Additionally, these blowers were identified as Korean/Canadian made and not claimed to be manufactured in the U.S., thus there is no evidence of false claim pertaining to the Mason County project.

The MBR system contract with Enviroquip/Ovivo USA requires 95% payment to the supplier (of the $2.1 million contract) for equipment delivered. Therefore the County would be obligated to pay for at least most of the KTurbo blowers cost, plus an estimated $540,000 extra for replacement domestic blowers, an estimated $80,000 for redesign and reconstruction costs, and up to $30,000 per month for construction delay costs per the prime contractor's agreement. Additionally, the three year warranty for the MBR system identified in the project specifications would be voided, as the manufacturer stipulated the warranty for the MBR system is valid only if system components identified in the manufacturer's proposal are utilized.

Furthermore, not allowing the installation of the six specified turbo aeration blower units that have been delivered to the site could cause a significant time delay to the project. The County would need to completely redesign, procure, and have domestic manufactured turbo aeration blower units delivered to the site. According to the County, the construction completion date could be delayed by four months or more. Of significant note, the County is scheduled to complete the project in September 2011. Increased delays in to the project schedule could push completion into the rainy season, during which the typical wet weather associated with October through January could cause runoff over areas of failing septic systems and pose a risk to environmental and water quality protection.

Finally, the purpose of the ARRA is to stimulate economic recovery by funding current infrastructure construction, not to delay or require the substantial redesign of projects that are ''shovel ready'', such as this project in Mason County, Washington. The implementation of the ARRA Buy American requirements in this case would result in an unreasonable delay in its completion. Such delay would also directly conflict with a fundamental economic purpose of ARRA, which is to create or retain jobs. More importantly, the imposition of the Buy American requirement would result in additional risk to water quality protection.

The Grants and Strategic Planning Unit of EPA has reviewed this waiver request and has determined that the supporting documentation provided by the County established a proper basis to specify that using the domestic manufactured good would be inconsistent with the public interest of Mason County, Washington. The March 31, 2009, Delegation of Authority Memorandum provided Regional Administrators with the authority to issue exceptions to Section 1605 of ARRA within the geographic boundaries of their respective regions and with respect to requests by individual grant recipients.

Having established both a proper basis to specify the particular good required for this project and that using a domestically available alternative manufactured good would be inconsistent with the public interest, Mason County, Washington, is hereby granted a waiver from the Buy American requirements of Section 1605(a) of Public Law 111–5. This waiver permits use of ARRA funds for the installation and utilization of the six specified turbo aeration blower units that have already been delivered to the construction site

as noted in the County's May 27, 2011 request and additional follow up documentation. This supplementary information constitutes the detailed written justification required by Section 1605(c) for waivers based on a finding under subsection (b).

Authority: Pub. L. 111–5, section 1605.

Dated: August 9, 2011.

Dennis J. McLerran,

Regional Administrator, EPA, Region 10.

[FR Doc. 2011–21230 Filed 8–18–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Privacy Act System of Records

AGENCY: Federal Communications Commission (FCC, Commission, or the Agency)

ACTION: Notice; one new Privacy Act system of records; two deleted systems of records.

SUMMARY: Pursuant to subsection (e)(4) of the *Privacy Act of 1974,* as amended (''Privacy Act''), 5 U.S.C. 552a, the FCC proposes to add one new, consolidated system of records, FCC/OMD–28, ''Time and Attendance Records.'' FCC/OMD–28, ''Time and Attendance Records'' will incorporate the information, *i.e.,* personally identifiable information (PII), presently covered by FCC/OMD–14, ''Pay and Leave Records,'' and FCC/OMD–21, ''Garnishment and Levy of Wages,'' and also add new and/or updated information that pertains to the responsibilities of the FCC's Human Resources Management (the Agency) division of the Office of Managing Director (OMD). Upon approval of FCC/OMD–30, the Commission will cancel FCC/OMD–14 and FCC/OMD–21. The purposes for adding this new system of records, FCC/OMD–28, ''Time and Attendance Records,'' are for the Agency to use the records in this system primarily to prepare time and attendance records and to certify hours worked/leave earned and leave taken and to administer the FCC's time and attendance/payroll program. These records may also be used to validate and verify hours worked/leave taken/credit hours claimed and to ensure appropriate recordkeeping as well as appropriate expenditure of Federal funds. The new system of records will consolidate FCC/OMD–14 and FCC/OMD–21 that the Agency currently uses so that all the personally identifiable information (PII) in the two information systems are now housed in a single Agency system of records.

DATES: In accordance with subsections (e)(4) and (e)(11) of the Privacy Act, any interested person may submit written comments concerning the alteration of this system of records on or before September 19, 2011. The Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB), which has oversight responsibility under the Privacy Act to review the system of records, and Congress may submit comments on or before September 28, 2011. The proposed new system of records will become effective on September 28, 2011 unless the FCC receives comments that require a contrary determination. The Commission will publish a document in the **Federal Register** notifying the public if any changes are necessary. As required by 5 U.S.C. 552a(r) of the Privacy Act, the FCC is submitting reports on this proposed new system to OMB and Congress.

ADDRESSES: Address comments to Leslie F. Smith, Privacy Analyst, Performance Evaluation and Records Management (PERM), Room 1–C216, Federal Communications Commission (FCC), 445 12th Street, SW., Washington, DC 20554, (202) 418–0217, or via the Internet at *Leslie.Smith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Leslie F. Smith, Performance Evaluation and Records Management (PERM), Room 1–C216, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554, (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION: As required by the *Privacy Act of 1974,* as amended, 5 U.S.C. 552a(e)(4) and (e)(11), this document sets forth notice of this proposed new system of records maintained by the FCC. The FCC previously gave complete notice of the two systems of records, FCC/OMD–14, ''Pay and Leave'' and FCC/OMD–21, ''Garnishment and Levy of Wages,'' which the Commission intends to cancel upon both the approval and deployment of FCC/OMD–28, ''Time and Attendance Records,'' as referenced under this Notice by publication in the **Federal Register** on April 5, 2006 (71 FR 17234, 17257 and 17266 respectively). This notice is a summary of the more detailed information about the proposed new system of records, which may be viewed at the location given above in the **ADDRESSES** section. The purposes for adding this new system of records, FCC/OMD–28, ''Time and Attendance Records,'' are for the Agency to use the records in this system of records primarily to prepare time and attendance records and to certify hours worked/leave earned and leave taken and to administer the FCC's time and attendance/payroll program. These records may also be used to validate and verify hours worked/leave taken/credit hours claimed and to ensure appropriate recordkeeping as well as appropriate expenditure of Federal funds. The new system of records will consolidate FCC/OMD–14 and FCC/OMD–21 that the Agency currently uses so that all the PII data in the two information systems are now housed in a single Agency system of records.

This notice meets the requirement documenting the change to the systems of records that the FCC maintains, and provides the public, OMB, and Congress with an opportunity to comment.

FCC/OMD–14

SYSTEM NAME:

Time and Attendance Records.

SECURITY CLASSIFICATION:

The FCC's Security Operations Center (SOC) has not assigned a security classification to this system of records.

SYSTEM LOCATION:

Human Resources Management (HRM), Office of Managing Director (OMD), Federal Communications Commission (FCC), 445 12th Street, SW., Washington, DC 20554.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The categories of individuals in this system consist of current and former employees of the Federal Communications Commission (FCC).

CATEGORIES OF RECORDS IN THE SYSTEM:

The categories of records in this system are used:

1. To administer the pay, leave, and garnishment requirements for FCC employees: FCC employee's name, work and home addresses, Social Security Number (SSN), bureau/office, timekeeper number, salary, pay plan, number of hours worked, leave accrual rate, usage, and balances, and associated supporting documentation such as Request for Leave, Credit Hours earned, Compensatory and Overtime hours requested and earned, time off awards credited, leave transfer requests, leave donor forms, medical documentation to support advance of sick leave and leave transfer, tax, payroll allotment, and direct deposit forms, etc; and

2. To administer garnishment and levy orders: Orders served upon the FCC for implementation, correspondence, and memorandum issued by a court of competent jurisdiction or by another government entity authorized to issue

such an order for a FCC employee subject thereto.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

1. To administer the pay and leave, and garnishment records: 5 U.S.C. 5501 et seq., 5525 et seq., 5701 et seq. and 6301 et seq.; 28 U.S.C. 66a; 44 U.S.C. 2801 and 2802; 5 U.S.C. 6328–6340; Federal Employees Leave Sharing Act of 1988 and Amendments of 1993 (Pub. L. 103–103 and Pub. L. 100–566); Executive Order 9397, November 22, 1943; Pub. L. 100–202, Pub. L. 100–440, Pub. L. 101–509, and Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104–193); and

2. To administer the garnishment and levy orders: 5 U.S.C. 5520a; 10 U.S.C. 1408; and 42 U.S.C. 659.

PURPOSE(S):

The Human Resources Management (HRM) uses the records in this system to:

1. Authorize payroll deductions, including but not limited to allotments, charitable contributions, and union dues;

2. Collect indebtedness, including but not limited to overpayment of salary and unpaid Internal Revenue Service (IRS) taxes and/or state taxes, etc.;

3. Pay income tax obligations, including but not limited to the Internal Revenue Service (IRS) and states' revenue departments;

4. Authorize the U.S. Department of the Agriculture's (USDA) National Finance Center (NFC) to issue salary checks;

5. Report gross wages and compensation information, including but not limited to unemployment compensation;

6. Pay any uncollected compensation, including but not limited to lump-sum payments of leave upon an employee's separation, such as retirement and resignation, or due to the beneficiaries of a deceased employee;

7. Determine leave balances, including but not limited to accrued and used leave, sick leave, eligibility for and/or authorize donations for the leave transfer program, and other types of leave categories;

8. Produce summary descriptive statistics and analytical studies in support of the FCC's Human Resource Management (HRM) functions;

9. Respond to general requests for statistical information (without disclosing any personally identifiable information (PII)) under the Freedom of Information Act (FOIA);

10. Locate specific individuals for Human Resource Management (HRM) functions; and

11. Direct the FCC's implementation of garnishment and levy orders served upon the Commission for implementation, correspondence, and memorandum, issued by a court of competent jurisdiction or by another government entity authorized to issue such an order for a Commission employee subject thereto.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information about individuals in this system of records may routinely be disclosed under the following conditions:

1. Compliance with Welfare Reform Requirements—Names, Social Security Numbers, home addresses, dates of birth, dates of hire, quarterly earnings, employer identifying information, and state of hire of employees may be disclosed to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services for the purposes of locating individuals to establish paternity, establishing and modifying orders of child support, identifying sources of income, and for other child support enforcement actions as required by the Personal Responsibility and Work Opportunity Reconciliation Act;

2. Adjudication and Litigation—Where by careful review, the agency determines that the records are both relevant and necessary to litigation and the use of such records is deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records, these records may be used by a court or adjudicative body in a proceeding when: (a) the agency or any component thereof; or (b) any employee of the agency in his or her official capacity; or (c) any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or (d) the United States Government is a party to litigation or has an interest in such litigation;

3. Law enforcement and Investigation—Where there is an indication of a violation or potential violation of a statute, regulation, rule, or order, records from this system may be shared with appropriate Federal, State, or local authorities either for purposes of obtaining additional information relevant to a FCC decision or for referring the record for investigation, enforcement, or prosecution by another agency;

4. Congressional Inquiries—When requested by a Congressional office in response to an inquiry by an individual made to the Congressional office for the individual's own records;

5. Government-wide Program Management and Oversight—When requested by the National Archives and Records Administration (NARA) for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906; when the U.S. Department of Justice (DOJ) is contacted in order to obtain that department's advice regarding disclosure obligations under the Freedom of Information Act; or when the Office of Management and Budget (OMB) is contacted in order to obtain that office's advice regarding obligations under the Privacy Act;

6. Employment, Clearances, Licensing, Contract, Grant, or other Benefits Decisions by the Agency—Disclosure may be made to a Federal, State, local, foreign, tribal, or other public agency maintaining civil, criminal, or other relevant enforcement records, or other pertinent records, or to another public authority or professional organization, if necessary to obtain information relevant to an investigation concerning the retention of an employee or other personnel action (other than hiring), the retention of a security clearance, the letting of a contract, or the issuance or retention of a grant or other benefit;

7. Employment, Clearances, Licensing, Contract, Grant, or other Benefits Decisions by Other than the Agency—Disclosure may be made to a Federal, State, local, foreign, tribal, or other public authority of the fact that this system of records contains information relevant to the retention of an employee, the retention of a security clearance, the letting of a contract, or the issuance or retention of a license, grant, or other benefit. The other agency or licensing organization may then make a request supported by the written consent of the individual for the entire records if it so chooses. No disclosure will be made unless the information has been determined to be sufficiently reliable to support a referral to another office within the agency or to another Federal agency for criminal, civil, administrative, personnel, or regulatory action;

8. Labor Relations—A record from this system may be disclosed to officials of labor organizations recognized under 5 U.S.C. Chapter 71 upon receipt of a formal request and in accord with the conditions of 5 U.S.C. 7114 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions;

9. Financial Obligations under the Debt Collection Act—A record from this system may be disclosed to other Federal agencies for the purpose of collecting and reporting on delinquent debts as authorized by the Debt Collection Act of 1982 or the Debt Collection Improvement Act of 1996. A record from this system may be disclosed to any Federal, state, or local agency to conduct an authorized computer matching program in compliance with the Privacy Act of 1974, as amended, to identify and locate individuals who are delinquent in their repayment of certain debts owed to the U.S. Government. A record from this system may be used to prepare information on items considered income for taxation purposes to be disclosed to Federal, State, and local governments;

10. Financial Obligations Required by the National Finance Center *et al.*—When the National Finance Center (the FCC's designated payroll office), the Department of the Treasury Debt Management Services, and/or a current employer to effect a salary, IRS and/or state tax refund(s), or administrative offset to satisfy an indebtedness; and to Federal agencies to identify and locate former employees for the purposes of collecting such indebtedness, including through administrative, salary, or tax refund offsets. Identifying and locating former employees, and the subsequent referral to such agencies for offset purposes, may be accomplished through authorized computer matching programs. Disclosures will be made only when all procedural steps established by the Debt Collection Act of 1982, as amended by the Debt Collection Improvement Act of 1996 or the Computer Matching and Privacy Protection Act of 1988 as appropriate, have been taken;

11. Breach Notification—A record from this system may be disclosed to appropriate agencies, entities, and persons when (1) the Commission suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Commission has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Commission or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Commission's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm; and

12. Pay and Leave Disclosures—A record from this system may be disclosed to any source from which additional information is requested relevant to an FCC determination concerning an individual's pay or leave to the extent necessary to identify the individual, inform the source of the purpose(s) of the requests, and to identify the type of information requested.

In each of these cases, the FCC will determine whether disclosure of the records is compatible with the purpose for which the records were collected.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act, 15 U.S.C. 1681a(f), or the Federal Claims Collection Act of 1966, 28 U.S.C. 3701(a)(3).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information includes paper document, records, and files that are stored in file cabinets, and electronic records, files and data that are stored on the FCC's network computer database.

RETRIEVABILITY:

Records are indexed by the FCC's employee's name.

SAFEGUARDS:

The paper documents, files, and records, which are stored in file cabinets in the HRM office suite, are locked when not in use and/or at the end of the business day. These file cabinets are accessible only via card-coded security doors. Access is restricted to authorized HRM supervisors, staff, and contractors.

The electronic records, files, and data are housed in the FCC's computer network databases. Access to the electronic files is restricted to authorized HRM supervisors, staff, and contractors. Authorized staff and contractors in the FCC's Information Technology Center (ITC), who manage the FCC's computer network databases, also have access to the electronic files. Other FCC employees and contractors may be granted access on a ''need-to-know'' basis. The FCC's computer network databases are protected by the FCC's security protocols, which include controlled access, passwords, and other security features. The electronic information is backed-up routinely. Back-up tapes are stored on-site and at a secured, off-site location.

RETENTION AND DISPOSAL:

1. For Pay and Leave Records—The FCC maintains and disposes of these records in accordance with General Records Schedule 2 (GRS 2) issued by the National Archives and Records Administration (NARA). Under the GRS 2, records are retained for various periods. Generally, the records are kept from 3 to 56 years, depending on the type of record involved.

2. For Garnishment and Levy of Wages Records—The FCC retains these records until the expiration of the garnishment or levy order or until the employee leaves the Commission, whichever comes first. In some instances that are related to a garnishment or levy order, the information is destroyed three years after the termination of the garnishment or levy order.

Disposal of the paper documents, records, and files is by shredding. Electronic records are destroyed physically (electronic storage media) or by electronic erasure.

Individuals may request a copy of the (document) disposition instructions from the FCC Privacy Act Officer or access GRS 2 directly at *http://www.archives.gov/records-mgmt/ardor/grs02.html.*

SYSTEM MANAGER(S) AND ADDRESS:

Human Resources Management (HRM), Office of Managing Director (OMD), Federal Communications Commission (FCC), 445 12th Street, SW., Washington, DC 20554.

NOTIFICATION PROCEDURE:

Address inquiries to the Human Resources Management (HRM), Office of Managing Director (OMD), Federal Communications Commission (FCC), 445 12th Street, SW., Washington, DC 20554.

RECORD ACCESS PROCEDURES:

Address inquiries to the Human Resources Management (HRM), Office of Managing Director (OMD), Federal Communications Commission (FCC), 445 12th Street, SW., Washington, DC 20554.

CONTESTING RECORD PROCEDURES:

Address inquiries to the Human Resources Management (HRM), Office of Managing Director (OMD), Federal Communications Commission (FCC), 445 12th Street, SW., Washington, DC 20554.

RECORD SOURCE CATEGORIES:

The sources of the records in this system are FCC employees and FCC managers, bankruptcy courts, state domestic relations courts, state public

health and welfare departments or agencies, Internal Revenue Service, and intra-agency memoranda.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Federal Communications Commission.

Bulah P. Wheeler,

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

[FR Doc. 2011–21246 Filed 8–18–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[ET Docket No. 04–186 and 02–380; DA 11–1291]

Unlicensed Operation in the TV Broadcast Bands

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document the Office of Engineering and Technology conditionally designates Microsoft Corporation as TV bands device database administrators. The TV bands databases will be used by fixed and personal portable unlicensed devices to identify unused channels in the spectrum used principally by the broadcast television service that are available at their geographic locations. Microsoft is the tenth entity designated to develop a database that will enable the introduction of this new class of unlicensed broadband wireless devices in the TV spectrum.

FOR FURTHER INFORMATION CONTACT: Hugh L. Van Tuyl at (202) 418–7056 or Alan Stillwell at (202) 418–2925 or via the Internet at *Hugh.VanTuyl@fcc.gov* or *Alan.Stillwell@fcc.gov,* TTY (202) 418–2989.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order,* ET Docket No. 04–186 and 02–380, DA 11–1291, adopted July 28, 2011 and released July 29, 2011. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov.*

Summary of Order

1. In this *Order,* the Office of Engineering and Technology designates Microsoft Corporation as a TV bands database administrator pursuant to § 15.715 of its rules, subject to conditions described. The TV bands databases will be used by fixed and personal portable unlicensed devices to identify unused channels in the spectrum used principally by the broadcast television service that are available at their geographic locations. Microsoft is the tenth entity designated to develop a database that will enable the introduction of this new class of unlicensed broadband wireless devices in the TV spectrum.

2. On September 23, 2010, the Commission adopted a *Second Memorandum Opinion and Order* (*Second MO&O*) in ET Docket No. 04–186, 75 FR 75814, December 6, 2010, that updated the rules for unlicensed wireless devices that can operate in broadcast television spectrum at locations where that spectrum is unused by licensed services. This unused TV spectrum is commonly referred to as television ''white spaces.'' The rules allow for the use of unlicensed TV bands devices in the unused spectrum to provide broadband data and other services for consumers and businesses.

3. To prevent interference to authorized users of the TV bands, TV bands devices must include a geo-location capability and the capability to access a database that identifies incumbent users entitled to interference protection, including, for example, full power and low power TV stations, broadcast auxiliary point-to-point facilities, PLMRS/CMRS operations on channels 14–20, and the Offshore Radiotelephone Service. The database will calculate and communicate to a TV bands device which TV channels are vacant and can be used at the device's location. The database will also register the locations of fixed TV bands devices and protected locations and channels of certain incumbent services that are not recorded in Commission databases. The rules state that the Commission will designate one or more entities to administer a TV bands database.

4. The Office of Engineering and Technology (OET) released a public notice on November 25, 2009, inviting entities interested in being designated as a TV bands database administrator to file proposals with the Commission and inviting comments on the proposals. The notice requested that entities address how the basic components of a TV band database as required by the Commission's rules would be satisfied—*i.e.,* a data repository, a data registration process, and a query process—and whether the entity sought to provide all or only some of these functions. Entities were also required to affirm that the database service would comply with all of the applicable rules. Nine parties filed proposals in response to this public notice.

5. On January 26, 2011, OET issued an *Order* designating all nine parties that filed proposals as TV bands database administrators, subject to certain conditions. Specifically, the administrators were required to: (1) Supplement their initial filings to show how they will comply with the rule changes adopted in the *Second MO&O;* (2) attend workshops conducted by OET to address the operation of the databases to ensure consistency and compliance with the rules; (3) cooperate with any steps OET deems necessary to ensure compliance with the rules; and (4) agree that they will not use their capacity as a database manager to engage in any discriminatory or anti-competitive practices or any practices that may compromise the privacy of users. In addition, each administrator's database will be subject to a trial period of not less than 45 days before it is allowed to be made available for actual use by TV bands devices to allow interested parties an opportunity to check that the database is providing accurate results. OET conducted three workshops after the release of the January 26, 2011 order.

6. On April 18, 2011, Microsoft Corporation filed a proposal with OET seeking designation as a TV bands database administrator. Microsoft's proposal addressed the questions in the November 25, 2009, public notice that invited proposals from parties seeking to be designated as database administrators. In addition, Microsoft provided information to show that it will comply with the rule changes adopted in the *Second MO&O* and stated that it will comply with the other three conditions in the January 26, 2011, order that conditionally designated the nine database administrators. Microsoft representatives attended all three of OET's database administrator workshops. On April 29, 2011, OET issued a public notice seeking comment on Microsoft's proposal. Two parties filed comments, and Microsoft filed reply comments.

Discussion

7. Based upon our review of its proposal and the record before us, OET is designating Microsoft Corporation as a TV bands database administrator, subject to the conditions described. OET finds that Microsoft has shown that it has the technical expertise to develop and operate a TV bands database. Moreover, none of the concerns raised

by any of the commenters in the record before us causes us to conclude that Microsoft is not capable of meeting all the requirements placed on database administrators by the Commission's rules in the *Second Report and Order* and as modified in the *Second MO&O* or that it should otherwise not be designated as a database administrator.

8. OET is not persuaded that the factors cited by the Engineers for the Integrity of Broadcast Auxiliary Services Spectrum (EIBASS) demonstrate that Microsoft is not qualified to administer a TV bands database. With regard to the issue of the timeliness of Microsoft's proposal, the rules do not prohibit additional parties from requesting designation as a TV bands database administrator after other parties have already been designated. In fact, the rules were designed with the expectation that there could be changes in database administrators over time, *e.g.,* administrators are designated for a five-year term, subject to renewal at the Commission's discretion, and an administrator that ceases operation must transfer its database to another designated entity that takes its place. The original filing deadline was established by OET to allow orderly processing of the initial prospective database administrators as a group. However, this deadline was not intended to preclude other parties from requesting designation as a database administrator at a later date.

9. With regard to the issue of the protection of authorized services, the Commission's November 25, 2009 public notice did not request that prospective database administrators submit a complete list of every licensed service that is eligible for protection from TV bands devices. The Commission's rules and procedures for database testing and approval will ensure that all TV bands databases protect all eligible facilities. We note that Microsoft's proposal and response states that it will obtain information about protected services from several different sources, including the Commission's databases, which contains information on the services that EIBASS referenced in its comments.

10. The Commission authorized the channel range for the Microsoft STA that EIBASS contends is overly large and contains operating TV stations. The Commission specified the large channel range requested by Microsoft to simplify processing of the STA. Rather than determining in advance which channels within that range were vacant at the STA's location, the Commission made operation subject to the condition that Microsoft coordinate with the Society of Broadcast Engineers (SBE) to ensure that operation would occur only on vacant TV channels. The Commission has taken this same approach with other experimental authorizations for operations in the TV bands. While EIBASS is correct that the Microsoft STA does not name the precise location of operation within Las Vegas, one can easily determine that the geographic coordinates specified in the STA correspond to the Las Vegas Convention Center. As for EIBASS's contention that Microsoft initially failed to contact SBE, the parties do not dispute the fact that coordination did occur before Microsoft began operations. Microsoft states that it did coordinate with SBE and EIBASS prior to operating, and EIBASS states that the Las Vegas area frequency coordinator was made aware of the STA prior to operation. Furthermore, the Commission received no complaints of interference resulting from Microsoft's operation under this STA. We find no basis here to reject Microsoft as a TV bands database administrator.

11. Cohen, Dippell and Everist, P.C. (''CDE'') filed brief comments on the Microsoft proposal. CDE recommends that the database be updated at 12-hour intervals, seven days a week to provide the most accurate and timely information to white spaces users. However, making this change mandatory for database administrators would require modifications to our rules, which currently require synchronization of TV bands databases with the Commission databases once a week and synchronization between TV bands databases once every 24 hours. Such rule changes are outside the scope of this Order.

12. OET is designating Microsoft as a TV bands database administrator subject to the same conditions it required of the nine previously designated administrators. Microsoft has already satisfied several of these conditions. Specifically, it included in its request to be designated as a database administrator information to show that it complies with the rule changes adopted in the *Second MO&O* and stated that it would not use its capacity as a database manager to engage in any discriminatory or anti-competitive practices or practices that may compromise the privacy of users. Microsoft also participated in all three database administrator workshops held by OET thus far. Microsoft will also be required to take part in any future workshops that may be held by OET that address database implementation details and provide guidance on the requirements to the database administrators. In addition, Microsoft must cooperate with any steps OET deems necessary to ensure that the TV bands databases provide accurate and consistent lists of protected services and available channels. Further, it must support capabilities that OET deems necessary to ensure that any changes in registration of protected facilities in one database are rapidly reflected in all others.

13. Consistent with our previous action designating database administrators, Microsoft's database will be subject to a trial period of not less than 45 days before it is allowed to be made available for actual use by TV bands devices to allow interested parties an opportunity to check that the database is providing accurate results. A longer trial period may be required if we determine that its database is not in compliance with the Commission's rules. OET will determine the details of the trial, balancing the need to ensure that the database is working properly with the need to avoid an unnecessarily cumbersome and burdensome process.

14. If Microsoft successfully satisfies all of the conditions herein, it will be allowed to make its database available for actual use for the five year term specified in our rules. In such case, OET will announce the public availability of the database, at which time the five year term for that database will commence.

15. In summary, OET has considered Microsoft's proposal and all the comments and replies filed in response to the April 29, 2011 Public Notice. We conclude that Microsoft is capable of meeting the Commission's regulatory requirements for serving as a database administrator, as set forth in the Commission's rules, including the rule revisions adopted in the *Second MO&O.* Accordingly, we are designating Microsoft Corporation as a TV bands database administrator subject to the conditions described.

Ordering Clause

16. Pursuant to the authority contained in sections 4(i), 302, 303(e), 303(f), and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 302, 303(c), 303(f), and 307, and §§ 0.31 and 0.241 of the Commission's rules, 47 CFR 0.31, 0.241, Microsoft Corporation *is designated* as a TV bands database administrator as set forth in Section 15.715 of the Commission's rules, 47 CFR 15.715, subject to the conditions specified.

Federal Communications Commission

Julius P. Knapp,

Chief, Office of Engineering and Technology.

[FR Doc. 2011–21258 Filed 8–18–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 11–13]

Atlantic Shipping Company, Inc. v. Di Nos Shipping, Inc.; Notice of Filing of Complaint and Assignment

Notice is given that a complaint has been filed with the Federal Maritime Commission (Commission) by Atlantic Shipping Company, Inc., hereinafter ''Complainant,'' against DI Nos Shipping, Inc., hereinafter ''Respondent''. Complainant asserts that it is a vessel-operating common carrier. Complainant alleges that Respondent is acting as a freight forwarder in Massachusetts.

Complainant alleges that Respondent is in violation of the Shipping Act of 1984, 46 U.S.C. 40901 and 40902, by operating as a freight forwarder without a license and that Respondent has copied Complainant's standard contract, known as a dock receipt and bill of lading ''with the intent of confusing potential customers''. Complainant requests that the Commission issue ''[a]n order enjoining the Defendant [Respondent], temporarily, preliminarily and permanently from operating as an ocean transportation intermediary without appropriate licensing and bonding'' and ''[a]n order enjoining the [Respondent], temporarily, preliminarily and permanently from operating using its current form of dock receipt and bill of lading.'' 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 August 14, 2012 and the final decision of the Commission shall be issued by December 12, 2012.

Karen V. Gregory,

Secretary.

[FR Doc. 2011–21188 Filed 8–18–11; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 15, 2011.

A. Federal Reserve Bank of Richmond (Adam M. Drimer, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. *Community First Financial Group, Inc.,* Chapel Hill, North Carolina; to become a bank holding company by acquiring Harrington Bank, Chapel Hill, North Carolina, proposed successor by charter conversion to Harrington Bank, FSB, Chapel Hill, North Carolina.

Board of Governors of the Federal Reserve System, August 16, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–21218 Filed 8–18–11; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–0331; 60-Day Notice]

Agency Information Collection Request. 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above e-mail address within 60-days.

Proposed Project: Evaluation of the Marriage and Family Strengthening Grants for Incarcerated and Reentering Fathers and their Partners—OMB No. 0990–0331 Extension-Assistant Secretary for Planning and Evaluation (ASPE).

Abstract: The Office of the Assistant Secretary for Planning and Evaluation (ASPE) is conducting an evaluation of a demonstration program called Marriage and Family Strengthening Grants for Incarcerated and Re-entering Fathers and their Partners (MFS–IP). This demonstration program, funded in 2006 by the Office of Family Assistance within the Administration for Children and Families (ACF), supports marriage strengthening and responsible fatherhood activities among incarcerated and recently released

fathers, their partners, and children. The MFS–IP evaluation will assess the effects of these activities by comparing relationship quality and stability, positive family interactions, family financial well-being, recidivism, and community connectedness between intervention and control groups. Information from the evaluation will assist Federal, state, and community policymakers and patrons in deciding whether to replicate or redesign identified marriage and family strengthening program models.

Primary data for the evaluation will come from three waves of in-person data collection collected from incarcerated and released fathers and their partners. Data will be collected through a baseline survey and follow-up surveys at approximately 9 and 18 months post-baseline in five sites. A fourth wave of data collection at approximately 34 months, will be collected in two of the five sites. Data collection for the entire evaluation is expected to last 6 years, from the time the first participant is enrolled until the last 34-month follow-up survey is administered. This three year renewal request covers data collection to complete the 9 month and 18 month follow-up surveys and for all of the 34 month follow-up surveys.

ESTIMATED ANNUALIZED BURDEN TABLE

Forms	Type of respondent	Number of respondents	Number of responses per respondent	Average burden (in hours) per response	Annual burden
MFS–IP Follow-up Survey—Fathers (9 & 18 month).	Individuals	321	1	1.5	481.5
MFS–IP Follow-up Survey—Partners (9 & 18 month).	individuals	489	1	1.5	733.5
MFS–IP Follow-up Survey—Fathers (34 month).	Individuals	463	1	1.5	694.5
MFS–IP Follow-up Survey—Partners (34 month).	Individuals	463	1	1.5	694.5
Totals					2604

Mary Forbes,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 2011–21241 Filed 8–18–11; 8:45 am]

BILLING CODE 4150–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60-Day–11–11JY]

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

Barriers to Occupational Injury Reporting by Workers: A NEISS–Work Telephone Interview Survey—New—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Each year about 5,400 workers die from a work-related injury and 4 million private industry workers report a nonfatal injury or illness. There are 3.4 million workers treated in U.S. hospital emergency departments annually for nonfatal occupational injuries and illnesses [1]. Although studies indicate that we have reduced the number of nonfatal injuries in recent decades, there is evidence that nonfatal occupational injury surveillance significantly underreports workplace injuries. This presumed undercount potentially decreases health and safety funding because of a false sense of improvement in the occupational injury rates. It also increases the misdirection of scarce safety and health resources because hazardous workplaces are not appropriately identified or assessed and intervention efforts cannot be properly targeted or evaluated. It is this basic need for reliable and comprehensive occupational injury surveillance that led to the 1987 National Academy of Science report *Counting Injuries and Illnesses in the Workplace—Proposals for a Better System* [6] and the 2008 *Congressional Report Hidden Tragedy: Underreporting of Workplace Injuries and Illnesses* [1].

The proposed pilot research addresses two facets of nonfatal occupational injury reporting noted in these reports—understanding barriers and incentives to reporting occupational injuries and using this knowledge to assess and improve our surveillance activities. The objectives of this project are to (1) characterize and quantify the relative importance of incentives and disincentives to self-identifying work-relatedness at the time of medical treatment and to employers; (2) characterize individual and employment characteristics that are associated with non-reporting of workplace injuries and incentives and disincentives to reporting; (3) test the reliability of hospital abstractors to properly distinguish between work-related and non-work-related injuries; and (4) evaluate the feasibility, need, and requirements for a future larger study. Results will be disseminated in multiple forms to reach a variety of

occupational health and safety stakeholders.

This project will use the occupational and the all injuries supplements to the National Electronic Injury Surveillance System (NEISS–Work and NEISS–AIP, respectively) to identify telephone interview survey participants. NEISS–Work and NEISS–AIP, collected by the Consumer Product Safety Commission (CPSC), capture people who were treated in the emergency department (ED) for a work-related illness or injury (NEISS–Work) or any injury, regardless of work-relatedness (NEISS–AIP). Interview respondents will come from two subgroups—individuals treated for a work-related injury and individuals who were treated for a non-work-related injury but who were employed during the time period that the injury occurred.

Data collection for the telephone interview survey will be done via a questionnaire. This questionnaire contains questions about the respondent's injury that sent them to the ED, the characteristics of the job they were working when they were injured, their experiences reporting their injury to the ED and their employer (if applicable), and their beliefs about the process and subsequent consequences of reporting an injury. The questionnaire was designed to take 30 minutes to complete. It contains a brief introduction that includes the elements of informed consent and asks for verbal consent to be given. The study has received a waiver of written informed consent by the NIOSH Human Subjects Review Board. The questionnaire includes a brief series of questions to screen out individuals who were not employed at the time the injury occurred or was made worse; who are younger than age 20 or older than age 64; who do not speak English; who were employed on a farm or ranch or were self-employed, an independent contractor, or a day laborer at the time of injury; who did not experience an acute injury; or who missed more than three days from work because of the injury. The informed consent procedure and screening questions take around five minutes to complete.

Approximately 600 interviews will be completed. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Number of respondents	Average burden per response (in hours)	Total burden hours
U.S. workers with work-related injury	600	30/60	300
U.S. workers with non-work-related injury	600	30/60	300
Total			600

Dated: August 15, 2011.

Daniel Holcomb,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–21197 Filed 8–18–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–11–11EF]

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 e-mail 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

Dynamic Decision Making in Mine Emergency Situations—Existing Collection in use without an OMB control number—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Mining is a context filled with tragic outcomes, as thousands of miners die in mining accidents each year throughout the world. In the process of examining workers' responses in emergency situations in mines, researchers at the NIOSH-Pittsburgh Research Laboratory (PRL) have found that one of the key human behavior processes that need to be better understood to better handle emergency situations is Decision Making (Vaught, Brnich, & Mallett, 2004). Decision Making, the process by which alternatives are constructed and a choice is made, continues to be one of the critically understudied aspects of mine emergencies. For example, The Mine Safety Technology and Training (MSTT) Commission suggests that escape/rescue decision-making is one of the most critical skill/knowledge gaps identified in mining (MSTTC, 2006). Their report strongly supports the need for additional training in decision-making during emergency situations to improve the ability of miners to escape (or be rescued).

The research proposed here will help address this gap by integrating the theoretical knowledge of human decision making in dynamic situations with the practical aspects of training miners. The research will result in the improved science of decision making and practical guidelines and tools that demonstrate how to best train decision making in the unique conditions of accidents when under workload, uncertainty, and time constraints.

A simple Decision Making Game (DMGame) was used in a laboratory study to investigate choice strategies based on the dynamic development of cues. Through a contract with the Centers for Disease Control and Prevention (Contract #200–2009–31403), the Dynamic Decision Making Laboratory at Carnegie Mellon University will investigate several independent variables relevant to Instance-Based Learning Theory, including: the diversity of instances, the number of instances (base rates) needed to improve accuracy in the triage process, and the effects of time constraints and workload on the effectiveness of triage. The manipulation of these independent variables will reveal training scenarios and conditions that are more effective during learning and at transfer. Knowledge acquired during training will be tested in transfer conditions. The transfer conditions will vary depending on the participants used in the

experiment. New guidelines for training for unexpected situations will be developed from the results of the laboratory experiment. The results and guidelines will be published in journal research papers and presented in international conferences and meeting.

The Dynamic Decision Making Laboratory conducted this research with a total of 28 students from Carnegie Mellon University and the University of Pittsburgh between January 2010 and December 2010. Participants were recruited through an online research participant pool from Carnegie Mellon University and the University of Pittsburgh to participate in a simple DMGame, called the ''Work Hazard Game.'' Participants were asked to read and sign a consent form. After signing the form, participants were provided with instructions on how to play the game. They then completed the Work Hazard Game. Overall, participation lasted about 30 minutes. The game recorded participants' actions and the data was transferred to statistical software (*i.e.,* SPSS) for analysis. There were no costs to respondents other than their time. The total estimated annual burden hours are 14.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents for DM Game	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Student	28	1	30/60

Dated: August 15, 2011.

Daniel Holcomb,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–21200 Filed 8–18–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–11–11JZ]

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

Underreporting of Occupational Injuries and Illnesses by Workers—New—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

In 2008, the Congressional Committee on Education and Labor released the report, ''Hidden Tragedy: Underreporting of Workplace Injuries and Illnesses,'' indicating ''that work-related injuries and illnesses in the United States are chronically and even grossly underreported.'' This report focused on employer-based reporting of occupational injuries and illnesses and the associated underreporting. Based in part on the report's results, Congress allocated funds for NIOSH to conduct a follow-up study using the NIOSH's occupational supplement to the National Electronic Injury Surveillance System (NEISS–Work) to estimate underreporting among individuals who seek care at an ED for an occupational illness, injury, or exposure. NEISS–Work, collected by the Consumer Product Safety Commission (CPSC), captures people who were treated in the emergency department (ED) for work-related injuries or illnesses.

Objectives for this project are to (1) assess the reporting behavior of workers that are injured, ill, or exposed to a harmful substance at work; (2) characterize the chronic aspects of work-related injuries or illnesses; and (3) estimate the prevalence of work-related chronic injuries and illnesses among United States workers treated in emergency departments (EDs). Particular attention will be paid to self-employed workers, workers with work-related illnesses, and workers with chronic health problems.

Data collection for the telephone interview survey will be done via a questionnaire containing questions about the respondent's injury, illness, or exposure that sent them to the ED; the characteristics of the job they were working when they were injured, became ill, or were exposed; their experiences reporting their injury, illness, or exposure to the ED and their employer (if applicable); the presence of an underlying chronic condition that is associated with their ED visit; and the nature of any other work-related chronic conditions they have experienced. The questionnaire was designed to take 30 minutes to complete. It contains a brief introduction that includes the elements of informed consent and asks for verbal consent to be given. The study has received a waiver of written informed consent by the NIOSH Human Subjects Review Board. The questionnaire includes a brief series of questions to screen out individuals who were not seen in the ED for a work-related injury, illness, or exposure; who are younger than age 20 or older than age 64; who do not speak English or Spanish; or who were working as volunteers or day laborers when the injury, illness, or exposure occurred or was made worse. The informed consent procedure and screening questions take approximately five minutes to complete.

It is estimated that between 1,500 and 3,000 interviews will be completed. There is no cost to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
U.S. workers	3,000	1	.5	1,500
Total				1,500

Dated: August 15, 2011.

Daniel Holcomb,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–21196 Filed 8–18–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–11–11HJ]

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 e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Comparing the Effectiveness of Traditional Evidence-Based Tobacco Cessation Interventions to Newer and Innovative Interventions Used by Comprehensive Cancer Control Programs—New—National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Centers for Disease Control and Prevention (CDC) provides funding and technical assistance for tobacco control through Tobacco Control Programs (TCPs), which offer evidence-based cessation interventions to increase successful quit attempts. CDC also supports Comprehensive Cancer Control (CCC) programs, which address cancer-related interventions from primary prevention to treatment and survivorship. TCPs and CCC programs are based in states, the District of Columbia, Tribal organizations, and U.S. territories.

Evidence-based tobacco cessation interventions include counseling offered through telephone quitlines (QLs) as well as Web-based counseling services. Mass media (*e.g.,* television, radio, print) has been shown to be the most important and consistent driver of call volume to QLs in some localities, but is resource intensive. To date there are no comprehensive studies that have examined TCP promotional strategies, the populations affected by these strategies, and their effect on QL and Web-based cessation program usage.

To address this gap in knowledge, CDC proposes to conduct a new study of state-based TCPs and their client populations. The study will consist of two components: (1) Quitline promotional activities, and (2) cessation intervention. The promotional activities component involves secondary analysis of information already collected by TCPs and CCC programs. The cessation intervention component involves new information collection.

Quitline Promotional Activities. The overall goal of this study component is to characterize state-based TCP promotional activities in terms of type and level of advertising; impact in relation to QL call volume; and client characteristics. Up to 50 state-based TCPs will be asked to participate. Existing sources of information will be used to minimize burden to respondents. Participating states will provide CDC with media purchasing information related to cessation promotional activities and permission to extract de-identified QL call volume data from the National Quitline Data Warehouse (NQDW, OMB No. 0920–0856, exp. 7/31/2012). Information will be transmitted to CDC on a quarterly basis. The estimated burden for each electronic transmission is 10 minutes.

Cessation Intervention. The overall goal of this study component is to describe relationships among mode of cessation service delivery (telephone vs. Web); client demographics; and quit success in the last 30 days. Participating TCPs in up to four states will use existing sources of information to produce study files containing client intake data, *i.e.,* information obtained from clients when they request tobacco cessation services through a telephone Quitline or a Web-based service. TCPs will transmit intake information to CDC four times per year. The estimated burden of each transmission is 15 minutes.

CDC also plans to conduct a follow-up data collection with a total of 8,000 individuals aged ≥ 18 years who have voluntarily agreed to participate in the study (4,000 clients who use QL services and 4,000 clients who use Web-based services). The 15-minute follow-up survey will be administered online or by telephone. Clients who choose not to participate in the study will receive regular access to QL or Web-based cessation services.

The results of this study will provide TCPs, policy makers, CDC, and others with information about the impact of promotional activities and the comparative effectiveness of traditional versus new and innovative cessation services. This study is funded through the American Reinvestment and Recovery Act (ARRA).

Information will be collected over a 24-month period. OMB approval is requested for two and one-half years to permit flexibility in scheduling start and stop dates. There are no costs to respondents other than their time. The total estimated annualized burden hours are 1,037.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hr)
Tobacco Control Programs	Quitline Promotion Activities Data	50	4	10/60
	Intake Data for QL Clients	2	4	15/60
	Intake Data for Web Services Clients	2	4	15/60
Quitline Clients	Follow-up Survey for QL Clients	2,000	1	15/60
Web Services Clients	Follow-up Survey for Web Clients	2,000	1	15/60

Dated: August 15, 2011.

Daniel Holcomb,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–21204 Filed 8–18–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

The meeting announced below concerns Special Interest Project (SIP): Systematic Review of Effective Community-based Interventions of Clinical Preventive Services for Older Adults, SIP11–045, initial review.

Correction: This notice was published in the **Federal Register** on August 11, 2011, Volume 76, Number 155, Page 49771. The time for the aforementioned meeting has been changed to the following.

Time

12 p.m.–2 p.m., August 31, 2011 (Closed).

Contact Person for More Information: Robin Hamre, M.P.H., R.D., Scientific Review Officer, Extramural Research Program Office, National Center for Chronic Disease Prevention and Health Promotion, CDC, 4770 Buford Highway, NE., Mailstop K–92, Atlanta, Georgia 30341, *RWH9@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elizabeth Millington,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2011–21217 Filed 8–18–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

ICD–9–CM Coordination and Maintenance Committee Meeting

National Center for Health Statistics (NCHS), Classifications and Public Health Data Standards Staff, announces the following meeting.

Name: ICD–9–CM Coordination and Maintenance Committee meeting.

Time and Date: 9 a.m.–5:30 p.m., September 14, 2011.

Place: Centers for Medicare and Medicaid Services (CMS) Auditorium, 7500 Security Boulevard, Baltimore, Maryland 21244.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 240 people.

Security Considerations: Due to increased security requirements CMS has instituted stringent procedures for entrance into the building by non-government employees. Attendees will need to present valid government-issued picture identification, and sign-in at the security desk upon entering the building. Attendees who wish to attend a specific ICD–9–CM C&M meeting on September 14, 2011, must submit their name and organization by September 9, 2011, for inclusion on the visitor list. This visitor list will be maintained at the front desk of the CMS building and used by the guards to admit visitors to the meeting.

Participants who attended previous ICD–9–CM C&M meetings will no longer be automatically added to the visitor list. You must request inclusion of your name prior to each meeting you attend.

Please register to attend the meeting on-line at: *http://www.cms.hhs.gov/apps/events/.* Please contact Mady Hue (410–786–4510 or *Marilu.hue@cms.hhs.gov*), for questions about the registration process.

Purpose: The ICD–9–CM Coordination and Maintenance (C&M) Committee is a public forum for the presentation of proposed modifications to the International Classification of Diseases, Ninth-Revision, Clinical Modification.

Matters To Be Discussed: Agenda items include:

September 14, 2011

ICD–10 Updates

2012 ICD–10–PCS.

2012 ICD–10–PCS GEM and Reimbursement Map Updates.

ICD–10–PCS Official Coding Guidelines.

ICD–10 MS–DRGs.

ICD–9–CM Procedure Topics

Electromagnetic Tip Tracked Sensor devices used in lung bronchoscopy and lung biopsy procedures.

Extracorporeal Heart and Lung Assist System, including Membrane Oxygenation, CO_2 Removal.

ICD–10–PCS Topics

Implantable meshes.

ICD–10–CM Diagnosis Topics

Aggressive periodontitis.

Chronic Fatigue Syndrome.

Chronic periodontitis.

Gingival recession.

Agenda items are subject to change as priorities dictate.

Note: CMS and NCHS will no longer provide paper copies of handouts for the meeting. Electronic copies of all meeting materials will be posted on the CMS and NCHS websites prior to the meeting at *http://www.cms.hhs.gov/ICD9ProviderDiagnosticCodes/03_meetings.asp#TopOfPage* and *http://www.cdc.gov/nchs/icd/icd9cm_maintenance.htm.*

Contact Persons for Additional Information: Donna Pickett, Medical Systems Administrator, Classifications and Public Health Data Standards Staff, NCHS, 3311 Toledo Road, Room 2337, Hyattsville, Maryland 20782, e-mail *dfp4@cdc.gov,* telephone 301–458–4434 (diagnosis); Mady Hue, Health Insurance Specialist, Division of Acute Care, CMS, 7500 Security Boulevard, Baltimore, Maryland 21244, e-mail *marilu.hue@cms.hhs.gov,* telephone 410–786–4510 (procedures).

The Director, Management Analysis and Services Office, has been delegated

the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry.

Dated: August 10, 2011.

Elizabeth Millington,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2011–21167 Filed 8–18–11; 8:45 am]

BILLING CODE 4160–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

President's Committee for People With Intellectual Disabilities (PCPID); Notice of Meeting

AGENCY: President's Committee for People with Intellectual Disabilities (PCPID), Administration for Children and Families, HHS.

ACTION: Notice of meeting.

DATES: Monday, September 26, 2011, from 8:30 a.m. to 5 p.m. EST; and Tuesday, September 27, 2011, from 9 a.m. to 5 p.m. EST. The meeting will be open to the public.

ADDRESSES: The meeting will be held in Conference Room 505–A of the Hubert H. Humphrey Building, U.S. Department of Health and Human Services, 200 Independence Avenue, SW., Washington, DC 20201. Individuals who would like to participate via conference call may do so by dialing 800–857–4846, pass code: 14201. Individuals who will need accommodations for a disability in order to attend the meeting (*e.g.,* sign language interpreting services, assistive listening devices, materials in alternative format such as large print or Braille) should notify Genevieve Swift, PCPID Executive Administrative Assistant, via e-mail at *Edith.Swift@acf.hhs.gov,* or via telephone at 202–619–0634, no later than Monday, September 19, 2011. PCPID will attempt to meet requests for accommodations made after that date, but cannot guarantee ability to grant requests received after this deadline. All meeting sites are barrier free.

Agenda: Committee members will discuss preparation of the PCPID 2011 Report to the President, including its content and format, and related data collection and analysis required to complete the writing of the Report.

Additional Information: For further information, please contact Laverdia Taylor Roach, Senior Advisor, President's Committee for People with Intellectual Disabilities, The Aerospace Center, Second Floor West, 370 L'Enfant Promenade, SW., Washington, DC 20447. Telephone: 202–619–0634. Fax: 202–205–9519. E-mail: *LRoach@acf.hhs.gov.*

SUPPLEMENTARY INFORMATION: PCPID acts in an advisory capacity to the President and the Secretary of Health and Human Services, through the Administration on Developmental Disabilities, on a broad range of topics relating to programs, services and supports for persons with intellectual disabilities. The PCPID Executive Order stipulates that the Committee shall: (1) Provide such advice concerning intellectual disabilities as the President or the Secretary of Health and Human Services may request; and (2) provide advice to the President concerning the following for people with intellectual disabilities: (A) Expansion of educational opportunities; (B) promotion of homeownership; (C) assurance of workplace integration; (D) improvement of transportation options; (E) expansion of full access to community living; and (F) increasing access to assistive and universally designed technologies.

Dated: August 12, 2011.

Jamie Kendall,

Deputy Commissioner, Administration on Developmental Disabilities.

[FR Doc. 2011–21240 Filed 8–18–11; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0410]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Premarket Notification for a New Dietary Ingredient

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Fax written comments on the collection of information by September 19, 2011.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or e-mailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0330. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Jr., Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3793.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Premarket Notification for a New Dietary Ingredient—21 CFR 190.6—(OMB Control Number 0910–0330)—Extension

Section 413(a) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 350b(a)) provides that at least 75 days before the introduction or delivery for introduction into interstate commerce of a dietary supplement that contains a new dietary ingredient (NDI), a manufacturer or distributor of an NDI, or of the dietary supplement that contains the NDI, is to submit to FDA (as delegate for the Secretary of Health and Human Services) the information which is the basis on which the manufacturer or distributor has concluded that a dietary supplement containing an NDI will reasonably be expected to be safe. Section 190.6 (21 CFR 190.6) implements this statutory provision. Section 190.6(a) requires each manufacturer or distributor of a dietary supplement containing an NDI, or of an NDI, to submit to the Office of Nutrition, Labeling, and Dietary Supplements notification of the basis for their conclusion that said supplement or ingredient will reasonably be expected to be safe. Section 190.6(b) requires that the notification include the following: (1) The complete name and address of the manufacturer or distributor, (2) the name of the NDI, (3) a description of the dietary supplements that contain the NDI, and (4) the history of use or other evidence of safety establishing that the dietary ingredient will reasonably be expected to be safe.

The notification requirements described previously are designed to enable FDA to monitor the introduction into the food supply of NDIs and dietary supplements that contain NDIs, in order to protect consumers from the introduction of unsafe dietary supplements into interstate commerce. FDA uses the information collected under these regulations to help ensure that a manufacturer or distributor of a dietary supplement containing an NDI is in full compliance with the FD&C Act.

Description of Respondents: The respondents to this collection of information are firms in the dietary supplement industry, including dietary supplement and dietary ingredient manufacturers, packagers and re-packagers, holders, labelers and re-labelers, distributors, warehouses, exporters, and importers.

In the **Federal Register** of June 3, 2011 (76 FR 32214), FDA published a 60-day notice (the June 3, 2011, notice) requesting public comment on the proposed extension of this collection of information. FDA received five letters in response to the notice, each containing multiple comments. Several comments were generally supportive of FDA's information collection provisions in § 190.6. Additional comments were outside the scope of the four collection of information topics on which the notice solicits comments, and will not be discussed in this document.

(Comment 1) FDA received several comments on the utility of the premarket notification procedures. Some comments stated that the information collection is necessary for the performance of FDA's functions and that the information will be of great practical utility to FDA in carrying out its role of protecting consumers from the introduction of unsafe dietary supplements into interstate commerce.

(Response) FDA agrees. As noted, section 413(a) of the FD&C Act requires a manufacturer or distributor of an NDI, or of the dietary supplement that contains the NDI, to submit the information which is the basis on which the manufacturer or distributor has concluded that a dietary supplement containing an NDI will reasonably be expected to be safe. Section 190.6 implements this statutory provision, and is essential to protecting consumers from unsafe dietary supplements.

(Comment 2) Several comments argued that FDA underestimated the burden hours associated with complying with the provisions of § 190.6. One comment argued that FDA's estimate of 20 hours per notification is too low and stated that firms filing notifications require 100 to 350 hours to generate data to meet the requirements of an NDI notification. The comment argued that FDA did not fully consider the time needed to acquire the required information.

(Response) FDA disagrees. FDA appreciates the data provided in the comment. However, the Agency stands by its estimate of the paperwork burden resulting from § 190.6. As noted in the June 3, 2011, notice, § 190.6(a) requires each manufacturer or distributor of a dietary supplement containing an NDI, or of an NDI, to submit notification of the basis for their conclusion that said supplement or ingredient will reasonably be expected to be safe. The Agency believes that there is minimal burden on the industry to generate data to meet the requirements of the premarket notification program because the Agency is requesting only that information that the manufacturer or distributor should already have developed as the basis for its conclusion that a dietary supplement containing an NDI will reasonably be expected to be safe. Therefore, the Agency estimates that extracting and summarizing the relevant information from the company's files, and presenting it in a format that will meet the requirements of section 413(a) of the FD&C Act and § 190.6 will require a burden of approximately 20 hours of work per submission.

(Comment 3) One comment argued that FDA's estimate of 20 hours per notification is too low and stated that FDA should use burden hour data from ''successful'' notifications only, indicating that the number of hours spent on notifications to which FDA does not object more accurately reflect the burden on industry.

(Response) FDA disagrees that the estimate of 20 hours per notification is too low for the reasons stated in response to Comment 2. In addition, the Agency does not regularly collect from those submitting notifications under § 190.6 information about the number of hours they spent preparing the notifications, whether ''successful'' or ''unsuccessful.'' FDA appreciates the suggestion provided in the comment, however, and will consider doing so when it prepares its next regular information collection request for this collection.

(Comment 4) One comment argued that FDA's estimate that it will receive 55 premarket notifications annually is inaccurate and ''deeply flawed.''

(Response) FDA disagrees that the estimate of 55 notifications annually is inaccurate. As stated in the June 3, 2011, notice, the estimated number of premarket notifications is an average based on the Agency's experience with notifications received during the last 3 years. FDA received 77 notifications in 2008, 39 notifications in 2009, and 48 notifications in 2010, for an average of 55 notifications. The sum of 77 + 39 + 48 equals 164. Dividing that sum by 3 yields an average of 54.66, which has been rounded up to 55.

(Comment 5) Several comments argued that FDA incorrectly estimated that there are no capital costs associated with submitting premarket notifications under § 190.6. Comments argued that FDA did not fully consider that notifiers invest significant capital resources in hiring consultants to extract and summarize information for NDI notifications, paying for full-text scientific journal articles and obtaining legal review of NDI notifications.

(Response) FDA disagrees. The comment mischaracterizes the significant costs associated with hiring consultants, obtaining reference materials, and securing legal review of a notification as capital costs. For purposes of information collection requests under the PRA, capital costs are costs for equipment, machinery, and construction that, if not for FDA's request or requirement, the respondent would not incur. This includes buying new software and new computer equipment; monitoring, sampling, drilling and testing equipment; record storage facilities; the cost of purchasing or contracting out information collection services; and, postage costs to mail in a report. Capital costs do not include costs to achieve regulatory compliance with requirements not associated with the information collection. Hiring consultants to extract and summarize information for NDI notifications, paying for full-text scientific journal articles and obtaining legal review of NDI notifications are costs associated with developing information that the manufacturer or distributor uses to satisfy itself that a dietary supplement containing an NDI is in full compliance with section 413(a) of the FD&C Act; thus, these costs are not a capital cost because they are costs associated with achieving regulatory compliance with requirements of the FD&C Act, not costs associated specifically with filing a notification under § 190.6. FDA notes that it has added a reference to these costs as ''Costs to Respondent'' in section 12(b) of the supporting statement component of the information collection request that it has submitted to OMB.

(Comment 6) Several comment letters noted that on July 5, 2011, FDA issued a draft guidance entitled ''Dietary Supplements: New Dietary Ingredient

Notifications and Related Issues'' (available at *http://www.fda.gov/Food/GuidanceComplianceRegulatoryInformation/GuidanceDocuments/DietarySupplements/ucm257563.htm*). Some comments argued that FDA underestimated the burden of the notification procedures under § 190.6 because it failed to take into account the provisions of the new draft guidance.

(Response) FDA disagrees that we underestimated the burden of the notification procedures under § 190.6. The collection of information analysis in the June 3, 2011, notice was limited to the sole collection of information contained in § 190.6; that is, the regulation itself and not the provisions of the new draft guidance. The notification requirements set forth in § 190.6 remain unchanged. The notice of availability for the new draft guidance (76 FR 39111, July 5, 2011) states that FDA will estimate the paperwork burden of the draft guidance document and submit it for OMB review under the PRA in a future issue of the **Federal Register**. Comments on the new draft guidance and any information collection provisions therein are outside the scope of the comment request in the June 3, 2011, notice, and will not be discussed in this document.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR Section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
190.6	55	1	55	20	1,100

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

As previously discussed, the Agency believes that there will be minimal burden on the industry to generate data to meet the requirements of the premarket notification program because the Agency is requesting only that information that the manufacturer or distributor should already have developed as the basis for its conclusion that a dietary supplement containing an NDI will reasonably be expected to be safe. Therefore, the Agency estimates that extracting and summarizing the relevant information from the company's files, and presenting it in a format that will meet the requirements of section 413(a) of the FD&C Act and § 190.6 will require a burden of approximately 20 hours of work per submission.

The estimated number of premarket notifications and hours per response is an average based on the Agency's experience with notifications received during the last 3 years and information from firms that have submitted recent premarket notifications. FDA received 77 notifications in 2008, 39 notifications in 2009, and 48 notifications in 2010, for an average of 55 notifications. Accordingly, we estimate that 55 respondents will submit 1 premarket notification each and that it will take a respondent 20 hours to prepare the notification, for a total of 1,100 hours.

Dated: August 15, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–21237 Filed 8–18–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0403]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Substantiation for Dietary Supplement Claims Made Under the Federal Food, Drug, and Cosmetic Act

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by September 19, 2011.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or e-mailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0626. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Jr., Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3793.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Substantiation for Dietary Supplement Claims Made Under the Federal Food, Drug, and Cosmetic Act—21 U.S.C. 343(r)(6)—(OMB Control Number 0910–0626)—Extension

Section 403(r)(6) of the Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 343(r)(6)) requires that a manufacturer of a dietary supplement making a nutritional deficiency, structure/function, or general well-being claim have substantiation that the statement is truthful and not misleading. Under section 403(r)(6)(A) of the FD&C Act, such a statement is one that ''claims a benefit related to a classical nutrient deficiency disease and discloses the prevalence of such disease in the United States, describes the role of a nutrient or dietary ingredient intended to affect the structure or function in humans, characterizes the documented mechanism by which a nutrient or dietary ingredient acts to maintain such structure or function, or describes general well-being from consumption for a nutrient or dietary ingredient.''

The guidance document entitled ''Substantiation for Dietary Supplement Claims Made Under Section 403(r)(6) of the Federal Food, Drug, and Cosmetic Act'' provides FDA's recommendations to manufacturers about the amount, type, and quality of evidence they should have to substantiate a claim under section 403(r)(6) of the FD&C Act. The guidance does not discuss the types of claims that can be made concerning

the effect of a dietary supplement on the structure or function of the body, nor does it discuss criteria to determine when a statement about a dietary supplement is a disease claim. The guidance document is intended to assist manufacturers in their efforts to comply with Section 403(r)(6). Persons with access to the Internet may obtain the guidance at *http://www.cfsan.fda.gov/~dms/guidance.html.*

Dietary supplement manufacturers collect the necessary substantiating information for their product as required by section 403(r)(6) of the FD&C Act. The guidance provides information to manufacturers to assist them in doing so. The recommendations contained in the guidance are voluntary. Dietary supplement manufacturers will only need to collect information to substantiate their product's nutritional deficiency, structure/function, or general well-being claim if they choose to place a claim on their product's label.

The standard discussed in the guidance for substantiation of a claim on the labeling of a dietary supplement is consistent with standards set by the Federal Trade Commission for dietary supplements and other health-related products that the claim be based on competent and reliable scientific evidence. This evidence standard is broad enough that some dietary supplement manufacturers may only need to collect peer-reviewed scientific journal articles to substantiate their claims; other dietary supplement manufacturers whose products have properties that are less well documented may have to conduct studies to build a body of evidence to support their claims. It is unlikely that a dietary supplement manufacturer will attempt to make a claim when the cost of obtaining the evidence to support the claim outweighs the benefits of having the claim on the product's label. It is likely that manufacturers will seek substantiation for their claims in the scientific literature.

The time it takes to assemble the necessary scientific information to support their claims depends on the product and the claimed benefits. If the product is one of several on the market making a particular claim for which there is adequate publicly available and widely established evidence supporting the claim, then the time to gather supporting data will be minimal; if the product is the first of its kind to make a particular claim or the evidence supporting the claim is less publicly available or not widely established, then gathering the appropriate scientific evidence to substantiate the claim will be more time consuming.

In the **Federal Register** of June 3, 2011 (76 FR 32215), FDA published a 60-day notice requesting public comment on the proposed extension of this collection of information. FDA received five letters in response to the notice, each containing multiple comments. Several comments were generally supportive of the necessity of the information collection provisions of the guidance. Additional comments were outside the scope of the four collection of information topics on which the notice solicits comments, and will not be discussed in this document.

(Comment 1) Several comment letters noted the accuracy of FDA's estimate of the burden hours, which ranges from 44 to 120 hours per claim depending upon the nature of the claim.

(Response) FDA agrees. As discussed in this notice, if the product is one of several on the market making a particular claim for which there is adequate publicly available and widely established evidence supporting the claim, then the time to gather supporting data will be minimal; if the product is the first of its kind to make a particular claim or the evidence supporting the claim is less publicly available or not widely established, then gathering the appropriate scientific evidence to substantiate the claim will be more time consuming.

(Comment 2) One comment stated that FDA incorrectly estimated that there are no capital costs associated with developing information that meets the guidance's recommendations to manufacturers about the amount, type, and quality of evidence they should have to substantiate a claim under section 403(r)(6) of the FD&C Act. The comment argued that FDA did not fully consider that manufacturers invest significant capital resources in subscriptions to scientific journals and libraries to gain access to full-text scientific literature, consultants to develop appropriate wording for claims, and legal review of claims.

(Response) FDA disagrees. The comment mischaracterizes the significant costs associated with hiring consultants, obtaining reference materials, and securing legal review of a notification as capital costs. For purposes of information collection requests under the Paperwork Reduction Act, capital costs are costs for equipment, machinery, and construction that, if not for FDA's request or requirement, the respondent would not incur. This includes: Buying new software and new computer equipment; monitoring, sampling, drilling and testing equipment; record storage facilities; the cost of purchasing or contracting out information collection services; and postage costs to mail in a report. Capital costs do not include costs to achieve regulatory compliance with requirements not associated with the information collection. Subscriptions to scientific journals and libraries to gain access to full-text scientific literature, hiring consultants to develop appropriate wording for claims, and legal review of claims are costs associated with developing information that the manufacturer uses to satisfy itself that it has met the guidance's recommendations to manufacturers about the amount, type, and quality of evidence they should have to substantiate a claim under section 403(r)(6) of the FD&C Act; thus, these costs are not capital costs because they are costs associated with achieving regulatory compliance with requirements of the FD&C Act, not costs associated specifically with equipment, machinery, and construction needed to retain appropriate substantiating evidence. FDA notes that it has added a reference to these costs as ''Costs to Respondent'' in section 12(b) of the supporting statement component of the Information Collection Request that it has submitted to OMB.

(Comment 3) One comment suggested that, to enhance the quality, utility and clarity of the information as well as minimize the burden of collection on manufacturers, FDA explore options for electronic submission and a digital, interactive database so the information can be easily reviewed, collated, analyzed and reported.

(Response) FDA notes that dietary supplement manufacturers making a nutritional deficiency, structure/function, or general well-being claim are required by section 403(r)(6) of the FD&C Act to have substantiation that the claim is truthful and not misleading. There is no requirement in the FD&C Act or recommendation in the guidance document that manufacturers submit the substantiation information to FDA. The information is retained by the manufacturers in their records. The guidance does not specifically prescribe the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology as necessary for use by dietary supplement manufacturers. Companies are free to use whatever forms of information technology that may best assist them in developing substantiation information.

(Comment 4) One comment stated that FDA should provide clarity on what type of evidence is needed to substantiate a traditional use claim. The

comment argued that Canada, the European Union, and Australia recognize traditional use evidence to support appropriate claim statements. The comment stated that several authoritative labeling standards monographs for herbal products specify traditional use claim statements, such as Health Canada Natural Health Products Directorate (NHPD) monographs, European Medicines Agency (EMA) European Community Herbal Monographs, and World Health Organization (WHO) Monographs on Selected Medicinal Plants. The comment recommended that FDA allow such monographs as acceptable pieces of evidence to substantiate a traditional use claim. The comment concluded that FDA's acceptance of label claim statements listed in appropriate monographs and clear guidance on other types of evidence that could be used to substantiate traditional use claims would significantly reduce the burden of collecting such information.

(Response) FDA disagrees that traditional use evidence is sufficient to meet the substantiation standard of competent and reliable scientific evidence applied by FDA in ''Guidance for Industry: Substantiation for Dietary Supplement Claims Made Under Section 403(r)(6) of the Federal Food, Drug, and Cosmetic Act.'' A claim based on historical or traditional use is not a claim that is substantiated by scientific evidence. Claims permitted by foreign and international monographs do not always have to be substantiated by scientific studies but may be acceptable if, in some cases, they are accompanied by disclosures that the claim is not scientifically established or are deemed appropriate merely by their history of use for a particular intended use. Therefore, FDA does not believe that these monographs are adequate to meet the substantiation standard applied by FDA.

(Comment 5) One comment suggested that FDA should identify monographs that are already recognized in other countries as substantiation for claims made for products that are manufactured in strict conformity to these monographs. The comment identified two specific compendia of monographs and recommended that FDA recognize these monographs as ''constituting in and of themselves substantiation for a pre-existing widely established claim that may be made for a dietary supplement under section 403(r)(6) of the FD&C Act, so long as the claim is not a drug claim and is significantly similar to the use or purpose described in a monograph, and the conditions and level of use of the ingredient(s) that is the basis of the claim is within the dosage range described in the monograph.''

(Response) FDA disagrees that foreign or other third-party monographs assure that a claim is substantiated by competent and reliable scientific evidence, which is the standard applied by FDA. Claims that may be permitted by foreign and international monographs do not always have to be substantiated by scientific studies but may be acceptable if substantiated, in whole or in part, by evidence not deemed adequate for a claim made for a dietary supplement in the United States, such as animal data or traditional medicinal use. Therefore, FDA does not believe that these monographs are adequate to meet the substantiation standard applied by FDA

(Comment 6) One comment argued that FDA overestimated the burden of the information collection by overestimating the number of respondents. The comment noted that FDA's website contains a list of notifications submitted in compliance with the requirements of 21 CFR 101.93 (a)(1) and stated that their review of the notices submitted between December 2007 and August 2010 indicates that the Agency has received an average of approximately 1,600 to 1,650 annually during this time, not the 2,001 per year estimated by FDA.

(Response) FDA disagrees that it has overestimated the number of respondents and stands by the estimate of 2,001 annual respondents for the next 3 years. The number of such notifications received by FDA in any given year can vary quite widely (by up to 300). In addition, the number of firms keeping records in anticipation of submitting a notification may be greater than the number of notification submitted. Thus, FDA believes retaining the estimate of 2,001 from the prior submission is appropriate.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Claim type	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Widely known, established	667	1	667	44	29,348
Pre-existing, not widely established	667	1	667	120	80,040
Novel	667	1	667	120	80,040
Total					189,428

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA assumes that it will take 44 hours to assemble information needed to substantiate a claim on a particular dietary supplement when the claim is widely known and established. FDA believes it will take closer to 120 hours to assemble supporting scientific information when the claim is novel or when the claim is pre-existing but the scientific underpinnings of the claim are not widely established. These are claims that may be based on emerging science, where conducting literature searches and understanding the literature takes time. It is also possible that references for claims made for some dietary ingredients or dietary supplements may primarily be found in foreign journals and in foreign languages or in the older, classical literature where it is not available on computerized literature databases or in the major scientific reference databases, such as the National Library of Medicine's literature database, all of which increases the time of obtaining substantiation.

In the **Federal Register** of January 6, 2000, FDA published a final rule on statements made for dietary supplements concerning the effect of the product on the structure or function of the body (65 FR 1000). FDA estimated that there were 29,000 dietary supplement products marketed in the United States (65 FR 1000 at 1045). Assuming that the flow of new products is 10 percent per year, then 2,900 new dietary supplement products will come on the market each year. The structure/function final rule estimated that about 69 percent of dietary supplements have a claim on their labels, most probably a

structure/function claim (65 FR 1000 at 1046). Therefore, we assume that supplement manufacturers will need time to assemble the evidence to substantiate each of the 2,001 claims (2,900 × 69 percent) made each year. If we assume that the 2,001 claims are equally likely to be pre-existing widely established claims, novel claims, or pre-existing claims that are not widely established, then we can expect 667 of each of these types of claims to be substantiated per year. Table 1 of this document shows that the annual burden hours associated with assembling evidence for claims is 189,428 (the sum of 667 × 44 hours, 667 × 120 hours, and 667 × 120 hours).

Dated: August 15, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–21236 Filed 8–18–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–P–0628]

Determination That PENTETATE CALCIUM TRISODIUM (Trisodium Calcium Diethylenetriaminepentaacetate) Solution for Intravenous or Inhalation Administration, Equivalent to 1 Gram Base/5 Milliliters (Equivalent to 200 Milligrams Base/Milliliter), Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined that PENTETATE CALCIUM TRISODIUM (trisodium calcium diethylenetriaminepentaacetate (Ca-DTPA)) solution for intravenous or inhalation administration, equivalent to (EQ) 1 gram (g) base/5 milliliters (mL) (EQ 200 milligrams (mg) base/mL) was not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for PENTETATE CALCIUM TRISODIUM (Ca-DTPA) solution for intravenous or inhalation administration (EQ 1 g base/5 mL (EQ 200 mg base/mL)), if all other legal and regulatory requirements are met.

FOR FURTHER INFORMATION CONTACT: Alexis Reisin Miller, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6356, Silver Spring, MD 20993–0002, 301–796–3977.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products under an ANDA procedure. ANDA applicants must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA). The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is known generally as the ''Orange Book.'' Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

A person may petition the Agency to determine, or the Agency may determine on its own initiative, whether a listed drug was withdrawn from sale for reasons of safety or effectiveness. This determination may be made at any time after the drug has been withdrawn from sale, but must be made prior to approving an ANDA that refers to the listed drug (§ 314.161 (21 CFR 314.161)). FDA may not approve an ANDA that does not refer to a listed drug.

PENTETATE CALCIUM TRISODIUM (Ca-DTPA) solution for intravenous or inhalation administration (EQ 1 g base/5 mL (EQ 200 mg base/mL)) is the subject of NDA 21–749, held by Hameln Pharmaceuticals GmbH, and initially approved on August 11, 2004. PENTETATE CALCIUM TRISODIUM (Ca-DTPA) solution for intravenous or inhalation administration (EQ 1 g base/5 mL (EQ 200 mg base/mL)) is indicated for treatment of individuals with known or suspected internal contamination with plutonium, americium, or curium to increase the rates of elimination.

In a letter dated June 24, 2010, Hameln Pharmaceuticals GmbH notified FDA that PENTETATE CALCIUM TRISODIUM (Ca-DTPA) solution for intravenous or inhalation administration (EQ 1 g base/5 mL (EQ 200 mg base/mL)) was being discontinued, and FDA moved the drug product to the ''Discontinued Drug Product List'' section of the Orange Book.

Heyl Chemisch-pharmazeutische Fabrik GmbH & Co. KG submitted a citizen petition dated November 26, 2010 (Docket No. FDA–2010–P–0628), under 21 CFR 10.30, requesting that the Agency determine whether PENTETATE CALCIUM TRISODIUM (Ca-DTPA) solution for intravenous or inhalation administration (EQ 1 g base/5 mL (EQ 200 mg base/mL)) was withdrawn from sale for reasons of safety or effectiveness.

After considering the citizen petition and reviewing Agency records, FDA has determined under § 314.161 that PENTETATE CALCIUM TRISODIUM (Ca-DTPA) solution for intravenous or inhalation administration (EQ 1 g base/5 mL (EQ 200 mg base/mL)) was not withdrawn for reasons of safety or effectiveness. The petitioner has identified no data or other information suggesting that PENTETATE CALCIUM TRISODIUM (Ca-DTPA) solution for intravenous or inhalation administration (EQ 1 g base/5 mL (EQ 200 mg base/mL)) was withdrawn for reasons of safety or effectiveness. We have carefully reviewed our files for records concerning the withdrawal of PENTETATE CALCIUM TRISODIUM (Ca-DTPA) solution for intravenous or inhalation administration (EQ 1 g base/5 mL (EQ 200 mg base/mL)) from sale. We have also independently evaluated relevant literature and data for possible postmarketing adverse events. We have found no information that would indicate that this product was withdrawn from sale for reasons of safety or effectiveness.

Accordingly, the Agency will continue to list PENTETATE CALCIUM TRISODIUM (Ca-DTPA) solution for intravenous or inhalation administration (EQ 1 g base/5 mL (EQ 200 mg base/mL)) in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to PENTETATE CALCIUM TRISODIUM (Ca-DTPA) solution for intravenous or inhalation

administration (EQ 1 g base/5 mL (EQ 200 mg base/mL)) may be approved by the Agency as long as they meet all other legal and regulatory requirements for the approval of ANDAs. If FDA determines that labeling for this drug product should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: August 15, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–21227 Filed 8–18–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–P–0630]

Determination That PENTETATE ZINC TRISODIUM (Zinc Trisodium Diethylenetriaminepentaacetate) Solution for Intravenous or Inhalation Administration, Equivalent to 1 Gram Base/5 Milliliters (Equivalent to 200 Milligrams Base/Milliliter), Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined that PENTETATE ZINC TRISODIUM (zinc trisodium diethylenetriaminepentaacetate (Zn-DTPA)) solution for intravenous or inhalation administration, equivalent to (EQ) 1 gram (g) base/5 milliliters (mL) (EQ 200 milligrams (mg) base per mL), was not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for PENTETATE ZINC TRISODIUM (Zn-DTPA) solution for intravenous or inhalation administration (EQ 1 g base/5 mL (EQ 200 mg base/mL)), if all other legal and regulatory requirements are met.

FOR FURTHER INFORMATION CONTACT: Alexis Reisin Miller, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6356, Silver Spring, MD 20993–0002, 301–796–3977.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products under an ANDA procedure. ANDA applicants must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA). The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is known generally as the ''Orange Book.'' Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

A person may petition the Agency to determine, or the Agency may determine on its own initiative, whether a listed drug was withdrawn from sale for reasons of safety or effectiveness. This determination may be made at any time after the drug has been withdrawn from sale, but must be made prior to approving an ANDA that refers to the listed drug (§ 314.161 (21 CFR 314.161)). FDA may not approve an ANDA that does not refer to a listed drug.

PENTETATE ZINC TRISODIUM (Zn-DTPA) solution for intravenous or inhalation administration (EQ 1 g base/5 mL (EQ 200 mg base/mL)) is the subject of NDA 21–751, held by Hameln Pharmaceuticals GmbH, and initially approved on August 11, 2004. PENTETATE ZINC TRISODIUM (Zn-DTPA) solution for intravenous or inhalation administration (EQ 1 g base/5 mL (EQ 200 mg base/mL)) is indicated for treatment of individuals with known or suspected internal contamination with plutonium, americium, or curium to increase the rates of elimination.

In a letter dated June 24, 2010, Hameln Pharmaceuticals GmbH notified the FDA that PENTETATE ZINC TRISODIUM (Zn-DTPA) solution for intravenous or inhalation administration (EQ 1 g base/5 mL (EQ 200 mg base/mL)) was being discontinued, and FDA moved the drug product to the ''Discontinued Drug Product List'' section of the Orange Book.

Heyl Chemisch-pharmazeutische Fabrik GmbH & Co. KG submitted a citizen petition dated December 6, 2010 (Docket No. FDA–2010–P–0630), under 21 CFR 10.30, requesting that the Agency determine whether PENTETATE ZINC TRISODIUM (Zn-DTPA) solution for intravenous or inhalation administration (EQ 1 g base/5 mL (EQ 200 mg base/mL)) was withdrawn from sale for reasons of safety or effectiveness.

After considering the citizen petition and reviewing Agency records, FDA has determined under § 314.161 that PENTETATE ZINC TRISODIUM (Zn-DTPA) solution for intravenous or inhalation administration (EQ 1 g base/5 mL (EQ 200 mg base/mL)) was not withdrawn for reasons of safety or effectiveness. The petitioner has identified no data or other information suggesting that PENTETATE ZINC TRISODIUM (Zn-DTPA) solution for intravenous or inhalation administration (EQ 1 g base/5 mL (EQ 200 mg base/mL)) was withdrawn for reasons of safety or effectiveness. We have carefully reviewed our files for records concerning the withdrawal of PENTETATE ZINC TRISODIUM (Zn-DTPA) solution for intravenous or inhalation administration (EQ 1 g base/5 mL (EQ 200 mg base/mL)) from sale. We have also independently evaluated relevant literature and data for possible postmarketing adverse events. We have found no information that would indicate that this product was withdrawn from sale for reasons of safety or effectiveness.

Accordingly, the Agency will continue to list PENTETATE ZINC TRISODIUM (Zn-DTPA) solution for intravenous or inhalation administration (EQ 1 g base/5 mL (EQ 200 mg base/mL)), in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to PENTETATE ZINC TRISODIUM (Zn-DTPA) solution for intravenous or inhalation administration (EQ 1 g base/5 mL (EQ 200 mg base/mL)) may be approved by the Agency as long as they meet all other legal and regulatory requirements for the approval of ANDAs. If the FDA determines that labeling for this drug product should be revised to meet current standards, the Agency will

advise ANDA applicants to submit such labeling.

Dated: August 15, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–21245 Filed 8–18–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–D–0215]

Draft Guidance for Industry and Food and Drug Administration Staff on In Vitro Companion Diagnostic Devices; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to October 12, 2011, the comment period for the notice that appeared in the **Federal Register** of July 14, 2011 (76 FR 41506). In the notice, FDA requested comments on a draft guidance document entitled ''In Vitro Companion Diagnostic Devices.'' The Agency is taking this action in response to requests for an extension to allow interested persons additional time to submit comments.

DATES: Submit either written or electronic comments by October 12, 2011.

ADDRESSES: Submit electronic comments on the draft guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1601, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT:

Elizabeth Mansfield, Center for Devices and Radiologic Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 5676, Silver Spring, MD 20993–0002, 301–796–4664; or

Christopher Leptak, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 5102, Silver Spring, MD 20993–0002, 301–796–0017; or

Stephen Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of July 14, 2011 (76 FR 41506), FDA published a notice announcing the availability of the draft guidance entitled ''In Vitro Companion Diagnostic Devices,'' and the opening of a public docket to receive comments on the draft guidance document. Interested persons were invited to submit comments by September 12, 2011. At this time the Agency is extending the comment period until October 12, 2011, to continue to receive public comments. Comments submitted to the docket will assist in identifying issues to be addressed in the finalized guidance document.

II. Request for 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. 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: August 15, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–21226 Filed 8–18–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–D–0586]

Draft Guidance for Industry on Standards for Clinical Trial Imaging Endpoints; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Standards for Clinical Trial Imaging Endpoints.'' The purpose of this draft guidance is to assist sponsors in the use of imaging endpoints in clinical trials of therapeutic drugs and biological products. The draft guidance describes standards sponsors can use to ensure that clinical trial imaging data are obtained in a manner that complies with a trial's protocol, maintains imaging data quality, and provides a verifiable record of the imaging process.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by October 18, 2011.

ADDRESSES: Submit written requests for single copies of the draft guidance 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; or the Office of Communication, Outreach, and Development (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit electronic comments on the draft guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT:

Rafel Dwaine Rieves, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 2354, Silver Spring, MD 20993 –0002, 301–796–2050; or Stephen Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Standards for Clinical Trial Imaging Endpoints.'' This draft guidance is intended to assist sponsors in the standardization of imaging procedures when an important imaging endpoint is used in a clinical trial of a therapeutic drug or biological product, especially for an efficacy endpoint. As part of the reauthorization of the Prescription Drug User Fee Act (PDUFA 4), FDA committed to certain performance goals (see letters from the Secretary of Health and Human Services to the Chairman of

the Committee on Health, Education, Labor, and Pensions of the Senate and the Chairman of the Committee on Energy and Commerce of the House of Representatives, as set forth in the Congressional Record).[1] This draft guidance addresses one of these goals with the creation of a guidance document that addresses the ''imaging standards for use as an endpoint in clinical trials.'' This draft guidance also follows the April 13, 2010, public workshop ''Standards for Imaging Endpoints in Clinical Trials'' cosponsored by FDA, the Society of Nuclear Medicine, and the Radiological Society of North America.[2]

This draft guidance outlines the major considerations for standardization of image acquisition, image interpretation methods, and other procedures to help ensure imaging data quality. The draft guidance describes two categories of image acquisition and interpretation standardization, a medical practice standard and a clinical trial standard, and provides guidance on the role of each standard in a clinical trial. With a medical practice standard, the image acquisition and interpretation methods in the trial do not exceed those used in medical practice. In contrast, a clinical trial standard involves imaging methods that exceed those used in medical practice. The draft guidance focuses on the methods important for image acquisition and interpretation and provides a detailed outline of other procedures important for optimizing clinical trial imaging data quality.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on standards for clinical trial imaging endpoints. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. The Paperwork Reduction Act of 1995

This draft 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 parts 312 and 314 have been approved under OMB control numbers 0910–0014 and 0910–0001, respectively.

III. 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.

IV. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm, http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/default.htm,* or *http://www.egulations.gov.*

Dated: August 15, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–21244 Filed 8–18–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App), notice is hereby given of a meeting of the Board of Scientific Counselors, National Center for Biotechnology Information.

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 as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for review, discussion, and evaluation of individual intramural programs and projects conducted by the National Library of Medicine, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Center for Biotechnology Information.

Date: November 8, 2011.

Open: 8:30 am to 12:00 pm.

Agenda: Program Discussion.

Place: National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD. 20892.

Closed: 12:00 pm to 2:00 pm.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Library of Medicine, Building 38, 2nd Floor, Board, Room, 8600 Rockville Pike, Bethesda, MD 20892.

Open: 2:00 pm to 3:00 pm.

Agenda: Program Discussion.

Place: National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: David J. Lipman, MD, Director, National Center of Biotechnology Information, National Library of Medicine, Department of Health and Human Services, Building 38A, Room 8N805, Bethesda, MD 20892, 301–435–5985, *dlipman@mail.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 taxicabs, 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.

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS).

Dated: August 15, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–21238 Filed 8–18–11; 8:45 am]

BILLING CODE 4140–01–P

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[1] See ''Section A: PDUFA Reauthorization Performance Goals and Procedures Fiscal Years 2008 Through 2012'' (*http://www.fda.gov/ForIndustry/UserFees/PrescriptionDrugUserFee/ucm119243.htm*).

[2] See *http://www.rsna.org/snm/index.html.*

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, An Integrated Approach to Understanding Host-Pathogen Interactions.

Date: September 21–23, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Hilton Silver Spring, 8727 Colesville Road, Silver Spring, MD 20910.

Contact Person: Eleazar Cohen, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health, NIAID, 6700 B Rockledge Drive, Room 3129, Bethesda, MD 20892, 301–435–3564, *ec17w@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: August 15, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–21234 Filed 8–18–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel, CTSA Revision.

Date: September 14–15, 2011.

Time: 10 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health/NCRR/OR, Democracy 1, 6701 Democracy Blvd., 1064, Bethesda, MD. (Virtual Meeting.)

Contact Person: Guo Zhang, Ph.D., Scientific Review Officer, Office of Review, National Center for Research Resources, National Institutes of Health, 6701 Democracy Blvd., DEM. 1, Room 1064, MSC 4874, Bethesda, MD 20892–4874. 301–435–0812. *zhanggu@mail.nih.gov.*

Name of Committee: National Center for Research Resources Special Emphasis Panel, Science Education Partnership Award (SEPA).

Date: October 5–6, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda Downtown, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Bonnie Dunn, Ph.D., Scientific Review Officer, Office of Review, National Center for Research Resources, National Institutes of Health, 6701 Democracy Blvd., 1 Dem. Blvd., Rm. 1074, Bethesda, MD 20892–4874. 301–435–0824. *dunnbo@mail.nih.gov.*

Name of Committee: National Center for Research Resources Initial Review Group, Comparative Medicine Review Committee, Comparative Medicine Review Committee.

Date: October 20–21, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Sheri A. Hild, Ph.D., Scientific Review Officer, National Institutes of Health, National Center for Research Resources, Office of Review, 6701 Democracy Blvd, Rm 1082, Bethesda, MD 20892. 301–435–0811. *hildsa@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure; 93.306, 93.333, 93.702, ARRA Related Construction Awards, National Institutes of Health, HHS)

Dated: August 15, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–21231 Filed 8–18–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; 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 Dental and Craniofacial Research 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 Dental and Craniofacial Research Council.

Date: September 19, 2011.

Open: 8:30 am to 11:30 am.

Agenda: Report to the Director, NIDCR.

Place: National Institutes of Health, Building 31 C, 31 Center Drive, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Closed: 1:00 pm to Adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31 C, 31 Center Drive, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Alicia J. Dombroski, PhD, Director, Division of Extramural Activities, National Institute of Dental and Craniofacial Research, National Institutes of Health, Bethesda, MD 20892.

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 taxicabs, 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.nidcr.nih.gov/* about, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: August 15, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–21229 Filed 8–18–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, NIAID Investigator Initiated Program Project.

Date: September 7, 2011.

Time: 1:00 pm to 4:00 pm.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Jay R. Radke, PhD, Scientific Review Officer, Scientific Review Program, DEA/NIAID/NIH/DHHS, Room 2217, 6700B Rockledge Drive MDS–7616, Bethesda, MD 20892–7616, (301) 496–2550, *jay.radke@nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Tropical Medicine Research Centers.

Date: September 12–14, 2011.

Time: 8:00 am to 5:30 pm.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Annie Walker-Abbey, PhD, Scientific Review Officer, Scientific Review Program, NIAID/NIH/DHHS, 6700B Rockledge Drive, RM 3126, MSC–7616, Bethesda, MD 20892–7616, 301–451–2671, *aabbey@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: August 15, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–21232 Filed 8–18–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–690; Extension of an Existing Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review: Form I–690, Application for Waiver of Grounds of Inadmissibility.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until October 18, 2011.

During this 60-day period, USCIS will be evaluating whether to revise the Form I–690. Should USCIS decide to revise Form I–690, we will advise the public when we publish the 30-day notice in the **Federal Register** in accordance with the Paperwork Reduction Act. The public will then have 30 days to comment on any revisions to the Form I–690.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Products Division, Office of the Executive Secretariat, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020. Comments may also be submitted to DHS via facsimile to 202–272–0997 or via e-mail at *uscisfrcomment@dhs.gov.* When submitting comments by e-mail please add the OMB Control Number 1615–0032 in the subject box.

Note: The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at: *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Application for Waiver of Grounds of Inadmissibility.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–690. U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary*: Individuals or Households. USCIS will use this form to determine whether applicants are

eligible for admission to the United States under sections 210 and 245A of the Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 74 responses at 15 minutes (0.25 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 19 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov/.*

We may also be contacted at: USCIS, Regulatory Products Division, Office of the Executive Secretariat, 20 Massachusetts Avenue, NW., Room 5012, Washington, DC 20529–2020, Telephone number 202–272–8377.

Dated: August 16, 2011.

Sunday A. Aigbe,

Chief, Regulatory Products Division, Office of the Executive Secretariat, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2011–21255 Filed 8–18–11; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–602; Extension of an Existing Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review: Form I–602, Application by Refugee for Waiver of Grounds of Excludability.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until October 18, 2011.

During this 60-day period, USCIS will be evaluating whether to revise the Form I–602. Should USCIS decide to revise Form I–602 we will advise the public when we publish the 30-day notice in the **Federal Register** in accordance with the Paperwork Reduction Act. The public will then have 30 days to comment on any revisions to the Form I–602.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Products Division, Office of the Executive Secretariat, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020. Comments may also be submitted to DHS via facsimile to 202–272–0997 or via e-mail at *uscisfrcomment@dhs.gov.* When submitting comments by e-mail please add the OMB Control Number 1615–0069 in the subject box.

Note: The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at: *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Application by Refugee for Waiver of Grounds of Excludability.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–602; U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Form I–602 is necessary to establish eligibility for waiver of excludability based on humanitarian, family unity, or public interest.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 2,500 responses at 15 minutes (0.25 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 625 annual burden hours.

If you need a copy of the information collection instrument, please visit the website at: *http://www.regulations.gov/.*

We may also be contacted at: USCIS, Regulatory Products Division, Office of the Executive Secretariat, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020, Telephone number 202–272–8377.

Dated: August 16, 2011.

Sunday A. Aigbe,

Chief, Regulatory Products Division, Office of the Executive Secretariat, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2011–21256 Filed 8–18–11; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5477–N–33]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7262, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,*

No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: August 11, 2011.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

[FR Doc. 2011–20881 Filed 8–18–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5300–FA–22]

Announcement of Funding Awards for the Service Coordinators in Multifamily Housing Fiscal Year 2009

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the Super Notice of Funding Availability (SuperNOFA) for the Service Coordinators in Multifamily Housing program. This announcement contains the names of the awardees and the amounts of the awards made available by HUD.

FOR FURTHER INFORMATION CONTACT: Ms. Aretha Williams, Acting Director, Office of Housing Assistance and Grant Administration, 451 7th Street, SW., Washington, DC 20410; telephone (202) 708–3000 (this is not a toll-free number). Hearing- and speech-impaired persons may access this number via TTY by calling the Federal Relay Service toll-free at 1–800–877–8339. For general information on this and other HUD programs, visit the HUD Web site at *http://www.hud.gov.*

SUPPLEMENTARY INFORMATION: The Service Coordinators in Multifamily Housing program is authorized by Section 808 of the Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101–625, approved November 28, 1990), as amended by sections 671, 674, 676, and 677 of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992), and section 851 of the American Homeownership and Economic Opportunity Act of 2000 (Pub. L. 106–569, approved December 27, 2000). The competition was announced in the SuperNOFA published in the **Federal Register** on September 1, 2009. Applications were reviewed and selected for funding on the basis of selection criteria contained in that Notice.

The Catalog of Federal Domestic Assistance number for this program is 14.191.

The Service Coordinators in Multifamily Housing program allows multifamily housing owners to assist elderly individuals and nonelderly people with disabilities living in HUD-assisted housing and in the surrounding area to obtain needed supportive services from the community, to enable them to continue living as independently as possible in their homes.

A total of $32,733,268 was awarded to 162 owners, serving 173 projects with 19,195 units nationwide. In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987. 42 U.S.C. 3545), the Department is publishing the grantees and amounts of the awards in Appendix A of this document.

Dated: August 15, 2011.

Carol J. Galante,

Acting Assistant Secretary for Housing-Federal Housing Commissioner.

State: Alabama

Recipient: Volunteers of America Southeast, Inc.
Property Name: Oak Hill Apartments
Address: 407 Brantley St
City: Opp
Assisted Units: 54
Amount: $97,097

State: Arizona

Recipient: FSL Christopher Properties, Inc.
Property Name: Kingman Heights
Address: 1020 Detroit Ave
City: Kingman
Assisted Units: 33
Amount: $114,330

Recipient: Foundation for Senior Adult Living (FSAL) Inc.
Property Name: Sweetwater Gardens
Address: 2035 E. Sweetwater Ave.
City: Phoenix
Assisted Units: 24
Amount: $101,330

Recipient: Fsal Rural Development Corporation
Property Name: Padua Hills
Address: 460 S. West Road
City: Wickenburg
Assisted Units: 25
Amount: $94,296

State: California

Recipient: Good Shepherd Housing Dev.Corp.
Property Name: Good Shepherd Homes
Address: 510 Centinela Ave
City: Inglewood
Assisted Units: 39
Amount: $254,513

Recipient: Little Tokyo Towers Inc
Property Name: Little Tokyo Towers
Address: 455 E 3rd St
City: Los Angeles
Assisted Units: 180
Amount: $449,216

Recipient: Terry Manor Preservation, L.P.
Property Name: Jessie L Terry Manor
Address: 3100 S Vermont Ave
City: Los Angeles
Assisted Units: 170
Amount: $369,672

Recipient: Plummer Village
Property Name: Plummer Village
Address: 15450 Plummer St
City: North Hills
Assisted Units: 74
Amount: $223,277

Recipient: Pledgerville Senior Citizens Villa
Property Name: Pledgerville Senior Citizens Villa
Address: 11060 Norris Ave
City: Pacoima
Assisted Units: 93
Amount: $250,665

State: Colorado

Recipient: San Juan Apartments, LLC
Property Name: San Juan Apartments
Address: 1650 Church St
City: Montrose
Assisted Units: 76
Amount: $153,969

State: Connecticut

Recipient: Underwood Associates Limited Partnership
Property Name: Underwood Elderly
Address: 25 Laurel St
City: Hartford
Assisted Units: 136
Amount: $292,986

Recipient: Lymes Elderly Housing, Inc.
Property Name: Lymewood Elderly
Address: 249 Boston Post Road
City: Old Lyme
Assisted Units: 20
Amount: $84,442

Recipient: BC Exchange Place LLC
Property Name: Exchange Place Towers
Address: 44 Center St
City: Waterbury
Assisted Units: 150
Amount: $213,258

Recipient: Nottingham Towers Investors, LLC
Property Name: Nottingham Towers
Address: 31 Nottingham Ter
City: Waterbury
Assisted Units: 156
Amount: $229,960

State: Florida

Recipient: Benchmark St. Andrews Towers Associates., L.P.
Property Name: St. Andrews Towers
Address: 24 Harrison Ave
City: Panama City

Assisted Units: 216
Amount: $354,513

Recipient: St Andrew's Residence of the Diocese of SE FL, Inc
Property Name: St. Andrew's Residence
Address: 208 Fern St
City: West Palm Beach
Assisted Units: 182
Amount: $109,241

State: Georgia

Recipient: Trinity Towers Limited Partnership, L.P.
Property Name: Trinity Towers
Address: 2611 Springdale Rd
City: Atlanta
Assisted Units: 232
Amount: $378,050

Recipient: Vineville Towers Associates, LTD
Property Name: Clisby Towers
Address: 2087 Vineville Ave
City: Macon
Assisted Units: 52
Amount: $98,801

Recipient: Heatherwood Apartments
Property Name: Heatherwood Apartments
Address: 42 Chateau Dr
City: Rome
Assisted Units: 68
Amount: $186,306

State: Iowa

Recipient: Sioux Falls Environmental Access Inc.
Property Name: Ridgewood Apartments
Address: 260 4th St
City: Akron
Assisted Units: 36
Amount: $76,110

Recipient: Fort Dodge Leased Housing Associates I LP
Property Name: Wahkonsa Manor Apartments
Address: 927 Central Ave
City: Fort Dodge
Assisted Units: 76
Amount: $135,454

Recipient: Sioux Falls Environmental Access Inc.
Property Name: Rosewood Heights Apartments
Address: 1202 S 3rd Ave
City: Rock Rapids
Assisted Units: 56
Amount: $76,110

State: Idaho

Recipient: NWRECC Idaho Affordable Housing Preservation LP
Property Name: Franklin Grove Apartments
Address: 4929 Franklin Rd
City: Boise
Assisted Units: 40
Amount: $147,839

State: Illinois

Recipient: c/s Lathrop Elderly Limited Partnership
Property Name: Lathrop Elderly
Address: 2717 N. Leavitt
City: Chicago
Assisted Units: 91
Amount: $242,083

Recipient: Continental Plaza Plaza Preservation II, L.P.
Property Name: Continental Plaza Apartments
Address: 1330 W 76th St
City: Chicago
Assisted Units: 292
Amount: $483,298

Recipient: OHA Associates
Property Name: Oxford House
Address: 2700 N. Monroe Street
City: Decatur
Assisted Units: 156
Amount: $359,397

Recipient: The Woods Associates
Property Name: The Woods
Address: 3010 E Mound Rd
City: Decatur
Assisted Units: 57
Amount: $128,893

Recipient: Ridgewood Tower Associates
Property Name: Ridgewood Towers
Address: 545 42nd Ave
City: East Moline
Assisted Units: 140
Amount: $237,663

Recipient: Westwood Terrace Second Limited Partnership
Property Name: Westwood Terrace
Address: 2200 First St
City: Moline
Assisted Units: 97
Amount: $236,376

State: Indiana

Recipient: Capri Ii Associates
Property Name: Capri Meadows Ii
Address: 58 Capri Court
City: Bluffton
Assisted Units: 100
Amount: $220,904

Recipient: Fairington Apartments
Property Name: Fairington Apartments
Address: 2134 Lombardy Drive
City: Clarksville
Assisted Units: 200
Amount: $229,708

Recipient: The Edsall House, L.P.
Property Name: Edsall House
Address: 310 W Berry St
City: Fort Wayne
Assisted Units: 203
Amount: $229,983

Recipient: United Church Residences of Fort Wayne, Indiana
Property Name: Salem Manor
Address: 1221 East California Road
City: Fort Wayne
Assisted Units: 83
Amount: $189,510

Recipient: Northwood Apartments of Franklin
Property Name: Northwood Apartments Franklin
Address: 2018 Cedar Lane
City: Franklin
Assisted Units: 100
Amount: $238,981

Recipient: Jamestown Square of Washington
Property Name: Jamestown Square Washington
Address: 110 Jamestown Ct
City: Washington
Assisted Units: 150
Amount: $223,710

State: Kansas

Recipient: Coffeyville Leased Housing Associates I
Property Name: Dale Apartments
Address: 206 W 8th
City: Coffeyville
Assisted Units: 47
Amount: $183,987

Recipient: Hutchinson Senior Residences, L.P.
Property Name: Washington Heights
Address: 2700 Washington
City: Hutchinson
Assisted Units: 76
Amount: $168,583

Recipient: Central Park Investors, LLC
Property Name: Sunrise Towers
Address: 15 N. 10th Street
City: Kansas City
Assisted Units: 193
Amount: $204,745

State: Kentucky

Recipient: Briarwood Apartments of Lexington
Property Name: Briarwood Apts of Lexington
Address: 1349 Centre Parkway
City: Lexington
Assisted Units: 203
Amount: $223,376

Recipient: Brighton Housing, Inc.
Property Name: Two Rivers Apts
Address: 411 Elm St
City: Newport
Assisted Units: 70
Amount: $186,564

State: Louisiana

Recipient: Bond House Senior Apartments, LP
Property Name: Bond House
Address: 720 Briscoe Ave
City: Bastrop
Assisted Units: 75
Amount: $172,340

Recipient: Tower Oaks Apartments LLC
Property Name: Tower Oaks Apartments
Address: 222 Louie St
City: Lake Charles
Assisted Units: 152
Amount: $313,430

Recipient: Wellington Square Senior Apartments LLC
Property Name: Wellington Square Apartments
Address: 1812 Jewella Avenue
City: Shreveport
Assisted Units: 170
Amount: $192,422

State: Massachusetts

Recipient: Wollaston Lutheran Church Apts, Inc.
Property Name: Fenno House
Address: 540 Hancock St
City: Quincy
Assisted Units: 31
Amount: $239,465

Recipient: HRCA Housing for Elderly, Inc.
Property Name: HRCA Housing For Elderly/Jack Satter House
Address: 420 Revere Beach Blvd.
City: Revere
Assisted Units: 266
Amount: $166,115

Recipient: Illyrian Gardens, Inc
Property Name: Illyrian Gardens
Address: 545 Salisbury St
City: Worcester
Assisted Units: 72
Amount: $226,811

State: Maryland

Recipient: Bon Secours Housing II, Inc.
Property Name: Bon Secours Benet House
Address: 400 Millington Ave
City: Baltimore
Assisted Units: 101
Amount: $208,800

Recipient: Monteverde
Property Name: Greenhill Housing Apts.
Address: 2503 Violet Ave
City: Baltimore
Assisted Units: 301
Amount: $406,563

Recipient: Park North Oxford Associates
Property Name: Bolton North Apartments
Address: 1600 W Mount Royal Ave
City: Baltimore
Assisted Units: 208
Amount: $454,449

Recipient: The Manhattan Park Apartments Limited Partnership
Property Name: Manhattan Park Apts
Address: 5715 Park Heights Ave
City: Baltimore
Assisted Units: 64
Amount: $119,706

State: Maine

Recipient: Housing Initiatives of New England Corporaton
Property Name: Kennebec Plaza
Address: 20 Willow Street
City: Augusta
Assisted Units: 67
Amount: $71,527

State: Michigan

Recipient: Bradley House LDHA
Property Name: Bradley House
Address: 100 15th St
City: Bay City
Assisted Units: 179
Amount: $175,501

Recipient: Lawrence Park 2004 Limited Dividend Housing Assoc
Property Name: Lawrence Park
Address: 7000 Ten Mile Road
City: Centerline
Assisted Units: 250
Amount: $217,389

Recipient: Bicentennial 1984 LDHA LP
Property Name: Bicentennial Towers Senior Housing
Address: 4 E Alexandrine St
City: Detroit
Assisted Units: 299
Amount: $217,389

Recipient: Greenhouse 2006 LDHA LP
Property Name: Greenhouse Apartments
Address: 17300 Southfield Rd
City: Detroit
Assisted Units: 208
Amount: $217,389

Recipient: Industrial-Stevens LDHA
Property Name: Industrial-Stevens Building
Address: 1410 Washington Blvd
City: Detroit
Assisted Units: 163
Amount: $174,066

Recipient: Jefferson Maison East Limited Dividend Housing Association LLC
Property Name: 8330 On The River
Address: 8330 East Jefferson Ave
City: Detroit
Assisted Units: 112
Amount: $209,616

Recipient: Lexington Village 2004 Limited Dividend Housing Assoc.
Property Name: Lexington Village
Address: 1310 Pallister
City: Detroit
Assisted Units: 350
Amount: $217,389

Recipient: Parkview Place/MHT LDHA LP
Property Name: Parkview Place
Address: 1401 Chene
City: Detroit
Assisted Units: 199
Amount: $434,954

Recipient: Alpine Alten Zimmer Apartments Company LP
Property Name: Alpine Alten Zimmer
Address: 120 Grandview Blvd
City: Gaylord
Assisted Units: 46
Amount: $137,406

Recipient: Camelot Woods LDHA
Property Name: Camelot Woods I
Address: 2399 Charring Cross SE
City: Grand Rapids
Assisted Units: 200
Amount: $171,716

Recipient: Plymouth Arms Associates
Property Name: Plymouth Arms Apts.
Address: 1836 Mason NE
City: Grand Rapids
Assisted Units: 80
Amount: $239,128

Recipient: Tamarack-1984 LDHA
Property Name: Tamarack
Address: 4400 W Holt Rd
City: Holt
Assisted Units: 100
Amount: $220,751

Recipient: Tamarisk Limited Dividend Housing Association
Property Name: Tamarisk Apts
Address: 4520 Bowen Blvd SE
City: Kentwood
Assisted Units: 100
Amount: $216,021

Recipient: Porter Partners Limited Dividend Housing Assoc, LLC
Property Name: Porter Apartments
Address: 505 Townsend
City: Lansing
Assisted Units: 98
Amount: $226,936

Recipient: Coventry Woods 2004 Limited Dividend Housing Assoc
Property Name: Coventry Woods
Address: 3550 Remembrance Rd
City: Walker
Assisted Units: 100
Amount: $215,721

Recipient: Whispering Woods LDHA
Property Name: Whispering Woods Apts
Address: 1450 Whispering Woods Dr
City: Waterford
Assisted Units: 192
Amount: $216,387

Recipient: Pinery Park LDHA
Property Name: Pinery Park Apts
Address: 2300 Newstead Ave SW
City: Wyoming
Assisted Units: 125
Amount: $220,751

State: Minnesota

Recipient: Elderly Housing Corp. of Clay County
Property Name: Houge Estates
Address: 510 Center Ave E
City: Dilworth
Assisted Units: 60
Amount: $238,290

Recipient: The Salvation Army, A MN Non-Profit Corp.
Property Name: Booth Manor/Salvation Army
Address: 1421 Yale Pl
City: Minneapolis
Assisted Units: 100
Amount: $150,000

Recipient: Catholic Charities of St. Paul and Minneapolis
Property Name: Mary Hall SRO Occupancy Program
Address: 438 Main Street
City: Saint Paul
Assisted Units: 75
Amount: $163,777

Recipient: The Salvation Army, A MN Non-Profit Corp.
Property Name: Salvation Army Booth Brown Foyer
Address: 1471 Como Avenue
City: Saint Paul
Assisted Units: 6
Amount: $81,552

State: Missouri

Recipient: New Wellington Associates
Property Name: Wellington Arms I Apartments
Address: 11333 Sugar Pine Dr
City: Florissant
Assisted Units: 224
Amount: $171,716

Recipient: Meadowglen Apartments, LP
Property Name: Meadowglen Apartments
Address: 12465 Scenic Lake Drive
City: St. Louis
Assisted Units: 208
Amount: $122,606

State: Montana

Recipient: Havre Eagles Manor
Property Name: Havre Eagles Manor
Address: 20 W Third St
City: Havre
Assisted Units: 40
Amount: $179,153

State: North Carolina

Recipient: Morehead Hills Senior Apartments Lp
Property Name: Morehead Hills Apartments
Address: 500 Cobb St
City: Durham
Assisted Units: 75
Amount: $209,666

Recipient: Community Housing Concepts Sheraton Towers Llc
Property Name: Sheraton Towers
Address: 400 North Main Street
City: High Point

Assisted Units: 97
Amount: $197,297

Recipient: Wilkes Towers, Ltd.
Property Name: Wilkes Towers
Address: 830 Main St Ofc 200
City: North Wilkesboro
Assisted Units: 72
Amount: $160,486

State: Nebraska

Recipient: Douglas County Housing Authority
Property Name: Benn View I Apartments
Address: 15652 N. Fourth Street
City: Bennington
Assisted Units: 44
Amount: $185,000

State: New Hampshire

Recipient: HINEC Bethlehem Senior Housing Associates LP
Property Name: Hillview Apartments
Address: 46 Agassiz St
City: Bethlehem
Assisted Units: 20
Amount: $37,853

State: New Jersey

Recipient: Elizabeth Senior Housing Limited Partnership
Property Name: Alexian Manor
Address: 122 Seventh Street
City: Elizabeth
Assisted Units: 75
Amount: $236,770

Recipient: The Riese Corporation
Property Name: Governor Paterson Towers I
Address: 225 20th Avenue
City: Paterson
Assisted Units: 63
Amount: $153,951

Recipient: The Riese Corporation
Property Name: Governor Paterson Towers Ii
Address: 195 20th Street
City: Paterson
Assisted Units: 31
Amount: $153,951

State: New Mexico

Recipient: YES Housing, Inc.
Property Name: Brentwood Gardens Apartments
Address: 6302 Harper Pl NE
City: Albuquerque
Assisted Units: 122
Amount: $211,961

State: New York

Recipient: Erma Cava Housing Development Fund Co., Inc.
Property Name: Erma Cava Houses
Address: 923 Barretto St
City: Bronx
Assisted Units: 35
Amount: $73,662

Recipient: New York City Housing Authority
Property Name: Saratoga Square
Address: 930 Halsey St
City: Brooklyn
Assisted Units: 251
Amount: $487,506

Recipient: Meadow Park Apartments LLC
Property Name: Meadow Park
Address: 85 Fair St
City: Deposit
Assisted Units: 81
Amount: $177,266

Recipient: Wedgwood Apartments LLC
Property Name: Wedgewood Apts.
Address: 7851 Route 298
City: Kirkville
Assisted Units: 69
Amount: $127,109

Recipient: Urban Park II, L.P.
Property Name: Urban Park Towers Apartments
Address: 77 Main St
City: Lockport
Assisted Units: 150
Amount: $334,070

Recipient: Niagara II, L.P.
Property Name: Niagara Towers
Address: 901 Cedar Ave
City: Niagara Falls
Assisted Units: 200
Amount: $432,769

Recipient: Tonawanda II, L.P.
Property Name: Tonawanda Towers
Address: 5 Main St
City: Tonawanda
Assisted Units: 100
Amount: $221,656

Recipient: NCR of Warsaw Housing Development Fund Co Inc
Property Name: Crestview Terrace Apartments
Address: 32 Salina St
City: Warsaw
Assisted Units: 35
Amount: $119,668

State: Ohio

Recipient: United Church Residences of Delaware Ohio Inc
Property Name: United Church Residence of Bedford
Address: 315 Bonnieview Drive
City: Bedford
Assisted Units: 60
Amount: $109,359

Recipient: National Church Residences of Chillicothe
Property Name: Hopeton Village
Address: 153 University Dr
City: Chillicothe
Assisted Units: 108
Amount: $158,942

Recipient: Andrews Apartments, Ltd., an Ohio LLC
Property Name: St Andrews Tower
Address: 5225 Superior Ave
City: Cleveland
Assisted Units: 176
Amount: $220,431

Recipient: Antioch Preservation, LP
Property Name: Antioch Towers
Address: 8920 Carnegie Ave
City: Cleveland
Assisted Units: 171
Amount: $311,912

Recipient: Jaelot Senior Housing, LTD.
Property Name: Jaelot Apts
Address: 12730 Shaker Blvd
City: Cleveland
Assisted Units: 160
Amount: $220,431

Recipient: Rockefeller Park Apartments Limited Partnership
Property Name: Rockefeller Park Towers
Address: 1588 Ansel Rd
City: Cleveland
Assisted Units: 130
Amount: $194,641

Recipient: Warrensville Senior Housing, LTD
Property Name: Warrensville Manor
Address: 1476 Warrensville Ctr Rd
City: Cleveland Heights
Assisted Units: 100
Amount: $220,431

Recipient: Nazareth Towers, LTD.
Property Name: Nazareth Towers
Address: 300 E Rich St
City: Columbus
Assisted Units: 177
Amount: $207,533

Recipient: National Church Residences of Cuyahoga Falls, OH
Property Name: Portage Trail Village
Address: 45 Cathedral Lane
City: Cuyahoga Falls
Assisted Units: 199
Amount: $188,682

Recipient: Cardinal One Portfolio LLC
Property Name: Asbury Apartments
Address: 215 Mcdaniel Street
City: Dayton
Assisted Units: 119
Amount: $205,620

Recipient: New Stratford Ltd.
Property Name: Stratford Place
Address: 4727 Dugger Rd
City: Dayton
Assisted Units: 100
Amount: $186,901

Recipient: United Church Residences of Delaware Ohio Inc
Property Name: St. Michael's Community
Address: 35 Lexington Boulevard
City: Delaware
Assisted Units: 44
Amount: $107,958

Recipient: KB Portfolio, LLC
Property Name: Owl's Nest Apts
Address: 2020 Taylor Rd
City: East Cleveland
Assisted Units: 229
Amount: $223,870

Recipient: KB Portfolio, LLC
Property Name: Findlay Senior Towers
Address: 806 Bright Rd
City: Findlay
Assisted Units: 114
Amount: $197,841

Recipient: Logan Place, Limited
Property Name: Logan Place
Address: 800 Logan Rd
City: Mansfield
Assisted Units: 45
Amount: $101,347

Recipient: Riverview Terrace, Inc
Property Name: Riverview Terrace
Address: 120 E Maumee Ave
City: Napoleon
Assisted Units: 46
Amount: $105,570

Recipient: United Church Residences of Pickerington,Ohio Inc
Property Name: Pickfair Square
Address: 310 Jericho Rd
City: Pickerington
Assisted Units: 33
Amount: $95,577

Recipient: Shaker Heights Housing Associates

Property Name: Campbell Court Apartments
Address: 16650 Van Aken Blvd
City: Shaker Heights
Assisted Units: 81
Amount: $194,606

Recipient: Benchmark Springfield Towers Associates, LP
Property Name: Springfield Towers
Address: 363 E High St
City: Springfield
Assisted Units: 120
Amount: $184,588

Recipient: Ashland Manor Apartments Limited Partnership
Property Name: Ashland Manor
Address: 2030 Ashland Ave
City: Toledo
Assisted Units: 146
Amount: $310,030

Recipient: Terrace Ridge Assoc. Limited
Property Name: Terrace Ridge
Address: 1312 McKaig Avenue
City: Troy
Assisted Units: 167
Amount: $197,841

State: Oklahoma

Recipient: The Foundation for Senior Citizens, Inc.
Property Name: Superbia Retirement Village
Address: 9720 Stacy Ct
City: Oklahoma City
Assisted Units: 99
Amount: $184,509

Recipient: Tulsa Housing Authority
Property Name: James M Inhofe Plaza
Address: 6565 S Newport Ave
City: Tulsa
Assisted Units: 149
Amount: $197,757

State: Oregon

Recipient: King Bell Associates
Property Name: King Bell Apartments
Address: 10005 SE Bell Ave
City: Milwaukie
Assisted Units: 61
Amount: $116,805

State: Pennsylvania

Recipient: Coatesville Towers
Property Name: Coatesville Towers
Address: 339 E Lincoln Hwy
City: Coatesville
Assisted Units: 90
Amount: $226,899

Recipient: Harriet Tubman Terrace, Inc.
Property Name: Harriet Tubman
Address: 550 Negley Run Blvd.
City: Pittsburgh
Assisted Units: 56
Amount: $78,000

Recipient: K B Connelly, LLC
Property Name: Connelly Manor
Address: 55 W Connelly Blvd
City: Sharon
Assisted Units: 125
Amount: $203,131

Recipient: K B Penn, LP
Property Name: Riverview Manor
Address: 15 W Connelly Blvd
City: Sharon
Assisted Units: 123
Amount: $201,359

State: Rhode Island

Recipient: Rumford Apartments, LP
Property Name: Rumford Towers
Address: 95 Newman Ave
City: East Providence
Assisted Units: 1100
Amount: $432,862

State: South Carolina

Recipient: Lee Co Senior Apts
Property Name: Lee County Senior Apartments, Inc.
Address: 318–A Chappell Rd
City: Bishopville
Assisted Units: 32
Amount: $214,233

Recipient: The Carolina, a Limited Partnership
Property Name: Carolina Apts. (The)
Address: 3201 Meadowlark Dr
City: Columbia
Assisted Units: 70
Amount: $229,860

Recipient: Lancaster Manor II, LLC
Property Name: Lancaster Apartments Associates
Address: 201 Chesterfield Ave
City: Lancaster
Assisted Units: 66
Amount: $148,599

Recipient: Tri-Vision Housing Corporation
Property Name: Wisteria Way
Address: 204–8 Hospital St. Ext,
City: Manning
Assisted Units: 30
Amount: $151,537

Recipient: The Ledges, a Limited Partnership
Property Name: Ledges Apartments (The)
Address: 550 Sikes Ave
City: North Augusta
Assisted Units: 84
Amount: $225,328

Recipient: SCAH, Inc.
Property Name: Pinckney Place
Address: 1300 South Pinckney Street
City: Union
Assisted Units: 46
Amount: $232,239

State: Tennessee

Recipient: Hickory Hollow II, LP
Property Name: Hickory Hollow Towers
Address: 100 Curtis Hollow Rd
City: Antioch
Assisted Units: 154
Amount: $280,335

Recipient: Morningside II, L.P.
Property Name: Morningside Gardens
Address: 1800 Linden Ave
City: Knoxville
Assisted Units: 267
Amount: $340,752

Recipient: Chippington II, L.P.
Property Name: Chippington Tower Apartments I
Address: 94 Berkley Dr
City: Madison
Assisted Units: 418
Amount: $708,874

Recipient: Madison View Towers Associates, Limited
Property Name: Riverwood Tower Apartments
Address: 621 N Dupont Ave
City: Madison
Assisted Units: 117
Amount: $245,792

Recipient: United Church Residences of Memphis, TN, Inc.
Property Name: Shelby Station
Address: 3290 Wood Hollow Dr
City: Memphis
Assisted Units: 39
Amount: $94,912

Recipient: Volunteer Housing Development Corporation, Inc.
Property Name: College Park Apartments
Address: 2526 Mall Dr
City: Morristown
Assisted Units: 44
Amount: $100,544

Recipient: Burton Plaza Associates, L.P.
Property Name: Burton Plaza
Address: 122 Burton Rd-Office
City: Rogersville
Assisted Units: 44
Amount: $99,739

State: Texas

Recipient: Beaumont Leased Housing Associates II, LP
Property Name: Seville Apartments
Address: 4325 Crow Rd
City: Beaumont
Assisted Units: 90
Amount: $207,815

Recipient: Woodland Christian Towers, Inc
Property Name: Woodland Christian Tower
Address: 600 E Tidwell Rd
City: Houston
Assisted Units: 126
Amount: $183,942

Recipient: Silver Village Partners, L.P.
Property Name: Silver Village
Address: 5401 54th St
City: Lubbock
Assisted Units: 100
Amount: $176,299

State: Virginia

Recipient: Grace Street Limited Partnership
Property Name: Dominion Place
Address: 1025 W Grace St
City: Richmond
Assisted Units: 249
Amount: $194,416

Recipient: Elm Manor Homes, Inc.
Property Name: Elm Manor Homes
Address: 32 Elm Avenue SW
City: Roanoke
Assisted Units: 23
Amount: $82,765

Recipient: Mountain Manor Homes
Property Name: Mountain Manor Homes
Address: 112 Elm Avenue
City: Roanoke
Assisted Units: 15
Amount: $46,967

State: Vermont

Recipient: Linden Terrace Housing Limited Partnership
Property Name: Linden Terrace
Address: 191 Grove St
City: Rutland
Assisted Units: 18
Amount: $70,235

State: Washington

Recipient: Archdiocesan Housing Authority

Property Name: Chancery Place
Address: 910 Marion St
City: Seattle
Assisted Units: 84
Amount: $135,932

Recipient: Archdiocesan Housing Authority
Property Name: Tumwater Apartments
Address: 5701 6th Ave SW
City: Tumwater
Assisted Units: 50
Amount: $131,703

Recipient: Housing Authority of Vancouver
Property Name: Columbia House
Address: 130 W. 24th Street
City: Vancouver
Assisted Units: 151
Amount: $213,107

State: Wisconsin

Recipient: WHPC-Dominium, LLC
Property Name: Jackson County
Address: 130 S Water St
City: Black River Falls
Assisted Units: 80
Amount: $217,653

Recipient: National Church Residences of Campbellsport, WI, In
Property Name: Mabess Manor
Address: 232 Mill St
City: Campbellsport
Assisted Units: 24
Amount: $82,167

Recipient: Riverview Romeis, LLC
Property Name: Romeis Millstream Apartments 1
Address: 607 High St
City: Chippewa Falls
Assisted Units: 108
Amount: $212,000

Recipient: Riverview Romeis, LLC
Property Name: Riverview Manor
Address: 217 S Water St E
City: Fort Atkinson
Assisted Units: 76
Amount: $165,601

Recipient: Capitol Centre Housing Partners
Property Name: Capitol Centre
Address: 333 W Dayton St
City: Madison
Assisted Units: 200
Amount: $221,559

Recipient: Dryden Terrace Hsg. Partners, LTD. Partnership
Property Name: Dryden Terrace
Address: 1902 Londonderry Dr
City: Madison
Assisted Units: 100
Amount: $209,350

Recipient: Quaker Housing Inc
Property Name: Quaker Housing
Address: 2110 Fisher St.
City: Madison
Assisted Units: 71
Amount: $145,806

Recipient: Anvil Housing Corporation, A Wisconsin Nonprofit
Property Name: St Mark Place
Address: 2025 N 14th St
City: Milwaukee
Assisted Units: 50
Amount: $197,081

Recipient: Wisconsin Housing Preservation Corp.
Property Name: Rivercrest Villages
Address: 1007 E Wisconsin Street
City: Prairie Du Chien
Assisted Units: 101
Amount: $207,650

Recipient: Racine Housing Partners
Property Name: McMynn Tower
Address: 110—7th Street
City: Racine
Assisted Units: 122
Amount: $201,000

Recipient: Riverview Romeis, LLC
Property Name: Albert House
Address: 4000 Maryland Avenue
City: Racine
Assisted Units: 94
Amount: $210,815

Recipient: Wisconsin Housing Preservation Corp.
Property Name: Rhine Haus Highland Estates I
Address: 1205 Tracy St
City: Rhinelander
Assisted Units: 95
Amount: $207,818

Recipient: WHPC-Dominium, LLC
Property Name: Richland County Housing
Address: 975 W Seminary St
City: Richland Center
Assisted Units: 78
Amount: $222,495

Recipient: Courtyard at Willow Woods Limited Partnership
Property Name: The Courtyard At Willow Woods
Address: 1500 Lincoln Ave
City: Tomah
Assisted Units: 71
Amount: $98,828

Recipient: Westby Housing Associates, Inc.
Property Name: Westby Housing
Address: 211 Milwaukee St
City: Westby
Assisted Units: 170
Amount: $172,434

State: West Virginia

Recipient: Alderson Manor Associates, Ltd.
Property Name: Alderson Manor
Address: PO Box 621
City: Alderson
Assisted Units: 56
Amount: $102,264

Recipient: Manor House Associates
Property Name: Manor House
Address: 624 Johnstown Rd
City: Beckley
Assisted Units: 102
Amount: $179,505

Recipient: Dunbar Towers
Property Name: Dunbar Towers
Address: 1000 Myers Ave
City: Dunbar
Assisted Units: 102
Amount: $170,815

[FR Doc. 2011–21271 Filed 8–18–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5300–FA–19]

Announcement of Funding Awards for the Section 811 Supportive Housing for Persons With Disabilities Program Fiscal Year 2009

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of funding awards.

SUMMARY: In accordance with section 102 (a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the Notice of Funding Availability (NOFA) for the Section 811 Supportive Housing for Persons with Disabilities Program. This announcement contains the names of the awardees and the amounts of the awards made available by HUD.

FOR FURTHER INFORMATION CONTACT: Ms. Aretha Williams, Acting Director, Office of Housing Assistance and Grant Administration, 451 7th Street, SW., Washington, DC 20410; telephone (202) 708–3000 (this is not a toll-free number). Hearing- and speech-impaired persons may access this number via TTY by calling the Federal Relay Service toll-free at 1–800–877–8339. For general information on this and other HUD programs, visit the HUD Website at *http://www.hud.gov*.

SUPPLEMENTARY INFORMATION: The Section 811 Supportive Housing for Persons with Disabilities Program is authorized by Section 811 of the Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101–625; approved November 28, 1990); the Housing and Community Development Act of 1992 (Pub. L. 102–550; approved October 28, 1992); the Recessions Act (Pub. L. 104–19; enacted on July 27, 1995); the American Homeownership and Economic Opportunity Act of 2000 (Pub. L. 106–569; approved December 27, 2000); the Consolidated Appropriations Act, 2008 (Pub. L. 110–161; approved December 26, 2007; and the Omnibus Appropriations Act, 2009 (Pub. L. 111–8 approved March 11, 2009).

The competition was announced in the SuperNOFA published in the **Federal Register** on September 1, 2009. Applications were rated and selected for funding on the basis of selection criteria contained in that Notice.

The Catalog of Federal Domestic Assistance number for this program is 14.181.

The Section 811 program is the Department's primary program for providing affordable housing for persons with disabilities that allows them to live independently with supportive services. Under this program, HUD provides funds to non-profit organizations to develop supportive housing for persons with disabilities. Funds are also provided to subsidize the expenses to operate the housing projects.

A total of $95,715,900 was awarded to 67 projects for 648 units nationwide. In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987. 42 U.S.C. 3545), the Department is publishing the awardees and amounts of the awards in Appendix A of this document.

Dated: August 15, 2011.

Carol J. Galante,

Acting Assistant Secretary for Housing-Federal Housing Commissioner.

Appendix A—FY 2009 Selections

Section 811 Supportive Housing for Persons With Disabilities

Alabama

Mobile, AL
VOA Southeast, Inc.
Capital Advance: $1,524,300
Three-year rental subsidy: $124,800
Number of units: 14

Alaska

Anchorage, AK
Anchorage Neighborhood Housing Services, Inc
Capital Advance: $2,085,000
Three-year rental subsidy: $206,100
Number of units: 10

Arizona

Mesa, AZ
MARC Center of Mesa, Inc.
Capital Advance: $1,516,200
Three-year rental subsidy: $145,200
Number of units: 14

Tucson, AZ
La Frontera Center, Inc.
Capital Advance: $1,516,200
Three-year rental subsidy: $142,500
Number of units: 14

Arkansas

Haskell, AR
Birch Tree Communities, Inc.
Capital Advance: $981,200
Three-year rental subsidy: $80,400
Number of units: 10

California

Montclair, CA
National Community Renaissance of California
Capital Advance: $2,869,900
Three-year rental subsidy: $294,600
Number of units: 18

San Jose, CA
Eden Housing, Inc.
Capital Advance: $2,972,000
Three-year rental subsidy: $327,900
Number of units: 18

Colorado

Greeley, CO
Accessible Space Inc.
Capital Advance: $1,927,900
Three-year rental subsidy: $176,100
Number of units: 17

Connecticut

Stamford, CT
Mutual Housing Assoc of Southwestern Connecticut
Capital Advance: $903,500
Three-year rental subsidy: $87,600
Number of units: 6

Florida

Clearwater, FL
Abilities of Florida Inc.
Capital Advance: $1,083,600
Three-year rental subsidy: $72,000
Number of units: 8

St. Petersburg, FL
Boley Centers, Inc.
Capital Advance: $1,816,200
Three-year rental subsidy: $125,700
Number of units: 14

St. Petersburg, FL
Boley Centers, Inc.
Capital Advance: $1,167,600
Three-year rental subsidy: $81,000
Number of units: 9

Georgia

Austell, GA
Right in the Community, Inc.
Capital Advance: $428,800
Three-year rental subsidy: $39,300
Number of units: 4

Macon, GA
Advocacy Resource Center-Macon, Inc.
Capital Advance: $428,800
Three-year rental subsidy: $39,300
Number of units: 4

Macon, GA
Georgia Behavioral Services, Inc.
Capital Advance: $1,198,800
Three-year rental subsidy: $98,100
Number of units: 10

Macon, GA
Advocacy Resource Center-Macon, Inc.
Capital Advance: $428,800
Three-year rental subsidy: $39,300
Number of units: 4

Marietta, GA
Right in the Community, Inc.
Capital Advance: $428,800
Three-year rental subsidy: $39,300
Number of units: 4

Hawaii

Maunaloa, HI
ARC of Maui County
Capital Advance: $884,300
Three-year rental subsidy: $72,300
Number of units: 5

Illinois

Joliet, IL
Cornerstone Services Inc
Capital Advance: $1,452,800
Three-year rental subsidy: $93,600
Number of units: 8

Loves Park, IL
Milestone, Inc.
Capital Advance: $1,266,600
Three-year rental subsidy: $93,600
Number of units: 9

Indiana

Indianapolis, IN
Fay Biccard Glick Neighborhood Center at Crooked
Light of the World Christian Church Incorporated
Capital Advance: $1,650,600
Three-year rental subsidy: $166,200
Number of units: 15

Iowa

Logan, IA
Mosaic
Capital Advance: $1,505,800
Three-year rental subsidy: $101,100
Number of units: 10

Kansas

Wichita, KS
Mental Health Association of South Central Kansas, Inc.
Capital Advance: $1,674,100
Three-year rental subsidy: $139,500
Number of units: 14

Kentucky

Bardstown, KY
Communicare Inc
Capital Advance: $1,334,100
Three-year rental subsidy: $104,100
Number of units: 10

Louisville, KY
Schizophrenia Foundation
New Directions Housing Corporation
Capital Advance: $1,388,800
Three-year rental subsidy: $124,800
Number of units: 12

Louisiana

Hammond, LA
Options, Inc.
The Westminster Foundation
Capital Advance: $687,700
Three-year rental subsidy: $46,500
Number of units: 6

Maine

Lewiston, ME
John F. Murphy Homes, Inc.
Capital Advance: $599,400
Three-year rental subsidy: $48,600
Number of units: 4

Maryland

Eldersburg, MD
Prologue, Inc.
Capital Advance: $1,194,800
Three-year rental subsidy: $108,600
Number of units: 9

Lanham, MD
Vesta, Inc.
Capital Advance: $1,547,500
Three-year rental subsidy: $122,700
Number of units: 10

Massachusetts

Hingham, MA
Work, Inc.
Capital Advance: $638,600
Three-year rental subsidy: $77,700
Number of units: 5

Lynn, MA
Bridgewell, Inc.
Capital Advance: $1,575,500
Three-year rental subsidy: $139,500
Number of units: 10

Michigan

Garden City, MI
Liberty Hill Housing Corporation
Capital Advance: $2,042,400
Three-year rental subsidy: $149,100
Number of units: 12

Missouri

Cape Girardeau, MO
Community Counseling Center, Inc.
Capital Advance: $1,326,200
Three-year rental subsidy: $119,100
Number of units: 10

Nevada

Las Vegas, NV
Accessible Space, Inc.
Capital Advance: $1,475,900
Three-year rental subsidy: $116,700
Number of units: 10

New Jersey

Delaware Twp, NJ
Allies, Inc
Capital Advance: $1,189,600
Three-year rental subsidy: $169,500
Number of units: 8

Hopewell Borough, NJ
Community Options, Inc
Capital Advance: $599,400
Three-year rental subsidy: $62,700
Number of units: 4

Lafayette, NJ
Advance Housing, Inc
Capital Advance: $1,488,400
Three-year rental subsidy: $211,800
Number of units: 10

Plainfield, NJ
Cerebral Palsy of N Jersey, Inc
Capital Advance: $599,400
Three-year rental subsidy: $84,900
Number of units: 4

New York

Buffalo, NY
Community Services for the Developmentally Disable
Capital Advance: $1,116,600
Three-year rental subsidy: $99,000
Number of units: 8

Medford, NY
Concern for Independent Living, Inc.
Capital Advance: $3,016,900
Three-year rental subsidy: $293,700
Number of units: 12

Yonkers, NY
Westhab, Inc.
Capital Advance: $3,623,700
Three-year rental subsidy: $538,500
Number of units: 23

North Carolina

Lincolnton, NC
Reinvestment in Communities of Gaston County, Inc
Capital Advance: $1,453,700
Three-year rental subsidy: $104,100
Number of units: 10

Ohio

Grove City, OH
Creative Housing, Inc
Capital Advance: $889,600
Three-year rental subsidy: $88,200
Number of units: 8

Marion, OH
Ohio Multi County Development Corporation
Marion Area Counseling Center
Capital Advance: $1,112,000
Three-year rental subsidy: $110,100
Number of units: 10

Warren, OH
Trumbull Housing Development Corporation
Capital Advance: $1,227,800
Three-year rental subsidy: $124,200
Number of units: 10

Oklahoma

Lawton, OK
Quality Enterprises of Lawton, Inc
Capital Advance: $477,100
Three-year rental subsidy: $57,600
Number of units: 6

Wilburton, OK
Kibois Community Action Foundation, Incorporated
Capital Advance: $440,600
Three-year rental subsidy: $59,100
Number of units: 6

Pennsylvania

Beaver Falls, PA
Supportive Services, Inc
Capital Advance: $1,145,200
Three-year rental subsidy: $101,400
Number of units: 9

Erie, PA
HANDS Inc
Capital Advance: $1,216,200
Three-year rental subsidy: $112,500
Number of units: 10

New Kensington, PA
Family Services of Western PA
Capital Advance: $471,800
Three-year rental subsidy: $33,900
Number of units: 3

Philadelphia, PA
KenCrest Centers
Capital Advance: $1,661,000
Three-year rental subsidy: $141,600
Number of units: 9

Philadelphia, PA
KenCrest Centers
Capital Advance: $1,661,000
Three-year rental subsidy: $141,600
Number of units: 9

Rhode Island

Pawtucket, RI
The ARC of Blackstone Valley, Inc.
Capital Advance: $1,660,900
Three-year rental subsidy: $144,600
Number of units: 10

South Kingstown, RI
Opportunities Unlimited, Inc.
House of Hope Community Development Corp
Capital Advance: $934,500
Three-year rental subsidy: $86,700
Number of units: 6

South Carolina

Cayce, SC
Mental Health America of South Carolina
Capital Advance: $1,678,400
Three-year rental subsidy: $134,100
Number of units: 14

Tennessee

Knoxville, TN
Breakthrough Corporation
Capital Advance: $1,215,100
Three-year rental subsidy: $86,400
Number of units: 9

Texas

El Paso, TX
Project Vida
Capital Advance: $1,951,800
Three-year rental subsidy: $170,700
Number of units: 18

Kingwood, TX
The Village Learning Center, Inc.
MHMRA of Harris County
Capital Advance: $1,816,800
Three-year rental subsidy: $144,600
Number of units: 15

San Antonio, TX
George Gervin Youth Center, Inc.
Capital Advance: $1,409,000
Three-year rental subsidy: $133,800
Number of units: 15

Virginia

Danville, VA
Danville-Pittsylvania Community Services
Capital Advance: $574,000
Three-year rental subsidy: $43,200
Number of units: 4

Fredericksburg, VA
Rappahannock Community Service, Inc.
Capital Advance: $649,200
Three-year rental subsidy: $64,800
Number of units: 6

Washington

Spokane, WA
Spokane Mental Health Coordinating Association
Capital Advance: $1,726,100
Three-year rental subsidy: $168,300
Number of units: 15

Vancouver, WA
Columbia Nonprofit Housing
Capital Advance: $1,785,400
Three-year rental subsidy: $140,100
Number of units: 14

West Virginia

Charleston, WV
Religious Coalition for Community Renewal
Capital Advance: $394,500
Three-year rental subsidy: $23,400
Number of units: 2

Huntington, WV
Prestera Center for Mental Health Services, Inc
Capital Advance: $498,500
Three-year rental subsidy: $69,900
Number of units: 6

Wisconsin

Glendale, WI
Movin' Out, Inc
Capital Advance: $1,363,400
Three-year rental subsidy: $113,100
Number of units: 10

Madison, WI
Goodwill Industries of SC WI Inc
Capital Advance: $1,065,400

Three-year rental subsidy: $79,200
Number of units: 8

[FR Doc. 2011–21266 Filed 8–18–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5300–FA–15]

Announcement of Funding Awards for the Assisted Living Conversion Program; Fiscal Year 2009

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the Notice of Funding Availability (NOFA) for the Assisted Living Conversion Program (ALCP). This announcement contains the names of the grantees and the amounts of the awards made available by HUD.

FOR FURTHER INFORMATION CONTACT: Ms. Aretha Williams, Acting Director, Office of Housing Assistance and Grant Administration, 451 7th Street, SW., Washington, DC 20410; telephone (202) 708–3000 (this is not a toll-free number). Hearing- and speech-impaired persons may access this number via TTY by calling the Federal Relay Service toll-free at 1–800–877–8339. For general information on this and other HUD programs, visit the HUD Web site at *http://www.hud.gov*.

SUPPLEMENTARY INFORMATION: The ALCP is authorized by Section 202b of the Housing Act of 1959 (12 U.S.C. 1701q–2) and the Omnibus Appropriations Act, 2009 (Pub. L. 111–8 approved March 11, 2009).

The competition was announced in the SuperNOFA published in the **Federal Register** on September 2, 2009. Applications were rated and selected for funding on the basis of selection criteria contained in that Notice.

The Catalog of Federal Domestic Assistance number for this program is 14.314.

The Assisted Living Conversion Program is designed to provide funds to private nonprofit Owners to convert their projects (that is, projects funded under Section 202, Section 8 project-based [including Rural Housing Services' Section 515], Section 221(d)(3) BMIR, Section 236, and unused and underutilized commercial properties) to assisted living facilities. Grant funds are used to convert the units and related space for the assisted living facility.

A total of $18,818,516 was awarded to 5 projects for 105 units nationwide. In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987. 42 U.S.C. 3545), the Department is publishing the grantees and amounts of the awards in Appendix A of this document.

Dated: August 15, 2011.

Carol J. Galante,

Acting Assistant Secretary for Housing-Federal Housing Commissioner.

APPENDIX A

Fiscal Year 2009 Assisted Living Conversion Program

Arizona

Phoenix, Kivel Manor, $3,292,367, 15 units.

Maryland

Baltimore, N.M. Carroll Manor Apartments, $5,020,436, 16 units.

New York

Syracuse, Bernardine Apartments, Inc., $2,544,147, 10 units.

Ohio

Chillicothe, NCR of Ohio, $3,988,867, 25 units.

Ohio

Cuyahoga Falls, NCR of Ohio, $3,972,699, 39 units.

[FR Doc. 2011–21269 Filed 8–18–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management, Regulation and Enforcement

[Docket ID No. BOEM–2011–0017]

Information Collection Activity: Leasing of Minerals Other Than Oil, Gas and Sulphur in the Outer Continental Shelf, Extension of a Collection; Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE), Interior.

ACTION: Notice.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements in the regulations under Leasing of Minerals Other than Oil, Gas and Sulphur in the Outer Continental Shelf (OMB No. 1010–0082). This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements.

DATES: Submit written comments by September 19, 2011.

ADDRESSES: Submit comments by either fax (202) 395–5806 or e-mail (*OIRA_DOCKET@omb.eop.gov*) directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010–0082). Please also submit a copy of your comments to BOEMRE by any of the means below.

- *Electronically:* go to *http://www.regulations.gov*. In the entry titled, ''Enter Keyword or ID,'' enter BOEM–2011–0017 then click search. Follow the instructions to submit public comments and view supporting and related materials available for this collection. BOEMRE will post all comments.
- E-mail *cheryl.blundon@boemre.gov*. Mail or hand-carry comments to: Department of the Interior; Bureau of Ocean Energy Management, Regulation and Enforcement; Attention: Cheryl Blundon; 381 Elden Street, MS–4024; Herndon, Virginia 20170–4817. Please reference ICR 1010–0082 in your comment and include your name and return address.

FOR FURTHER INFORMATION CONTACT: Cheryl Blundon, Regulations and Standards Branch, (703) 787–1607. To see a copy of the entire ICR submitted to OMB, go to *http://www.reginfo.gov* (select Information Collection Review, Currently Under Review). You may also contact Cheryl Blundon to obtain a copy, at no cost, of the regulation that requires the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR part 281, Leasing of Minerals Other than Oil, Gas, and Sulphur in the Outer Continental Shelf.

OMB Control Number: 1010–0082.

Abstract: Section 8(k) of the Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1337), authorizes the Secretary of the Interior (Secretary) to grant to the qualified persons, offering the highest cash bonuses on a basis of competitive bidding, leases of any mineral other than oil, gas, and sulphur in any area of the OCS not then under lease for such mineral upon such royalty, rental, and other terms and conditions as the Secretary may prescribe at the time of offering the area for lease. The Secretary is to administer the leasing provisions of the Act and prescribe the rule and regulations necessary to carry out those provisions.

Regulations implementing these responsibilities are under 30 CFR part 281. Responses are mandatory or required to obtain or retain a benefit. No questions of a sensitive nature are asked. The MMS protects information considered proprietary according to the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2, and 30 CFR parts 280 and 282).

BOEMRE uses the information required by 30 CFR part 281 to determine if statutory requirements are met prior to the issuance of a lease. Specifically, BOEMRE would use the information to:

• Evaluate the mineral(s) deposits requested by the lessee to ensure that the Federal government receives fair market value for the mineral(s) leased.

• Request the State(s) to initiate the establishment of a joint working group or task force to assess the proposed action and provide input.

• Ensure excessive overriding royalty interests are not created that would put economic constraints on all parties involved.

• Document that a leasehold or geographical subdivision has been surrendered by the record title holder.

• Determine if activities on the proposed lease area (s) will have significant impact on the environment.

There has been no activity in the OCS for minerals other than oil, gas and sulphur for many years. However, because these are regulatory requirements, the potential exists for information to be collected.

Frequency: On occasion.

Description of Respondents: There are no active respondents; therefore, we estimated the potential annual number of respondents to be one.

Estimated Reporting and Recordkeeping Hour Burden: The estimated annual hour burden for this information collection is a total of 1,248 hours. The following chart details the individual components and estimated hour burdens. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Citation 30 CFR 281	Reporting and/or recordkeeping requirements	Hour burden	Average Number of annual reponses	Annual burden hours
		Non-Hour Cost Burden(s)		
	Subpart A—General			
6	Appeal decisions	Exempt under 5 CFR 1320.4(a)(2), (c).		0
	Subpart B—Leasing Procedures			
11(a), (c)	Request approval for mineral lease with relevant information	60	1	60
All sections	Submit response to Call for Information and Interest on areas for leasing of minerals (other than oil, gas, sulphur) in accordance with approved lease program, including information from States/local governments.	120	1	120
13	States or local governments submit comments/recommendations on planning, coordination, consultation, and other issues that may contribute to the leasing process.	200	1	200
All sections	Submit suggestions and relevant information in response to request for comments on proposed lease including information from States/local governments.	160	1	160
18(a), (b), (c); 20 (e), (f); 26(a).	Submit bids (oral or sealed) and required information	250	1	250
18(c); 20 (e), (f)	Tie bids—submit oral bids for highest bidder	20	1	20
20(a), (b), (c); 41(a)	Establish a Company File for qualification; submit updated information, submit qualifications for lessee/bidder.	58	1	58
21(a); 47(c)	Request for reconsideration of bid rejection/cancellation	Requirement not considered IC per 5 CFR 1320.3(h)(9).		0
	Subtotal		**7 Responses**	**868 Hours**
	Subpart C—Financial Considerations			
26; 21(b), (e); 40(b); 41(b).	Execute lease (includes submission of evidence of authorized agent and request for dating of leases).	100	1	100
31(b); 41	File application and required information for assignment or transfer for approval.	160	1	160
		$50 required or non-required filing document fee × 1 = $50		
32(b), (c)	File application for waiver, suspension, or reduction and supporting documentation.	80	1	80
33; 41(c)	Submit surety or personal bond	Burden covered under 1010–0081.		0
	Subtotal		**3 Responses**	**340 Hours**
			$50 Non-Hour Cost Burden	
	Subpart E—Termination of Leases			
46(a)	File written request for relinquishment	40	**1 Response**	**40 Hours**

Citation 30 CFR 281	Reporting and/or recordkeeping requirements	Hour burden	Average Number of annual reponses	Annual burden hours
TOTAL BURDEN			**11 Responses**	**1,248 Hours**
			$50 Non-Hour Cost Burden	

Estimated Reporting and Recordkeeping Non-Hour Cost Burden: We have identified one non-hour cost burden. In § 281.41, respondents would pay a $50 application fee for any instrument to be filed (see burden table). We have identified no other non-hour cost burdens for this collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.*) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, on April 15, 2011, we published a **Federal Register** notice (76 FR 21393) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. In addition, § 282.0 provides the OMB control number for the information collection requirements imposed by the 30 CFR 282 regulations. The PRA (5 U.S.C. 1320) informs the public that they may comment at any time on the collections of information and BOEMRE provides the address to which they should send comments. We have received one comment in response to this effort and it was not germane to the paperwork burden.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. The OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by September 19, 2011.

Public Availability of Comments: Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

BOEMRE Information Collection Clearance Officer: Arlene Bajusz (703) 787–1025.

Dated: July 26, 2011.

David Moore,

Acting Chief, Office of Offshore Regulatory Programs.

[FR Doc. 2011–21166 Filed 8–18–11; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–R–2011–N093; 1265–0000–10137–S3]

Keālia Pond National Wildlife Refuge (NWR) and Kakahai'a NWR, Maui County, HI; Draft Comprehensive Conservation Plan and Environmental Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of our draft comprehensive conservation plans and environmental assessments (Draft CCPs/EAs) for the Keālia Pond and Kakahai'a National Wildlife Refuges (Refuges), for public review and comment. The Draft CCPs/EAs describe our proposals for managing the Refuges for the next 15 years.

DATES: To ensure consideration, we must receive your written comments by September 19, 2011. We will also announce opportunities for public input in local news media throughout the CCP process.

ADDRESSES: Additional information about the Refuges is available on our Web sites *http://www.fws.gov/kealiapond/*and *http://www.fws.gov/kakahaia/*. You may submit comments or request CD–ROM copies of the Draft CCPs/EAs by any of the following methods. A limited number of printed copies of the Draft CCPs/EAs are also available.

E-mail: FW1PlanningComments@fws.gov. Include ''Keālia Pond/Kakahai'a NWRs'' in the subject line of the message.

Fax: Attn: Glynnis Nakai, Project Leader, (808) 875–2945.

U.S. Mail: Glynnis Nakai, Project Leader, Maui National Wildlife Refuge Complex, P.O. Box 1042, Kīhei, Hawai'i 96753.

FOR FURTHER INFORMATION CONTACT: Glynnis Nakai, Project Leader, (808) 875–1582 (phone).

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we continue the CCP process for the Refuges. We started this process through a notice in the **Federal Register** (74 FR 53755; October 20, 2009).

The Keālia Pond and Kakahai'a Refuges are part of the Maui National Wildlife Refuge Complex. Keālia Pond Refuge is located along the southern shore of the island of Maui. It was established in 1992 for the purpose of providing habitat for endangered Hawaiian waterbirds, specifically, the endangered Hawaiian stilt (ae'o), and endangered Hawaiian coot ('alae ke'oke'o). Keālia Pond is one of the largest natural wetlands remaining in the Hawaiian Islands. The 704-acre Keālia Pond Refuge is administered under a perpetual conservation easement provided by Alexander and Baldwin, Inc. The Refuge encompasses open water, fresh to brackish water marsh, mudflat, grassland, upland shrub, and coastal beach strand habitats.

The Refuge also contains one of the largest concentrations of wetland birds in Hawai'i, and is an important breeding, feeding, and resting area for the ae'o and 'alae ke'oke'o. In addition, Keālia Pond Refuge provides a strategic landfall for migratory birds coming from Alaska, Siberia, and Asia, including Northern pintail (koloa māpu), Northern shoveler (koloa mohā), lesser scaup, Pacific golden-plover (kōlea), and ruddy turnstone ('akekeke). A total of 110 bird species have been documented on Keālia Pond Refuge. A majority of the Refuge is closed to general public access; however, trails, overlooks, and educational programs provide the public with opportunities to view some of Hawai'i's endangered and migratory wildlife.

The Kakahai'a Refuge is located on the southeastern coast of the island of Moloka'i. It was established to protect and provide habitat for endangered species. Habitats found on this Refuge include open water, freshwater marsh, mudflat, grassland, and shrubland. An inland Hawaiian fishpond is also located on the Refuge. Some of the more common migrants are koloa māpu and kōlea. Kakahai'a Refuge is closed to the general public; however, volunteers occasionally conduct wetland education programs.

Background

The CCP Process

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) (Refuge Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities that are compatible with a refuge's purposes, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Refuge Administration Act.

Public Outreach and CCP Issues

We started the public scoping phase of the CCP planning process in 2009 by publishing a Notice of Intent (NOI) in the **Federal Register** (74 FR 53755; October 20, 2009), announcing our intention to complete a CCP/EA for the Keālia Pond and Kakahai'a Refuges, and requesting public comments. Concurrently, we released Planning Update 1, to provide information to the public and various stakeholders regarding our planning process, the Refuges' purposes, and our preliminary issues, goals, and objectives. We also invited the public to two open house meetings and requested public comments in the NOI and Planning Update 1. In November 2009, we held two public open house meetings in Kīhei and Kaunakakai, HI.

In Planning Update 2, released in February 2010, we summarized the comments we received, listed the preliminary management issues we used to draft alternatives, and presented our refined goals and objectives. In March 2011, we released Planning Update 3. We described our preliminary alternatives and identified our preferred alternatives in the update, and requested comments. We identified the following key issues during our planning and public involvement process, and addressed them in the Draft CCPs/EAs.

- Reduce threats to native habitats, endangered species, migratory birds, and other native wildlife at Keālia Pond Refuge, from invasive California bulrush and pickleweed plants; and nonnative rats, Indian mongooses, and cats. Identify more efficient techniques to control the most aggressive invasive species.
- Reduce midge swarms, wind-blown dust, and foul-smelling tilapia die-offs that originate on Keālia Pond Refuge, and encroach on neighboring property.
- Expand opportunities for wildlife-dependent public uses on Keālia Pond Refuge, and manage public uses to prevent wildlife and habitat disturbances.
- Develop restoration plans and step-down habitat management plans, and identify alternative water sources for endangered waterbird habitat on both Refuges.
- Increase funding for and maintenance of equipment and facilities that are exposed to and degraded by the Refuges' coastal marine environmental conditions.
- Increase law enforcement to protect both Refuges' resources.
- Conduct baseline surveys of invertebrates and their associated vegetation, to facilitate adaptive management at both Refuges.
- Increase staff presence on the Kakahai'a Refuge, to improve habitat management, volunteer efforts, and visitor services.

Draft CCP Alternatives We Are Considering

During the public scoping process with which we started work on these Draft CCPs/EAs, we, other governmental partners, and the public raised several issues. To address these issues we developed and evaluated three alternatives for managing each Refuge. In each Draft CCP/EA, we present our evaluation of the environmental effects of each alternative, and identify Alternative C as our preferred alternative. Alternative C was selected in both documents, because it best achieves the Refuges' purposes, visions, and goals; contributes to the National Wildlife Refuge System mission; addresses issues and relevant mandates; and is consistent with principles of sound fish and wildlife management. Summaries of our alternatives follow.

Keālia Pond Refuge Draft CCP/EA Alternatives

Alternative A: No Change

Under Alternative A, we would continue current management. Management of threatened and endangered species would focus on waterbird protection and successful nesting, in support of Hawaiian Waterbird Recovery Plan implementation. Public use programs would remain virtually unchanged. We would rely on natural, annual flooding, to manage habitat, and supplemental flooding, to provide habitat for waterbirds. The open-water, 200-acre Keālia Pond is subject to the natural hydrological cycle, represented by high water in winter, receding water April to September, and complete drying October to November. The seasonal mudflats at Mā'alaea would not be actively managed.

The Refuge's proposed Molokini Islet Unit (a proposed overlay refuge) would continue to be managed as a seabird colony. We would visit the unit one or two times per year, to monitor the seabird population, and continue a collaborative, long-term bird-banding project with the Hawai'i Department of Land and Natural Resources (HDLNR).

There are three nuisance issues at Keālia Pond that impact downwind neighbors, they include: Nonnative insects (midges), dust, and fish die-off odor. In extended high-water years, an invasive midge species reproduces multiple times, and the resulting swarms encroach on adjacent property. The Refuge would continue to control midges by treating the main pond with

an insect growth inhibitor during peak abundance.

An overabundance of tilapia, a nonnative fish, occurs during extended flood conditions in the main pond. When the water recedes, the tilapia die-off emanates a foul odor, and the decaying fish must be raked out of the mud to remove the biomass. The Refuge would continue to trap and remove tilapia from the pond under Alternative A.

When water in the main pond recedes due to evaporation, trade winds disperse dust from the pond to the south-southeast side of the Refuge, and onto neighboring properties. Under Alternative A, we would continue to control windblown sediment by pumping and sheetflowing water into the main pond, targeting the pond's upper north edge.

Alternative B: Restoration Focus

Under Alternative B, we would identify and implement more efficient techniques for controlling the most aggressive invasive species, prepare a restoration plan and step-down habitat management plan with an inventory and monitoring protocol, and identify alternative water sources for endangered waterbirds. Developing a water source for Mā'alaea Flats would be a priority, enabling managing water levels for foraging, resting, and breeding ae'o, and providing enhanced wildlife viewing opportunities from the Keālia Coastal Boardwalk. We would conduct additional studies to evaluate the impacts visitors have on endangered waterbirds. Monitoring on the proposed Molokini Islet Unit would increase to two or three visits per year, for monitoring breeding and banding chicks. Methods to control nuisances (midges, dust, and tilapia) would be similar to Alternative A, until the Refuge is able to manipulate water levels in the open-water pond.

Alternative C: Wetland Capacity Focus (Preferred Alternative)

Under Alternative C, we would increase our ability to control water in the main pond and adjacent vegetated mudflats, remove the most aggressive invasive plants, and control pickleweed on the flats. Refuge enhancements would include constructing a water control structure, developing new wells to deliver water to target areas, and recontouring the topography, to maintain water on the flats. Increasing our capability to dewater and flood the main pond, would enhance our midge and tilapia control efforts.

Public uses would be similar to Alternatives A and B; however, new vegetated barriers and/or blinds would be provided for better wildlife viewing opportunities. Additional visitor services staff would recruit and train volunteers to assist with Refuge programs, and increase environmental educational opportunities.

Monitoring on the proposed Molokini Islet Unit would include three to six visits annually, during seabird nesting season (March to November). Very little information is known about 'ou (Bulwer's petrels) nesting on Molokini Islet; therefore, we would begin a monitoring program to determine the population's parameters. In addition, we would initiate a native plant restoration plan, particularly for 'ihi (*Portulaca molokiniensis*), a Federal and State species of concern. Volunteers would assist with propagating plants in the Refuge's greenhouse, and outplanting would be conducted by Federal and State biologists under a cooperative agreement with HDLNR.

Kakahai'a Refuge Draft CCP/EA Alternatives

Alternative A: Continue Current Management (No Change)

Under Alternative A, no changes in current management would occur. Wetland management would continue to be limited, due to staff and funding limitations. An overgrowth of pest plants, including trees and shrubs on levees, would continue to hinder efforts to manage the habitat on a small scale. Sedimentation would continue to degrade wetland habitat, resulting in even fewer waterbirds using the habitat; therefore we would not restart predator control activities. Management at Kakahai'a Refuge would be limited to treating pest plant species along the fence line with herbicide, maintaining access to gages and piezometers, monitoring water levels, and replacing the perimeter fence, as funding permits. The Refuge would remain closed to visitors.

Alternative B: Restoration and Biodiversity Focus

Under Alternative B, we would restore 10.5 acres of wetland habitat at Kakahai'a Refuge. We would create a water source for 5.5 acres of the Refuge's New Pond, by constructing a well, installing a water pump and distribution line, and repairing the electric panel. This alternative would create foraging and resting habitat for ae'o and 'alae ke'oke'o, and potential nesting habitat for ae'o. Removing 5 acres of invasive vegetation would recreate open water habitat in Old Pond. If feasible, the Old Pond's topography would be recontoured in areas where California bulrush has been removed, to create foraging and nesting habitat for 'alae ke'oke'o. Water level management in both ponds would also enhance invertebrate abundance. We would resume waterbird monitoring and predator control. The perimeter fence would be repaired or replaced to minimize the occurrence of invasive mammals such as axis deer, pigs, and dogs.

Under Alternative B, we would compile available data on the ecology of the wetlands, and evaluate wetland geomorphology and hydrology, to restore wetland habitat for the ae'o and 'alae ke'oke'o. The Refuge would remain closed to the public, except for issuing Special Use Permits for environmental education and interpretation activities. We would develop an earthen platform outside the fence along the entrance road to the Refuge, for wildlife viewing opportunities. Refuge staff visits would coincide with volunteer work group activities.

Alternative C: Wetland Capacity Focus (Preferred Alternative)

Under Alternative C, we would restore the 15-acre Old Pond, and 5.5 acres of the New Pond. Old Pond restoration activities would include removing California bulrush and other aggressive nonnative species, dredging accumulated sediment, recontouring the pond's bathymetry, removing and reconfiguring radial levees, reconstructing perimeter levees, replacing the water control structure, and replacing the pump between the two ponds. Restoring Old Pond would provide open water and emergent habitat for breeding, foraging, and nesting 'alae ke'oke'o. Natural groundwater springs would also supply water to Old Pond, which would reduce the need for supplemental water. A well, pump, water distribution line, and water control outlet would be constructed for New Pond, and levees would be rebuilt, which would enable us to flood and dewater the ponds to provide semi-permanent and seasonal habitat for ae'o, 'alae ke'oke'o, and migratory waterbirds. All monitoring activities would resume as part of the wetland restoration. A predator-proof fence would be installed, to protect wetland habitat and species.

We would work with the Hawai'i Department of Transportation, to modify the culvert passing under Kamehameha V Highway, to allow water from the upper watershed and periodic dewatering of the wetlands to flow to the ocean naturally, without blockage from sand.

Maintaining the wetlands at Kakahai'a Refuge would require regular onsite Refuge staff presence. The opportunities for visitors to engage in compatible wildlife-dependent recreation would expand, depending on staffing. At a minimum, a kiosk would be constructed on an earthen mound along the Refuge entrance road. Volunteer groups would assist Refuge staff with restoration and maintenance activities.

Public Availability of Documents

We encourage you to stay involved in the CCP planning process by reviewing and commenting on the proposals we have developed in the Draft CCPs/EAs. Copies of the documents are available by request from the Maui National Wildlife Refuge Complex, Milepost 6, Mokulele Highway, Kīhei, HI. The Draft CCPs/EAs are also available for downloading on our Web site *http://www.fws.gov/pacific/planning.*

Public Meetings

We will hold the following public meetings. In Moloka'i, the meeting is September 7, 2011, 6:30 to 8 p.m. at the Mitchell Pauole Center, 90 Ainoa Street, Kaunakakai, Hawai'i. In Maui, the meeting is September 8, 2011, from 6:30 to 8 p.m. at the Kīhei Community Center, 303 E. Lipoa Street, Kīhei, Hawai'i. For more information on the meetings, contact the person under **FOR FURTHER INFORMATION CONTACT**.

Next Steps

After the comment period ends, we will analyze the comments we receive and address them in the Final CCPs and decision documents.

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.

Dated: June 21, 2011.

Robyn Thorson,

Regional Director, Region 1, Portland, Oregon.

[FR Doc. 2011–21326 Filed 8–18–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Proclaiming Certain Lands, Forest Service Lands, as an Addition to the Bay Mills Indian Reservation for the Bay Mills Indian Community of Michigan

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Reservation Proclamation.

SUMMARY: This notice informs the public that the Assistant Secretary—Indian Affairs proclaimed approximately 842 acres, more or less, to be added to the Bay Mills Indian Reservation for the Bay Mills Indian Community of Michigan.

FOR FURTHER INFORMATION CONTACT: Ben Burshia, Bureau of Indian Affairs, Division of Real Estate Services, Mail Stop 4639–MIB, 1849 C Street, NW., Washington, DC 20240, telephone (202) 208–7737.

SUPPLEMENTARY INFORMATION: This Notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by part 209 of the Departmental Manual.

A proclamation was issued according with Section 7 of the Act of June 18, 1934 (48 Stat. 986; 25 U.S.C. 467), for the land described below. The land was proclaimed to be an addition to the Bay Mills Indian Reservation and part of the Bay Mills Indian Community of Michigan for the exclusive use of Indians on that Reservation who are entitled to reside at the Reservation by enrollment or tribal membership.

Bay Mills Indian Community Reservation

Michigan Meridian Township of Bay Mills, Chippewa County, Michigan

South One Half (½) of Southeast One Quarter (SE ¼), Section 13, Township 47 North, Range 3 West (80 acres);

That part of the NW ¼ of SE ¼, Section 13, Township 47 North, Range 3 West, and Government Lot 2 described as, Beginning at the Southeast corner of said Government Lot 2; thence Northerly along the east line of said Government Lot 2 to the shore of Lake Superior; thence Westerly and parallel to the south line of said Government Lot 2 to the centerline of the Point Iroquois Road (FR 3150); thence southeasterly and along said centerline to the south line of Government Lot 2; thence Easterly and along said south line to the Southeast corner of Government Lot 2 and the Place of Beginning (26.0 acres);

That part of the NW ¼ of the SE ¼, Section 13, Township 47 North, Range 3 West, lying westerly of the centerline of the Point Iroquois Road (FR 3150) (37.0 acres); Northeast One Quarter (NE ¼) of Southwest One Quarter (SW ¼), Section 13, Township 47 North, Range 3 West (40 acres); Southeast One Quarter (SE ¼) of Southwest One Quarter (SW ¼), Section 13, Township 47 North, Range 3 West (40 acres);

The Southerly 500 feet of the Southeast One Quarter (SE ¼) of the Northwest One Quarter (NW ¼), Section 13, Township 47 North, Range 3 West (15 acres); Part of the SW ¼ of NE ¼, Section 13, Township 47 North, Range 3 West, described as: Beginning at a point on the west line of said SW ¼ of NE ¼ which lies 500 feet north of the Southwest corner; thence South and along said west line a distance of 500 feet to said Southwest corner of the SW ¼ of NE ¼; thence east and along the South line of said SW ¼ of NE ¼ to the Southeast corner of said SW ¼ of NE ¼; thence North and along the East line of said SW ¼ of NE ¼ a distance of 700 feet; thence southwesterly to the west line of said SW ¼ of NE ¼ and the Place of Beginning, EXCEPT that portion lying easterly of the centerline of the Point Iroquois Road (FR 3150) (14.0 acres);

Government Lot 1, Section 23, Township 47 North, Range 3 West, EXCEPT 10 acres described as follows: Beginning at the Northwest corner of said Government Lot 1; thence East a distance of 417.42 feet; thence South and parallel with the west line a distance of 1,043.55 feet; thence West and parallel with the north line a distance of 417.42 feet to the west line; thence North along the west line to the Northwest corner and the Place of Beginning (30.0 acres);

Northwest One Quarter (NW ¼) of the Southwest One Quarter (SW ¼), Section 24, Township 47 North, Range 3 West (40 acres);

Southwest One Quarter (SW ¼) of Section 25, Township 47 North, Range 3 West (160 acres);

West One Half (W ½) of the Southeast One Quarter (SE ¼), Section 25, Township 47 North, Range 3 West (80 acres);

Southeast One Quarter (SE ¼) of Southeast One Quarter (SE ¼), Section 25, Township 47 North, Range 3 West (40 acres);

Northwest One Quarter (NW ¼) of Section 36, Township 47 North, Range 3 West (160 acres); and

West One Half (W ½) of Northeast One Quarter (NE ¼), Section 36, Township 47 North, Range 3 West (80 acres).

The above-described lands contain a total of 842 acres, more or less, which are subject to all valid rights, reservations, rights-of-way, and easements of record.

This proclamation does not affect title to the land described above, nor does it affect any valid existing easements for public roads and highways, public utilities and for railroads and pipelines and any other rights-of-way or reservations of record.

Dated: August 8, 2011.

Jodi Gillette,

Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 2011–21263 Filed 8–18–11; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLOR957000–L14200000–BJ0000: HAG11–309]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Bureau of Land Management Oregon/Washington State Office, Portland, Oregon, 30 days from the date of this publication.

Willamette Meridian

Oregon

T. 24 S., R.4 W., accepted July 18, 2011,
T. 23 S., R.4 W., accepted July 18, 2011,
T. 8 S., R. 19 E., accepted July 20, 2011,
T. 22 S., R. 3 W., accepted July 21, 2011,
T. 28 S., R. 10 W., accepted July 21, 2011,
T. 3 S., R 45 E., accepted July 22, 2011.

Washington

T. 18 N., R. 9 W., accepted July 20, 2011.

ADDRESSES: A copy of the plats may be obtained from the Land Office at the Bureau of Land Management, Oregon/Washington State Office, 333 SW. 1st Avenue, Portland, Oregon 97204, upon required payment. A person or party who wishes to protest against a survey must file a notice that they wish to protest (at the above address) with the Oregon/Washington State Director, Bureau of Land Management, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Kyle Hensley, (503) 808–6124, Branch of Geographic Sciences, Bureau of Land Management, 333 SW. 1st Avenue, Portland, Oregon 97204. 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: 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.

Fred O'Ferrall,

Chief, Branch of Land, Mineral, and Energy Resources.

[FR Doc. 2011–21172 Filed 8–18–11; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNM940000. L1420000.BJ0000]

Notice of Filing of Plats of Survey, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of Plats of Survey.

SUMMARY: The plats of survey described below are scheduled to be officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, thirty (30) calendar days from the date of this publication.

SUPPLEMENTARY INFORMATION:

New Mexico Principal Meridian, New Mexico (NM):

The plat, representing the dependent resurvey and survey, in Township 15 North, Range 3 West, of the New Mexico Principal Meridian, accepted July 5, 2011, for Group 1128 NM.

The plat, representing the dependent resurvey and survey, in Township 10 South, Range 9 West, of the New Mexico Principal Meridian, accepted June 10, 2011, for Group 1122 NM.

Indian Meridian, Oklahoma (OK):

The plat, in two sheets, representing the dependent resurvey and survey in Township 19 North, Range 5 East, of the Indian Meridian, accepted June 15, 2011, for Group 195 OK.

The plat, in three sheets, representing the dependent resurvey and survey in Township 15 North, Range 11 West, of the Indian Meridian, accepted November 5, 2010, for Group 184 OK.

The plat, in eight sheets, representing the dependent resurvey and survey in Township 11 North, Range 22 East, of the Indian Meridian, accepted July 22, 2011, for Group 66 OK.

The plat, representing the dependent resurvey and survey in Township 14 North, Range 25 East, of the Indian Meridian, accepted July 25, 2011, for Group 204 OK.

The plat, in three sheets, representing the dependent resurvey and survey in Township 5 North, Range 19 West, of the Indian Meridian, accepted July 18, 2011, for Group 174 OK.

The plat, representing the dependent resurvey and survey in Township 13 North, Range 25 East, of the Indian Meridian, accepted August 3, 2011, for Group 197 OK.

The plat, representing the dependent resurvey and survey in Township 17 North, Range 23 East, of the Indian Meridian, accepted August 3, 2011, for Group 190 OK.

FOR FURTHER INFORMATION CONTACT: These plats will be available for inspection in the New Mexico State Office, Bureau of Land Management, 301 Dinosaur Trail, Santa Fe, New Mexico. Copies may be obtained from this office upon payment. Contact Marcella Montoya at 505–954–2097, or by e-mail at *Marcella_Montoya@nm.blm.gov,* for assistance.

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.

These plats are to be scheduled for official filing 30 days from the notice of publication in the **Federal Register**, as provided for in the BLM Manual Section 2097—Opening Orders. Notice from this office will be provided as to the date of said publication. If a protest against a survey, in accordance with 43 CFR 4.450–2, of the above plats is received prior to the date of official filing, the filing will be stayed pending consideration of the protest.

A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

A person or party who wishes to protest against any of these surveys must file a written protest with the Bureau of Land Management New Mexico State Director stating that they wish to protest.

A statement of reasons for a protest may be filed with the Notice of protest to the State Director or the statement of reasons must be filed with the State Director within thirty (30) days after the protest is filed.

Robert A. Casias,

Deputy State Director, Cadastral Survey/ GeoSciences.

[FR Doc. 2011–21169 Filed 8–18–11; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–923–1310–FI; WYW178834]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease WYW178834, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of the Mineral Leasing Act of 1920, as amended, the Bureau of Land Management (BLM) received a petition for reinstatement from Langley Energy Inc. for competitive oil and gas lease WYW178834 for land in Campbell County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: BLM, Julie L. Weaver, Chief, Fluid Minerals Adjudication, at 307–775–6176. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10 per acre or fraction thereof, per year and 16–2/3 percent, respectively. The lessee has paid the required $500 administrative fee and $163 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the BLM is proposing to reinstate lease WYW178834 effective February 1, 2011, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. The BLM has not issued a valid lease to any other interest affecting the lands.

Julie L. Weaver,

Chief, Branch of Fluid Minerals Adjudication.

[FR Doc. 2011–20937 Filed 8–18–11; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Continuation of Visitor Services—Yosemite National Park

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: Under the terms of the existing concession contract, the National Park Service intends to request a continuation of visitor services in Yosemite National Park for a period not to exceed one year from the expiration date of the current contract.

DATES: Effective Date: October 1, 2011.

FOR FURTHER INFORMATION CONTACT: Debra Hecox, Acting Chief, Commercial Services Program, National Park Service, 1201 Eye Street, NW., 11th Floor, Washington, DC 20005; Telephone: 202–513–7156.

SUPPLEMENTARY INFORMATION: We, the National Park Service, have extended the contract listed below for the maximum period allowable under 36 CFR 51.23. We authorize continuation of visitor services for a period not to exceed one year under the terms and conditions of the current contract as amended. We make this authorization under the provisions of current concession contracts and pending the completion of the public solicitation of a prospectus for a new concession contract. The continuation of operations does not affect any rights with respect to selection for award of a new concession contract.

Concession ID No.	Concessioner name	Park
YOSE004–93	DNC Parks & Resorts, Inc.	Yosemite National Park.

Jo A. Pendry,

Acting Associate Director, Business Services.

[FR Doc. 2011–21090 Filed 8–18–11; 8:45 am]

BILLING CODE 4312–53–M

INTERNATIONAL TRADE COMMISSION

[USITC SE–11–023]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: August 30, 2011 at 11 a.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: None.
2. Minutes.
3. Ratification List.
4. Vote in Inv. Nos. 731–TA–825 and 826 (Second Review) (Polyester Staple Fiber from Korea and Taiwan). The Commission is currently scheduled to transmit its determinations and Commissioners' opinions to the Secretary of Commerce on or before September 13, 2011.
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: August 17, 2011.

William R. Bishop,

Hearings and Meetings Coordinator.

[FR Doc. 2011–21412 Filed 8–17–11; 4:15 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Connected Media Experience, Inc.

Notice is hereby given that, on July 15, 2011, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Connected Media Experience, Inc. (''CMX'') has filed

written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Deluxe Digital Studios, Burbank, CA; and Christopher Young-Zawada (Individual Member), New York, NY, have been added as parties to this venture. Also, MXP4, Paris, FRANCE; Tunewiki, Santa Monica, CA; MC Squared Incorporated, Pennington, NJ; Related Content Database Inc., San Francisco, CA; and Thwapr, Inc., New York, NY, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and CMX intends to file additional written notifications disclosing all changes in membership.

On March 12, 2010, CMX filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on April 16, 2010 (75 FR 20003).

The last notification was filed with the Department on April 26, 2011. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 20, 2011 (75 FR 40851).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2011–21112 Filed 8–18–11; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—American Society of Mechanical Engineers

Notice is hereby given that, on July 25, 2011, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), American Society of Mechanical Engineers (''ASME'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, since April 7, 2011, ASME has published one new standard, initiated five new standards activities, withdrawn two standards, established one new consensus committee, and revised the charter of one consensus committee within the general nature and scope of ASME's standards development activities, as specified in its original notification. More detail regarding these changes can be found at *http://www.asme.org.*

On September 15, 2004, ASME filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on October 13, 2004 (69 FR 60895).

The last notification was filed with the Department on April 12, 2011. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 11, 2011 (76 FR 27351).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2011–21114 Filed 8–18–11; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

[OMB Number 1110–NEW]

Agency Information Collection Activities: Applicant Information Form (1–783)

ACTION: 30-Day Notice of Information Collection.

The Department of Justice (DOJ), Federal Bureau of Investigation (FBI), Criminal Justice Information Services (CJIS) Division will be submitting the following information collection to the Office of Management and Budget (OMB) for review in accordance with established review procedures of the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. The information collection was previously published in the **Federal Register** Volume 76, Number 115, Page 35022, on, June 15, 2011, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until September 19, 2011. This process is conducted in accordance with 5 CFR 1320.10.

Written comments concerning this information collection should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: DOJ Desk Officer. The best way to ensure your comments are received is to e-mail them to *oira_submission@omb.eop.gov* or fax them to 202–395–7285. All comments should reference the 8 digit OMB number for the collection or the title of the collection. If you have questions concerning the collection, please contact Rachel K. Hurst at 1–304–625–2000 or the DOJ Desk Officer at 202–395–3176.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(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 a 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 of other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of information collection:* Approval of existing collection in use without an OMB control number.

(2) *The title of the form/collection:* Applicant Information Form.

(3) *The agency form number, if any, and the applicable component of the department sponsoring the collection:* 1–783 (Applicant Information Form); CJIS Division, FBI, DOJ.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals. This collection is necessary for an individual to request a copy of their personal identification record to review it or to obtain a change, correction, or an update to the record.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Annually, the FBI receives 225,000 identification requests,

therefore there are 225,000 respondents. The form requires three minutes to complete.

(6) *An estimate of the total public burden (in hours) associated with this collection:* There are approximately 11,250 burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street, NE., Room 2E–508, Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2011–21220 Filed 8–18–11; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

[OMB Number 1110–NEW]

Agency Information Collection Activities; Proposed Collection, Comments Requested; Establishment and Distribution of National Fingerprint Examiners Questionnaire

ACTION: 30-Day Notice of Information Collection Under Review.

The Department of Justice, Federal Bureau of Investigation, Training and Records Testimony Team will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with established review procedures of the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 76, Number 119, Pages 36155–36156, on June 21, 2011, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until September 19, 2011. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to David R. Cotton, Training Administrator, Federal Bureau of Investigation, Training and Records Testimony Team, Criminal Justice Information Services (CJIS) Division, Clarksburg, West Virginia 26306; facsimile (304) 625–2337.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond.

Overview of This Information Collection

(1) *Type of information collection:* Identify agencies that provide fingerprint comparisons.

(2) *The title of the form/collection:* National Fingerprint Examiners Questionnaire.

(3) *The agency form number, if any, and the applicable component of the department sponsoring the collection:* N/A.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Federal, state, and local government law enforcement agencies charged with the responsibility of fingerprint comparison.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Sampling of one-hundred to one-hundred and fifty respondents with a time burden of less than ten minutes per phone call.

(6) *An estimate of the total public burden (in hours) associated with this collection:* There are approximately 1,500 burden hours associated with this information collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street, NE., Room 2E–508, Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2011–21221 Filed 8–18–11; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Permissible Equipment Testing

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the revised Mine Safety and Health Administration (MSHA) sponsored information collection request (ICR) titled, ''Permissible Equipment Testing,'' 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 September 19, 2011.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an e-mail to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the U.S. Department of Labor, Mine Safety and Health Administration (MSHA), 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 MSHA is responsible for quality control of mine equipment and components, materials, instruments, and explosives used in the mining industry.

Regulations 30 CFR parts 6 through 36 contain procedures by which manufacturers may apply to have equipment approved as permissible for use in mines.

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 1219–0066. 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 April 29, 2011 (76 FR 24060).

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 1219–0066. 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: Mine Safety and Health Administration (MSHA).

Title of Collection: Permissible Equipment Testing.

OMB Control Number: 1219–0066.

Affected Public: Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 257.

Total Estimated Number of Responses: 754.

Total Estimated Annual Burden Hours: 4441.

Total Estimated Annual Other Costs Burden: $2,780,708.

Dated: August 15, 2011.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2011–21191 Filed 8–18–11; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (11–074)]

NASA International Space Station Advisory Committee and the Aerospace Safety Advisory Panel; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces an open joint meeting of the NASA International Space Station Advisory Committee and the Aerospace Safety Advisory Panel. The purpose of this meeting is to assess the status of the development of two current commercial cargo vehicles under consideration by NASA for Commercial Resupply Services for the International Space Station (ISS), with particular focus on the ability of each to rendezvous and berth safely with the ISS.

DATES: September 9, 2011, 1–3 p.m., Local Time.

ADDRESSES: National Aeronautics and Space Administration Headquarters, 300 E Street, SW., Glennan Conference Room, 1Q39, Washington, DC 20546. The meeting will be open to the public up to the seating capacity of the room. This meeting is also available telephonically. You must use a touch tone phone to participate in this meeting. Any interested person may dial access number, 1–800–857–5122 and then enter the participant passcode: miller, followed by the # sign.

FOR FURTHER INFORMATION CONTACT: Dr. J. Donald Miller, Office of International and Interagency Relations, (202) 358–1527, National Aeronautics and Space Administration, Washington, DC 20546–0001.

SUPPLEMENTARY INFORMATION: It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. This meeting will be open to the public up to the seating capacity of the room. Five seats will be reserved for members of the press. Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving an access badge. Foreign nationals attending this meeting will be required to provide a copy of their passport, visa, or green card in addition to providing the following information no less than ten working days prior to the meeting: full name; gender; date/place of birth; citizenship; visa/green card information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, phone); title/position of attendee. Send identifying information to Dr. Miller via e-mail at *j.d.miller@nasa.gov* or by telephone at (202) 358–1527. To expedite admittance, attendees with U.S. citizenship can provide identifying information 3 working days in advance by contacting Dr. Miller via e-mail at *j.d.miller@nasa.gov* or by telephone at (202) 358–1527.

August 15, 2011.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2011–21161 Filed 8–18–11; 8:45 am]

BILLING CODE P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (11- 075)]

NASA Federal Advisory Committees; Nominations and Self-Nominations

AGENCY: National Aeronautics and Space Administration.

ACTION: Public Invitation for Potential Members to Serve on NASA Federal Advisory Committees.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration, and in accordance with the Memorandum for the Heads of Executive Departments and Agencies signed on December 17, 2010, signed by

the Director of the Office of Science and Technology Policy (OSTP), Executive Office of the President, NASA announces an invitation for the public to nominate individuals and also submit self-nominations for consideration as potential members of NASA's Federal advisory committees. NASA's Federal advisory committees have member vacancies from time to time throughout the year, and NASA will consider nominations and self-nominations to fill such intermittent vacancies. NASA is committed to selecting members to serve on its Federal advisory committees based on their expertise, knowledge, and contribution to the relevant subject area.

Deadline: September 20, 2011.

ADDRESSES: Nominations and self-nominations from interested individuals must be sent to NASA in letter form, be signed, and must include the name of the specific NASA Federal advisory committee of interest for consideration. Such letters must be accompanied by the following additional information: (1) Resume and/or curriculum vitae; (2) professional biography (one page maximum). Letters may be submitted electronically, in hard-copy, or both. Please send all letters and accompanying information to: Ms. Susan Burch, Advisory Committee Management Division, Office of International and Interagency Relations, NASA Headquarters, Washington, DC 20546; or electronically to: *susan.burch@nasa.gov.*

SUPPLEMENTARY INFORMATION: NASA's currently chartered Federal advisory committees are as follows:

- *NASA Advisory Council [http://www.nasa.gov/offices/nac/home/index.html]*—The NASA Advisory Council provides advice and recommendations to the NASA Administrator on Agency programs, policies, plans, financial controls, and other matters pertinent to the Agency's responsibilities. The Council's areas of emphasis are: Aeronautics; audit, finance and analysis; commercial space; education and public outreach; human exploration and operations; information technology infrastructure; science; and technology and innovation.
- *Aerospace Safety Advisory Panel [http://oiir.hq.nasa.gov/asap/index.html]*—The Aerospace Safety Advisory Panel provides advice and recommendations to the NASA Administrator and the Congress on matters related to safety, and perform such other duties as the NASA Administrator may request.
- *International Space Station (ISS) Advisory Committee*—The ISS Advisory Committee provides advice and recommendations to the NASA Associate Administrator for Space Operations on all aspects related to the safety and operational readiness of the ISS. It addresses additional issues and/or areas of interest identified by the NASA Associate Administrator for Space Operations.
- *International Space Station (ISS) National Laboratory Advisory Committee*—The ISS National Laboratory Advisory Committee monitors, assesses, and makes recommendations to the NASA Administrator regarding effective utilization of the ISS as a national laboratory and platform for research, and such other duties as the NASA Administrator may request.
- *National Space-Based Positioning, Navigation and Timing (PNT) Advisory Board [http://www.pnt.gov]*—The National Space-Based PNT Advisory Board provides advice to the PNT Executive Committee (comprised of nine stakeholder Federal agencies, of which NASA is a member) on U.S. space-based PNT policy, planning, program management, and funding profiles in relation to the current state of national and international space-based PNT services.

FOR FURTHER INFORMATION CONTACT: To view charters for each of the above-listed NASA Federal advisory committees, and for additional information, please visit the NASA Advisory Committee Management Division website *[http://oiir.hq.nasa.gov/acmd.html]*, or contact Ms. Susan Burch, Advisory Committee Specialist, NASA Headquarters, Washington, DC 20546, (202) 358–0550, or *susan.burch@nasa.gov.*

Dated: August 15, 2011.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2011–21153 Filed 8–18–11; 8:45 am]

BILLING CODE P

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

Submission for OMB Review, Comment Request, Proposed Collection: Sustainability of Digitized Special Collections

AGENCY: Institute of Museum and Library Services, The National Foundation for the Arts and the Humanities.

ACTION: Submission for OMB Review, Comment Request.

SUMMARY: The Institute of Museum and Library Services announces that the following information collection has been submitted to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

A copy of the proposed information collection request, with applicable supporting documentation, may be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before September 18, 2011.

OMB is particularly interested in comments that help the agency to:

- 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 submissions of responses.

ADDRESSES: Chuck Thomas, Senior Program Officer, Institute of Museum and Library Services, 1800 M Street, NW., 9th Floor, Washington, DC 20036. Telephone: 202–653–4663. E-mail: *cthomas@imls.gov* or by teletype (TTY/TDD) for persons with hearing difficulty at 202–653–4614.

SUPPLEMENTARY INFORMATION: The Institute of Museum and Library Services (IMLS) is an independent Federal grant-making agency and is the primary source of Federal support for the Nation's 123,000 libraries and 17,500 museums. IMLS provides a variety of grant programs to assist the Nation's museums and libraries in improving their operations and enhancing their services to the public.

IMLS conducts policy research, analysis, and data collection to extend and improve the Nation's museum, library, and information services. The policy research, analysis, and data collection is used to: Identify national needs for and trends in museum, library, and information services; measure and report on the impact and effectiveness of museum, library, and information services throughout the United States; identify best practices; and develop plans to improve museum, library, and information services of the United States and strengthen national, State, local, regional, and international communications and cooperative networks. (20 U.S.C. Chapter 72, 20 U.S.C. 9108).

Abstract: Libraries and museums have invested in digitizing their rare or unique special collections content, often with funds from the government. The data collection phase of this project will provide a much-needed landscape of the current activities and costs incurred by institutions that host and manage digitized special collections. The subsequent case studies will permit a deeper exploration of strategies that project leaders are using to make these resources most valuable to users.

Current Actions: This notice proposes clearance of the Sustaining Digitized Special Collections and Archives Survey. The 60-day notice for the Sustaining Digitized Special Collections and Archives Survey was published in the **Federal Register** on May 31, 2011, (FR vol. 76, No. 104, pg. 31367). No comments were received.

Agency: Institute of Museum and Library Services.

Title: Sustainability of Digitized Special Collections.

OMB Number: To be determined.

Agency Number: 3137.

Frequency: One-time survey of no more than 761 reference-service providers.

Affected Public: State, Local and Tribal Government, General public, libraries, museums.

Number of Respondents: 761.

Total burden hours: 543.08.

Total cost for respondents: $24,279.61.

Total Annualized Capital/Startup Costs: $24,279.61.

Total Annual Costs: N/A.

FOR FURTHER INFORMATION CONTACT: Comments should be sent to Office of Information and Regulatory Affairs, Attn.: OMB Desk Officer for Education, Office of Management and Budget, Room 10235, Washington, DC 20503, (202) 395–7316.

Dated: August 15, 2011.

Kim A. Miller,

Management Analyst, Institute of Museum & Library Services.

[FR Doc. 2011–21168 Filed 8–18–11; 8:45 am]

BILLING CODE 7036–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–288; NRC–2011–0172]

Reed College, Facility License No. R–112; Notice of Acceptance for Docketing and Opportunity To Provide Comments and/or Request a Hearing and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Acceptance for Docketing.

DATES: Submit comments by October 18, 2011. Requests for a hearing must be filed by October 18, 2011. Any potential party as defined in Title 10 of the *Code of Federal Regulations* (10 CFR), Section 2.4 who believes access to Sensitive Unclassified Non-Safeguards Information (SUNSI) is necessary to respond to this notice must request document access by August 29, 2011.

ADDRESSES: You may submit comments by any one of the following methods. Please include Docket ID NRC–2011–0172 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the U.S. Nuclear Regulatory Commission (NRC or the Commission) Web site and on the Federal Rulemaking Web site, *http://www.regulations.gov.* Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed. You may submit comments by any one of the following methods:

- Federal Rulemaking Web Site: Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2011–0172. Address questions about NRC dockets to Carol Gallagher, telephone: 301–492–3668; e-mail: *Carol.Gallagher@nrc.gov.*
- Mail comments to: Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- Fax comments to: RADB at 301–492–3446.

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

- NRC's Public Document Room (PDR): The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.* The initial application and other related documents may be accessed in ADAMS, under ADAMS Accession Nos.: ML092200010, ML100610121, ML102360016, ML102990489 and ML111520559.
- 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–2011–0172.

FOR FURTHER INFORMATION CONTACT: A. Francis DiMeglio, Project Manager, Research and Test Reactors Licensing Branch, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Rockville, MD 20852. Telephone: 301–415–0894; e-mail: *Francis.DiMeglio@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is considering an application for the renewal of Facility License No. R–112 (''Application''), which currently authorizes the Reed College (the licensee) to operate the Reed Research Reactor at a maximum steady-state thermal power of 250 kilowatts (kW) thermal power. The renewed license would authorize the

applicant to operate the Reed Research Reactor up to a steady-state thermal power of 250 kW for an additional 20 years from the date of issuance.

On August 29, 2007, the NRC received an application from the licensee filed pursuant to 10 CFR 50.51(a) to renew Facility License No. R–112 for the Reed Research Reactor. In addition, the licensee also requested an upgrade of the licensed power level to 500 kW as part of the license renewal request. By letter dated January 26, 2010, as supplemented by letters dated July 30, 2010, October 15, 2010, and May 20, 2011, the licensee amended the license renewal application submitted earlier and requested that the license be renewed at the power level of 250 kW.

The application contains SUNSI.

Based on its initial review of the application, the NRC staff determined that Reed College submitted sufficient information in accordance with 10 CFR 50.33 and 10 CFR 50.34 so that the application is acceptable for docketing. The current Docket No. 50–288 for Facility Operating License No. R–112 will be retained. The docketing of the renewal application does not preclude requests for additional information as the review proceeds, nor does it predict whether the Commission will grant or deny the application. Prior to a decision to renew the license, the Commission will make findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations.

II. Opportunity To Request a Hearing

Requirements for hearing requests and petitions for leave to intervene are found in 10 CFR 2.309, ''Hearing requests, Petitions to Intervene, Requirements for Standing, and Contentions.'' Interested persons should consult 10 CFR part 2, Section 2.309, which is available at the NRC's Public Document Room (PDR), located at O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852 (or call the PDR at (800) 397–4209 or (301) 415–4737). NRC regulations are also accessible electronically from the NRC's Electronic Reading Room on the NRC Web site at *http://www/nrc.gov.*

III. Petitions for Leave To Intervene

Any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition must provide the name, address, and telephone number of the petitioner and specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order that may be entered in the proceeding on the petitioner's interest.

A petition for leave to intervene must also include a specification of the contentions that the petitioner seeks to have litigated in the hearing. For each contention, the petitioner must provide a specific statement of the issue of law or fact to be raised or controverted, as well as a brief explanation of the basis for the contention. Additionally, the petitioner must demonstrate that the issue raised by each contention is within the scope of the proceeding and is material to the findings the NRC must make to support the granting of a license renewal in response to the application. The petition must also include a concise statement of the alleged facts or expert opinions which support the position of the petitioner and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the petitioner intends to rely. Finally, the petition must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact, including references to specific portions of the application for license renewal that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application for license renewal fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief. Each contention must be one that, if proven, would entitle the petitioner to relief.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that person's admitted contentions, including the opportunity to present evidence and to submit a cross-examination plan for cross-examination of witnesses, consistent with NRC regulations, policies, and procedures. The Atomic Safety and Licensing Board will set the time and place for any prehearing conferences and evidentiary hearings, and the appropriate notices will be provided.

Non-timely petitions for leave to intervene and contentions, amended petitions, and supplemental petitions will not be entertained absent a determination by the Commission, the Atomic Safety and Licensing Board or a Presiding Officer that the petition should be granted and/or the contentions should be admitted based upon a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

A State, county, municipality, Federally-recognized Indian Tribe, or agencies; thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(d)(2). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by October 18, 2011. The petition must be filed in accordance with the filing instructions in Section IV of this document, and should meet the requirements for petitions for leave to intervene set forth in this section, except that State, local governmental bodies, and Federally-recognized Indian tribes do not need to address the standing requirements in 10 CFR 2.309(d)(1) if the facility is located within its boundaries. The entities listed above could also seek to participate in a hearing as a nonparties pursuant to 10 CFR 2.315(c).

Any person who does not wish, or is not qualified, to become a party to this proceeding may request permission to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of position on the issues, but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to such limits and conditions as may be imposed by the Atomic Safety and Licensing Board. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission by October 18, 2011.

IV. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-

Filing process requires participants to submit and serve all adjudicatory documents over the Internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E–Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E–Submittal server are detailed in NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through 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 *MDHD.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://ehds.nrc.gov/EHDI,* 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 August 19, 2011. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

Detailed guidance which the NRC uses to review applications for the renewal of non-power reactor licenses can be found in NUREG–1537, ''Guidelines for Preparing and Reviewing Applications for the Licensing of Non-Power Reactors,'' and ''Interim Staff Guidance (ISG) on the Streamlined Review Process for License Renewal for Research Reactors.'' The detailed review guidance (NUREG–1537 and the ISG) may be accessed online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html* under ADAMS Accession No. ML042430055 for part one of NUREG–1537, ADAMS Accession No. ML042430048 for part two of NUREG–1537, and ADAMS Accession No. ML092240244 for the ISG.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing SUNSI.

B. Within 10 days after publication of this opportunity to request a hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI is necessary to respond to this notice may request such access. A ''potential party'' is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requestor shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The e-mail address for the Office of the Secretary and the Office of the General Counsel are *hearing.docket@nrc.gov* and *OGCmailcenter@nrc.gov,* respectively.[1] The request must include the following information:

1. A description of the licensing action with a citation to this **Federal Register** notice;

2. The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1); and

3. The identity of the individual or entity requesting access to SUNSI and the requestor's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly-available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention.

D. Based on an evaluation of the information submitted under paragraph C.(3) the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order[2] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after the requestor is granted access to that information. However, if more than 25 days remain between the date the petitioner is granted access to the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.

G. Review of Denials of Access.

(1) If the request for access to SUNSI is denied by the NRC staff either after a determination on standing and need for access, or after a determination on trustworthiness and reliability, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requestor may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

H. Review of Grants of Access. A party other than the requestor may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed with the Chief Administrative Judge within 5 days of the notification by the NRC staff of its grant of access.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[3]

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR Part 2. Attachment 1 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It Is So Ordered.

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

For the Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's ''E-Filing Rule,'' the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

[2] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

[3] Requesters should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION IN THIS PROCEEDING

Day	Event/Activity
0	Publication of **Federal Register** notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: Supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.
60	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 petitioner/requestor reply).
20	Nuclear Regulatory Commission (NRC) staff informs the requestor of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents).
25	If NRC staff finds no ''need'' or no likelihood of standing, the deadline for petitioner/requestor to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds ''need'' for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
A	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 60	Decision on contention admission.

[FR Doc. 2011–21214 Filed 8–18–11; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[NRC–2011–0054; Docket No. 40–0299]

Environmental Assessment and Finding of No Significant Impact for License Amendment No. 64 for Umetco Minerals Corporation Gas Hill Reclamation Project, License No. SUA–648

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Availability.

FOR FURTHER INFORMATION CONTACT: Dominick A. Orlando, Senior Project Manager, Special Projects Branch, Decommissioning and Uranium Recovery Licensing Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: 301–415–6749; e-mail: *Dominick.Orlando@nrc.gov*.

SUPPLEMENTARY INFORMATION:

Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to Source Materials License SUA–648 issued to Umetco Minerals Corporation (Umetco or the licensee) to authorize repairs to the erosion protection system at its Gas Hills Reclamation Project in Fremont and Natrona Counties, Wyoming. The NRC has prepared an Environmental Assessment (EA) for this proposed action in accordance with the requirements of Title 10 of the *Code of Federal Regulations* (10 CFR) part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate with respect to the proposed action. The amendment will be issued following the publication of this Notice.

The current Umetco site consists of three primary tailings disposal areas on the 1,920 acre parcel—the 170 acre Above-Grade Tailings Impoundment (AGTI), the 55 acre A–9 Repository (A–9), and the 60 acre Heap Leach Area. In addition, the Gas Hills Pond No. 2 area, adjacent to the Heap Leach Area, also contains waste from heap leach operations.

Umetco submitted a reclamation plan for the AGTI area of the site in 1980. During the mid-1990s, the existing reclamation plan was reevaluated to address potential erosion of the cover design and additional contamination identified adjacent to the existing cover in the area. In addition, given the NRC's position on the acceptance of previously approved reclamation plans and license termination requirements, Umetco re-examined the AGTI reclamation design and the completed work, and concluded that license termination would not be possible with the existing erosion protection design. Umetco submitted an enhanced reclamation plan for the AGTI area in October 1997. The NRC approved this enhanced plan in 1999. In 2000, Umetco requested approval for modification of the erosion protection design to prevent potential disturbance of cultural resources discovered during reclamation activities. The modification was approved by the NRC in April 2001. Umetco completed the work in this area

in 2002. The A–9 is a former open pit uranium mine that was used for tailings disposal. The original reclamation plan was previously approved by the NRC, but the cover was never constructed. Umetco submitted a revised reclamation plan in 1998 to implement modifications to the A–9. The NRC approved the revised reclamation plan in 1999 [NRC 1999]. Umetco completed work in this area in 2006.

In June 2007, Umetco submitted the Construction Completion Report documenting the completed construction activities at the site inclusive of the AGTI and A–9 reclamation covers. The Construction Completion Report was subsequently approved by License Amendment 60 in September 2008.

Monitoring and inspection activities performed by Umetco on the AGTI and A–9 reclamation covers identified isolated areas of erosion, namely sub-grade erosion of the erosion protection layer resulting in isolated, shallow incisions of the underlying cover soils. While this issue has resulted in shallow incisions of the underlying cover soils in isolated locations, the incisions do not extend deeper than 12–18 inches. In addition, the frost protection layer is 54 inches thick on the cover and the radon barrier is located beneath the frost protection layer. Thus, it does not appear that there has been a release of tailings or degradation of the radon attenuation capacities of the completed reclamation covers.

On December 21, 2010, Umetco submitted an evaluation that identified what Umetco believed was the reason for the incisions and requested approval of an enhanced design to repair the cover. The current licensing action is to approve Umetco's request.

Environmental Assessment Summary

The purpose of the proposed amendment is to authorize the repair of the erosion protection system at Umetco's Gas Hills Reclamation Project site, in Fremont and Natrona Counties, Wyoming. By letters dated December 21, 2010, May 10, 2011, June 8, 2011, July 13, 2011, and July 18, 2011, Umetco submitted a request for approval of, and provided additional information supporting, their proposed repair approach for the cover.

Umetco proposes to correct the sub-grade erosion by placing a bedding layer under the AGTI and A–9 covers by one of two methods. The first would involve removing the cover, laying down a bedding layer and replacing the cover. The second method would involve laying the bedding layer on the cover and using a mechanical vibrator to move the bedding layer under the cover. Umetco also proposed installing bedding layer on the northeast portion of the AGTI to reduce erosion and repair erosion sink holes and repairing the erosion control apron on the southeast corner of the AGTI by placing riprap around the apron channel.

The NRC staff has prepared the EA in support of the proposed licensing action. The EA evaluates the repair of the AGTI, A–9 and other locations and is limited to these repair impacts as all other impacts were previously evaluated in the approvals of the final cover as described above.

Umetco will perform the proposed activities either on the existing tailings pile or on areas that were disturbed during earlier closure activities and were previously evaluated by NRC. The footprint of the site will not be expanded as a result of the proposed actions. The NRC staff, therefore, does not expect the proposed action to significantly impact land use, geology, soils, water resources, ecological resources, meteorology, climatology, air quality, endangered and threatened species, historic and cultural resources. The staff also does not expect significant environmental impacts to ecological resources, transportation, noise, visual resources, socioeconomic conditions or public and occupational health.

Only one alternative to the proposed action was considered by the staff, the ''no action'' alternative, because no other alternatives were considered reasonable or technically feasible.

Finding of No Significant Impact

Based on the analysis contained in the EA, the NRC staff concluded that there are no significant environmental impacts from the proposed action and that the preparation of an Environmental Impact Statement is not warranted. Accordingly, the NRC determined that a Finding of No Significant Impact is appropriate.

Further Information

Documents related to this action, including the application for license amendment, are available electronically at the NRC Library at *http://www.nrc.gov.reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this Notice are:

Document	ADAMS Accession No.
Umetco Above Grade Tailings Impoundment and A–9 Repository Erosion Protection Enhancement Design Report and Request for Approval, December 21, 2010	ML103640265
Umetco Gas Hills Erosion Enhancement Design Report Photos, February 22, 2011	ML111110263
NRC Meeting Summary for March 30, 2011, meeting with Umetco, April 20, 2011	ML111101409
Umetco Response to NRC Staff Request for Additional Information, May 10, 2011	ML11132A154
Umetco Clarifications to NRC Questions and Comments, June 8, 2011	ML11160A096
Letter from Umetco Regarding Cost Estimate for Repair Methods, July 13, 2011	ML11196A143
Letter from Umetco Regarding Cost Estimate for Repair Methods, July 18, 2011	ML11201A304
NRC Environmental Assessment	ML112060216

If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr.resource@nrc.gov.*

These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Rockville, Maryland, this 11th day of August 2011.

For the Nuclear Regulatory Commission.

Paul Michalak,

Acting Deputy Director, Decommissioning and Uranium Recovery Licensing Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. 2011–21215 Filed 8–18–11; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. A2011–46; Order No. 803]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Star Tannery, Virginia post office has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioners, and others to take appropriate action.

DATES: *Administrative record due (from Postal Service*): August 29, 2011; *deadline for notices to intervene:* September 9, 2011. *See* the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

ADDRESSES: Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to 39 U.S.C. 404(d), on August 12, 2011, the Commission received a petition for review of the Postal Service's determination to close the post office in Star Tannery, Virginia. The petition was filed by Robert Engle (Petitioner) and is postmarked August 8, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2011–46 to consider Petitioner's appeal. If Petitioner would like to further explain his position with supplemental information or facts, Petitioner may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than September 15, 2011.

Categories of issues apparently raised. Petitioner contends that the Postal Service failed to consider the effect of the closing on the community. *See* 39 U.S.C. 404(d)(2)(A)(i).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than the one set forth above, or that the Postal Service's determination disposes of one or more of those issues. The deadline for the Postal Service to file the applicable administrative record with the Commission is August 29, 2011. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service to this notice is August 29, 2011.

Availability; Web site posting. The Commission has posted the appeal and supporting material on its Web site at *http://www.prc.gov.* Additional filings in this case and participants' submissions also will be posted on the Commission's Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's webmaster via telephone at 202–789–6873 or via electronic mail at *prc-webmaster@prc.gov.*

The appeal and all related documents are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., eastern time, Monday through Friday, except on Federal government holidays. Docket section personnel may be contacted via electronic mail at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

Filing of documents. All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and 10(a) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained. *See* 39 CFR 3001.9(a) and 3001.10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

The Commission reserves the right to redact personal information which may infringe on an individual's privacy rights from documents filed in this proceeding.

Intervention. Persons, other than Petitioner and respondent, wishing to be heard in this matter are directed to file a notice of intervention. *See* 39 CFR 3001.111(b). Notices of intervention in this case are to be filed on or before September 9, 2011. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site unless a waiver is obtained for hardcopy filing. *See* 39 CFR 3001.9(a) and 3001.10(a).

Further procedures. By statute, the Commission is required to issue its decision within 120 days from the date it receives the appeal. *See* 39 U.S.C. 404(d)(5). A procedural schedule has been developed to accommodate this statutory deadline. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate issue. As required by the Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. *See* 39 CFR 3001.21.

It is ordered:

1. The Postal Service shall file the applicable administrative record regarding this appeal no later than August 29, 2011.

2. Any responsive pleading by the Postal Service to this notice is due no later than August 29, 2011.

3. The procedural schedule listed below is hereby adopted.

4. Pursuant to 39 U.S.C. 505, Malin Moench is the designated officer of the Commission (Public Representative) to represent the interests of the general public.

5. The Secretary shall arrange for publication of this notice and order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

PROCEDURAL SCHEDULE

August 12, 2011.	Filing of Appeal.
August 29, 2011.	Deadline for the Postal Service to file the applicable administrative record in this appeal.
August 29, 2011.	Deadline for the Postal Service to file any responsive pleading.
September 9, 2011.	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
September 16, 2011.	Deadline for Petitioner's Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
October 6, 2011.	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
October 21, 2011.	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
October 28, 2011.	Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116).
December 6, 2011.	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2011–21211 Filed 8–18–11; 8:45 am]

BILLING CODE 7710–FW–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

Summary: In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

1. *Title and purpose of information collection:* Medical Reports; OMB 3220–0038

Under sections 2(a)(1)(iv) and 2(a)(1)(v) of the Railroad Retirement Act (RRA), annuities are payable to qualified railroad employees whose physical or mental condition makes them unable to (1) work in their regular occupation (occupational disability) or (2) work at all (permanent total disability). The requirements for establishing disability and proof of continuing disability under the RRA are prescribed in 20 CFR part 220.

Under Sections 2(c)(1)(ii)(C) and 2(d)(1)(ii) of the RRA, annuities are also payable to qualified spouses and widow(er)s, respectively, who have a qualifying child who became disabled before age 22. Annuities are also payable to surviving children on the basis of disability under section 2(d)(1)(iii)(C) if the child's disability began before age 22 as well as to widow(er)s on the basis of disability under section 2(d)(1)(i)(B). To meet the disability standard, the RRA provides that individuals must have a permanent physical or mental condition such that they are unable to engage in any regular employment.

Under section 2(d)(1)(v) of the RRA, annuities are also payable to remarried widow(er)s and surviving divorced spouses on the basis of, among other things, disability or having a qualifying disabled child in care. However, the disability standard in these cases is that found in the Social Security Act. That is, individuals must be unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment. The RRB also determines entitlement to a Period of Disability and entitlement to early Medicare based on disability for qualified claimants in accordance with section 216 of the Social Security Act.

When making disability determinations, the RRB needs evidence from acceptable medical sources. The RRB currently utilizes Forms G–3EMP, Report of Medical Condition by Employer; G–197, Authorization to Release Medical Information to the Railroad Retirement Board; G–250, Medical Assessment; G–250A, Medical Assessment of Residual Functional Capacity; G–260, Report of Seizure Disorder; RL–11B, Disclosure of Hospital Medical Records; RL–11D, Disclosure of Medical Records from a State Agency; and RL–250, Request for Medical Assessment, to obtain the necessary medical evidence.

One response is requested of each respondent. Completion is voluntary. The RRB proposes minor editorial changes to Form G–197.

Estimate of Annual Respondent Burden

The estimated annual respondent burden is as follows:

Form Number	Annual Responses	Time (Minutes)	Burden (Hours)
G–3EMP	600	10	100
G–197	6,000	10	1,000
G–250	11,950	30	5,975
G–250A	50	20	17
G–260	100	25	42
RL–11B	5,000	10	833
RL–11D	250	10	42
RL–250	11,950	10	1,992
Total	35,900		10,001

2. *Title and purpose of information collection:* Student Beneficiary Monitoring; OMB 3220–0123

Under provisions of the Railroad Retirement Act (RRA), there are two types of benefit payments that are based on the status of a child being in full-time elementary or secondary school attendance at age 18–19: a survivor child's annuity benefit under Section 2(d)(2)(iii) and an increase in the

employee retirement annuity under the Special Guaranty computation as prescribed in section 3(f)(3) and 20 CFR part 229.

The survivor student annuity is usually paid by direct deposit to a financial institution either into the student's checking or savings account or into a joint bank account with a parent. The requirements for eligibility as a student are prescribed in 20 CFR 216.74, and include students in independent study and home schooling.

To help determine if a child is entitled to student benefits, the RRB requires evidence of full-time school attendance. This evidence is acquired through the RRB's student monitoring program, which utilizes the following forms. Form G–315, Student Questionnaire, obtains certification of a student's full-time school attendance as well as information on the student's marital status, Social Security benefits, and employment, which are needed to determine entitlement or continued entitlement to benefits under the RRA. Form G–315A, Statement of School Official, is used to obtain, from a school, verification of a student's full-time attendance when the student fails to return a monitoring Form G–315. Form G–315A.1, School Official's Notice of Cessation of Full-Time School Attendance, is used by a school to notify the RRB that a student has ceased full-time school attendance. The RRB proposes no changes to the forms.

Estimate of Annual Respondent Burden

The estimated annual respondent burden is as follows:

Form Number	Annual Responses	Time (Minutes)	Burden (Hours)
G–315	860	15	215
G–315a	20	3	1
G–315a.1	20	2	1
Total	900		217

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, contact Charles Mierzwa, the RRB Clearance Officer, at (312) 751–3363 or *Charles.Mierzwa@RRB.GOV.* Comments regarding the information collection should be addressed to Patricia Henaghan, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or e-mailed to *Patricia.Henaghan@RRB.GOV.* Written comments should be received within 60 days of this notice.

Charles Mierzwa,

Clearance Officer.

[FR Doc. 2011–21219 Filed 8–18–11; 8:45 am]

BILLING CODE 7905–01–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review, Request for Comments

Summary: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) is forwarding three Information Collection Requests (ICR) to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB). Our ICR describes the information we seek to collect from the public. Review and approval by OIRA ensures that we impose appropriate paperwork burdens.

The RRB invites comments on the proposed collections of information to determine (1) the practical utility of the collections; (2) the accuracy of the estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of collection; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology. Comments to the RRB or OIRA must contain the OMB control number of the ICR. For proper consideration of your comments, it is best if the RRB and OIRA receive them within 30 days of the publication date.

1. *Title and Purpose of information collection:* Application for Reimbursement for Hospital Insurance Services in Canada; OMB 3220–0086.

Under section 7(d) of the Railroad Retirement Act (RRA), the RRB administers the Medicare program for persons covered by the railroad retirement system. Payments are provided under section 7(d)(4) of the RRA for medical services furnished in Canada to the same extent as for those furnished in the United States. However, payments for the services furnished in Canada are made from the Railroad Retirement Account rather than from the Federal Hospital Insurance Trust Fund, with the payments limited to the amount by which insurance benefits under Medicare exceed the amount payable under Canadian Provincial plans.

Form AA–104, Application for Canadian Hospital Benefits Under Medicare—Part A, is provided by the RRB to a claimant seeking reimbursement for covered hospital services received in Canada. The form obtains information needed to determine the eligibility of the applicant and the amount of any reimbursement due. One response is requested of each respondent. Completion is required to obtain a benefit.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (76 FR 29282 on May 20, 2011) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Application for Reimbursement for Hospital Insurance Services in Canada

OMB Control Number: 3220–0086

Form(s) submitted: AA–104

Type of request: Revision of a currently approved collection

Affected public: Individuals or Households

Abstract: The Railroad Retirement Board administers the Medicare program for persons covered by the railroad retirement system. The collection obtains the information needed to determine eligibility and for the amount due for covered hospital services received in Canada.

Changes proposed: The RRB proposes non-burden impacting formatting and editorial changes to Form AA–104.

The burden estimate for the ICR is as follows:

Estimated Completion Time for Form AA–104: 10 minutes

Estimated annual number of respondents: 35

Total annual responses: 35

Total annual reporting hours: 6

2. *Title and Purpose of information collection:* Employee Non-Covered Service Pension Questionnaire; OMB 3220–0154.

Section 215(a)(7) of the Social Security Act provides for a reduction in social security benefits based on

employment not covered under the Social Security Act or the Railroad Retirement Act (RRA). This provision applies a different social security benefit formula to most workers who are first eligible after 1985 to both a pension based in whole or in part on non-covered employment and a social security retirement or disability benefit. There is a guarantee provision that limits the reduction in the social security benefit to one-half of the portion of the pension based on non-covered employment after 1956. Section 8011 of Public Law 100–647 changed the effective date of the onset from the first month of eligibility to the first month of concurrent entitlement to the non-covered service benefit and the RRA benefit.

Section 3(a)(1) of the RRA provides that the Tier I benefit of an employee annuity shall be equal to the amount (before any reduction for age or deduction for work) the employee would receive if entitled to a like benefit under the Social Security Act. The reduction for a non-covered service pension also applies to a Tier I portion of the employee annuity under the RRA when the annuity or non-covered service pension begins after 1985. Since the amount of a spouse's Tier I benefit is one-half of the employee's Tier I, the spouse annuity is also affected.

Form G–209, Employee Non-Covered Service Pension Questionnaire, is used by the RRB to obtain needed information (1) from a railroad employee who while completing Form AA–1, *Application for Employee Annuity* (OMB No. 3220–0002), indicates entitlement to or receipt of a pension based on employment not covered under Railroad Retirement or Social Security; (2) from a railroad employee when an independently-entitled divorced spouse applicant believes the employee to be entitled to a non-covered service pension. However, should RRB records indicate the employee has 30 or more years of coverage, this development is unnecessary; or (3) from an employee annuitant who becomes entitled to a pension based on employment not covered under Railroad Retirement or Social Security. One response is requested of each respondent. Completion is required to obtain or retain benefits.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (76 FR 29283 on May 20, 2011) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Employee Non-Covered Service Pension Questionnaire

OMB Control Number: 3220–0154

Form(s) submitted: G–209

Type of request: Revision of a currently approved collection

Affected public: Individuals or Households

Abstract: Under Section 3 of the Railroad Retirement Act, the Tier I portion of an employee annuity may be subject to a reduction for benefits received based on work not covered under the Social Security Act or Railroad Retirement Act. The questionnaire obtains the information needed to determine if the reduction applies and the amount of such reduction.

Changes proposed: The RRB proposes minor non-burden impacting editorial changes to Form G–209.

The burden estimate for the ICR is as follows:

Estimated Completion Time for Form G–209: 1 minute for a partial questionnaire and 8 minutes for a full questionnaire.

Estimated annual number of respondents: 150

Total annual responses: 150

Total annual reporting hours: 14

3. *Title and Purpose of information collection:* Availability for Work; OMB 3220–0164. Under section 1(k) of the Railroad Unemployment Insurance Act, unemployment benefits are not payable for any day for which the claimant is not available for work.

Under Railroad Retirement Board (RRB) regulation 20 CFR 327.5, ''available for work'' is defined as being willing and ready for work. A claimant is ''willing'' to work if willing to accept and perform for hire such work as is reasonably appropriate to his or her employment circumstances. A claimant is ''ready'' for work if he or she (1) is in a position to receive notice of work and is willing to accept and perform such work, and (2) is prepared to be present with the customary equipment at the location of such work within the time usually allotted.

Under RRB regulation 20 CFR 327.15, a claimant may be requested at any time to show, as evidence of willingness to work, that reasonable efforts are being made to obtain work. In order to determine whether a claimant is; (a) available for work, and (b) willing to work, the RRB utilizes Forms UI–38 and UI–38s to obtain information from the claimant and Form ID–8k from the union representative. One response is completed by each respondent. Completion of Forms UI–38 and UI–38s is required to obtain or retain benefits. Completion of Form ID–8k is voluntary.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (76 FR 29283 on May 20, 2011) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Availability for Work

OMB Control Number: 3220–0164

Form(s) submitted: UI–38, UI–38s, ID–8k

Type of request: Revision of a currently approved collection

Affected public: Individuals or Households, Non-profit institutions

Abstract: Under Section 1(k) of the Railroad Unemployment Insurance Act, unemployment benefits are not payable for any day in which the claimant is not available for work. The collection obtains information needed by the RRB to determine whether a claimant is willing and ready to work.

Changes proposed: The RRB proposes to revise Form ID–8k to eliminate question two regarding ''pay for time lost.'' This question was previously included to remind covered employers of their reporting obligations under section 2(f) of the RUIA. The question is being removed as it was determined that other forms, such as the ID–4e and ID–4k, provide sufficient notice of covered employer's reporting obligations under section 2(f).

The burden estimate for the ICR is as follows:

Estimated Completion Time for Forms: UI–38 is estimated at 11.5 minutes per response; UI–38s is estimated at 6 minutes per response in person and 10 minutes per response by mail; and Form ID–8k is estimated at 5 minutes per response.

Estimated annual number of respondents: 7,428

Total annual responses: 7,428

Total annual reporting hours: 966

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Charles Mierzwa, the agency clearance officer at (312) 751–3363 or *Charles.Mierzwa@RRB.GOV.*

Comments regarding the information collection should be addressed to Patricia Henaghan, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 or *Patricia.Henaghan@RRB.GOV* and to the OMB Desk Officer for the RRB, Fax: 202–395–6974, E-mail address: *OIRA_Submission@omb.eop.gov.*

Charles Mierzwa,

Clearance Officer.

[FR Doc. 2011–21222 Filed 8–18–11; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65111; File No. SR–NYSE–2011–42]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Rule 128 So That Clearly Erroneous Executions Involving Securities Recently Added to the Individual Security Trading Pause Pilot Under NYSE Rule 80C Continue To Be Resolved in the Same Manner Before Being Added to the Pilot

August 11, 2011.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that August 9, 2011, New York Stock Exchange LLC (''NYSE'' or the ''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 self-regulatory organization. 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 NYSE Rule 128 so that clearly erroneous executions involving securities recently added to the individual security trading pause pilot under NYSE Rule 80C continue to be resolved in the same manner as they were before being added to the pilot. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE Rule 128 so that clearly erroneous executions involving securities recently added to the individual security trading pause pilot under NYSE Rule 80C continue to be resolved in the same manner as they were before being added to the pilot.

Background

The Exchanges [4] and the Financial Industry Regulatory Authority, Inc. (''FINRA''), in consultation with the Commission, have made changes to their respective rules in a concerted effort to strengthen the markets after the severe market disruption that occurred on May 6, 2010. One such effort by the Exchanges and FINRA was to adopt a uniform trading pause process during periods of extraordinary market volatility as a pilot in S&P 500 Index stocks (''Pause Pilot''),[5] approved by the Commission on June 10, 2010.[6] On September 10, 2010, the Commission approved the Exchanges' and FINRA's proposals to add the securities included in the Russell 1000 Index and specified Exchange-Traded Products (''ETPs'') to the Pause Pilot.[7] On September 10, 2010, the Commission also approved changes proposed by the Exchanges to amend certain of their respective rules to set forth clearer standards and curtail their discretion with respect to breaking erroneous trades.[8] The changes, among other things, provided for uniform treatment of clearly erroneous execution reviews in the event of transactions that result in the issuance of an individual stock trading pause pursuant to the Pause Pilot on the primary listing market and those transactions that occur up to the time the trading pause message is received by the other markets from the single plan processor responsible for consolidation and dissemination of information for the security (''Latency Trades'').

As part of the changes to the clearly erroneous process under NYSE Rule 128, NYSE added new text to NYSE Rule 128(c)(4) to provide clarity in the clearly erroneous process when a Pause Pilot trading pause is triggered. Pursuant to NYSE Rule 128(c)(4), Latency Trades will be broken by the Exchange if they exceed the applicable percentage from the Reference Price, as noted in the table found under NYSE Rule 128(c)(1).[9] The Reference Price, for purposes of Rule 128(c)(4), is the price that triggered a trading pause pursuant to the Pause Pilot (the ''Trading Pause Trigger Price''). As such, Latency Trades that occur on the Exchange would be broken by the Exchange pursuant to NYSE Rule 128(c)(4) if the transaction occurred at either three, five or ten percent above the Trading Pause Trigger Price.[10]

On June 23, 2011, the Commission approved a joint proposal to expand the respective Pause Pilot rules of the Exchanges and FINRA to include all remaining NMS stocks (''Phase III Securities'').[11] The new pilot rules, which will be implemented on August

[4] For purposes of this filing, the term ''Exchanges'' refers collectively to BATS Exchange, Inc., BATS Y–Exchange, Inc., NASDAQ OMX BX, Inc., Chicago Board Options Exchange, Inc., Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., International Securities Exchange LLC, The NASDAQ Stock Market LLC, New York Stock Exchange LLC, NYSE Amex LLC, NYSE Arca, Inc., National Stock Exchange, Inc., and NASDAQ OMX PHLX LLC.

[5] *See* NYSE Rule 80C. The pauses under NYSE Rule 80C occur when a security's price moves by the applicable percentage within a five-minute period between 9:45 a.m. and 3:35 p.m., or in the case of an early scheduled close, 25 minutes before the close of trading. Such pauses last for five minutes. At the conclusion of the pause period, the security is opened pursuant to NYSE Rule 80C(b).

[6] *See* Securities Exchange Act Release Nos. 62252 (June 10, 2010), 75 FR 34186 (June 16, 2010) (File Nos. SR–BATS–2010–014; SR–EDGA–2010–01; SR–EDGX–2010–01; SR–BX–2010–037; SR–ISE–2010–48; SR–NYSE–2010–39; SR–NYSEAmex–2010–46; SR–NYSEArca–2010–41; SR–NASDAQ–2010–061; SR–CHX–2010–10; SR–NSX–2010–05; and SR–CBOE–2010–047) and 62251 (June 10, 2010), 75 FR 34183 (June 16, 2010) (SR–FINRA–2010–025).

[7] *See, e.g.,* Securities Exchange Act Release Nos. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010) (File Nos. SR–BATS–2010–018; SR–BX–2010–044; SR–CBOE–2010–065; SR–CHX–2010–14; SR–EDGA–2010–05; SR–EDGX–2010–05; SR–ISE–2010–66; SR–NASDAQ–2010–079; SR–NYSE–2010–49; SR–NYSEAmex–2010–63; SR–NYSEArca–2010–61; and SR–NSX–2010–08) and 62883 (September 10, 2010), 75 FR 56608 (September 16, 2010) (SR–FINRA–2010–033).

[8] *See* Securities Exchange Act Release No. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010) (File Nos. SR–BATS–2010–016; SR–BX–2010–040; SR–CBOE–2010–056; SR–CHX–2010–13; SR–EDGA–2010–03; SR–EDGX–2010–03; SR–ISE–2010–62; SR–NASDAQ–2010–076; SR–NSX–2010–07; SR–NYSE–2010–47; SR–NYSEAmex–2010–60; and SR–NYSEArca–2010–58).

[9] Pursuant to NYSE Rule 128(c)(1), during regular trading hours a security with a Reference Price of greater than zero and up to an including $25 is subject to a 10% threshold; a security with a Reference Price of greater than $25 and up to and including $50 is subject to a 5% threshold; and a security with a Reference Price of greater than $50 is subject to a 3% threshold.

[10] *See* NYSE Rule 128(c)(4).

[11] *See* Securities Exchange Act Release No. 64735 (June 23, 2011), 76 FR 38243 (June 29, 2011) (File Nos. SR–BATS–2011–016; SR–BYX–2011–011; SR–BX–2011–025; SR–CBOE–2011–049; SR–CHX–2011–09; SR–EDGA–2011–15; SR–EDGX–2011–14; SR–FINRA–2011–023; SR–ISE–2011–028; SR–NASDAQ–2011–067; SR–NYSE–2011–21; SR–NYSEAmex–2011–32; SR–NYSEArca–2011–26; SR–NSX–2011–06; and SR–Phlx–2011–64).

8, 2011, not only expand the application of the Pause Pilot, but also apply larger percentage moves that trigger a pause to the Phase III Securities. The Exchange amended its Pause Pilot rule, NYSE Rule 80C, by adding three new subparagraphs to Rule 80C(a) to address the treatment of the Phase III Securities. The rule applicable to the original Pause Pilot securities was placed in new NYSE Rule 80C(a)(i). The rules applicable to the Phase III Securities were placed in new NYSE Rule 80C(a)(ii) and (iii). A pause under NYSE Rule 80C(a)(ii) is triggered by a 30 percent price move within a five-minute period in a Phase III Security that had a closing price on the previous trading day of $1 or more. A pause under NYSE Rule 80C(a)(iii) is triggered by a 50 percent price move within a five-minute period in a Phase III Security that had a closing price on the previous trading day of less than $1. If no prior day closing price is available, the last sale reported to the Consolidated Tape on the previous trading day is used.

The Exchange has submitted immediately effective proposed rule changes to the Commission to extend both the Pause Pilot under NYSE Rule 80C and the clearly erroneous execution process pilot under Rule 128 until January 31, 2012.[12]

The Issue

The recently-approved changes to the Pause Pilot will have the unintended effect of removing the Phase III Securities from the normal clearly erroneous process and potentially result in unfair outcomes in the face of severe volatility in such securities. Phase III Securities are currently subject to the clearly erroneous process under NYSE Rule 128(c)(1)–(3), which applies to all securities except the current Pause Pilot securities subject to a pause. For purposes of transactions in securities not involving Pause Pilot securities, or transactions involving Pause Pilot securities that occur when there is not a pause pursuant to the Pause Pilot, the Reference Price is the consolidated last sale price immediately prior to the execution(s) under review, subject to certain exceptions.[13] As noted above, the Trading Pause Trigger Price is used as the Reference Price when a Pause Pilot pause is in effect. As a consequence, under the current rules a Latency Trade is subject to the clearly erroneous thresholds based on the Trading Pause Trigger Price, which represents a ten percent or greater move in the transacted price of the security in a five-minute period.

Under the amended Pause Pilot rule, a Latency Trade in a Phase III Security occurs only after either a 30 or 50 percent (or greater) move in the transacted price of the security in a five-minute period. As a result, a member organization that trades in a Phase III Security that triggers a clearly erroneous threshold of three, five or ten percent from the Reference Price, yet falls below the Pause Pilot trigger of either 30 or 50 percent, would be able to avail themselves of a clearly erroneous review. A similarly situated member organization that transacts in the same security as a Latency Trade at a price equal to or greater than the Phase III Security thresholds, yet less than the clearly erroneous thresholds under NYSE Rule 128(c)(1), would not be able to avail themselves of the clearly erroneous process. Another member organization that transacts in the same security as a Latency Trade that exceeds three, five or ten percent from the Trading Pause Trigger Price would automatically receive clearly erroneous relief. The Exchange believes that this would be an inequitable result and an arbitrary application of the clearly erroneous process. Specifically, the Exchange believes that, since the 30 and 50 percent triggers of the Pause Pilot are substantially greater than the 10 percent threshold of the original Pause Pilot, the Phase III Securities should remain under the current clearly erroneous process of NYSE Rule 128(c)(1)–(3).

Applying the clearly erroneous process under NYSE Rule 128(c)(1)–(3) to the Phase III Securities would allow the Exchange to review all transactions that exceed the normal clearly erroneous thresholds and Reference Price, and, importantly, avoid arbitrary selection of ''winners'' and ''losers'' in the face of severe volatile moves in a security of 30 or 50 percent over a five-minute period. For example, a member organization that trades in a security subject to NYSE Rule 80C(a)(ii) and (iii) that triggers a clearly erroneous threshold of three, five or ten percent, yet falls below the Pause Pilot trigger threshold trading at 29 percent from the prior day's closing price, would be potentially entitled to a clearly erroneous break pursuant NYSE Rule 128(c)(1). Should trading in that same security trigger a trading pause at a price of 30 or 50 percent greater than the prior day's close, the member organization would not be entitled to a clearly erroneous trade break unless that trade exceeded three, five or ten percent beyond the price that triggered the pause. This scenario causes an inequity among a group of member organizations that have transactions in the Phase III Securities falling between the three, five and ten percent thresholds from the Reference Price under the normal NYSE Rule 128(c)(1) clearly erroneous process and the Pause Pilot clearly erroneous triggers of three, five or ten percent away from the Trading Pause Trigger Price. Such member organizations would not be provided relief under the clearly erroneous rules merely due to the imposition of a Pause Pilot halt, notwithstanding that other member organizations with transactions that occur at the same rolling five minute percentage difference. The Exchange believes a better outcome is to afford all member organizations transacting in Phase III Securities the opportunity of having such trades reviewed.

Summary

The expansion of the Pause Pilot to the Phase III Securities will have the unintended consequence of setting the point at which a clearly erroneous transaction occurs once a Pause Pilot pause is initiated far beyond the triggers applied prior to the expansion, which will, in turn, prevent certain market participants from availing themselves of the clearly erroneous rules, notwithstanding that other similarly situated participants are able to do so. The Exchange believes that this would be an arbitrary application of the clearly erroneous process in a manner that is unfair and not consistent with the spirit and purpose of the rule. Accordingly, the Exchange is proposing to amend NYSE Rule 128(c)(1)–(4) to specify that NYSE Rule 128(c)(4) applies only to the current securities of the Pause Pilot, as found under NYSE Rule 80C(a)(i).[14]

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Securities Exchange Act of 1934 (the ''Act''),[15] which requires the rules of an exchange to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule change also is designed to support the principles of Section 11A(a)(1)[16] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The

[12] *See* SR–NYSE–2011–40 (extending NYSE Rule 80C pilot until January 31, 2012) and SR–NYSE–2011–41 (extending NYSE Rule 128 pilot until January 31, 2012).

[13] *See supra* note 9.

[14] NYSE notes that the Exchanges are filing similar proposals to make the changes proposed herein.

[15] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78k–1(a)(1).

Exchange believes that the proposed rule meets these requirements in that it promotes transparency and uniformity across markets concerning decisions to break erroneous trades, yet also ensures fair application of the process so that similarly situated member organizations are provided the same opportunity of a clearly erroneous review. The Exchange notes that the changes proposed herein will in no way interfere with the operation of the Pause Pilot process, as amended.

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 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

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 foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [17] and Rule 19b–4(f)(6)(iii) thereunder.[18] The Exchange has asked the Commission to 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 such waiver will allow the clearly erroneous rules to continue to operate as they did prior to the effectiveness of the Pause Pilot expansion to Phase III Securities so that similarly situated member organizations are provided the same opportunity of a clearly erroneous review. Accordingly, the Commission waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing with the Commission.[19]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2011–42 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–NYSE–2011–42. 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 NYSE. 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–NYSE–2011–42 and should be submitted on or before September 9, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–21257 Filed 8–18–11; 8:45 am]

BILLING CODE 8011–01–P

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission is waiving the five day written notice requirement in this case. Therefore, the Commission notes that the Exchange has satisfied this requirement.

[19] 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).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65135; File No. SR–Phlx–2011–111]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing of Proposed Rule Change Requesting Permanent Approval of Pilot Program to Permit NASDAQ OMX PHLX to Receive Inbound Routes by Nasdaq Options Services

August 15, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 8, 2011, NASDAQ OMX PHLX LLC (''Phlx'' or the ''Exchange'') filed with the Securities and Exchange Commission (q''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to request permanent approval of the Exchange's pilot program allowing Phlx to accept inbound routes by NASDAQ Options Services, LLC (''NOS'') of 1) NASDAQ Options Market (''NOM'') Exchange Direct Orders without checking the NOM book and 2) NOM non-system

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

securities, including Exchange Direct Orders.[3]

The text of the proposed rule change is available from the principle office of the Exchange, at the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/*, 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, Phlx 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. Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, NOS is the approved outbound routing facility of The NASDAQ Stock Market (the ''NASDAQ Exchange'') for NOM, providing outbound routing from NOM to other market centers.[4] Phlx and the NASDAQ Exchange have previously adopted rules to permit Phlx to receive inbound routes of certain option orders, specifically (1) Exchange Direct Orders without checking the NOM book prior to routing, and (2) NOM non-system securities, from NOS on a pilot basis.[5] Phlx specifically has adopted a rule to prevent potential information advantages resulting from the affiliation between Phlx and NOS, as related to NOS's authority to route orders from NOM to Phlx.[6] NOS's authority to route these orders to Phlx is subject to a pilot period ending on August 25, 2011.[7] The Exchange hereby seeks permanent approval to permit Phlx to accept inbound routes of (1) Exchange Direct Orders without checking the NOM book prior to routing, and (2) NOM non-system securities orders, including Exchange Direct Orders that NOS routes from NOM.[8]

Pursuant to prior rule filings with the Commission, the Phlx and NOS inbound routing relationship has operated on a pilot basis. In connection with this pilot program Phlx committed to the following:

1. The Exchange and FINRA would enter into a regulatory services agreement (''Regulatory Contract'') pursuant to which FINRA has been allocated regulatory responsibilities to review NOS's compliance with the Exchange's rules through FINRA's examination program.[9] The Exchange, however, retained ultimate responsibility for enforcing its rules with respect to NOS except to the extent that they are covered by an agreement with FINRA pursuant to Rule 17d–2,[10] in which case regulatory responsibility is allocated to FINRA as provided in Rule 17d–2(d).

2. FINRA and the Exchange would monitor NOS for compliance with Phlx's trading rules, and collect and maintain certain related information;[11]

3. FINRA has agreed to provide a report to the Exchange's Chief Regulatory Officer, on at least a quarterly basis, that: (i) Quantifies all alerts (of which the Exchange and FINRA become aware) that identify NOS as a participant that has potentially violated Commission or Exchange rules and (ii) quantifies the number of investigations that identify NOS as a participant that has potentially violated Exchange or Commission Rules;[12]

4. The Exchange adopted Rule 985(c), which requires The NASDAQ OMX Group, Inc., as the holding company owning NOS and the Exchange, to establish and maintain procedures and internal controls reasonably designed to ensure that NOS does not develop or implement changes to its system on the basis of non-public information regarding planned changes to the Exchange's systems, obtained as a result of its affiliation with the Exchange, until such information is available generally to similarly situated Exchange members in connection with the provision of inbound routing to the Exchange;[13] and

5. The Exchange proposed that NOS be authorized to route (1) Exchange Direct Orders without checking the NOM book and (2) orders in NOM non-system securities inbound to the Exchange from NOM for a pilot period of twelve months, as further extended to August 25, 2011.[14]

The Exchange has met all the above-listed conditions. By meeting the above-conditions, the Exchange has set up mechanisms that protect the independence of the Exchange's regulatory responsibility with respect to

[3] Pursuant to Chapter VI, Section 1(b) of the NOM Rules, ''System Securities'' are all options that are currently trading on NOM pursuant to Chapter IV of the NOM rules. All other options are ''Non-System Securities.'' Pursuant to Chapter VI, Section (1)(e)(7) of the NOM Rules, Exchange Direct Orders are orders that are directed to an exchange other than NOM as directed by the entering party on an immediate-or-cancel basis without first checking the NOM book for liquidity.

[4] NOM Rule Chapter VI, Section 11(e). Under NOM Rule Chapter VI, Section 11(e): (1) NOM routes orders in options via NOS, which serves as the sole ''routing facility'' of NOM; (2) the sole function of the routing facility is to route orders in options to away markets pursuant to NOM rules, solely on behalf of NOM; (3) NOS is a member of an unaffiliated self-regulatory organization, which is the designated examining authority for the broker-dealer; (4) the routing facility is subject to regulation as a facility of the NASDAQ Exchange, including the requirement to file proposed rule changes under Section 19 of the Act; (5) when routing orders in options that are not listed and open for trading on NOM, NOS is not a facility of NASDAQ and is not regulated as a facility of NASDAQ but as a broker-dealer regulated by its designated examining authority; (6) use of NOS to route order to other market centers is optional; (7) NOM must establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between the NASDAQ Exchange and its facilities (including the routing facility), and any other entity; and (8) the books, records, premises, officers, directors, agents, and employees of the routing facility, as a facility of the NASDAQ Exchange, shall be subject at all times to inspection and copying by the NASDAQ Exchange and the Commission.

[5] *See* Securities Exchange Act Release Nos. 58179 (July 17, 2008), 73 FR 42874 (July 23, 2008)(SR–Phlx–2008–31); 61667 (March 5, 2010), 75 FR 11964 (March 12, 2010) (SR–Phlx–2010–36); 61668 (March 5, 2010), 75 FR 12323 (March 15, 2010)(SR–NASDAQ–2010–028). *See also* Securities Exchange Act Release No. 63873 (February 9, 2011), 76 FR 8798 (February 15, 2011)(SR–Phlx–2011–16).

[6] *See* NASDAQ OMX PHLX Rule 985(c)(1).

[7] *See* Securities Exchange Act Release No. 63873 (February 9, 2011), 76 FR 8798 (February 15, 2011)(SR–Phlx–2011–16). The Exchange intends to seek an extension of the pilot period while the proposed rule change seeking permanent approval of the pilot program is pending.

[8] NASDAQ OMX BX, Inc. also recently filed a similar proposed rule change to request permanent approval of BX's pilot program permitting Boston Options Exchange to accept inbound routes by NOS of (1) NOM Exchange Direct Orders without checking the NOM book prior to routing, and (2) NOM non-system securities orders, including Exchange Direct Orders that NOS routes from NOM. *See* Securities Exchange Act Release No. 64896 (July 15, 2011), 76 FR 43740 (July 21, 2011)(SR–BX–2011–045).

[9] The Exchange also states that NOS is subject to independent oversight by FINRA, its Designated Examining Authority, for compliance with financial responsibility requirements. *See* Securities Exchange Act Release No. 61667 (March 5, 2010), 75 FR 11964 (March 12, 2010) (SR–Phlx–2010–36).

[10] 17 CFR 240.17d–2.

[11] Pursuant to the Regulatory Contract, both the Exchange and FINRA will collect and maintain all alerts, complaints, investigations and enforcement actions in which NOS (in routing orders to the Exchange) is identified as a participant that has potentially violated applicable Commission or Exchange rules. The Exchange and FINRA will retain these records in an easily accessible manner in order to facilitate any potential review conducted by the Commission's Office of Compliance Inspections and Examinations. *See* Securities Exchange Act Release No. 61667 (March 5, 2010), 75 FR 11964 (March 12, 2010) (SR–Phlx–2010–36).

[12] The Exchange, FINRA, and SEC staff may agree going forward to reduce the number of applicable or relevant surveillances that form the scope of the agreed upon report. *Id.*

[13] *See* NASDAQ OMX PHLX Rule 985(c)(1).

[14] *See* supra note 7.

NOS, as well as demonstrated that NOS cannot use any information advantage it may have because of its affiliation with the Exchange. Since the Exchange has met all the above-listed conditions, it now seeks permanent approval of the Phlx and NOS inbound routing relationship. The Exchange will continue to comply with the conditions 1–4 stated above.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[15] in general, and with Section 6(b)(5) of the Act,[16] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, the proposed rule change will allow the Exchange to continue receiving inbound routes of certain orders from NOS in a manner consistent with prior approvals and established protections. The Exchange believes that having met the commitments established during the pilot program demonstrates that the Exchange has mechanisms that protect the independence of the Exchange's regulatory responsibility with respect to NOS, as well as demonstrate that NOS cannot use any information advantage it may have because of its affiliation with the Exchange.

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, as amended.

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.

[15] 15 U.S.C. 78f.

[16] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission 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–Phlx–2011–111 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–2011–111. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–Phlx–2011–111 and should be submitted on or before September 9, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–21174 Filed 8–18–11; 8:45 am]

BILLING CODE 8011–01–P

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65133; File No. SR–BATS–2011–029]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Offer a Bulk-Quoting Interface

August 15, 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 August 9, 2011, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing related to the BATS Options Market (''BATS Options'') to introduce a bulk-quoting interface for BATS Options Market Makers[3] that will help them meet their obligations as market makers and to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] As defined in Rule 16.1(a)(37), a ''Market Maker'' on BATS Options is a member of BATS Options registered with the Exchange for the purpose of making markets in options contracts traded on the Exchange and that is vested with the rights and responsibilities specified in Chapter XXII of the Exchange's Rules.

provide liquidity to the market in an efficient manner.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant 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 Exchange currently offers an order-based market making interface for the BATS Options trading platform. Market Makers use this interface to provide a two-sided quotation on BATS Options. Since it is an order-based interface, a two-sided quotation requires the entry of both a buy and a sell order. As part of several technological enhancements the Exchange plans to implement on BATS Options, the Exchange proposes to introduce a bulk-quoting interface for market makers in order to offer an additional market making interface choice to BATS Options Market Makers. The proposed bulk-quoting market making interface will be used by Market Makers to submit and update their quotations in the marketplace much like the current order-based interface is used today. The bulk-quoting interface, however, allows Market Makers to provide both a bid and an offer in one message. In addition, the bulk-quoting interface allows Market Makers to bundle several quote updates into one bulk message. This is a useful feature for Market Makers that provide quotations in many different options.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [4] in general, and furthers the objectives of Section 6(b)(5) of the Act [5] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Exchange believes this proposal is in keeping with those principles by protecting investors and the public interest, as well as promoting just and equitable principles of trade, through the addition of a new market making interface option for BATS Options Market Makers, which by aiding Market Makers in their market making activities will help to enhance market liquidity for investors.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [6] and Rule 19b–4(f)(6) thereunder.[7]

A proposed rule change filed under Rule 19b–4(f)(6) [8] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[9] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange notes that the proposed rule change is a non-controversial system change and would not affect the execution of trades. The Exchange also notes that prompt implementation would extend the benefits and new features to BATS Options Market Makers more quickly. For these reasons, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, and designates the proposed rule change to be operative upon filing with the Commission.[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 proposal 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 No. SR–BATS–2011–029 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 No. SR–BATS–2011–029. 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 changes between the

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6).

[8] 17 CFR 240.19b–4(f)(6).

[9] 17 CFR 240.19b–4(f)(6)(iii).

[10] 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).

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 will also 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–BATS–2011–029 and should be submitted on or before September 9, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–21171 Filed 8–18–11; 8:45 am]

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[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65134; File No. SR–NYSEArca–2011–23]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change To List and Trade Shares of ProShares Short VIX Short-Term Futures ETF, ProShares Short VIX Mid-Term Futures ETF, ProShares Ultra VIX Short-Term Futures ETF, ProShares Ultra VIX Mid-Term Futures ETF, ProShares UltraShort VIX Short-Term Futures ETF, and ProShares UltraShort VIX Mid-Term Futures ETF Under NYSE Arca Equities Rule 8.200, Commentary .02

August 15, 2011.

I. Introduction

On April 28, 2011, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of ProShares Short VIX Short-Term Futures ETF, ProShares Short VIX Mid-Term Futures ETF (''Short Funds''), ProShares Ultra VIX Short-Term Futures ETF, ProShares Ultra VIX Mid-Term Futures ETF (''Ultra Funds''), ProShares UltraShort VIX Short-Term Futures ETF, and ProShares UltraShort VIX Mid-Term Futures ETF (''UltraShort Funds'' and, together with the Short Funds and Ultra Funds, the ''Funds'') under NYSE Arca Equities Rule 8.200, Commentary .02. The proposed rule change was published in the **Federal Register** on May 17, 2011.[3] The Commission received no comments on the proposal. On July 1, 2011, the Exchange submitted a request to extend the Commission's action date for the proposed rule change to August 15, 2011. This order grants approval of the proposed rule change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Description of the Proposal

The Exchange proposes to list and trade the Shares pursuant to NYSE Arca Equities Rule 8.200, Commentary .02, which permits the trading of Trust Issued Receipts. ProShare Capital Management LLC (''Sponsor''), a Maryland limited liability company, serves as the Sponsor of ProShares Trust II (''Trust'') and is a commodity pool operator and commodity trading advisor.[4] Brown Brothers Harriman & Co. serves as the administrator (''Administrator''), custodian, and transfer agent of the Funds and their respective Shares. SEI Investments Distribution Co. serves as Distributor of the Shares. Wilmington Trust Company, a Delaware banking corporation, is the sole trustee of the Trust.

The Funds seek, on a daily basis, to provide investment results (before fees and expenses) that correspond to the inverse of the daily performance, a multiple of the daily performance, or an inverse multiple of the daily performance of a benchmark that seeks to offer exposure to market volatility through publicly traded futures markets. The benchmark for ProShares Short VIX Short-Term Futures ETF, ProShares Ultra VIX Short-Term Futures ETF, and ProShares UltraShort VIX Short-Term Futures ETF is the S&P 500 VIX Short-Term Futures Index, and the benchmark for ProShares Short VIX Mid-Term Futures ETF, ProShares Ultra VIX Mid-Term Futures ETF, and ProShares UltraShort VIX Mid-Term Futures ETF is the S&P 500 VIX Mid-Term Futures Index (each, an ''Index,'' and, collectively, the ''Indexes'').[5] The Funds will take long (in the case of the Ultra Funds) and short (in the case of the Short and UltraShort Funds) positions in futures contracts based on the Chicago Board Options Exchange (''CBOE'') Volatility Index (''VIX'') and, under limited circumstances, swap agreements (as described below), to pursue their respective investment objectives. Each Fund also may invest in cash or cash equivalents such as U.S. Treasury securities or other high credit quality short-term fixed-income, or similar securities that may serve as collateral for the futures contracts and swap agreements.

Specifically, each Fund seeks to achieve its investment objective by investing under normal market conditions [6] in VIX futures contracts traded on the CBOE Futures Exchange (''CFE'') (''VIX Futures Contracts'') such that each Fund has exposure intended to approximate the inverse of the daily performance, a multiple of the daily performance, or an inverse multiple of the daily performance of its respective Index at the time of the net asset value (''NAV'') calculation. In the event position accountability rules are reached with respect to VIX Futures Contracts, the Sponsor may, in its commercially reasonable judgment, cause such Fund to obtain exposure through swaps referencing the relevant Index or particular VIX Futures Contracts, or invest in other futures contracts or swaps not based on the particular VIX Futures Contracts if such instruments tend to exhibit trading prices or returns that correlate with the Indexes or any VIX Futures Contract and will further the investment objective of such Fund.[7] The Funds may also invest in swaps if the market for a specific futures contract experiences emergencies or disruptions that prevent a Fund from obtaining the appropriate amount of investment exposure to the

[3] *See* Securities Exchange Act Release No. 64470 (May 11, 2011), 76 FR 28493 (''Notice'').

[4] The Funds have filed a registration statement on Form S–3 under the Securities Act of 1933. *See* Post-Effective Amendment No. 4 dated April 13, 2011 (File No. 333–163511) to the Trust's Registration Statement on Form S–3 (''Registration Statement'').

[5] Standard & Poor's Financial Services LLC, the index sponsor with respect to the Indexes, is not a broker-dealer and has implemented procedures designed to prevent the use and dissemination of material, non-public information regarding the Indexes.

[6] The term ''under normal conditions'' includes, but is not limited to, the absence of extreme volatility or trading halts in the futures markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

[7] To the extent practicable, the Funds will invest in swaps cleared through the facilities of a centralized clearing house.

affected VIX Futures Contracts directly or to other futures contracts.[8]

If the Short Funds are successful in meeting their objectives, their values (before fees and expenses) should gain approximately as much on a percentage basis as their respective Index when it declines on a given day. Conversely, their values (before fees and expenses) should lose approximately as much on a percentage basis as their respective Index when it rises on a given day. If the Ultra Funds are successful in meeting their objectives, their values (before fees and expenses) should gain approximately twice as much on a percentage basis as their respective Index when it rises on a given day. Conversely, their values (before fees and expenses) should lose approximately twice as much on a percentage basis as their respective Index when it declines on a given day. If the UltraShort Funds are successful in meeting their objectives, their values (before fees and expenses) should gain approximately twice as much on a percentage basis as their respective Index when it declines on a given day. Conversely, their values (before fees and expenses) should lose approximately twice as much on a percentage basis as their respective Index when it rises on a given day.

Each of the Funds uses investment techniques that include the use of any one or a combination of VIX Futures Contracts and may, if applicable, include swap agreements. The Funds' investment techniques may involve a small investment relative to the amount of investment exposure assumed and may result in losses exceeding the amounts invested. Such techniques, particularly when used to create leverage, may expose the Funds to potentially dramatic changes (losses or gains) in the value of their investments and imperfect correlation between the value of the investments and the security or Index.

The Funds do not seek to achieve their stated investment objective over a period of time greater than one day because mathematical compounding prevents the Funds from perfectly achieving such results. Accordingly, results over periods of time greater than one day typically will not be a simple inverse correlation (−100%), multiple correlation (+200%), or multiple inverse correlation (−200%) of the period return of the corresponding Index and may differ significantly.

Each Fund is not actively managed by traditional methods, which typically involve effecting changes in the composition of a portfolio on the basis of judgments relating to economic, financial, and market considerations with a view toward obtaining positive results under all market conditions. Rather, the Sponsor will seek to cause the NAV to track the inverse of the daily performance, a multiple of the daily performance, or an inverse multiple of the daily performance of an Index, even during periods in which the benchmark is flat or moving in a manner which causes the NAV of a Fund to decline. The Sponsor will use a mathematical approach to determine the type, quantity, and mix of investment positions that it believes should produce returns consistent with each Fund's objective. The Sponsor will rely upon a pre-determined model to generate orders that result in repositioning the Funds' investments in accordance with their respective investment objectives.

VIX Futures Contracts

The Indexes are comprised of, and the value of the Funds will be based on, VIX Futures Contracts. VIX Futures Contracts are measures of the market's expectation of the level of the VIX at certain points in the future and will behave differently than current or spot VIX values.[9] The Funds are not linked to the VIX, and in many cases the Indexes, and by extension the Funds, could significantly underperform or outperform the VIX. While the VIX represents a measure of the current expected volatility of the S&P 500 over the next 30 days, the prices of VIX Futures Contracts are based on the current expectation of what the expected 30-day volatility will be at a particular time in the future (on the expiration date). The VIX Futures Contracts trade from 8:20 a.m. Eastern Time (''E.T.'') to 4:15 p.m. E.T.

The Indexes

The Indexes act as a measure of volatility as reflected by the price of certain VIX Futures Contracts (''Index Components''), with the price of each VIX Futures Contract reflecting the market's expectation of future volatility. Each Index seeks to reflect the returns that are potentially available from holding an unleveraged long position in certain VIX Futures Contracts. Unlike the Indexes, the VIX, which is not a benchmark for any Fund, is calculated based on the prices of put and call options on the S&P 500, which are traded on the CBOE.

The S&P 500 VIX Short-Term Futures Index employs rules for selecting the Index Components and a formula to calculate a level for the Index from the prices of these components. Specifically, the Index Components represent the prices of the two near-term VIX futures months, replicating a position that rolls the nearest month VIX Futures Contract to the next month VIX Futures Contract on a daily basis in equal fractional amounts. This results in a constant weighted average maturity of one month. The roll period begins on the Tuesday prior to the monthly VIX Futures Contracts settlement date and runs through the Tuesday prior to the subsequent month's VIX Futures Contract settlement date.

The S&P 500 VIX Mid-Term Futures Index also employs rules for selecting the Index Components and a formula to calculate the level of the Index from the prices of these components. Specifically, the Index Components represent the prices for four contract months of VIX Futures Contracts, representing a market-based estimation of constant maturity, five month forward implied VIX values. The S&P 500 VIX Mid-Term Futures Index measures the return from a rolling long position in the fourth, fifth, sixth and seventh month VIX Futures Contracts and rolls continuously throughout each month while maintaining positions in the fifth and sixth month contracts. This results in a constant weighted average maturity of five months.

Because the Indexes incorporate the process of rolling futures positions on a daily basis, and the Funds, in general, also roll their positions on a daily basis, the daily roll is not anticipated to be a significant source of tracking error between a Fund and its respective Index. The Indexes are based on VIX Futures Contracts and not the VIX, and as such neither the Funds nor the Indexes are expected to track the VIX. The level of each Index is calculated in accordance with the method described

[8] The Sponsor will attempt to mitigate the Funds' credit risk by transacting only with large, well-capitalized institutions using measures designed to determine the creditworthiness of a counterparty. The Sponsor will take various steps to limit counterparty credit risk, as described in the Registration Statement.

[9] VIX is the ticker symbol for the CBOE Volatility Index, a popular measure of implied volatility. According to the Registration Statement, the goal of the VIX is to estimate the implied volatility of the S&P 500 over the next 30 days. A relatively high level of the VIX corresponds to a more volatile U.S. equity market as expressed by more costly options on the S&P 500 Index. The VIX represents one measure of the market's expectation of the volatility over the next 30 day period. It is a composite value of options on the S&P 500 Index. The formula used to calculate the composite value utilizes current market prices for a series of out-of-the-money calls and puts for the front month and second month expirations.

in the Registration Statement and will be published at least every 15 seconds both in real time from 9:30 a.m. to 4:15 p.m. E.T. and at the close of trading on each Business Day by Bloomberg L.P. and Reuters.[10]

Additional information regarding the Funds and the Shares, investment strategies, risks, creation and redemption procedures, Indexes, VIX Futures Contracts, calculation and dissemination of NAV, fees, portfolio holdings, disclosure policies, distributions and taxes, availability of information, trading rules and halts, and surveillance procedures, among other things, can be found in the Notice and Registration Statement, as applicable.[11]

III. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act [12] and the rules and regulations thereunder applicable to a national securities exchange.[13] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[14] which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the Shares must comply with the requirements of NYSE Arca Equities Rule 8.200 and Commentary .02 thereto to be listed and traded on the Exchange.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,[15] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the Consolidated Tape Association. The level of each Index will be published at least every 15 seconds both in real time from 9:30 a.m. to 4:15 p.m. E.T. and at the close of trading on each Business Day by Bloomberg L.P. and Reuters. In addition, an updated Indicative Optimized Portfolio Value (''IOPV''), which is an indicator of the value of the VIX Futures Contracts and cash and/or cash equivalents less liabilities of a Fund, will be calculated. NYSE Arca will calculate and disseminate every 15 seconds throughout the NYSE Arca Core Trading Session (9:30 a.m. to 4 p.m. E.T.) an updated IOPV. The IOPV will be published on the NYSE Arca's Web site and be available through on-line information services such as Bloomberg and Reuters. Further, the Funds will provide Web site disclosure of portfolio holdings daily and will include, as applicable, the notional value (in U.S. dollars) of VIX Futures Contracts, other financial instruments, if any, cash equivalents, and amount of cash held in the portfolio of the Funds. The intra-day, closing, and settlement prices of the Index Components are also readily available from the Web sites of the CFE (*http://www.cfe.cboe.com*), automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. The specific contract specifications for component futures underlying the Indexes are also available on such websites, as well as other financial informational sources. The CFE also provides delayed futures information on current and past trading sessions and market news free of charge on its Web site. The NAV for each Fund will be calculated by the Administrator once a day at 4:15 p.m. E.T. The Exchange will make available on its Web site daily trading volume of each of the Shares, closing prices of such Shares, and number of Shares outstanding. The Funds' Web site, *http://www.proshares.com,* will display the end of day closing Index levels and NAV.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Commission notes that Web site disclosure of the portfolio composition of the Funds will occur at the same time as the disclosure by the Funds of the portfolio composition to Authorized Participants so that all market participants are provided portfolio composition information at the same time. In addition, if the Exchange becomes aware that the NAV with respect to the Shares is not disseminated to all market participants at the same time, the Exchange will halt trading in the Shares until such time as the NAV is available to all market participants. Further, the Exchange may halt trading during the day in which an interruption to the dissemination of the IOPV, the value of an Index, the VIX, or the value of the underlying VIX Futures Contracts occurs. If an interruption to the dissemination of the IOPV, the value of an Index, the VIX, or the value of the underlying VIX Futures Contracts persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.[16] Trading in the Shares will be subject to NYSE Arca Equities Rule 8.200, Commentary .02(e), which sets forth certain restrictions on Equity Trading Permit (''ETP'') Holders acting as registered Market Makers in Trust Issued Receipts to facilitate surveillance. The Exchange represents that Standard & Poor's Financial Services LLC, the index sponsor with respect to the Indexes, is not a broker-dealer and has implemented procedures designed to prevent the use and dissemination of material, non-public information regarding the Indexes.

The Exchange further represents that the Shares are deemed to be equity securities subject to the Exchange's existing rules governing the trading of equity securities. In support of this proposal, the Exchange has made additional representations, including:

(1) The Funds will meet the initial and continued listing requirements applicable to Trust Issued Receipts in NYSE Arca Equities Rule 8.200 and Commentary .02 thereto.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) The Exchange's surveillance procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. In

[10] A ''Business Day'' means any day other than a day when any of the NYSE, NYSE Arca, CBOE, or CFE or other exchange material to the valuation or operation of the Funds, or the calculation of the VIX, options contracts underlying the VIX, VIX Futures Contracts, or the Indexes is closed for trading.

[11] *See* Notice and Registration Statement, *supra* notes 3 and 4, respectively.

[12] 15 U.S.C. 78f.

[13] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[16] Trading may also be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the underlying futures contracts; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

addition, with respect to any Fund's holdings of futures contracts traded on exchanges, not more than 10% of the weight of such futures contracts in the aggregate shall consist of components whose principal trading market is not a member of the Intermarket Surveillance Group or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

(4) Prior to the commencement of trading, the Exchange will inform its ETP Holders of the suitability requirements of NYSE Arca Equities Rule 9.2(a) in an Information Bulletin. Specifically, ETP Holders will be reminded in the Information Bulletin that, in recommending transactions in the Shares, they must have a reasonable basis to believe that (a) the recommendation is suitable for a customer given reasonable inquiry concerning the customer's investment objectives, financial situation, needs, and any other information known by such member, and (b) the customer can evaluate the special characteristics, and is able to bear the financial risks, of an investment in the Shares. In connection with the suitability obligation, the Information Bulletin will also provide that members must make reasonable efforts to obtain the following information: (i) The customer's financial status; (ii) the customer's tax status; (iii) the customer's investment objectives; and (iv) such other information used or considered to be reasonable by such member or registered representative in making recommendations to the customer. In addition, the Information Bulletin will reference the FINRA Regulatory Notices regarding sales practice and customer margin requirements implemented by FINRA, applicable to FINRA members, with respect to leveraged ETFs (which include the Shares) and options on leveraged ETFs.[17] ETP Holders that carry customer accounts will be required to follow the FINRA guidance set forth in these notices.

(5) Prior to the commencement of trading, the Exchange also will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) The risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated IOPV will not be calculated or publicly disseminated; (b) the procedures for purchases and redemptions of Shares in Creation Baskets and Redemption Baskets (and that Shares are not individually redeemable); (c) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (d) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (e) trading information.[18]

(6) The Funds must be in compliance with NYSE Arca Equities Rule 5.3 and Rule 10A–3 under the Act.[19]

(7) A minimum of 100,000 Shares for each Fund will be outstanding as of the start of trading on the Exchange.

This approval order is based on the Exchange's representations.[20]

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act[21] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therfore ordered, pursuant to Section 19(b)(2) of the Act,[22] that the proposed rule change (SR–NYSEArca–2011–23) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Elizabeth M. Murphy,

Secretary.

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[17] *See* FINRA Regulatory Notices 09–31 (June 2009), 09–53 (August 2009) and 09–65 (November 2009) (''FINRA Regulatory Notices'').

[18] As noted above, the Information Bulletin will further advise ETP Holders that FINRA has implemented increased customer margin requirements applicable to leveraged ETFs (which include the Shares) and options on leveraged ETFs, as discussed in the FINRA Regulatory Notices. *See supra,* note 17.

[19] 17 CFR 240.10A–3.

[20] The Commission notes that it does not regulate the market for futures in which the Fund plans to take positions, which is the responsibility of the Commodity Futures Trading Commission (''CFTC''). The CFTC has the authority to set limits on the positions that any person may take in futures. These limits may be directly set by the CFTC or by the markets on which the futures are traded. The Commission has no role in establishing position limits on futures, even though such limits could impact an exchange-traded product that is under the jurisdiction of the Commission.

[21] 15 U.S.C. 78f(b)(5).

[22] 15 U.S.C. 78s(b)(2).

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65136; File No. SR–NYSEArca–2011–24]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change To List and Trade Shares of the Following Under NYSE Arca Equities Rule 8.200: ProShares Short DJ–UBS Natural Gas, ProShares Ultra DJ–UBS Natural Gas and ProShares UltraShort DJ–UBS Natural Gas

August 15, 2011.

I. Introduction

On April 28, 2011, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares of the ProShares Short DJ–UBS Natural Gas, ProShares Ultra DJ–UBS Natural Gas, and ProShares UltraShort DJ–UBS Natural Gas under NYSE Arca Equities Rule 8.200. The proposed rule change was published for comment in the **Federal Register** on May 17, 2011.[3] The Commission received no comments on the proposal. On July 1, 2011, the Exchange submitted a request to extend the Commission's action date for the proposed rule change to August 15, 2011. This order grants approval of the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposes to list and trade shares (''Shares'') of the ProShares Short DJ–UBS Natural Gas, ProShares Ultra DJ–UBS Natural Gas, and ProShares UltraShort DJ–UBS Natural Gas (each a ''Fund'' and, collectively, ''Funds'')[4] pursuant to NYSE Arca Equities Rule 8.200, Commentary .02, which permits the trading of Trust Issued Receipts either by listing or pursuant to unlisted trading privileges.[5]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 64464 (May 11, 2011), 76 FR 28483 (''Notice'').

[4] *See* Post-Effective Amendment No. 1 dated May 28, 2010 (File No. 333–163511) and Post-Effective Amendment No. 4 dated April 13, 2011 (File No. 333–163511) to the Funds' Registration Statement on Form S–3 (''Registration Statements'').

[5] Commentary .02 to NYSE Arca Equities Rule 8.200 applies to Trust Issued Receipts that invest in ''Financial Instruments.'' The term ''Financial Instruments,'' as defined in Commentary .02(b)(4) to NYSE Arca Equities Rule 8.200, means any combination of investments, including cash; securities; options on securities and indices; futures

Continued

Each of the Funds is a series of the ProShares Trust II (''Trust''), a Delaware statutory trust. ProShare Capital Management LLC (''Sponsor'') is the Trust's Sponsor, and Wilmington Trust Company is the Trust's trustee. Brown Brothers Harriman & Co. (''Administrator'') serves as the administrator, custodian, and transfer agent of the Funds. SEI Investments Distribution Co. serves as distributor of the Shares.

The Funds seek daily investment results (before fees and expenses) that correspond to the inverse (opposite) of the daily performance, a multiple of the daily performance, or an inverse multiple of the daily performance of the Dow Jones-UBS Natural Gas Sub-Index, the benchmark index for each of the Funds (''Benchmark'' or ''Index''). The Index, which is comprised of New York Mercantile Exchange (''NYMEX'') Natural Gas futures contracts (''Natural Gas Futures Contracts''), is intended to reflect the performance of natural gas as measured by the performance of Natural Gas Futures Contracts, including roll costs, without regard to income earned on cash positions. The Index rolls (or sells its existing position prior to settlement while purchasing a new position further from settlement) the component Natural Gas Futures Contracts every other month. The roll for each Index component occurs over a period of five NYMEX business days.

Each Fund will seek to achieve its respective investment objective by investing under normal market conditions in Natural Gas Futures Contracts. In the event position accountability rules are reached with respect to Natural Gas Futures Contracts, the Sponsor may, in its commercially reasonable judgment, cause the Funds to obtain exposure through swaps referencing the Index or particular Natural Gas Futures Contracts, or invest in other futures contracts or swaps not based on the particular Natural Gas Futures Contracts if such instruments tend to exhibit trading prices or returns that correlate with the Index or any Natural Gas Futures Contract and will further the investment objective of such Fund.[6] Each Fund may also invest in swaps if the market for a specific futures contract experiences emergencies (*e.g.,* natural disaster, terrorist attack, or an act of God) or disruptions (*e.g.,* a trading halt or a flash crash) that would prevent such Fund from obtaining the appropriate amount of investment exposure to the affected Natural Gas Futures Contracts directly or to other futures contracts.[7] In addition, each Fund may invest in cash, cash equivalents, and/or U.S. Treasury Securities or other high credit quality short-term fixed-income or similar securities (such as shares of money market funds, bank deposits, bank money market accounts, certain variable-rate demand notes, and repurchase agreements collateralized by government securities) that will serve as collateral for any futures contracts or swap agreements held by the Funds.

The Sponsor expects the Funds to have a statistical correlation[8] over time of −0.95 or better (for ProShares Short DJ–UBS Natural Gas and ProShares UltraShort DJ–UBS Natural Gas) and +0.95 or better (for ProShares Ultra DJ–UBS Natural Gas) when correlating the daily return of a Fund's NAV against the daily return of its relevant Benchmark.

If ProShares Short DJ–UBS Natural Gas is successful in meeting its objective, its value on a given day (before fees and expenses) should gain approximately as much on a percentage basis as its Benchmark when the Benchmark falls on a given day. Conversely, its value on a given day (before fees and expenses) should lose approximately as much on a percentage basis as the Benchmark when the Benchmark rises on a given day. If the ProShares Ultra DJ–UBS Natural Gas Fund is successful in meeting its objective, its value (before fees and expenses) should gain approximately twice as much on a percentage basis as the Benchmark when it rises on a given day. Conversely, its value (before fees and expenses) should lose approximately twice as much on a percentage basis as the Benchmark when it declines on a given day. If the ProShares UltraShort DJ–UBS Natural Gas Fund is successful in meeting its objective, its value (before fees and expenses) should gain approximately twice as much on a percentage basis as the Benchmark when it declines on a given day. Conversely, its value (before fees and expenses) should lose approximately twice as much on a percentage basis as the Benchmark when it rises on a given day.

For each dollar invested in the Funds, each Fund will seek the requisite exposure in Natural Gas Futures Contracts to pursue its respective investment objective. The Funds' investment techniques may involve a small investment relative to the amount of investment exposure assumed and may result in losses exceeding the amounts invested. Such techniques, particularly when used to create leverage, may expose the Funds to potentially dramatic changes (losses or gains) in the value of their investments and imperfect correlation between the value of the investments and the security or index. The Sponsor does not intend to invest directly in any commodity.

The Exchange represents that the Funds will be subject to the criteria in NYSE Arca Equities Rule 8.200 and Commentary .02 thereto for the initial and continued listing of the Shares. The Exchange further represents that, for the initial and continued listing of the Shares, the Funds will be in compliance with NYSE Arca Equities Rule 5.3 and Rule 10A–3 under the Act[9] and a minimum of 100,000 Shares for each Fund will be outstanding as of the start of trading on the Exchange.

Additional details regarding the Trust, Shares, trading policies of the Fund, creations and redemptions of the Shares, Natural Gas Futures Contracts, investment risks, Benchmark performance, NAV calculation, the dissemination and availability of information about the underlying assets, trading halts, applicable trading rules, surveillance, and the Information Bulletin, among other things, can be found in the Notice and/or the Registration Statements, as applicable.[10]

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change to list and trade the Shares of the Funds is consistent with the requirements of Section 6 of the Act and the rules and regulations thereunder applicable to a national securities exchange.[11] In particular, the Commission finds that the proposed rule change is consistent

contracts; options on futures contracts; forward contracts; equity caps, collars and floors; and swap agreements.

[6] To the extent practicable, the Funds will invest in swaps cleared through the facilities of a centralized clearing house.

[7] The Sponsor will also attempt to mitigate the Funds' credit risk by transacting only with large, well-capitalized institutions using measures designed to determine the creditworthiness of a counterparty. The Sponsor will take various steps to limit counterparty credit risk.

[8] Correlation is the strength of the relationship between (1) the change in a Fund's net asset value (''NAV'') and (2) the change in the underlying Index or Benchmark. The statistical measure of correlation is known as the ''correlation coefficient.'' A correlation coefficient of +1 indicates a perfect positive correlation while a value of −1 indicates a perfect negative (inverse) correlation. A value of zero would mean that there is no correlation between the two variables.

[9] 17 CFR 240.10A–3.

[10] *See* Notice and Registration Statements, *supra* notes 3 and 4, respectively.

[11] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

with the requirements of Section 6(b)(5) of the Act,[12] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the Funds and the Shares must comply with the requirements of NYSE Arca Equities Rule 8.200 and Commentary .02 thereto to be listed and traded on the Exchange. The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,[13] which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association high-speed line, and the Index level will be disseminated by one or more major market data vendors and will be updated at least every 15 seconds during the NYSE Arca Core Trading Session, except for that period after the end of the NYMEX Natural Gas pit trading session at 2:30 p.m. Eastern Time (''E.T.''), at which point the Index value will be static.[14] In addition, the Indicative Fund Value (''IFV'') for each Fund will be disseminated on a per-Share basis by one or more major market data vendors at least every 15 seconds during the NYSE Arca Core Trading Session.[15] The NAV for the Funds' Shares will be calculated by the Administrator once a day and will be disseminated daily to all market participants at 2:30 p.m. E.T. Each Fund's total portfolio composition will be disclosed on the Funds' Web site or another relevant Web site as determined by the Trust and/or the Exchange. The Trust will provide Web site disclosure of portfolio holdings daily and will include, as applicable, the names and notional value (in U.S. dollars) of Natural Gas Futures Contracts and swap agreements, if any, cash equivalents and amount of cash held in the portfolio of each Fund. The intra-day, closing, and settlement prices of the futures contracts held by the Funds are available from NYMEX, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. In addition, the Web site for the Funds and/or the Exchange will contain the prospectus and additional data relating to NAV and other applicable quantitative information.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. If the Exchange becomes aware that the NAV with respect to the Shares is not disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants.[16] Further, the Exchange represents that it may halt trading during the day in which an interruption to the dissemination of the Index value, IFV, or the value of the underlying futures contracts occurs. If the interruption to the dissemination of the Index value, IFV, or the value of the underlying futures contracts persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. In addition, the Web site disclosure of the portfolio composition of each Fund will occur at the same time as the disclosure by the Sponsor of the portfolio composition to Authorized Participants so that all market participants are provided portfolio composition information at the same time. Therefore, the same portfolio information will be provided on the public Web site as well as in electronic files provided to Authorized Participants. Accordingly, each investor will have access to the current portfolio composition of each Fund through the Funds' Web site and/or at the Exchange's Web site. The Exchange may halt trading in the Shares if trading is not occurring in the underlying futures contracts or if other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.[17] In addition, the Exchange represents that certain parties involved with the sponsoring and/or maintenance of the Index will be subject to restrictions on the use or disclosure of any material non-public information relating to changes to the composition and/or the calculation of the Index.[18] Lastly, the trading of the Shares will be subject to NYSE Arca Equities Rule 8.200, Commentary .02(e), which sets forth certain restrictions on ETP Holders[19] acting as registered Market Makers[20] in Trust Issued Receipts to facilitate surveillance.

The Exchange has represented that the Shares are deemed to be equity

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[14] The daily closing Index level and the percentage change in the daily closing Index level will be publicly available on various websites, *e.g., http://www.bloomberg.com,* and data regarding the Index will also be available from the Dow Jones & Company, Inc. to subscribers. In addition, data will be available for the Natural Gas Futures Contracts in the Index and for other futures contracts from those futures exchanges that list and trade futures contracts on such commodity. Several independent data vendors also package and disseminate data in various value-added formats (including vendors displaying both Index constituents and Index levels and vendors displaying Index levels only).

[15] The value of a Share may be influenced by non-concurrent trading hours between NYSE Arca and NYMEX when the Shares are traded on NYSE Arca after normal trading hours of NYMEX. The IFV will be updated during the NYSE Arca Core Trading Session when Natural Gas Futures Contracts held by the Funds are traded. However, a static IFV will be disseminated between the close of trading of Natural Gas Futures Contracts and the close of the NYSE Arca Core Trading Session.

[16] The Exchange will obtain a representation (prior to listing the Shares of the Funds) from the Trust that the NAV per Share will be calculated daily and made available to all market participants at the same time.

[17] With respect to trading halts, the Exchange may consider other relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Funds. Trading in the Shares of the Funds will be subject to halts caused by extraordinary market volatility pursuant to the Exchange's circuit breaker rules in NYSE Arca Equities Rule 7.12. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.

[18] UBS Securities LLC, a co-sponsor of the Index, is a registered broker-dealer and has represented to the Exchange that it will: (1) Implement and maintain procedures reasonably designed to prevent the use and dissemination by its relevant personnel of material non-public information relating to changes in the composition or method of computation or calculation of the Index; and (2) periodically review the requirements of such procedures as they relate to certain of its personnel directly responsible for such changes. CME Group Index Services LLC, another co-sponsor of the Index, is not engaged in the business of trading in commodities or securities. CME Group Inc., which, together with its subsidiaries, operates derivatives exchanges, maintains a Code of Conduct applicable to all personnel that prohibits disclosure of any confidential information obtained during the course of one's employment and the use or disclosure of any material non-public information relating to changes to the composition of the Index or changes to the Index methodology in violation of applicable laws, rules or regulations. Dow Jones & Company, Inc. also maintains a Code of Conduct applicable to all personnel that prohibits disclosure of any confidential information relating to changes to the composition of the Index or changes to the Index methodology obtained during the course of one's employment and the use of any material non-public information in violation of applicable laws, rules or regulations.

[19] *See* NYSE Arca Equities Rule 1.1(n) (defining ETP Holder).

[20] *See* NYSE Arca Equities Rule 1.1(u) (defining Market Maker).

securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including:

(1) The Funds will be subject to the criteria in NYSE Arca Equities Rule 8.200 and Commentary .02 thereto for initial and continued listing of the Shares.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) The Exchange's surveillance procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

(4) Prior to the commencement of trading, the Exchange will inform its ETP Holders of the suitability requirements of NYSE Arca Equities Rule 9.2(a) in an Information Bulletin. Specifically, ETP Holders will be reminded in the Information Bulletin that, in recommending transactions in the Shares, they must have a reasonable basis to believe that (a) the recommendation is suitable for a customer given reasonable inquiry concerning the customer's investment objectives, financial situation, needs, and any other information known by such member, and (b) the customer can evaluate the special characteristics, and is able to bear the financial risks, of an investment in the Shares. In connection with the suitability obligation, the Information Bulletin will also provide that members must make reasonable efforts to obtain the following information: (i) The customer's financial status; (ii) the customer's tax status; (iii) the customer's investment objectives; and (iv) such other information used or considered to be reasonable by such member or registered representative in making recommendations to the customer.[21] Further, the Exchange's Information Bulletin regarding the Funds will provide information regarding the suitability of an investment in the Shares, as stated in the Registration Statements.

(5) With respect to the Funds' futures contracts traded on exchanges, not more than 10% of the weight of such futures contracts in the aggregate shall consist of components whose principal trading market is not a member of the Intermarket Surveillance Group or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

(6) Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) The risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated IFV will not be calculated or publicly disseminated; (b) the procedures for purchases and redemptions of Shares in creation baskets and redemption baskets (and that Shares are not individually redeemable); (c) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (d) how information regarding the IFV is disseminated; (e) a static IFV will be disseminated between the close of trading of Natural Gas Futures Contracts on NYMEX and the close of the NYSE Arca Core Trading Session; (f) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (g) trading information. In addition, the Information Bulletin will reference the FINRA Regulatory Notices regarding sales practice and customer margin requirements for FINRA members applicable to leveraged products.

(7) A minimum of 100,000 Shares will be outstanding as of the start of trading on the Exchange.

(8) For the initial and continued listing of the Shares, the Funds will be in compliance with NYSE Arca Equities Rule 5.3 and Rule 10A–3 under the Act.

This approval order is based on the Exchange's representations.[22]

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act[23] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[24] that the proposed rule change (SR–NYSEArca–2011–24) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–21175 Filed 8–18–11; 8:45 am]

BILLING CODE 8011–01–P

[21] FINRA has implemented increased sales practice and customer margin requirements for FINRA members applicable to leveraged ETFs (which include the Shares) and options on leveraged ETFs, as described in FINRA Regulatory Notices 09–31 (June 2009), 09–53 (August 2009) and 09–65 (November 2009) (''FINRA Regulatory Notices''). The Exchange represents that ETP Holders that carry customer accounts will be required to follow the FINRA guidance set forth in these notices.

[22] The Commission notes that it does not regulate the market for futures in which the Fund plans to take positions, which is the responsibility of the Commodity Futures Trading Commission (''CFTC''). The CFTC has the authority to set limits on the positions that any person may take in futures. These limits may be directly set by the CFTC or by the markets on which the futures are traded. The Commission has no role in establishing position limits on futures, even though such limits could impact an exchange-traded product that is under the jurisdiction of the Commission.

[23] 15 U.S.C. 78f(b)(5).

[24] 15 U.S.C. 78s(b)(2).

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65137; File No. SR–FINRA–2011–040]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Amend the Supplementary Material to FINRA Rule 1230(b)(6) (Operations Professional)

August 15, 2011.

On August 12, 2011, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by FINRA. The Commission is publishing this notice and order to solicit comment on the proposed rule change and approve the proposed rule change on an accelerated basis.

I. Description of Proposed Rule Change

FINRA is proposing to amend the supplementary material to FINRA Rule 1230(b)(6) (Operations Professional), FINRA Rule 1230.06 (Scope of Operations Professional Requirement), to clarify the application of the Operations Professional requirements to employees of a foreign broker-dealer whose activities, relating to certain transactions in foreign securities on behalf of a member's customers, as further detailed herein, are limited to facilitating the clearance and settlement of such transactions.

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

On June 16, 2011, the Commission approved SR–FINRA–2011–013, which adopted FINRA Rule 1230(b)(6) (Operations Professional), and its accompanying supplementary material in FINRA Rule 1230.06 (Scope of Operations Professional Requirement), to establish a registration category and qualification examination requirement for certain operations personnel (Operations Professionals).[1] FINRA Rule 1230(b)(6), and its accompanying supplementary material in FINRA Rule 1230.06, takes effect on October 17, 2011.[2]

Questions have been raised regarding the application of the Operations Professional requirements to employees of a foreign broker-dealer whose activities, relating to certain transactions in foreign securities on behalf of a member's customers, are limited to facilitating the clearance and settlement of such transactions. These arrangements between the member and the foreign broker-dealer involve transactions in foreign securities to be executed by the foreign broker-dealer on the foreign market, where the foreign broker-dealer accepts the member's customer's instructions to settle the transactions on a DVP/RVP basis through the foreign clearing system and settle directly with the customer's custodian.

To provide clarification with respect to the application of FINRA Rule 1230(b)(6) to such arrangements, the proposed rule change would amend supplementary material .06 to FINRA Rule 1230(b)(6) to provide that an employee of a foreign broker-dealer whose activities, relating to a transaction in foreign securities on behalf of a customer of a member, are limited to facilitating the clearance and settlement of the transaction shall not be required to register as an Operations Professional pursuant to FINRA Rule 1230(b)(6)(A) where: (1) The member sending the order for a transaction in foreign securities on behalf of the customer to the foreign broker-dealer is not a direct participant of the applicable foreign clearing system; and (2) in executing such order in the foreign market, the foreign broker-dealer accepts the member's customer's instructions to settle the transaction in foreign securities on a DVP/RVP basis through the foreign clearing system and settle directly with a custodian for the customer.[3]

The effective date of the proposed rule change will be October 17, 2011, the effective date of FINRA Rule 1230(b)(6) (Operations Professional) and its accompanying supplementary material in FINRA Rule 1230.06 (Scope of Operations Professional Requirement).

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[4] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes the proposed rule change would provide clarification in response to questions raised regarding the application of the Operations Professional requirements to employees of a foreign broker-dealer facilitating the clearance and settlement of certain transactions in foreign securities on behalf of a member's customers pursuant to the arrangements described above.

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. Commission's Findings

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to FINRA and, in particular, the requirements of Section 15A of the Act[5] and the rules and regulations thereunder.

FINRA has requested that the Commission find good cause pursuant to Section 19(b)(2) of the Act[6] for approving the proposed rule change prior to the 30th day after publication in the **Federal Register**. The Commission finds good cause, pursuant to Section 19(b)(2), for approving the proposed rule change prior to the 30th day after publication of notice of the filing in the **Federal Register**. The proposed rule change is intended to clarify the scope of application of FINRA's Rule 1230(b)(6), which rule comes into effect on October 17, 2011.[7] By accelerating the approval of the proposed rule, and allowing it to become effective on October 17, 2011, the Commission can eliminate uncertainty about the rule's applicability to the persons who are the subject of this interpretation, improve the ability of FINRA members to plan accordingly for the upcoming compliance date of Rule 1230(b)(6), and avoid undue burdens associated with preparing for the registration of persons who will not be required to register under this interpretation.[8]

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:

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[1] *See* Securities Exchange Act Release No. 64687 (June 16, 2011), 76 FR 36586 (June 22, 2011) (Order Approving Proposed Rule Change; File No. SR–FINRA–2011–013). This rule change also established continuing education requirements for Operations Professionals and adopted NASD Rule 1120 (Continuing Education Requirements) as FINRA Rule 1250 (Continuing Education Requirements) in the consolidated FINRA rulebook with certain changes.

[2] *See Regulatory Notice* 11–33 (July 2011).

[3] We are approving this rule change as it addresses the application of FINRA Rule 1230(b)(6) to the fact pattern described above. No statement in the proposed rule or this order otherwise affects the Commission's interpretation of any provision of the Securities Exchange Act of 1934, or any rule thereunder, including Rule 15c3–3 (17 CFR 240.15c3–3).

[4] 15 U.S.C. 78*o*–3(b)(6).

[5] 15 U.S.C. 78*o*–3.

[6] 15 U.S.C. 78s(b)(2).

[7] *See* Regulatory Notice 11–33 (July 2011) (Operations Professionals).

[8] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–2011–040 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–2011–040. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of 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–2011–040 and should be submitted on or before September 9, 2011.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR–FINRA–2011–040) is approved on an accelerated basis.

[9] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–21176 Filed 8–18–11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64892A; File No. SR–FINRA–2011–034]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Amend FINRA Rule 4240 (Margin Requirements for Credit Default Swaps); Correction

August 15, 2011.

FR Doc. No. 2011–18221, beginning on page 43360 for Wednesday, July 20, 2011, contained an error. Release No. 34–64892 (''Release'') approved a proposed rule change on an accelerated basis filed by FINRA (File No. SR–FINRA–2011–034). Section V of the Release was inadvertently omitted. Accordingly, the conclusion of the Release is added to read as noted below. On page 43363, column 1, following line 6, insert:

''V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[1] that the proposed rule change (SR–FINRA–2011–034), be, and hereby is, approved on an accelerated basis.''

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[2]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–21190 Filed 8–18–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Auriga Laboratories, Inc., Curon Medical, Inc., Goldstate Corp., OneWorld Systems, Inc., and PracticeXpert, Inc.; Order of Suspension of Trading

August 17, 2011.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Auriga Laboratories, Inc. because it has not filed any periodic reports since the period ended March 31, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Curon Medical, Inc. because it has not filed any periodic reports since the period ended June 30, 2006.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Goldstate Corp. because it has not filed any periodic reports since the period ended March 31, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of OneWorld Systems, Inc. because it has not filed any periodic reports since the period ended December 31, 1999.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of PracticeXpert, Inc. because it has not filed any periodic reports since the period ended June 30, 2006.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on August 17, 2011, through 11:59 p.m. EDT on August 30, 2011.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–21336 Filed 8–17–11; 4:15 pm]

BILLING CODE 8011–01–P

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(2).

[2] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12734 and #12735]

Iowa Disaster #IA–00035

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Iowa Dated.

Incident: Severe Storms and Flash Flooding.

Incident Period: 07/27/2011 through 07/28/2011.

Effective date:

Physical loan application deadline date:

Economic Injury (EIDL) Loan Application Deadline Date:

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 Administrator's disaster declaration, applications for disaster loans may be filed 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: Dubuque.

Contiguous counties:

Iowa: Clayton, Delaware, Jackson, Jones.

Illinois: Jo Daviess.

Wisconsin: Grant.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere:	5.000
Homeowners Without Credit Available Elsewhere:	2.500
Businesses With Credit Available Elsewhere:	6.000
Businesses Without Credit Available Elsewhere:	4.000
Non-Profit Organizations With Credit Available Elsewhere:	3.250
Non-Profit Organizations Without Credit Available Elsewhere:	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere:	4.000
Non-Profit Organizations Without Credit Available Elsewhere:	3.000

The number assigned to this disaster for physical damage is 12734B and for economic injury is 127350.

The States which received an EIDL Declaration # are Iowa, Illinois, Wisconsin.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

August 12, 2011.

Karen G. Mills,

Administrator.

[FR Doc. 2011–21170 Filed 8–18–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12732 and #12733]

Tennessee Disaster #TN–00056

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Tennessee dated 08/12/2011.

Incident: Severe Storms, Tornadoes and Flooding.

Incident Period: 06/18/2011 through 06/25/2011.

Effective Date: 08/12/2011.

Physical Loan Application Deadline Date: 10/11/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 05/12/2012.

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 Administrator's disaster declaration, applications for disaster loans may be filed 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: Claiborne.

Contiguous Counties:

Tennessee: Campbell, Grainger, Hancock, Union.

Kentucky: Bell, Whitley.

Virginia: Lee.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere:	5.375
Homeowners Without Credit Available Elsewhere:	2.688
Businesses With Credit Available Elsewhere:	6.000
Businesses Without Credit Available Elsewhere:	4.000
Non-Profit Organizations With Credit Available Elsewhere:	3.250
Non-Profit Organizations Without Credit Available Elsewhere:	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere:	4.000
Non-Profit Organizations Without Credit Available Elsewhere:	3.000

The number assigned to this disaster for physical damage is 12732 B and for economic injury is 12733 0.

The States which received an EIDL Declaration # are Tennessee, Kentucky, Virginia.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

August 12, 2011.

Karen G. Mills,

Administrator.

[FR Doc. 2011–21177 Filed 8–18–11; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes one revision to an OMB-approved information collection.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, e-mail, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB) Office of Management and Budget. *Attn:* Desk Officer for SSA. *Fax:* 202–395–6974. *E-mail address: OIRA_Submission@omb.eop.gov.*

(SSA) Social Security Administration, DCBFM. *Attn:* Reports Clearance Officer, 1333 Annex Building, 6401 Security Blvd., Baltimore, MD 21235. *Fax:* 410–965–6400. *E-mail address: OPLM.RCO@ssa.gov.*

SSA submitted the information collection listed below to OMB for clearance. Your comments on the information collection would be most useful if OMB and SSA receive them within 30 days from the date of this publication. To consider your comments, we must receive them no

later than September 19, 2011. You can obtain a copy of the OMB clearance package by calling the SSA Reports Clearance Officer at 410–965–8783 or by writing to the above e-mail address.

Help America Vote Act—0960–0706. H.R. 3295, the Help America Vote Act of 2002, mandates that States verify the identities of newly registered voters. When newly registered voters do not have drivers' licenses or State-issued identification cards, they must supply the last four digits of their Social Security number to their local State election agencies for verification. The election agencies forward this information to their State Motor Vehicle Administration (MVA), who inputs the data into the American Association of MVAs, a central consolidation system that routes the voter data to SSA's Help America Vote Verification (HAVV) system. Once SSA's HAVV system has confirmed the identity of the voter, the information will return along the same route in reverse until it reaches the State election agency. The official respondents for this collection are the State MVAs.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 2,352,204.

Frequency of Response: 1.

Average Burden per Response: 2 minutes.

Estimated Annual Burden: 78,407 hours.

Dated: August 16, 2011.

Faye Lipsky,

Reports Clearance Officer, Center for Reports Clearance, Social Security Administration.

[FR Doc. 2011–21198 Filed 8–18–11; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice: 7558]

Culturally Significant Objects Imported for Exhibition Determinations: ''Modern Antiquity: Picasso, de Chirico, Léger, and Picabia in the Presence of the Antique.''

Summary: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Modern Antiquity: Picasso, de Chirico, Léger, and Picabia in the Presence of the Antique,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit objects at The J. Paul Getty Museum, the Getty Villa, Pacific Palisades, California, from on or about November 2, 2011, until on or about January 16, 2012, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

For Further Information Contact: For further information, including a list of the exhibit objects, contact Kevin M. Gleeson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6473). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: August 15, 2011.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2011–21264 Filed 8–18–11; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 7559]

In the Matter of the Designation of Sangeen Zadran, Also Known as Sangin, Also Known as Sangin Zadran, Also Known as Sangeen, Also Known as Sangeen Khan Zadran, Also Known as Fateh, as a Specially Designated Global Terrorist Pursuant to Section 1(b) of Executive Order 13224, as Amended

Acting under the authority of and in accordance with section 1(b) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13268 of July 2, 2002, and Executive Order 13284 of January 23, 2003, I hereby determine that the individual known as Sangeen Zadran, also known as Sangin, also known as Sangin Zadran, also known as Sangeen, also known as Sangeen Khan Zadran, also known as Fateh, committed, or poses a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of Executive Order 13224 that ''prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously,'' I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: August 15, 2011.

Hillary Rodham Clinton,

Secretary of State.

[FR Doc. 2011–21265 Filed 8–18–11; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Public Notice 7560]

In the Matter of the Designation of; Mumtaz Dughmush, aka About Abir, aka Mumtaz Muhammad Jum'ah Dughmush, aka Mumtaz Muhammad Jum'ah Daghmash, aka Mumtaz Muhammad Jum'ah Dughmish, aka Mumtaz Daghmash, as a Specially Designated Global Terrorist Pursuant to Section 1(b) of Executive Order 13224, as Amended

Acting under the authority of and in accordance with section 1(b) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13268 of July 2, 2002, and Executive Order 13284 of January 23, 2003, I hereby determine that the individual known as Mumtaz Dughmush, also known as About Abir, also known as Mumtaz Muhammad Jum'ah Dughmush, also known as Mumtaz Muhammad Jum'ah Daghmash, also known as Mumtaz Muhammad Jum'ah Dughmish, also known as Mumtaz Daghmash, has committed, or poses a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of Executive Order 13224 that ''prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously,'' I determine that no prior notice needs to

be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: August 3, 2011.

Hillary Rodham Clinton,

Secretary of State.

[FR Doc. 2011–21268 Filed 8–18–11; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Public Notice: 7561]

Determination on Imposition and Waiver of Sanctions Under Sections 603 and 604 of the Foreign Relations Authorization Act, Fiscal Year 2003 (Pub. L. 107–228)

Consistent with the authority contained in section 604 of the Foreign Relations Authorization Act, Fiscal Year 2003 (Pub. L. 107–228) (the ''Act''), the Delegation of Authority in the April 30, 2009, Memorandum for the Secretary of State, and Department of State Delegation of Authority No. 245–1, and with reference to the determinations set out in the Report to the Congress transmitted pursuant to section 603 of that Act, regarding the extent of noncompliance by the Palestine Liberation Organization (PLO) or Palestinian Authority with certain commitments, I hereby impose the sanction set out in section 604(a)(2), ''Downgrade in Status of the PLO Office in the United States.'' This sanction is imposed for a period of 180 days from the date that the report under section 603 of the Act is transmitted to the Congress or until such time as the next report under section 603 is required to be transmitted to the Congress, whichever is later.

Furthermore, I hereby determine that it is in the national security interest of the United States to waive that sanction, pursuant to section 604(c) of the Act. This waiver shall be effective for a period of 180 days from the date hereof or until such time as the next report under section 603 of the Act is required to be transmitted to Congress, whichever is later.

This determination shall be reported to Congress promptly and published in the **Federal Register**.

Dated: August 10, 2011.

William J. Burns,

Deputy Secretary of State.

[FR Doc. 2011–21270 Filed 8–18–11; 8:45 am]

BILLING CODE 4710–31–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Dispute No. WTO/DS422]

WTO Dispute Settlement Proceeding Regarding United States—Anti-Dumping Measures on Diamond Sawblades and Parts Thereof From China

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (''USTR'') is providing notice that on July 22, 2011, the People's Republic of China requested consultations with the United States under the *Marrakesh Agreement Establishing the World Trade Organization* (''WTO Agreement'') concerning anti-dumping measures regarding diamond sawblades and parts thereof from China. That request may be found at *http://www.wto.org* contained in a document designated as WT/DS422/1/Add.1. USTR invites written comments from the public concerning the issues raised in China's July 22, 2011 consultation request.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before September 19, 2011, to be assured of timely consideration by USTR.

ADDRESSES: Public comments should be submitted electronically to *http://www.regulations.gov,* docket number USTR–2011–0002. If you are unable to provide submissions by *http://www.regulations.gov,* please contact Sandy McKinzy at (202) 395–9483 to arrange for an alternative method of transmission.

If (as explained below) the comment contains confidential information, then the comment should be submitted by fax only to Sandy McKinzy at (202) 395–3640.

FOR FURTHER INFORMATION CONTACT: Jared Wessel, Assistant General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508, (202) 395–3150.

SUPPLEMENTARY INFORMATION: USTR is providing notice that consultations have been requested pursuant to the WTO *Understanding on Rules and Procedures Governing the Settlement of Disputes* (''DSU''). If such consultations should fail to resolve the matter and a dispute settlement panel is established pursuant to the DSU, such panel, which would hold its meetings in Geneva, Switzerland, would be expected to issue a report on its findings and recommendations within nine months after it is established.

Major Issues Raised by China

On July 22, 2011, China requested consultations regarding the antidumping duty investigation conducted by the Department of Commerce on diamond sawblades and parts thereof from China, referring in particular to the use of what it calls ''zeroing'' in that proceeding. Specifically, China requested consultations regarding the determination by the Department of Commerce in (1) *Final Determination of Sales at Less than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China,* 71 FR 29303 (May 22, 2006) and the accompanying May 15, 2006, Issues and Decision Memorandum, as well as any amendments, replacements and/or implementing measures issued pursuant thereto; and (2) *Diamond Sawblades and Parts Thereof from the People's Republic of China and Republic of Korea: Antidumping Duty Orders,* 74 FR 57145 (November 4, 2009), as well as any amendments, replacements and/or implementing measures issued pursuant thereto.

China asserts that the present request for consultations constitutes an addendum to, and must be read together with, its consultation request dated February 28, 2001 regarding anti-dumping measures on certain frozen warmwater shrimp from China, WTO/DS422/1. (See *WTO Dispute Settlement Proceeding Regarding United States—Anti-Dumping Measures on Certain Frozen Warmwater Shrimp From China,* 76 FR 17985 (March 31, 2011)).

China alleges that so-called zeroing is inconsistent with Articles VI:1 and VI:2 of the *General Agreement on Tariffs and Trade 1994* and Articles 1, 2.1, 2.4, 2.4.2, 5.8, 9.2, 9.3, and 9.4 of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994.*

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in this dispute. Persons may submit public comments electronically to *http://www.regulations.gov* docket number USTR–2011–0002. If you are unable to provide submissions by *http://www.regulations.gov,* please contact Sandy McKinzy at (202) 395–9483 to

arrange for an alternative method of transmission.

To submit comments via *http://www.regulations.gov,* enter docket number USTR–2011–0002 on the home page and click ''search''. The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting ''Notice'' under ''Document Type'' on the left side of the search-results page, and click on the link entitled ''Submit a Comment.'' (For further information on using the *http://www.regulations.gov* Web site, please consult the resources provided on the Web site by clicking on ''How to Use This Site'' on the left side of the home page.)

The *http://www.regulations.gov* site provides the option of providing comments by filling in a ''Type Comment and Upload File'' field, or by attaching a document. It is expected that most comments will be provided in an attached document. If a document is attached, it is sufficient to type ''See attached'' in the ''Type Comment and Upload File'' field.

A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly designated as such and the submission must be marked ''BUSINESS CONFIDENTIAL'' at the top and bottom of the cover page and each succeeding page. Any comment containing business confidential information must be submitted by fax to Sandy McKinzy at (202) 395–3640. A non-confidential summary of the confidential information must be submitted to *http://www.regulations.gov.* The non-confidential summary will be placed in the docket and open to public inspection.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must clearly so designate the information or advice;

(2) Must clearly mark the material as ''SUBMITTED IN CONFIDENCE'' at the top and bottom of the cover page and each succeeding page; and

(3) Must provide a non-confidential summary of the information or advice.

Any comment containing confidential information must be submitted by fax. A non-confidential summary of the confidential information must be submitted to *http://www.regulations.gov.* The non-confidential summary will be placed in the docket and open to public inspection.

Pursuant to section 127(e) of the Uruguay Round Agreements Act (19 U.S.C. 3537(e)), USTR will maintain a docket on this dispute settlement proceeding accessible to the public at *http://www.regulations.gov,* docket number USTR–2011–0002. The public file will include non-confidential comments received by USTR from the public with respect to the dispute. If a dispute settlement panel is convened or in the event of an appeal from such a panel, the U.S. submissions, any non-confidential submissions, or non-confidential summaries of submissions, received from other participants in the dispute, will be made available to the public on USTR's Web site at *http://www.ustr.gov,* and the report of the panel, and, if applicable, the report of the Appellate Body, will be available on the Web site of the World Trade Organization, *http://www.wto.org.* Comments open to public inspection may be viewed on the *http://www.regulations.gov* Web site.

William Busis,

Deputy Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 2011–21235 Filed 8–18–11; 8:45 am]

BILLING CODE 3190–W1–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No: FTA–2009–0052]

Final Policy Statement on the Eligibility of Pedestrian and Bicycle Improvements Under Federal Transit Law

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Final policy statement.

SUMMARY: The Federal Transit Administration (FTA) hereby establishes a formal policy on the eligibility of pedestrian and bicycle improvements for FTA funding and defines the catchment area for pedestrians and bicyclists in relation to public transportation stops and stations.

DATES: *Effective Date:* The effective date of this final policy statement is August 19, 2011.

ADDRESSES: *Availability of the Final Policy Statement and Comments:* One may access this final policy statement, the proposed policy statement, and public comments on the proposed policy statement at docket number FTA–2009–0052. For access to the docket, please visit *http://www.regulations.gov* or the Docket Operations office located in the West Building of the United States Department of Transportation, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jayme L. Blakesley at *jayme.blakesley@dot.gov* or Matthew Lesh at *matthew.lesh@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The purpose of this notice is to simplify the process for determining whether a pedestrian or bicycle improvement qualifies for FTA funding by defining a radius around a public transportation stop or station within which FTA will consider pedestrian and bicycle improvements to have a *de facto* functional relationship to public transportation. For the reasons outlined in this Policy Statement, and for purposes of determining whether a pedestrian or bicycle improvement has a physical or functional relationship to public transportation, all pedestrian improvements located within one-half mile and all bicycle improvements located within three miles of a public transportation stop or station shall have a *de facto* physical and functional relationship to public transportation. Pedestrian and bicycle improvements beyond these distances may be eligible for FTA funding by demonstrating that the improvement is within the distance that people will travel by foot or by bicycle to use a particular stop or station.

II. Background

Walking, bicycling, and public transportation are complementary modes of transportation: many people access public transportation by walking a short distance; others arrive by bicycle. The success of public transportation can often be limited by poor ''first and last mile'' access to the system. Further, safe walking and bicycling access can be important inducements to using public transportation. Thus, it is essential to develop safe, secure, and appropriate pedestrian and bicycle infrastructure if the users of public transportation are to

have safe, convenient, and practical access routes to, as well as appropriate amenities to enhance the utility of, public transportation systems across the country.

Adequate sidewalks, pathways, and roadway crossings in the area around public transportation access points and amenities such as benches, shelters, and lighting at stops and stations are important for pedestrian comfort and safety. The most successful and useful public transportation systems have safe and convenient pedestrian access and provide comfortable waiting areas, all of which encourage greater use.[1] Well-connected sidewalks should be installed in all areas with regular public transportation service so that public transportation patrons will not be forced to walk in the street while traveling to or from a stop or station. Additionally, roadway crossings should be made safer with an appropriate combination of facilities, such as marked crosswalks, median crossing islands, warning signs, and pedestrian signals.[2]

Distances beyond the ''walkshed'' of public transportation stops and stations may, in fact, be within the range of a short bicycle trip. Indeed, as one author stated, ''[bicycles] are the perfect transportation choice for a short one- to three-mile trip to and from a transit station.''[3] Providing secure parking and other amenities for bicycles and cyclists at public transportation stops or stations can be less expensive than providing parking for automobiles. Access to public transportation allows bicyclists the opportunity to make longer trips. Further, where physical conditions prevent a continuous bicycle trip, public transportation can provide a link to previously inaccessible destinations.

A community's design, including the layout of the roads, public transportation systems, and walkways, has a huge impact on its residents. A ''livable community'' may promote quality of life, economic development, and social equity. As Secretary of Transportation Ray LaHood noted, a ''livable community'' is ''a community where if people don't want an automobile, they don't have to have one; a community where you can walk to work, your doctor's appointment, pharmacy or grocery store. Or you could take light rail, a bus, or ride a bike.''[4] As the Secretary further described, ''livable communities are mixed-use neighborhoods with highly-connected streets promoting mobility for all users, whether they are children walking or biking to school or commuters riding transit or driving motor vehicles. Benefits include improved traffic flow, shorter trip lengths, safer streets for pedestrians and cyclists, lower greenhouse gas emissions, reduced dependence on fossil fuels, increased trip-chaining, and independence for those who prefer not to or are unable to drive. In addition, investing in a 'complete street' concept stimulates private-sector economic activity by increasing the viability of street-level retail small businesses and professional services, creating housing opportunities and extending the usefulness of school and transit facilities.''[5] As one leading scholar noted, ''Pedestrian and bicycle traffic use fewer resources and affect the environment less than any other form of transport.''[6] If we are to create livable communities, ''the range of transportation choices available to all Americans—including transit, walking, bicycling, and improved connectivity for various modes—must be expanded.''[7]

III. United States Department of Transportation Policy

On March 15, 2010, the United States Department of Transportation (DOT or the Department) issued a Policy Statement on Bicycle and Pedestrian Accommodations.[8] The statement expressed ''support for * * * the establishment of well-connected walking and bicycling networks'' and recommended actions to encourage active transportation networks. According to the Policy Statement, ''walking and bicycling foster safer, more livable, family-friendly communities; promote physical activity and health; and reduce vehicle emissions and fuel use.'' The Department's policy is ''to incorporate safe and convenient walking and bicycling facilities into transportation projects.''

IV. Planning Requirements

The joint planning regulations of FTA and the Federal Highway Administration (FHWA) require States and metropolitan planning organizations to integrate pedestrian and bicycle facilities into all transportation plans and improvement programs. Pedestrians and bicyclists must be provided with a reasonable opportunity to comment on long-range statewide transportation plans and metropolitan transportation master plans.[9]

V. Eligibility of Pedestrian and Bicycle Improvements for FTA Funding

Most grant programs administered by FTA may be used to fund the design, construction, and maintenance of pedestrian and bicycle projects that enhance or are related to public transportation facilities. Improvements made expressly eligible by statute include capital projects like pedestrian and bicycle access to a public transportation facility;[10] and transit enhancements like pedestrian access, walkways, and bicycle access, including bicycle storage facilities and equipment for transporting bicycles on public transportation vehicles.[11] Additionally, certain funding programs administered by FHWA, including the Surface Transportation Program (STP) and the

[1] *Pedestrian Safety Guide for Transit Agencies,* Federal Highway Administration, United States Department of Transportation, February 2008.

[2] *Pedestrian Safety Guide for Transit Agencies,* Federal Highway Administration, United States Department of Transportation, February 2008.

[3] Andrea White-Kjoss, *Building Multimodal Transit Facilities: The One Clear Step toward the New Transportation Paradigm,* Mass Transit, July/August 2009, at 36–37.

[4] Christie Findlay, *Living in a Post-Car World,* AARP Bulletin, October 1, 2009.

[5] Statement of Ray LaHood, Secretary of Transportation, before the Committee on Banking, Housing, and Urban Affairs, United States Senate Hearing on Greener Communities, Greater Opportunities: New Ideas for Sustainable Development and Economic Growth (June 16, 2009).

[6] Jan Gehl, *Cities for People* 105 (2010).

[7] Statement of Ray LaHood, Secretary of Transportation, before the Committee on Banking, Housing, and Urban Affairs, U.S. Senate Hearing on Greener Communities, Greater Opportunities: New Ideas for Sustainable Development and Economic Growth (June 16, 2009).

[8] United States Department of Transportation, Policy Statement on Bicycle and Pedestrian Accommodation Regulations and Recommendations, March 15, 2010, available at *http://www.dot.gov/affairs/2010/bicycle-ped.html.*

[9] Federal Transit Law, Title 49, Chapter 53, United States Code, encourages states and metropolitan areas to develop innovative transportation plans and programs which better integrate public transportation, bicycle facilities, pedestrian walkways, and other modes of travel into the existing transportation system. To this end, the statewide transportation plan and the transportation improvement program developed for each state must ''provide for the development and integrated management and operation of transportation systems and facilities (including accessible pedestrian walkways and bicycle transportation facilities) that will function as an intermodal transportation system.'' 49 U.S.C. 5304(a)(2). Similarly, the plans and transportation improvement programs (TIP) of all metropolitan areas must ''provide for the integrated management and operation of transportation systems and facilities (including accessible pedestrian walkways and bicycle transportation facilities).'' 49 U.S.C. 5303(c)(2). Moreover, when preparing long-range statewide transportation plans and transportation master plan, each state and metropolitan planning organization (MPO) must provide a reasonable opportunity to comment to the ''representatives of users of public transportation, representatives of users of pedestrian walkways and bicycle transportation facilities,'' among others. 49 U.S.C. 5303(i)(5) and 5304(f)(3).

[10] 49 U.S.C. 5302(a)(1)(g).

[11] 49 U.S.C. 5302(a)(15)(f).

Congestion Mitigation and Air Quality (CMAQ) Program, may be used for public transportation purposes. Once transferred to FTA for a public transportation purpose, these ''flexible'' funds are administered as FTA funds and take on all the eligibility and requirements of the FTA program to which they are transferred, except for the Federal share, which remains that required under the FHWA program.[12] The following is a description of the eligibility requirements for pedestrian and bicycle improvements under Federal Transit Law.

A. Capital Projects

An FTA grantee may use any of the following programs under Title 49, Chapter 53, of the United States Code to fund capital projects for pedestrian and bicycle access to a public transportation facility:

Section 5307 Urbanized Area Formula Program;

Section 5309 New Starts and Small Starts Major Capital Investment Programs;

Section 5309 Fixed Guideway Modernization Program;

Section 5309 Bus and Bus Facilities Discretionary Program;

Section 5310 Elderly Individuals and Individuals with Disabilities Formula Program;

Section 5311 Non-Urbanized Area Formula Program;

Section 5311 Public Transportation on Indian Reservations;

Section 5316 Job Access and Reverse Commute Formula Program;

Section 5317 New Freedom Program; and,

Section 5320 Paul S. Sarbanes Alternative Transportation in Parks and Public Lands.

Federal Transit Law defines the term ''capital project'' to mean, among other things, ''a public transportation improvement that enhances economic development or incorporates private investment, including * * * pedestrian and bicycle access to a [public] transportation facility.'' [13]

This eligibility is not without restrictions.[14] Pedestrian and bicycle projects made eligible under the definition of ''capital project'' must satisfy additional statutory criteria, including requirements to enhance economic development or incorporate private investment; to enhance the effectiveness of public transportation project and relate physically or functionally to that project, or to establish new or enhanced coordination between public transportation and other transportation; and to provide a fair share of revenue for public transportation.[15]

B. Transit Enhancement Activities

One percent of FTA's Urbanized Area Formula program funds apportioned to urbanized areas with populations of at least 200,000 are set aside for transit enhancements. Eligible transit enhancement projects include pedestrian access and walkways, bicycle access, bicycle storage facilities, and installing equipment for transporting bicycles on public transportation vehicles.[16] As an added incentive, the Federal share of transit enhancement grants covers 90 percent of the cost of the project.[17] If the project involves providing bicycle access to public transportation, the grant or portion of that grant may be at a Federal share of 95 percent.[18]

VI. Response to Public Comments

FTA received approximately 159 comments on its Proposed Policy Statement on the Eligibility of Pedestrian and Bicycle Improvements under Federal Transit Law. Of those 159 comments, 46 comments were filed after the January 12, 2010 deadline. Only three of those comments were filed after January 15, 2010, with the final comment being filed on March 9, 2010. FTA has considered all comments submitted to the docket on or before June 1, 2011.

The commenters represent a broad spectrum of stakeholders throughout the United States, including the New York Metropolitan Transportation Authority, the Washington Metropolitan Area Transit Authority, the Seattle Department of Transportation, the City of Dallas, the Metropolitan Planning Council of Chicago, the Tri-County Metropolitan Transportation District of Oregon, the Center for Transit-Oriented Development, the American Public Transportation Association, the United States Environmental Protection Agency, the Association of Pedestrian and Bicycle Professionals, Smart Growth America, the National Complete Streets Coalition, and the Bicycle Transportation Alliance. Numerous other State governments, local governments, metropolitan planning organizations, trade associations, and individuals commented on the Proposed Policy Statement.

In this section, FTA responds to public comments in the following topical order: (A) General Comments; (B) The Pedestrian Catchment Area; (C) The Bicycle Catchment Area; (D) Funding Issues; (E) FTA's Capital Investment Grants Program; (F) Access to Public Transportation for Individuals With Disabilities; (G) Eligible Activities; (H) Bicycle Sharing Programs; (I) Planning Issues; (J) Safety Concerns; (K) Bicycle Improvements in Rural Areas; (L) Research Issues; (M) Public Health Issues; (N) Carpooling and Ridesharing Initiatives; (O) The HUD–DOT–EPA Partnership for Sustainable Communities; (P) Park-and-Ride Lots; (Q) Continuing Control Issues; and, (R) Miscellaneous Comments. Several commenters raised issues that are outside the scope of FTA's Proposed Policy Statement, and FTA does not address those concerns in this Final Policy Statement.

A. General Comments

The majority of commenters expressed overwhelming support for FTA's Proposed Policy Statement. Many commenters generally indicated that, through the Proposed Policy Statement, FTA was taking a positive step towards fostering the development and the sustainability of livable communities.

FTA Response: FTA appreciates the support for the Proposed Policy Statement. As discussed above, by considering pedestrian improvements located within one-half mile and bicycle improvements located within three miles of a public transportation stop or station to have a *de facto* physical and functional relationship to public transportation, individuals will benefit from improved traffic flow, shorter trip lengths, safer streets for pedestrians and cyclists, lower greenhouse gas emissions, reduced dependence on fossil fuels, increased trip-chaining, increased overall health, and independence for individuals who prefer not to or are unable to drive. Additionally, pedestrian and bicycle improvements benefit local economies by increasing activity that supports street-level retail.

B. The Pedestrian Catchment Area

The majority of commenters supported FTA's proposal to create a *de facto* public transportation stop or

[12] 49 U.S.C. 5334(i).

[13] 49 U.S.C. 5302(a)(1)(G).

[14] **Note:** The restrictions described in this paragraph do not apply to projects funded under 49 U.S.C. 5320, Paul S. Sarbanes Alternative Transportation in Parks and Public Lands. Alternative transportation expressly includes activities that provide ''a nonmotorized transportation system (including the provision of facilities for pedestrians, bicycles, and nonmotorized watercraft).''

[15] For more information, see FTA's February 7, 2007 guidance on the Eligibility of Joint Development Projects under Federal Transit Law at 72 FR 5788.

[16] 49 U.S.C. 5302(a)(15).

[17] 49 U.S.C. 5319.

[18] 49 U.S.C. 5319.

station radius of one-half mile for purposes of determining whether a pedestrian improvement has a physical or functional relationship to public transportation. Additionally, the majority of commenters supported FTA's proposal to make pedestrian improvements beyond this threshold eligible for FTA funding if the improvement is within the distance that people could be expected to safely and conveniently walk to use the particular stop or station.

Some commenters suggested that FTA should expand the pedestrian catchment radius to encompass more than one-half mile. Some commenters suggested that FTA use a one mile pedestrian catchment area or a two mile pedestrian catchment area. To support the expansion of the pedestrian catchment area, the majority of these commenters made general statements that some studies indicate pedestrians travel at speeds of three miles per hour, and consequently, pedestrians can cover more distance than one-half mile during a fifteen minute walk. Some commenters also made general statements that some studies indicate the majority of pedestrians are willing to walk more than one-half mile to reach a public transportation stop or station.

Some commenters expressed concerns with FTA's proposed use of a *de facto* ''radial distance'' from a public transportation stop or station to measure whether a pedestrian improvement has a physical or functional relationship to the stop or station. These commenters suggested that FTA use a ''street network radius'' whereby FTA would measure one-half mile of actual street walking, while considering factors such as density, weather patterns, and physical obstructions surrounding stops and stations, to determine the eligibility of a pedestrian improvement. These commenters asserted that the determination of whether a physical or functional relationship exists varies greatly under the widely divergent circumstances of a local transportation system, and that the relationship should not be mileage-based, but rather, it should be based on a case-by-case analysis.

FTA Response: FTA appreciates the support for the creation of the *de facto* one-half mile pedestrian catchment area and for its proposal to make pedestrian improvements beyond the one-half mile threshold eligible for FTA funding if the improvement is within the distance that people could be expected to safely and conveniently walk to use the particular stop or station.

For purposes of the Final Policy Statement, FTA believes that a conservative, one-half mile *de facto* catchment area is appropriate. As discussed above, recent research indicates that: (1) Pedestrians walk at a pace of approximately two miles per hour, and (2) pedestrians generally are willing to walk approximately fifteen minutes to reach a public transportation stop or station.[19] Accordingly, pedestrians generally are able to walk a distance of approximately one-half mile during a fifteen minute walk at a two mile per hour pace. Based on this information, FTA hereby establishes a one-half mile *de facto* pedestrian catchment area. This *de facto* catchment area will simplify the process of determining whether a pedestrian improvement is eligible for FTA funding. Moreover, FTA will measure one-half mile using a ''radial distance'' because the radial method further simplifies these determinations.

FTA notes that the majority of the commenters who proposed a catchment area beyond one-half mile did not offer citations to specific studies which lend support to their proposals. Notwithstanding this fact, FTA acknowledges that, in some localities, pedestrians are willing to spend up to thirty minutes walking to a public transportation stop or station.[20] FTA supports investments in pedestrian projects beyond the *de facto* catchment area. Therefore, FTA hereby makes eligible for funding pedestrian improvements beyond the one-half mile catchment area if the improvement is within the distance that people could be expected to safely and conveniently walk to use the particular stop or station. This policy will allow investments in pedestrian improvements well beyond the one-half mile catchment area, and it will account for the variety of factors in any given locality that may impact an individual's ability to reach a public transportation stop or station by walking.

C. The Bicycle Catchment Area

The majority of commenters supported FTA's proposal to create a *de facto* public transportation stop or station radius of three miles for purposes of determining whether a bicycle improvement has a physical or functional relationship to public transportation. Additionally, the majority of commenters supported FTA's proposal to make bicycle improvements beyond this threshold eligible for FTA funding if the improvement is within the distance that people could be expected to safely and conveniently bike to use the particular stop or station.

Some commenters suggested that FTA should expand the bicycle catchment radius to encompass more than three miles. Some commenters suggested that FTA use a four mile, a five mile, or a six mile bicycle catchment area. The majority of these commenters did not offer a rationale for these suggestions. However, some commenters referred to various studies which indicate that bicyclists travel at average speeds of twelve to fifteen miles per hour, and they therefore can cover more distance than three miles during a fifteen minute bicycle ride.

Some commenters expressed concerns with FTA's proposed use of a *de facto* radial distance from a public transportation stop or station to measure whether a bicycle improvement has a physical or functional relationship to the stop or station. These commenters suggested that FTA use a ''street network radius'' whereby FTA would measure three miles of actual bicycling while considering factors such as density, weather patterns, and physical obstructions surrounding stops and stations, to determine the eligibility of a bicycle improvement. These commenters asserted that the determination of whether a physical or functional relationship exists varies greatly under the widely divergent circumstances of a local transportation system, and that the relationship should not be mileage-based, but rather, it should be based on a case-by-case analysis.

Finally, some commenters suggested, without rationale, that FTA should limit bicycle improvements only to areas where transit-oriented development is likely.

FTA Response: FTA appreciates the support for the creation of the *de facto* three mile bicycle catchment area. FTA also appreciates the support for its proposal to make bicycle improvements beyond the three mile threshold eligible for FTA funding if the improvement is within the distance that people could be expected to safely and conveniently bike to use the particular stop or station.

For purposes of the Final Policy Statement, FTA believes that a conservative, three mile *de facto* catchment area is appropriate. As discussed above, recent research indicates that: (1) Bicyclists can ride at

[19] Schlossberg, M. *et al.,* How Far, By Which Route, and Why? A Spatial Analysis of Pedestrian Reference, Mineta Transportation Institute, June 2007. *See* L.M. Besser and A.L. Dannenberg, *Walking to Public Transit: Steps to Help Meet Physical Activity Recommendations,* Am. J. Prev. Med., November 2005, at 273.

[20] *See* L.M. Besser and A.L. Dannenberg, *Walking to Public Transit: Steps to Help Meet Physical Activity Recommendations,* Am. J. Prev. Med., November 2005, at 273.

a pace of approximately ten miles per hour in almost any environment, and (2) bicyclists generally are willing to bike at least fifteen minutes to reach a public transportation stop or station.[21] Accordingly, bicyclists can cover at least three miles during a fifteen minute bicycle ride at a pace of ten miles per hour. Consequently, FTA hereby establishes a three mile *de facto* bicycle catchment area. This *de facto* catchment area will simplify the process of determining whether a bicycle improvement is eligible for FTA funding. Moreover, FTA will measure three miles using a ''radial distance'' because the radial method further simplifies these determinations and avoids the complex decision-making that a ''street network radius'' would foster.

FTA acknowledges that, in some circumstances, bicyclists travel at higher speeds may be willing to spend more than fifteen minutes biking to a public transportation stop or station. FTA supports investments in bicycle projects beyond the *de facto* catchment area. Therefore, FTA hereby makes eligible for funding bicycle improvements beyond the three mile catchment area if the improvement is within the distance that people could be expected to safely and conveniently bike to use the particular stop or station. This policy will allow investments in bicycle improvements well beyond the three mile catchment area, and it will account for the variety of factors in any given locality that may impact an individual's ability to reach a public transportation stop or station by biking.

D. Funding Issues

In light of FTA's Proposed Policy Statement, numerous commenters expressed a need for additional Federal funding for pedestrian and bicycle improvements. Some commenters expressed a need for increased Federal funding for (1) capital projects, (2) the Surface Transportation Program, and (3) the CMAQ Program. These commenters asserted that, through the increased funding, local communities could implement livability initiatives, create jobs, and maintain pedestrian and bicycle projects in a state of good repair.

Some commenters suggested that Congress should establish a dedicated funding source for pedestrian and bicycle projects, such as a formula funding program. These commenters asserted that, through a formula funding program, recipients of Federal transportation funds would not have to weigh the needs of competing projects when making local planning decisions. Other commenters suggested that Congress should provide a short-term operating subsidy to FTA's grantees to support pedestrian and bicycle projects.

Some commenters suggested various methods of raising revenues to support increased funding in pedestrian and bicycle projects. Some commenters suggested that Congress should raise the Federal gas tax to raise revenues. Other commenters suggested that the Department should encourage road pricing throughout the United States so that local governments could finance pedestrian and bicycle improvements.

FTA Response: FTA supports additional funding for pedestrian and bicycle improvements. Indeed, recent research indicates a significant disparity between the percentage of pedestrian and bicycle trips in the United States and the amount of Federal transportation funding for those trips. Approximately 10 percent of all trips are by foot or by bicycle nationwide, however, these modes receive only 1 percent of the total amount of transportation funding at the Federal level.[22] To remedy this disparity, FTA supports the expansion of funding sources, such as the Surface Transportation Program and the CMAQ Program. FTA agrees that, through an increase in Federal funding, local communities could implement livability initiatives, create jobs, and maintain pedestrian and bicycle projects in a state of good repair.

FTA notes that a purpose of this Final Policy Statement is to provide flexibility to recipients of Federal funds so that they can use those funds when alternative funding sources are insufficient to support pedestrian and bicycle projects. These planning and funding decisions take place at the local level, and the burden is on transit agencies and project sponsors to coordinate and identify funding priorities.

Finally, in response to comments that Congress should raise the Federal gas tax or that the Department should encourage road pricing to support funding for pedestrian and bicycle improvements, FTA notes that Congress is in the process of developing a surface transportation reauthorization bill. That bill will establish surface transportation priorities and funding sources to support those priorities. FTA is currently working with Congress in an effort to develop these priorities and identify potential funding sources for the next reauthorization legislation.

E. FTA's Capital Investment Grants Program

Many commenters identified potential issues with the Proposed Policy Statement as it relates to FTA's Capital Investment Grants Program at 49 U.S.C. 5309, commonly referred to as FTA's ''New Starts'' Program. These commenters expressed concerns with FTA's method of calculating the cost-effectiveness of a New Starts project. These commenters asserted that an investment in a pedestrian or bicycle component of a New Starts project would increase capital costs and thereby potentially decrease the project's cost-effectiveness. These commenters suggested that FTA re-evaluate its method for calculating cost-effectiveness so that project sponsors may capture the benefits of a pedestrian or bicycle project—such as decreased carbon emissions—and account for the return that applicants would receive on their investment.

FTA Response: FTA appreciates the comments that it received on the relationship between the Proposed Policy Statement and the New Starts program. FTA acknowledges that major capital projects, such as those funded by the New Starts program, benefit from pedestrian and bicycle improvements and that, historically, these improvements may have adversely affected the ability for a project to remain cost effective.

For this reason and others, FTA has revisited its New Starts evaluation criteria. On June 3, 2010, FTA issued an Advanced Notice of Proposed Rulemaking which sought public comments regarding its New Starts and Small Starts project justification criteria.[23] In particular, FTA sought public input on how to improve its calculation of ''cost effectiveness'' and whether FTA should measure quantifiable benefits other than reduced travel time. Additionally, FTA sought public comments on how it should evaluate environmental benefits and economic development effects. FTA intends to issue a Notice of Proposed Rulemaking on this subject in the near future.

[21] League of American Bicyclists. Retrieved From: *http://www.bikeleague.org/resources/better/commuters.php. See* Kevin J. Krizek, Ann Forsyth and Laura Baum, *Walking and Cycling International Literature Review,* Victoria Department of Transport, 2009, at 18.

[22] Alliance for Biking and Walking, Bicycling and Walking in the United States: 2010 Benchmarking Report, 2010, at 16, 78.

[23] Federal Transit Administration, Advance Notice of Proposed Rulemaking, Request for Comments on Major Capital Investment Projects, 75 FR 31383 (June 3, 2010).

F. Access to Public Transportation for Individuals With Disabilities

Many commenters expressed support for FTA's Proposed Policy Statement because they believed that, through pedestrian and bicycle improvements, individuals with disabilities will have better access to public transportation stops and stations. These commenters believed that the Proposed Policy Statement is an excellent ''complete streets'' initiative.

Some commenters believed one of the benefits of the Proposed Policy Statement is that, with increased pedestrian and bicycle improvements, there will be a decreased need for paratransit service because public transportation stops and stations will become more accessible. They also noted that pedestrian and bicycle improvements are significantly less costly than paratransit service.

Several commenters questioned whether the Proposed Policy Statement would impact any interpretation of the Americans with Disabilities Act.

FTA Response: FTA appreciates the comments that it received regarding the relationship between this Final Policy Statement and access to public transportation for individuals with disabilities. FTA agrees that, through pedestrian and bicycle improvements, individuals with disabilities will have better access to public transportation stops and stations. One of the purposes of this Final Policy Statement is to make fixed-route public transportation available and accessible to the largest number of individuals possible. Indeed, pedestrian and bicycle improvements will improve access to public transportation for all users, including individuals with disabilities.

FTA notes that this Final Policy Statement will not impact any interpretation of the Americans with Disabilities Act.

G. Eligible Activities

Several commenters expressed support for FTA's Proposed Policy Statement because, through the Policy Statement, FTA makes ''all'' pedestrian and bicycle improvements within the one-half mile radius and three mile radius eligible for Federal funding. Other commenters requested that FTA define the pedestrian and bicycle improvements that would be eligible for Federal funding under the Proposed Policy Statement. These commenters suggested that eligible activities should include bicycle parking and bicycle stations with storage rooms, bicycle lockers, changing rooms, and space for bicycle repair and rental shops.

FTA Response: FTA appreciates the comments that it received regarding eligible activities. Indeed, as discussed in detail above and as indicated in the Final Policy below, ''*[A]ll* pedestrian improvements located within one-half mile and all bicycle improvements located within three miles of a public transportation stop or station shall have a *de facto* physical and functional relationship to public transportation.''

More specifically, as discussed above, most grant programs administered by FTA may be used to fund the design, construction, and maintenance of pedestrian and bicycle projects that enhance or are related to public transportation facilities. Improvements made expressly eligible by statute include capital projects such as pedestrian and bicycle access to a public transportation facility,[24] and transit enhancements such as pedestrian access, walkways, and bicycle access, including bicycle storage facilities and equipment for transporting bicycles on public transportation vehicles.[25] Additionally, certain funding programs administered by FHWA, including the Surface Transportation Program and the CMAQ Program, may be used for public transportation purposes. Once transferred to FTA for a public transportation purpose, these ''flexible'' funds are administered as FTA funds and take on all the eligibility and requirements of the FTA program to which they are transferred, except for the Federal share, which remains that required under the FHWA program.

FTA grantees may use any of the following programs to fund capital projects for pedestrian and bicycle access to a public transportation facility:

Section 5307 Urbanized Area Formula Program;

Section 5309 New Starts and Small Starts Major Capital Investment Programs;

Section 5309 Fixed Guideway Modernization Program;

Section 5309 Bus and Bus Facilities Discretionary Program;

Section 5310 Elderly Individuals and Individuals with Disabilities Formula Program;

Section 5311 Non-Urbanized Area Formula Program;

Section 5311 Public Transportation on Indian Reservations;

Section 5316 Job Access and Reverse Commute Formula Program;

Section 5317 New Freedom Program; and

Section 5320 Paul S. Sarbanes Alternative Transportation in Parks and Public Lands.

Pursuant to 49 U.S.C. 5302(a)(1)(G), the term ''capital project'' means, among other things, ''a public transportation improvement that enhances economic development or incorporates private investment, including * * * pedestrian and bicycle access to a [public] transportation facility.'' This eligibility is not without restrictions. Pedestrian and bicycle projects made eligible under the definition of ''capital project'' must satisfy additional statutory criteria, including requirements to enhance economic development or incorporate private investment; to enhance the effectiveness of public transportation project and relate physically or functionally to that project, or to establish new or enhanced coordination between public transportation and other transportation; and to provide a fair share of revenue for public transportation.

Finally, one percent of Urbanized Area Formula program funds apportioned to urbanized areas with populations of at least 200,000 are set aside for transit enhancements. Eligible transit enhancement projects include pedestrian access and walkways, and bicycle access, including bicycle storage facilities and installing equipment for transporting bicycles on public transportation vehicles. As an added incentive, the Federal share of transit enhancement grants covers 90 percent of the cost of the project. If the project involves providing bicycle access to public transportation, the grant or portion of that grant may be at a Federal share of 95 percent.

H. Bicycle Sharing Programs

Several commenters expressed a hope that FTA would eventually expand funding eligibility to include bicycle sharing initiatives. These commenters believed that bicycle sharing systems assist commuters with the ''first and last mile'' problem by linking them to public transportation during the beginning and ending of their commutes.

FTA Response: FTA agrees that bicycle sharing systems provide meaningful access to public transportation and help address the problem of the ''first and last mile.'' Moreover, bicycle sharing programs, like all forms of active transportation, provide numerous benefits, such as reduced carbon emissions and improved public health.

Federal Transit Law limits the use of FTA funds for ''public transportation.'' Historically, FTA has not included ''bicycle'' within the definition of

[24] 49 U.S.C. 5302(a)(1)(g).

[25] 49 U.S.C. 5302(a)(15)(f).

''public transportation.'' Therefore, while a grantee may use FTA funds to purchase aspects of a bicycle sharing system if those aspects are located near public transportation stops and stations, an FTA grantee may not use FTA funds to purchase bicycles, regardless of whether those bicycles comply with Federal Buy America requirements.

I. Planning Issues

Several commenters highlighted the need for transit agencies to work collaboratively with local stakeholders when planning pedestrian and bicycle improvements.

FTA Response: FTA and FHWA require coordinated planning efforts and public involvement for project development.[26] FTA requires grantees to work collaboratively with local stakeholders when planning pedestrian and bicycle improvements.

J. Safety Concerns

Several commenters expressed a general concern that pedestrians and bicyclists should be safe during their commutes.

FTA Response: FTA agrees that pedestrians and bicyclists should be safe during their commutes, and FTA expects its grantees to consider the safety of pedestrians and bicyclists at all times. This Final Policy Statement, however, is limited to identifying the eligibility of capital projects and transit enhancements.

K. Bicycle Improvements in Rural Areas

One commenter hoped that the Proposed Policy Statement will foster the development of bicycle lanes in rural areas so that commuters have better access to public transportation.

FTA Response: FTA promotes the use of public transportation in both urban and rural areas. Consequently, through this Final Policy Statement, FTA hopes to encourage the development of bicycle lanes in rural areas.

L. Research Issues

One commenter suggested that FTA compile and present a series of ''best practices'' for grantees that intend to develop and implement pedestrian and bicycle projects.

FTA Response: FTA is exploring research programs that will support the objectives of this Final Policy Statement. FTA looks forward to working with stakeholders and industry partners to collect information regarding pedestrian and bicycle connections to public transportation systems.

[26] 23 CFR 450.210, 771.111 (2010).

M. Public Health Issues

One commenter highlighted potential public health benefits associated with the pedestrian and bicycle catchment areas. This commenter suggested that FTA should require consideration of health benefits when determining catchment areas.

FTA Response: FTA appreciates comments regarding the public health benefits related to pedestrian and bicycle improvements. Indeed, there are numerous public health benefits associated with walking and biking, such as a decreased risk of obesity, diabetes, heart disease, and high blood pressure, and reduced overall depression and anxiety.[27] The Centers for Disease Control and Prevention have noted that, to increase overall public health, communities should ''[b]uild good pedestrian and bicycle infrastructure, including sidewalks and bike paths.'' [28] Additionally, by walking or biking to or from public transportation, individuals reduce overall carbon emissions.

N. Carpooling and Ridesharing Initiatives

One commenter urged FTA to consider expanding the scope of eligible activities to include carpooling and ridesharing initiatives.

FTA Response: FTA recognizes that carpooling and ridesharing initiatives provide a viable solution to many transportation challenges. Although FTA encourages carpooling or ridesharing, this Final Policy Statement focuses on providing pedestrians and bicyclists with greater access to public transportation.

O. The HUD-DOT-EPA Partnership for Sustainable Communities

One commenter suggested that the United States Department of Housing and Urban Development (HUD), the United States Environmental Protection Agency (EPA), and FHWA should make funds available for pedestrian and bicycle improvements.

FTA Response: DOT and FTA are strongly committed to the HUD-DOT-EPA Partnership for Sustainable Communities. Together, these agencies are working to promote livable communities.

[27] National Center for Bicycling and Walking, *Increasing Physical Activity Through Community Design,* June 2010; Smart Growth for America, *Measuring the Health Effects of Sprawl,* September 2003;

[28] Centers for Disease Control and Prevention, Healthy Community Design Fact Sheet, June 2008.

P. Park-and-Ride Lots

Several commenters expressed a preference for investments in pedestrian and bicycle improvements over investments in park-and-ride lots. These commenters believed that investments in pedestrian and bicycle projects are more effective tools of promoting livability.

FTA Response: FTA agrees with these comments. Pedestrian and bicycle projects have many advantages over park-and-ride lots. Unlike motor vehicles, pedestrian and bicycle improvements allow individuals to access public transportation without the costs and negative health effects of motor vehicle travel.

Q. Continuing Control Issues

Several commenters expressed concerns with potential continuing control issues. By expanding pedestrian and bicycle catchment areas, project sponsors may create access routes on property that is outside the control of the transit agency. One commenter suggested that, in these scenarios, FTA should require the transit agency to execute a subgrantee agreement with the locality to address potential continuing control issues.

FTA Response: FTA agrees that continuing control issues may arise through the expansion of pedestrian and bicycle catchment areas. For example, a grantee may expand pedestrian and bicycle catchment areas on real estate that is under the control of a locality.

Pursuant to Section 19 of FTA's Master Agreement, a grantee ''agrees to maintain continuing control of the use of Project property to the extent satisfactory to FTA.'' FTA believes that, in scenarios such as the one described above, a subgrantee agreement may be necessary to ensure the grantee has a degree of continuing control over real estate that is subject to an FTA investment.

R. Miscellaneous Comments

Two commenters noted a spelling error in the following sentence in the Preamble of the Proposed Policy Statement: ''Walking, bicycling, and public transportation are complimentary.'' [29] These commenters noted that the word ''complimentary'' should be spelled ''complementary.''

FTA Response: FTA thanks these commenters for noting the spelling and grammatical error. FTA has changed the word ''complimentary'' to

[29] Federal Transit Administration, Proposed Policy Statement on the Eligibility of Pedestrian and Bicycle Improvements under Federal Transit Law, 74 FR 58679 (Nov. 13, 2009).

''complementary'' in the Preamble of this Final Policy Statement.

One commenter suggested that FTA should require recipients of Federal funds for pedestrian and bicycle improvements to certify that the projects will increase public transportation ridership as a result of the Federal investments.

FTA Response: The purpose of this Policy Statement is to improve access to public transportation stops and stations by simplifying the process for determining whether the improvements have a physical or functional relationship to public transportation. FTA grantees will not need to certify ridership figures for projects within the one-half mile walk shed and three mile bike shed set forth in this Policy Statement. Research indicates that improved access to a stop or station typically results in higher ridership. For improvements beyond these distances, a study indicating the likelihood of increased ridership would be a valid justification for the improvement.

VII. Statement of Policy

A. Background

In accordance with the goals, principles, and legal authority outlined in this notice, FTA encourages the use of its funds for pedestrian and bicycle amenities that expand the catchment area and utility of public transportation stops and stations. Therefore, FTA hereby establishes threshold catchment areas of one-half mile for pedestrian improvements and three miles for bicycle improvements near public transportation stops and stations.

A key requirement for determining the eligibility of a pedestrian or bicycle improvement is whether it has a functional relationship to a public transportation facility. FTA grantees can benefit from FTA determining the typical distances pedestrians and bicyclists can be expected to travel to access a public transportation stop or station. The purpose of this Policy Statement is to propose a radius around a public transportation stop or station within which FTA will consider pedestrian and bicycle improvements to have a *de facto* functional relationship to public transportation.

FTA's existing guidance on the eligibility of joint development improvements serves as the foundation for this proposed policy. According to that guidance, ''the functional relationship test of activity and use permits the use of FTA funds for joint development improvements [including pedestrian and bicycle improvements] located outside the structural envelope of a public transportation project, and may extend across an intervening street, major thoroughfare or unrelated property, [but] should not extend beyond the distance most people can be expected to safely and conveniently walk to use the transit service.'' [30]

Relying on this guidance, in most circumstances FTA has considered pedestrian improvements within approximately 1,500 feet of a public transportation stop or station to be functionally related. Improvements beyond a 1,500 foot radius were considered functionally related to public transportation only if they satisfied a test of activity and use.

The distance stated in FTA's existing guidance is too short. ''While distance is very important for pedestrians, on average they will walk further than the anecdotal rule of thumb of 400 meters used in many planning applications.'' [31] Research indicates that pedestrians are willing to walk at least one-half mile to train stations or other forms of reliable public transportation when the environment surrounding the station is safe and well-designed.[32] A pedestrian may travel a distance of one-half mile during fifteen minutes at a pace of two miles per hour. A one-half mile catchment area is a conservative estimate of the distance a pedestrian is willing to travel to a public transportation stop or station. FTA has reason to believe that pedestrians are willing to spend more than fifteen minutes walking to public transportation stops and stations: A study published in the American Journal of Preventative Medicine concluded that Americans who use public transportation spend a median of nineteen minutes daily walking to and from public transportation; and people in high-density urban areas were more likely to spend approximately thirty minutes walking to and from public transportation daily.[33]

Applying the same timeframes to bicyclists yields at least a three mile catchment area. Bicycle paths may extend further than pedestrian walkways and still be functionally related to public transportation because ''bicyclists are willing to travel much longer distances than pedestrians, largely due to higher average speeds attainable by bicycle.'' [34] Inasmuch as the average bicycle commuter travels at ten miles per hour,[35] FTA proposes a bicycle catchment area of three miles from public transportation stops and stations. The three mile catchment area equals the distance the average bicyclist could travel in fifteen minutes time.

B. Final Policy

For purposes of determining whether a pedestrian or bicycle improvement has a physical or functional relationship to public transportation, regardless of whether it is funded as a capital project or public transportation enhancement, all pedestrian improvements located within one-half mile and all bicycle improvements located within three miles of a public transportation stop or station shall have a *de facto* physical and functional relationship to public transportation. Pedestrian and bicycle improvements beyond these threshold distances may be eligible for FTA funding if the improvement is within the distance that people could be expected to safely and conveniently walk or bicycle to use that particular transit stop or station.

Issued this 15th day of August, 2011.

Peter M. Rogoff,

Administrator, Federal Transit Administration.

[FR Doc. 2011–21273 Filed 8–18–11; 8:45 am]

BILLING CODE 4910–57–P

[30] FTA guidance on the Eligibility of Joint Development Improvements under Federal Transit Law, 72 FR 5790 (Feb. 7, 2007).

[31] Kevin J. Krizek, Ann Forsyth and Laura Baum, *Walking and Cycling International Literature Review,* Victoria Department of Transport, 2009, at 29.

[32] Schlossberg, M. *et al.* How Far, By Which Route, and Why? A Spatial Analysis of Pedestrian Reference, Mineta Transportation Institute, June 2007.

[33] L.M. Besser and A.L. Dannenberg, *Walking to Public Transit: Steps to Help Meet Physical Activity Recommendations,* Am. J. Prev. Med., November 2005, at 273.

[34] Kevin J. Krizek, Ann Forsyth and Laura Baum, *Walking and Cycling International Literature Review,* Victoria Department of Transport, 2009, at 18.

[35] League of American Bicyclists. Retrieved From: *http://www.bikeleague.org/resources/better/commuters.php.*

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Notice of Applications for Modification of Special Permit

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

ACTION: List of Applications for Modification of Special Permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart

B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modification of special permits (*e.g.* to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix ''M'' denote a modification request. These applications have been separated from the new application for special permits to facilitate processing.

DATES: Comments must be received on or before September 6, 2011.

Address Comments To: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue, SE., Washington, DC or at *http://www.regulations.gov.*

This notice of receipt of applications for modification of special permit is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on August 08, 2011.

Donald Burger,

Chief, General Approvals and Permits.

MODIFICATION SPECIAL PERMITS

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permit thereof
10597–M	.....	Thermo King Corporation Minneapolis, MN.	49 CFR 177.834(1)(2)(i)	To modify the special permit to authorize a new series of heaters containing Class 3 liquids and/or Division 2.1 gases.
13601–M	.....	DS Containers, Inc. Batavia, IL.	49 CFR 173.306(b)(1)	To modify the special permit to authorize an alternative pressure relief device.

[FR Doc. 2011–20616 Filed 8–18–11; 8:45 am]

BILLING CODE 4909–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Notice of Application for Special Permits

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

ACTION: List of Applications for Special Permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before September 19, 2011.

Address Comments To: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue, Southeast, Washington, DC or at *http://regulations.gov*.

This notice of receipt of applications for special permit is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on August 08, 2011.

Donald Burger,

Chief, General Approvals and Permits.

NEW SPECIAL PERMITS

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permits thereof
15388–N	.....	Alpine Air Alaska, Inc., Girdwood, AK.	49 CFR 172.101 Column (9B), 172.204(c)(3), 173.27(b)(2), 175.30(a)(1), 172.200, 172.300 and 172.400.	To authorize the transportation in commerce of certain hazardous materials by cargo aircraft in remote areas of the U.S. without being subject to hazard communication requirements and quantity limitations where no other means of transportation is available. (mode 4)
15392–N	.....	Brim Equipment Leasing, Inc. dba Brim Aviation, Ashland, OR.	49 CFR, 49 CFR Parts 106, 107, and 171–180.	To authorize the transportation in of certain hazardous materials by cargo aircraft including by external load in remote areas of the U.S. without being subject to hazard communication requirements and quantity limitations where no other means of transportation is available. (mode 4)

NEW SPECIAL PERMITS—Continued

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permits thereof
15393–N		Savannah Acid Plant LLC, Savannah, GA.	49 CFR 173.31(d)(1)(vi)	To authorize the transportation in commerce of sulfuric acid in tank cars that have not had both sides of the rupture disc inspected prior to shipment. (mode 2)
15404–N		Proserv UK Ltd., Aberdeen, AB12 3BT.	49 CFR 173.201, 173.302, 173.304, 178.35(e) and 178.36.	To authorize the manufacture, marking, sale and use of a non-DOT specification seamless titanium pressurized sample cylinder. (modes 1, 2, 3, 4)
15405–N		Giant Resource Recovery—Attalla, Inc., Attalla, AL.	49 CFR 173.306(h) and 173.156(b).	To authorize the one-time transportation in commerce of aerosols in alternative packaging for the purposes of testing. (mode 1)
15411–N		HyPerComp Engineering, Inc., Brigham City, UT.	49 CFR 173.302a and 180.205.	To authorize the manufacturing, mark, sale and use of Carbon and Glass fiber reinforced, Stainless Steel lined composite pressure vessels per DOT–CFFC specification. (modes 1, 2, 3, 4, 5)
15413–N		QSA Global, Inc., Burlington, MA.	49 CFR 173.301, 173.302a.	To authorize the one-way transportation in commerce of non-DOT specification cylinders containing Helium from QSA Global in Burlington, MA to Linde Gas in Stewartsville, NJ for transfer of gas to DOT authorized cylinders. (mode 1)
15415–N		HyPerComp Engineering, Inc., Brigham City, UT.	49 CFR, 49 CFR Parts 106, 107, and 171–180.	To authorize the manufacture, mark, sale, and use of non-DOT specification fully wrapped carbon-fiber reinforced aluminum lined cylinders per DOT–CFFC for the U.S. Army as a survival egress air support cylinder. (modes 1, 2, 3, 4)
15425–N		National Aeronautics & Space Administration (NASA), Washington, DC.	49 CFR 177.848	To authorize the transportation in commerce of certain hydrazine fuels on the same motor vehicle without regard to segregation requirements. (mode 1)
15427–N		The Proctor & Gamble Company, LeGrange, GA.	49 CFR 173.306(a)(3)(v)	To authorize the transportation in commerce of certain aerosols containing a Division 2.2 compressed gas in certain non-refillable aerosol containers which are not subject to the hot water bath test. (modes 1, 2, 3, 4, 5, 6)
15428–N		Space Exploration Technologies Corp.	49 CFR Part 172 and 173	To authorize the transportation in commerce of certain hazardous material as part of the Dragon space capsule without requiring shipping papers, marking and labeling. (mode 1)

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Part II

Department of Housing and Urban Development

Proposed Fair Market Rents for the Housing Choice Voucher Program and Moderate Rehabilitation Single Room Occupancy Program; Fiscal Year 2012; Notice

Department of Housing and Urban Development

[Docket No. FR–5567–N–01]

Proposed Fair Market Rents for the Housing Choice Voucher Program and Moderate Rehabilitation Single Room Occupancy Program Fiscal Year 2012

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice of Proposed Fiscal Year (FY) 2012 Fair Market Rents (FMRs).

SUMMARY: Section 8(c)(1) of the United States Housing Act of 1937 (USHA) requires the Secretary to publish FMRs periodically, but not less than annually, adjusted to be effective on October 1 of each year. The primary uses of FMRs are to determine payment standards for the Housing Choice Voucher (HCV) program, to determine initial renewal rents for some expiring project-based Section 8 contracts, to determine initial rents for housing assistance payment contracts in the Moderate Rehabilitation Single Room Occupancy program, and to serve as rent ceilings in the HOME program. Today's notice provides proposed FY 2012 FMRs for all areas that reflect the estimated 40th and 50th percentile rent levels trended to April 1, 2012. The FY 2012 FMRs are re-benchmarked using five-year, 2005–2009 data collected by the American Community Survey (ACS). These data are updated using one-year ACS data in areas where statistically valid one-year ACS data is available. The Consumer Price Index (CPI) rent and utility indexes are used to further update the data from 2009 to the end of 2010. HUD continues to use ACS data in different ways according to how many two-bedroom standard-quality and recent-mover sample cases are available in the FMR area or its Core-Based Statistical Area (CBSA).

The proposed FY 2012 FMR areas are based on current Office of Management and Budget (OMB) metropolitan area definitions and include HUD modifications that were first used in the determination of FY 2006 FMR areas. Changes to the OMB metropolitan area definitions through December 2009 are incorporated. The bedroom ratios developed using 2000 Census data continue to be used and state minimums, calculated each year from the estimated FMRs, continue to be applied.

This notice also includes HUD's responses to comments received on the March 9, 2011, (76 FR 12985), **Federal Register** notice (''Trend Notice'') seeking public comment regarding the manner in which HUD calculates a trend factor, the time period the trend factor is applied in the FMR estimation process and related issues.

HUD received four applications to participate in the Small Area FMR demonstration program. These applications are being reviewed and information on the demonstration program will be made available in a notice published at a later date.

Finally, in an effort to serve HUD's external clients who use HUD's estimates of Area Median Family Income (MFI) and their associated Income Limits (IL), HUD is requesting comments on a proposal to establish a certain date for publishing these parameters.

DATES: *Comment Due Date: September 19, 2011.*

ADDRESSES: Interested persons are invited to submit comments regarding HUD's estimates of the FMRs and/or HUD's proposed timeline for publishing MFIs and ILs, as published in this notice, to the Office of General Counsel, Rules Docket Clerk, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0001. Communications should refer to the above docket number and title and should contain the information specified in the ''Request for Comments'' section.

Submission of Hard Copy Comments. To ensure that the information is fully considered by all of the reviewers, each commenter who is submitting hard copy comments, by mail or hand delivery, is requested to submit two copies of its comments to the address above, one addressed to the attention of the Rules Docket Clerk and the other addressed to the attention of Economic and Market Analysis Division staff in the appropriate HUD field office. Due to security measures at all federal agencies, submission of comments by mail often results in delayed delivery. To ensure timely receipt of comments, HUD recommends that any comments submitted by mail be submitted at least two weeks in advance of the public comment deadline.

Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *http://www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow instructions provided on that site to submit comments electronically.

No Facsimile Comments. Facsimile (Fax) comments are not acceptable.

Public Inspection of Comments. All comments and communications submitted to HUD will be available, without charge, for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Copies of all comments submitted are available for inspection and downloading at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For technical information on the methodology used to develop FMRs or a listing of all FMRs, please call the HUD USER information line at 800–245–2691 or access the information on the HUD Web site *http://www.huduser.org/portal/datasets/fmr.html.* FMRs are listed at the 40th or 50th percentile in Schedule B. For informational purposes, 40th percentile recent-mover rents for the areas with 50th percentile FMRs will be provided in the HUD FY 2012 FMR documentation system at *http://www.huduser.org/portal/datasets/fmr/fmrs/docsys.html&data=fmr12* and 50th percentile rents for all FMR areas will be published at *http://www.huduser.org/portal/datasets/50per.html* after publication of final FY 2012 FMRs.

Questions related to use of FMRs or voucher payment standards should be directed to the respective local HUD program staff. Questions on how to conduct FMR surveys or concerning further methodological explanations may be addressed to Marie L. Lihn or Peter B. Kahn, Economic and Market Analysis Division, Office of Economic Affairs, Office of Policy Development and Research, telephone 202–708–0590. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339. (Other than the HUD USER information line and TDD numbers, telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION

I. Background

Section 8 of the USHA (42 U.S.C. 1437f) authorizes housing assistance to aid lower-income families in renting safe and decent housing. Housing assistance payments are limited by FMRs established by HUD for different geographic areas. In the HCV program, the FMR is the basis for determining the ''payment standard amount'' used to calculate the maximum monthly subsidy for an assisted family (see 24 CFR 982.503). In general, the FMR for an area is the amount that would be needed to pay the gross rent (shelter rent plus utilities) of privately owned, decent, and safe rental housing of a modest (non-luxury) nature with suitable amenities. In addition, all rents subsidized under the HCV program must meet reasonable rent standards. HUD's regulations at 24 CFR 888.113 permit it to establish 50th percentile FMRs for certain areas.

Electronic Data Availability: This **Federal Register** notice is available electronically from the HUD User page at *http://www.huduser.org/datasets/fmr.html.* **Federal Register** notices also are available electronically from *http://www.gpoaccess.gov/fr/index.html,* the U.S. Government Printing Office Web site. Complete documentation of the methodology and data used to compute each area's proposed FY 2012 FMRs is available at *http://www.huduser.org/portal/datasets/fmr/fmrs/docsys.html&data=fmr12.* Proposed FY 2012 FMRs are available in a variety of electronic formats at *http://www.huduser.org/portal/datasets/fmr.html.* FMRs may be accessed in PDF format as well as in Microsoft Excel. Small Area FMRs based on Proposed FY 2012 Metropolitan Area Rents are available in Microsoft Excel format at the same web address. Please note that these Small Area FMRs are for reference only, and will only be used by PHAs participating in the Small Area FMR demonstration.

II. Procedures for the Development of FMRs

Section 8(c) of the USHA requires the Secretary of HUD to publish FMRs periodically, but not less frequently than annually. Section 8(c) states, in part, as follows:

Proposed fair market rentals for an area shall be published in the **Federal Register** with reasonable time for public comment and shall become effective upon the date of publication in final form in the **Federal Register**. Each fair market rental in effect under this subsection shall be adjusted to be effective on October 1 of each year to reflect changes, based on the most recent available data trended so the rentals will be current for the year to which they apply, of rents for existing or newly constructed rental dwelling units, as the case may be, of various sizes and types in this section.

HUD's regulations at 24 CFR part 888 provide that HUD will develop proposed FMRs, publish them for public comment, provide a public comment period of at least 30 days, analyze the comments, and publish final FMRs. (See 24 CFR 888.115.)

In addition, HUD's regulations at 24 CFR 888.113 set out procedures for HUD to assess whether areas are eligible for FMRs at the 50th percentile. Minimally qualified areas [1] are reviewed each year unless not qualified to be reviewed. Areas are not qualified to be reviewed if they have been made a 50th-percentile area within the last three years or have lost 50th-percentile status for failure to de-concentrate within the last three years.

In FY 2011 there are 18 areas using 50th-percentile FMRs. Of these 18 areas, 10 of them have completed three years of program participation and are due for re-evaluation. The following table lists these 10 areas.

FY 2011 50TH-PERCENTILE FMR AREAS RE-EVALUATED FOR ELIGIBILITY EVALUATION IN FY 2012

Albuquerque, NM MSA.	Chicago-Joliet-Naperville, IL HMFA [2].
Denver-Aurora, CO MSA.	Hartford-West Hartford-East Hartford, CT HMFA.
Houston-Baytown-Sugar Land, TX HMFA.	Kansas City, MO–KS, HMFA.
Milwaukee-Waukesha-West Allis, WI MSA.	North Port-Bradenton-Sarasota, FL MSA.
Richmond, VA HMFA	Tacoma, WA HMFA.

[2] HMFA stands for HUD Metropolitan FMR Area.

Only three of the 10 areas up for re-evaluation will continue to be 50th-percentile FMR areas:

FY 2011 50TH-PERCENTILE FMR AREAS THAT CONTINUE AS 50TH-PERCENTILE AREAS, NEXT EVALUATION IN FY 2015

Hartford-West Hartford-East Hartford, CT HMFA.	Houston-Baytown-Sugar Land, TX HMFA.
North Port-Bradenton-Sarasota, FL MSA.	

Two areas ''graduated'' from the 50th-percentile FMR program. This means that the concentration of HCV tenants is below what is required to be eligible for a 50th-percentile FMR. These two areas may be evaluated annually and may return to the program:

FY 2011 50TH-PERCENTILE FMR AREAS THAT ''GRADUATE,'' EVALUATED ANNUALLY

Milwaukee-Waukesha-West Allis, WI MSA.	Richmond, VA HMFA.

The remaining five areas failed to deconcentrate and will not be eligible for evaluation for three years, until the FY 2015 FMRs are evaluated:

FY 2011 50TH-PERCENTILE FMR AREAS THAT FAILED TO DECONCENTRATE, ELIGIBLE FOR EVALUATION IN FY 2015

Albuquerque, NM MSA.	Chicago-Joliet-Naperville, IL HMFA.
Denver-Aurora, CO MSA.	Kansas City, MO–KS, HMFA.
Tacoma, WA HMFA.	

Of the remaining eight 50th-percentile FMR areas that were not eligible for review, seven will complete three years in the program and be reviewed for the FY 2013 FMRs, as shown below:

FY 2012 CONTINUING 50TH-PERCENTILE FMR AREAS SLATED FOR EVALUATION IN FY 2013

Baltimore-Towson, MD MSA.	Fort Lauderdale, FL HMFA.
Grand Rapids-Wyoming, MI HMFA.	New Haven-Meriden, CT HMFA.
Philadelphia-Camden-Wilmington, PA–NJ–DE–MD MSA.	Washington-Arlington-Alexandria, DC–VA–MD HMFA.
West Palm Beach-Boca Raton, FL HMFA.	

The eighth FY 2011 area, Bergen-Passaic, NJ HMFA, was granted authorization to use 50th-percentile FMRs in FY 2011. Therefore, under

[1] As defined in 24 CFR 888.113(c), a minimally qualified area is an area with at least 100 census tract where 70 percent or fewer of the census tracts with at least 10 two bedroom rental units are census tracts in which at least 30 percent of the two bedroom rental units have gross rents at or below the two bedroom FMR set at the 40th percentile rent. This is evaluated with 2000 Census tract data, while we are awaiting 2010 ACS data to be aggregated using 2010 Census tract definitions.

current regulations, Bergen-Passaic, NJ HMFA, will continue in the 50th percentile program for FY 2012 and will be evaluated when the FY 2014 FMRs are calculated.

There will be 10 additional 50th-percentile FMR areas, one that is new to the program, Sacramento—Arden-Arcade—Roseville, CA HMFA. The other 9 areas, as listed below, all failed to deconcentrate when evaluated for the FY 2009 FMRs, but have been reinstated as 50th-percentile FMRs:

FY 2012 50TH-PERCENTILE FMR AREAS REINSTATED EVALUATION IN FY 2015

Austin-Round Rock-San Marcos, TX MSA.	Fort Worth-Arlington, TX HMFA.
Honolulu, HI MSA	Las Vegas-Paradise, NV MSA.
Orange County, CA HMFA.	Phoenix-Mesa-Glendale, AZ MSA.
Riverside-San Bernardino-Ontario, CA HMFA.	Tucson, AZ MSA.
Virginia Beach-Norfolk-Newport News, VA–NC MSA.	

In summary, there will be 21 50th-percentile FMR areas in FY 2012. These areas are indicated by an asterisk in Schedule B, where all FMRs are listed by state.

III. FMR Methodology

This section provides a brief overview of how the FY 2012 FMRs are computed. For complete information on how FMR areas are determined, and on how each area's FMRs are derived, see the online documentation at: *http://www.huduser.org/portal/datasets/fmr/fmrs/docsys.html&data=fmr12.*

The proposed FY 2012 FMRs are based on current OMB metropolitan area definitions and standards that were first used in the FY 2006 FMRs. OMB changes to the metropolitan area definitions through December 2009 are incorporated. There have been no area definition changes published by OMB since the publication of the FY 2011 FMRs; therefore, the FY 2012 area definitions are the same as those used in FY 2011.

A. Base Year Rents

The U.S. Census Bureau released standard tabulations of 5-year ACS data collected between 2005 through 2009 in December of 2010. This is the first time that updated data are available for all FMR areas and their component geographies since the release of the 2000 Decennial Census data (previous ACS releases only covered areas with 20,000 or more in population). Because of this new data availability, HUD has the ability to estimate new base rents based on the 5-year ACS data.

FMRs are typically based on gross rents for recent movers (those who have moved into their current residence in the last 24 months). FMRs prior to FY 2012 were calculated based on recent mover gross rent estimates from the 2000 Census or from more recent HUD commissioned surveys. However, due to the way the 5-year data are constructed, the notion of recent mover is a murky concept. The 5-year data aggregates all survey data collected between January 2005 and December 2009 for a given area. Dollar values such as gross rents are transformed from the time period in which they were collected to an overall 2009 value using the national CPI. Attempting to limit the 5-year data to those who have moved in the last 24 months severely limits the usefulness of the 5-year data. Consequently, all areas are assigned as a base rent the estimated two-bedroom standard quality 5-year gross rent from the ACS.[3] Because HUD's regulations mandate that FMRs must be published as recent mover gross rents, HUD has created a recent mover bonus factor to apply to the standard quality base rents assigned from the 5-year ACS data. The recent mover bonus is described below.

Local area rent surveys conducted in 2010 by HUD or PHAs are used instead of ACS-base rents when the survey results are statistically different from the ACS based rents. The surveys for Williamsport, PA, MSA and Pike County, HMFA were evaluated and are being used in place of the 2009 ACS data. A survey conducted in 2010 for the county group, Bradford-Sullivan-Tioga, PA, was also evaluated, but there was no statistical difference from the 2009 ACS data, updated to 2010.

B. Recent Mover Bonus Factor

Following the assignment of the standard quality two-bedroom rent described above, HUD applies a recent mover bonus to these rents. The following describes the process for determining the appropriate recent mover bonus.

For non-metropolitan areas, HUD calculated the percentage change between the 5-year standard quality rent for the non-metropolitan portion of the state and the 1-year recent mover rent for the same area.[4] HUD then computes a z-score to determine if the 5-year standard quality rent and the 1-year recent mover rent are statistically different.[5] If the two rents have a statistically significant difference, the recent mover bonus factor is set at the difference between the state non-metropolitan 1-year recent mover rent and the state non-metropolitan 5-year standard quality rent expressed as a percentage of the state non-metropolitan 5-year standard quality rent. If the two rents are not statistically different, the recent mover bonus is set to 1.0.

For metropolitan areas, the recent mover bonus is calculated in a similar fashion. HUD selects the smallest geographic area which encompasses the metropolitan area in question that has at least 100 recent mover observations to use in the calculation of the recent mover bonus factor. For HUD-defined subareas of OMB defined metropolitan areas, this means that the recent mover bonus factor may be based on the recent mover data for the subarea, the entire metropolitan area, the metropolitan portions of the state, or finally the entire state depending on which geographic level has 100 or more recent mover observations.[6] Once the area with 100 or more recent mover cases has been determined, HUD calculates a z-score comparing the 1-year recent mover two-bedroom gross rent with the 5-year standard quality two-bedroom gross rent for the recent mover bonus area. If the two rents are statistically different, HUD sets the recent mover bonus for the FMR area as the percentage change between the two rents for the recent mover bonus area. If the difference in rents is not statistically different, the recent mover bonus factor for the FMR area is set to 1.

For FMR areas without 100 recent mover rents, a recent mover bonus is

[3] For areas with a two-bedroom standard quality gross rent from the ACS that have a margin of error greater than the estimate or no estimate due to inadequate sample in the 2009 5-year ACS, HUD uses the two-bedroom state non-metro rent for non-metro areas.

[4] HUD ensures that the recent mover estimate for each non-metropolitan portion of the state has at least 100 ACS sample observations. If any state non-metropolitan recent mover rent is based on fewer than 100 observations, the recent mover factor would be calculated based on the 1-year recent mover data and 5-year standard quality data for the entire state.

[5] The change is considered statistically significant if Z is greater than 1.645 where Z is equal to the change between the estimate for the 1-year data and the 5-year estimate, over the square root of the sum of the squared standard error for the 1-year estimate and the squared standard error of the 5-year estimate.

[6] For metropolitan areas that cross state boundaries, and where there are not 100 2-bedroom recent mover observations, HUD uses the weighted average update factors for the encompassing state metropolitan areas. HUD performs the Z-score test for statistical difference between the 1-year recent-mover rent and 5-year standard-quality rent separately for each state metropolitan part prior to computing the weighted average update factor.

calculated at the smallest area level that does have 100 recent movers. For metropolitan areas, this order is subarea, metropolitan area, state metropolitan area, and state. For a nonmetropolitan area a recent mover bonus based on the state nonmetropolitan area, or if that is not available it is calculated on the basis of the whole state. For an example of how the recent mover bonus is calculated for these areas, please review this methodology for Abilene, TX MSA and Baldwin County, AL, in the FY 2012 documentation system: *http://www.huduser.org/portal/datasets/fmr/fmrs/docsys.html&data=fmr12.*

This process produces an ''as of'' 2009 recent mover two-bedroom base gross rent for the FMR area.[7]

C. Updates From 2009 to 2010

The ACS data is updated through 2009 using the one-half of the change in annual CPI measured between 2008 and 2009. This data is further updated through the end of 2010 using the annual change in CPI from 2009 to 2010. As in previous years, HUD uses Local CPI data for FMR areas with at least 75 percent of their population within Class A metropolitan areas covered by local CPI data. HUD uses Census region CPI data for FMR areas in Class B and C size metropolitan areas and nonmetropolitan areas without local CPI update factors.

D. Trend From 2010 to 2012

The national 1990 to 2000 average annual rent increase trend of 3 percent is applied to end-of-2010 rents for 15 months, to derive the proposed FY 2012 FMRs with a date of April 2012.

On March 9, 2011 (76 FR 12985), HUD published a notice requesting public comment regarding the manner in which it calculates the trend factor used in determining FMR estimates to meet the statutory requirement that FMRs be ''trended so the rentals will be current for the year to which they apply.'' HUD's notice provided several proposed alternatives to the current trend factor and requested comments on the alternatives as well as suggestions of other ideas. These comments are discussed in further detail later in this notice, but, in short, the commenters did not arrive at a consensus over how to change the trending methodology. Therefore, HUD will continue to consider the suggestions provided in the comments and make plans to implement a new methodology with the publication of FY 2013 Proposed FMRs.

E. Bedroom Rent Adjustments

HUD calculates the primary FMR estimates for two-bedroom units. This is generally the most common size of rental units and, therefore, the most reliable to survey and analyze. Formerly, after each Decennial Census, HUD calculated rent relationships between two-bedroom units and other unit sizes and used them to set FMRs for other units. HUD did this because it is much easier to update two-bedroom estimates and to use pre-established cost relationships with other bedroom sizes than it is to develop independent FMR estimates for each bedroom size. HUD did the last update of bedroom-rent relationships using 2000 Census data. A publicly releasable version of the data file used for the derivations of rent ratios is available at *http://www.huduser.org/portal/datasets/fmr/CensusRentData/index.html.*

HUD made adjustments using 2000 Census data to establish rent ratios for areas with local bedroom-size intervals above or below what are considered reasonable ranges, or where sample sizes are inadequate to accurately measure bedroom rent differentials. Experience has shown that highly unusual bedroom ratios typically reflect inadequate sample sizes or peculiar local circumstances that HUD would not want to utilize in setting FMRs (*e.g.,* luxury efficiency apartments that rent for more than typical one-bedroom units). HUD established bedroom interval ranges based on an analysis of the range of such intervals for all areas with large enough samples to permit accurate bedroom ratio determinations. These ranges are: efficiency FMRs are constrained to fall between 0.65 and 0.83 of the two-bedroom FMR; one-bedroom FMRs must be between 0.76 and 0.90 of the two-bedroom FMR; three-bedroom FMRs must be between 1.10 and 1.34 of the two-bedroom FMR; and four-bedroom FMRs must be between 1.14 and 1.63 of the two-bedroom FMR. HUD adjusts bedroom rents for a given FMR area if the differentials between bedroom-size FMRs were inconsistent with normally observed patterns (*i.e.,* efficiency rents are not allowed to be higher than one-bedroom rents and four-bedroom rents are not allowed to be lower than three-bedroom rents).

HUD further adjusts the rents for three-bedroom and larger units to reflect HUD's policy to set higher rents for these units than would result from using unadjusted market rents. This adjustment is intended to increase the likelihood that the largest families, who have the most difficulty in leasing units, will be successful in finding eligible program units. The adjustment adds bonuses of 8.7 percent to the unadjusted three-bedroom FMR estimates and adds 7.7 percent to the unadjusted four-bedroom FMR estimates. The FMRs for unit sizes larger than four bedrooms are calculated by adding 15 percent to the four-bedroom FMR for each extra bedroom. For example, the FMR for a five-bedroom unit is 1.15 times the four-bedroom FMR, and the FMR for a six-bedroom unit is 1.30 times the four-bedroom FMR. FMRs for single-room occupancy units are 0.75 times the zero-bedroom (efficiency) FMR.

For low-population, nonmetropolitan counties with small 2000 Census samples of recent-mover rents, HUD uses Census-defined county group data to determine rents for each bedroom size. HUD made this adjustment to protect against unrealistically high or low FMRs due to insufficient sample sizes. The areas covered by this estimation method had less than the HUD standard of 200 two-bedroom, Census-tabulated observations.

The 2010 Decennial Census did not collect the information necessary to update unit bedroom rent relationships. HUD intends to use the 2006–2010 5-year ACS data to update these relationships for the FY 2013 FMRs. HUD is choosing to wait until next year to ensure something closer to a consistent 10 year time period, but more importantly, because the 2010 ACS data will be published based on the 2010 Decennial Census geographic definitions.

IV. Manufactured Home Space Surveys

The FMR used to establish payment standard amounts for the rental of manufactured home spaces in the HCV program is 40 percent of the FMR for a two-bedroom unit. HUD will consider modification of the manufactured home space FMRs where public comments present statistically valid survey data showing the 40th-percentile manufactured home space rent

[7] The Pacific Islands (Guam, Northern Marianas and American Samoa) as well as the US Virgin Islands are not covered by ACS data. As part of the 2010 Decennial Census, these areas were covered by a long-form survey. The results gathered by this long form survey will not be available until 2012. Therefore, HUD uses the national change in gross rents, measured between 2008 and 2009 to update last year's FMR for these areas. Puerto Rico is covered by the Puerto Rico Community Survey within the American Community Survey; however, the gross rent data produced by the 2005–2009 ACS are not sufficient to adequately house voucher holders in Puerto Rico. This is due to the limited ability to eliminate units that do not pass the voucher program's housing quality standards. Consequently, HUD is updating last year's FMRs for Puerto Rico using the change in rents measured from all of Puerto Rico measured between the 2008 and 2009. For details behind these calculations, please see HUD's Proposed FY 2012 FMR documentation system available at: *http://www.huduser.org/portal/datasets/fmr/fmrs/docsys.html&data=fmr12.*

(including the cost of utilities) for the entire FMR area.

All approved exceptions to these rents that were in effect in FY 2011 were updated to FY 2012 using the same data used to estimate the Housing Choice Voucher program FMRs. If the result of this computation was higher than 40 percent of the new two-bedroom rent, the exception remains and is listed in Schedule D. The FMR area definitions used for the rental of manufactured home spaces are the same as the area definitions used for the other FMRs.

V. Review of Comments and HUD's Responses Regarding the Methodology for Calculating the FMR Trend Factor

As previously stated, the comments delivered to HUD in response to the March 9, 2011 (76 FR 12985) **Federal Register** notice concerning the trend factor methodology yielded only one consensus, the need for a trend factor. This section summarizes the comments received and provides HUD's responses. In order to respond to all comments received, HUD has summarized the comments below, and has grouped the comments into two sections: General Comments and Comments on Specific HUD Questions.

A. General Comments

1. *Ensure fairness in FMR methodology*. One commenter states that one of the most basic needs is housing and, especially in these times, many citizens who are willing to work lack opportunities to do so. As a result, these individuals may not have enough to meet their basic needs. The commenter requests that whatever methodology chosen, that it fairly and accurately evaluate the FMR for those in need, so that they might assist these individuals in meeting this most basic need.

HUD Response: HUD's methodology for calculating Fair Market Rents is constructed to be as fair as possible using the most recent data available. HUD will keep these comments in mind as it determines the appropriate method for future FMR calculation decisions.

2. *FMR methodology fails to consider the cost of accessible units*. Another commenter states that the process for calculating FMRs is neither fair nor sensible when applied to units that are wheelchair accessible. The current HUD process treats accessible and non-accessible units as being similar, both in terms of availability and price, when evidence suggests the opposite. The commenter states that until HUD requires a separate analysis of FMRs for accessible units, HUD will be making policy in the dark.

HUD Response: HUD's regulations allow PHAs to approve a higher payment standard on a case-by-case basis, as a reasonable accommodation for a family with a person with disabilities (refer to PIH Notice 2010–11, which was extended by PIH Notice 2011–19). There is no data available that would allow HUD to calculate a separate FMR for accessible units.

3. *Correct failure of FMRs to consider cost of accessible units*. The same commenter recommends that HUD, to correct the defect with respect to FMRs for wheelchair accessible units, (1) grant a 10 percent increase in rent (not to the 50th percentile, but 10 percent more dollars to the FMR), (2) grant an additional 10 percent increase with HUD approval; and (3) grant an extension of time (allowing the family to search longer for an apartment which may not even exist in that price range). The commenter notes that while there may not be statistical evidence regarding the availability of accessible apartments at current FMRs, the commenter's experience as a person with a disability and an attorney with 30 years experience in housing law is that families looking for accessible units have fewer housing choices that cost more than average.

HUD Response: HUD's regulations concerning housing for disabled persons allow PHAs to request exception payment standards as a reasonable accommodation for families with a disabled family member.

4. *Maintain the publication of FMRs in a timely manner and on a certain date*. Two commenters emphasize the importance of timely publication of HUD's FMRs. They state that timely publication permits PHAs and property owners to be able to forecast and plan for rent adjustments and operating expense budgets. Further, FMRs are used in the determination of annual income limits which cannot be published until FMR calculations are completed. Without a date certain for publication of FMRs, uncertainty surrounding the timing of the publication of income limits could worsen and owners of Low Income Housing Tax Credit (LIHTC) properties would not be able to set annual rents.

HUD Response: Under current statutes and regulations, the publication date for Final FMRs remains October 1. Under current rules, FMRs must also be published for comment and given at least a 30-day comment period. HUD has suggested changes to the manner in which the publication of FMRs is completed, and due to the local coverage of ACS data, HUD has recommended that proposed FMRs no longer are necessary and that comments with requests for FMR reviews could be made following the publication of Final FMRs.

5. *Review of Alternative Tending Methodologies*. One commenter addressed each of the alternative trending methods suggested in the notice. The commenter states that it does not support Alternative 1 (use of overall Consumer Price Index (CPI) data) because local and regional CPI provides a more accurate FMR calculation for specific geographic areas than national CPI data. It also recommends that should HUD use national CPI data rather than local or regional data, it should limit its use to rent and utility, instead of overall, CPI data. The commenter supports Alternative 2 (use of rent and utilities CPI) since, according to the commenter, the use of a local or regional trend factor is a more appropriate way to calculate FMRs. The commenter does not support the use of proprietary information (Alternative 3) since the likelihood of this data providing timely, complete, and usable data, particularly for rural and remote areas, is low. The commenter also supports alternative 4 (seeking legislative change, trending to the midpoint of the fiscal year) as providing a good balance between the use of the most recent local data available and the need to publish the trend factor in advance. Finally, the commenter does not support Alternatives 5 (seeking legislative change, trending to the beginning of the fiscal year) and requests more information to fully consider Alternative 6 (eliminating the need for trending by using the most recent half-yearly CPI and publishing final FMRs between October and December).

HUD Response: HUD takes these comments under advisement, and continues to consider all of these methods as well as others suggested by different commenters.

B. Comments on Specific HUD Questions

HUD Question: Should HUD continue to use a constant trend factor or should the trend factor be updated annually to attempt to capture market changes?

1. Four commenters recommend that HUD use a trend factor that is updated annually, noting that a constant trend factor can substantially understate true costs and put clients who depend on rental assistance and landlords who accept vouchers, at risk. One commenter, for example, states that the volatility of utility costs makes it critical that the trend factor be updated

annually to capture market changes. According to the commenter, this is especially important in the Northeastern United States where heating accounts for a significant portion of utility costs and price volatility is exacerbated by the significant use of fuels such as fuel oil and natural gas. According to the commenter, unless the trend factor is updated annually HUD will not be able to fairly account for utility price volatility. Annual updates of the trend factor would minimize the negative impacts of market changes.

2. A commenter states that the use of the CPI Fuels & Utilities Index masks changes in specific fuels used for home energy, and recommends that HUD replace the use of the Fuels & Utilities Index with three indices (Electricity, Utility (piped) Gas service and Motor Fuels) with the indices used to calculate a state specific trend factor by weighting them based on the percentage of rental units in the state heated by each of the 3 fuels, as provided by the ACS. The commenter recommends use of a fuel oil-specific index if one was available, but believes that the price of heating fuel oil tracks motor fuel prices enough that the Motor Fuels Index is a fair substitute.

3. Another commenter supports use of a trend factor that is updated annually but cautioned that HUD build in stopgaps that eliminate sharp peaks and valleys due to short-term instability. HUD might consider, for example, a stopgap that prevents the factor from changing more than a certain percentage each year. Another commenter recommends that HUD use a rolling average or other techniques to eliminate significant increases or decreases in FMRs. A third commenter states that using a national, constant trending factor does not make sense in a world where many of HUD's programs depend on the local market and its changing activity. The commenter recommends the use of a trend factor that can be updated annually and based on local or regional data. The commenter also cautions that the trend factor should not be negative, as that could have serious programmatic implications, particularly for Section 8 project-based and tax-credit properties. As a result, HUD should treat trends less than or equal to zero growth as zero growth.

4. One commenter recommends that HUD continue its use of a constant trend factor since it minimizes large fluctuations from year to year. The commenter stated that a 10-year or 5-year trending factor would accomplish this goal. The commenter specifically recommends, however, that HUD use a single, national trend factor, based on a rolling five years of national median gross rent in the ACS. Since the commenter does not believe that ACS data are reliable enough to use as a basis for a trend factor prior to 2005, the year that the ACS was first fully implemented and collected data from every county or county equivalent in the country, the commenter states that a 5-year rolling average using ACS could be implemented within a year, as soon as the ACS data becomes available.

HUD Response: While more commenters supported the use of a trend factor updated annually, all were concerned with controlling volatility in the trend factor. Some who want an annual trend factor were only willing to consider annual increases. Instituting caps and floors for annual trend factors would be new to the FMR estimation process and not necessarily improve the process. Using more detailed utility data would be of little benefit. The more detailed the index of the CPI, the larger the geographic area for which this data is available on a current basis. The ACS does not provide data based on type of heating fuel for rental units, as one commenter suggested, so allocating national utility data to states and determining an appropriate fuel index cannot be done with the ACS. Caps and floors, such as never allowing the trend factor to be less than zero, could be instituted to reduce volatility, but this would also reduce anticipated improvements in accuracy of trend estimates.

HUD Question: The constant trend factor that HUD has used in the past cannot be replicated for 2000 to 2010 based on available 2010 Census data. If a constant trend factor is appropriate, what data and time period should be used for a constant trend factor?

1. One commenter restates its position that a constant trend factor is not appropriate because the results will not reflect the reality of the local rental marketplace. Another commenter that expressed support for a trend factor that is updated annually, and states, should HUD use a constant trend factor, that HUD consider using ACS data for a similar period as has been used previously (10 years).

2. Another commenter expressed a preference for the CPI as the most appropriate basis for the trend factor, and restating the disadvantages of using proprietary data on rental markets. The commenter states that CPI would not add too much additional variation to FMR estimates, noting that FMRs already vary considerably from year-to-year, which in some years, has nothing to do with market conditions but rather with corrections from prior years. Should the CPI be selected as the basis for the trend factor, the commenter recommends that HUD use the BLS series that calculate annual changes to avoid seasonality issues, since seasonal adjustments are not available at the local/regional level.

3. The same commenter states that HUD's use of a rolling average of local/regional ACS increases in gross rent would be a viable option, as long as HUD determined that such use better met programmatic needs of key constituencies using FMRs in their operations. The commenter concludes that any factor that is more locally-derived and that reflects changes in the market would be an improvement over the current constant, nationally-derived factor.

HUD Response: Since most commenters do not support a constant trend factor, any consensus on this issue is irrelevant. The one commenter that supports the use of a constant trend factor would use the gross rents from the ACS to calculate the trend factor and that is the only way to have a constant long-term trend factor. Although some commenters recommend using CPI data for a constant long-term trend factor, their comments lacked specificity as to how to make the concept operational. CPI data seems best suited to a trend factor that changes on an annual albeit lagged, basis.

HUD Question: Is a national trend factor appropriate, or should HUD limit itself to use of more local options such as regional factors?

1. One commenter states that a regional or local trend factor is more appropriate than a national factor because it provides the most accurate FMR calculation for specific geographic areas. A second commenter agreed, adding that ideally the trend factors should be state specific because there can be substantial differences in utility costs (and the factors that affect them) even within a region. A third commenter encouraged HUD update factors based on regional trends and those in the largest metro areas, or use a data set that provides the lowest level of geography without causing undue problems with sample size or computation or delays in the release.

2. A commenter recommends that HUD consider using regional CPI indices as they are readily available and include regional Fuels and Utilities Index, and more specific Indices for certain utilities (*e.g.,* piped gas). Another commenter states that basing the trend factor on monthly local or regional CPI data would be particularly

ill-advised because monthly CPI numbers are available for a very limited set of local areas, and when available, only every other month or semi-annually. In addition, the commenter states that only the national CPI data are seasonally adjusted and that potential problems with using seasonally unadjusted monthly data should be enough to preclude their use in computing FMRs.

HUD Response: As with the other two issues, one commenter is concerned with the volatility of the data and prefers the use of a national, constant trend factor other commenters want the trend factor to change annually and be at least regional, or the lowest level of geography that is possible. HUD reiterates that these suggestions are contradictory: The more detailed the data the less often it is published, and then at a broader geography. That is, more detailed fuel data cannot be used along with data for the lowest geography possible.

HUD Question: Should HUD allow changes between the proposed and final FMRs resulting from updated trend factors?

1. One commenter states that HUD should be able to allow changes between proposed and final FMRs as long as the changes result in rents that more accurately reflect current, local market conditions. A second commenter agrees that permitting HUD to make changes would permit HUD to use the most recent and most local data possible. The commenter also stated that it would be more effective to discontinue the publication of proposed FMRs, but allow for public comments on the final FMRs, releasing revised final FMRs as needed.

2. One commenter states that allowing updates would provide for less certainty for housing entities. Assuming the proposed FMRs are susceptible to challenge prior to becoming final, the commenter concludes that automatic changes due to updated trend factors should not be necessary.

HUD Response: The purpose of the publishing proposed FMRs would be circumvented if HUD re-estimated FMRs for the final publication using more current data. All proposed FMRs would be subject to change. HUD would prefer not to publish proposed FMRs for comment, but such a change would require a change to the statute.

HUD Question: Is using the more current data for estimating the FMRs more important than providing for public comment before establishing final FMRs for effect?

1. Most commenters support HUD's continued publication of the FMRs for comment. One commenter, for example, notes that the opportunity to comment may present HUD with current data that ensures that changes to FMRs reflect actual changes in the local rental market. The commenter states that a shorter comment period of 30 days may be appropriate and reasonable if HUD uses regional data adjusted for state specific characteristics for estimating trends. The commenter added that a 90-day comment period should apply if HUD changes more than just FMR levels, (*e.g.*, changing the geographic regions where the FMRs apply) or if HUD does not start with regional and State specific data for estimating trends.

2. Another commenter that supports the elimination of a constant national trend factor states that using the most recent data possible would still not merit eliminating the public comment period. The commenter stated public comment permits its members to assess the proposed FMRs and whether they need to request reevaluation in light of current market conditions. Changing the FMRs between the publication of the proposed and final estimates would render the public comment process meaningless.

3. A third commenter states that HUD's use of more current regional or local factors is more important than providing for public comment before establishing the final FMRs as long as there is the opportunity for public comments on the final FMRs and HUD is willing to revise the FMRs as necessary. The commenter recommends, however, that HUD release as proposed for public comment any significant changes to the data sources and the methodology it intends to use in calculating final FMRs at least 60 days prior to their release.

4. One commenter strongly opposes the elimination of a public comment period, stating that public comment adds to the reliability of the FMRs by ensuring that the expertise of individuals affected by the FMRs is considered before HUD publishes its final FMRs. Without a public comment period, there would be no way to contest FMR levels, changes in methodology, or other policy issues. The commenter concludes that while HUD suggests that using CPI data would provide more recent data and potentially shorten the trending period, it does not believe this is an acceptable trade off for losing the certainty of publication on October 1 and for losing the public comment period.

HUD Response: HUD would prefer to eliminate the comment period, but no commenters support this position. The commenters, if anything, want a longer comment period whenever there are substantial changes to FMR estimation methodology. Given the timing of the data releases, longer comment periods of 60 to 90 days are not possible even when there are major changes, such as for geographic areas. In the past HUD has dealt with this issue of short comment periods by publishing revised final FMRs and sees this as an appropriate mechanism for the future. Clearly the commenters want a formal comment period for FMRs, so HUD will take this under advisement.

HUD Question: Is the seasonality of rent and utility prices important in considering what month to collect data for trending? If so, how should HUD select the month to use or to compare it with?

1. One commenter that strongly supported the use of an annually updated trend factor states that if current, regional data with appropriate state adjustments are used, seasonality adjustments should be relatively unimportant. Another commenter states that seasonality is an important consideration if trending uses data releases separated by less than a year. A third commenter states that seasonality should be used rather than be avoided, particularly depending on the geographic area affected.

HUD Response: There is disagreement on whether seasonality is a concern. HUD views seasonality as a concern because it potentially adds to the volatility of the FMR estimate. While some have proposed caps and floors for trend factor changes to reduce the volatility of FMR estimates, caps and floors tend to increase the noise in an estimate so that constrained trends will add little accuracy to FMR estimates.

HUD Question: Is double counting of CPI data a concern?

1. Two commenters address this issue. Both stated that they recognize this issue but under the current proposals either do not have a strong concern about the issue or feel that the issue is not significant.

HUD Response: HUD believes that when prices are increasing, the double counting of the CPI indices will not be a concern except possibly for budgetary reasons. However, when prices are falling and the FMRs could drop, this

would become an issue with tenants, and landlords. For these reasons HUD does not find double-counting the CPI data, which is already lagged when used for the FMRs, to be an effective forecast of trend.

HUD Question: Is it more important to base a trend on the most recent data possible, or on the most specific geography?

1. One commenter states that both issues are important, and it should not be necessary to choose one over the other. The commenter notes that there are good data sources available that allow for use of both recent and locally relevant data, such as the CPI and ACS. Another commenter gave slight preference to more specific geography, but within limits. Specifically, the commenter states that if using data for areas smaller than the largest metro areas and census regions requires using significantly older data and leads to significant lags in the release of the FMRs, then more local specificity would cease to be the priority.

2. A third commenter states that geography is more important because market conditions are more likely to show greater variance from region to region over a given time period than that reflected in local or regional market conditions over the same period.

HUD Response: HUD is already using the most current ACS and CPI data at the lowest level of geography. There is no way to use current data at the lowest level of geography without ensuring publication of the proposed FMRs regularly in mid- to late-August. The only more current data at the lowest geographic level that could be incorporated for a trend factor, would be the CPI data for the first-half of the year, which comes out late July. Waiting this late for calculation of FMRs would push the proposed FMR **Federal Register** notice to mid-August at the earliest. There would barely be time for a 30-day comment period and recalculation of final FMRs in time for the October 1 final FMR publication. There would still be double counting of the CPI data, which HUD considers problematic.

HUD Question: Is it better to use rent and utility CPI data in developing a trend factor or should other prices be included?

1. One commenter states that in addition to capturing changes in rent and utilities generally, it is also important to account for changes in heating fuel prices specifically because the impacts can vary significantly State by State, and even within a region. A second commenter states that it would not in advance exclude from consideration additional specific data that would assist FMRs to better reflect the price a household must be able to pay in a specific location in order to be reasonably assured of finding a decent, modest and safe home. The commenter states, however, that generally rent and utility costs in the CPI are likely sufficient.

HUD Response: HUD believes that the rent and utility CPI data currently used is appropriate. The utility CPI data cannot be changed to provide a greater emphasis on heating fuel as appropriate weighting of this fuel sources is not possible.

HUD Question: Should HUD pursue legislative and regulatory changes to reduce or eliminate the need for trending?

1. One commenter supported HUD seeking the legislative changes as proposed in the FY 2012 HUD budget, trending to the midpoint of the fiscal year and using CPI rent and utility data to calculate the trend. According to the commenter, this alternative provides a good balance between the use of the most recent local data available and the need to publish the trend factor in advance. The use of local and regional CPI rent and utility data would provide for more accurate FMR calculations than the use of national CPI data, and the application of the factor through the midpoint of the fiscal year would provide balance in the final FMR calculation. Another commenter states that solutions other than trending in the calculation of FMR may be acceptable as long as the calculation includes some mechanism for considering current market conditions.

HUD Response: HUD would prefer to reduce the period of trending down from a 15-month period to a 6-month or 9-month period, to reduce the impact of this factor. To do so would require a legislative change that assumes the FMR represents a beginning of fiscal year rent, rather than a middle of fiscal year rent.

HUD Question: Is there a data source or aggregation of sources of data provided on a more current basis than the CPI that could be used in the FMR estimation process?

1. No commenter responded that it was aware of any data source or aggregation of sources of data provided on a more current basis than the CPI that could be used in the FMR estimation process.

HUD Response: HUD agrees, but the use of the most current CPI data at the lowest level of geography is the use of the first half of the year data and, as discussed earlier, incorporating this data makes the publication of the proposed FMR so late as to not allow time for meaningful comments.

Given the divergence in comments, HUD has determined that additional study is required to select an appropriate methodology to employ for this program parameter. HUD will announce a new trending methodology in the FY 2013 proposed FMRs.

VI. Proposal To Formalize a Publication Date for Income Limits

In the comments filed regarding the trend factor, several commenters reminded HUD of the need for publication of FMRs by a certain date. One of the reasons submitted is because HUD uses FMRs in the calculation of income limits used in various federal, state and local housing programs. Currently, there is no statutorily required publication date for income limits. In recent years, HUD has attempted to incorporate the most recent vintage of ACS data into the income limits calculations; however, due to the increase in the number and scope of ACS data products, the publication date for income limits has become later each year.

In an attempt to be responsive to the concerns of the users of Income Limits, HUD is proposing to give the publication of area median family income estimates and income limits a more certain date. Currently, HUD is considering two possible timeframes for the publication of median family incomes and income limits. The first date would be October 1 at the same time that Final FMRs are published. The second date would be December 1. In either case, if HUD were to move the publication date, the FY 2012 Median Family Income estimates and the Income Limits would not benefit from any additional ACS data over what was included in the FY 2011 publication. The FY 2012 Median Family Income estimates and Income Limits, published on either October 1, 2011, or December 1, 2011, under this proposal, would be updated with the FY 2012 FMRs for the purposes of evaluating areas of relatively high or low income to housing cost relationships and would be further updated with CPI to the end of 2010 and trended to the mid-point of FY 2012 in a manner similar to what was done with the FY 2011 Median Family Income estimates and Income Limits. The FY 2013 Median Family Income estimates and Income Limits, published on October 1, 2012, or December 1, 2012, would be the first set of median family income estimates and income limits

updated with ACS data collected from 2006–2010.

VII. Request for Public Comments

HUD seeks public comments on the methodology used to calculate FY 2012 Proposed FMRs and the FMR levels for specific areas. Comments on FMR levels must include sufficient information (including local data and a full description of the rental housing survey methodology used) to justify any proposed changes. Changes may be proposed in all or any one or more of the unit-size categories on the schedule. Recommendations and supporting data must reflect the rent levels that exist within the entire FMR area.

For the supporting data, HUD recommends the use of professionally conducted Random Digit Dialing (RDD) telephone surveys to test the accuracy of FMRs for areas where there is a sufficient number of Section 8 units to justify the survey cost of approximately $35,000–$50,000. Areas with 2,000 or more program units usually meet this cost criterion, and areas with fewer units may meet it if actual rents for two-bedroom units are significantly different from the FMRs proposed by HUD.

PHAs in nonmetropolitan areas may, in certain circumstances, conduct surveys of groups of counties. HUD must approve all county-grouped surveys in advance. PHAs are cautioned that the resulting FMRs may not be identical for the counties surveyed; each individual FMR area will have a separate FMR based on the relationship of rents in that area to the combined rents in the cluster of FMR areas. In addition, PHAs are advised that counties where FMRs are based on the combined rents in the cluster of FMR areas will not have their FMRs revised unless the grouped survey results show a revised FMR statistically different from the combined rent level.

PHAs that plan to use the RDD survey technique should obtain a copy of the appropriate survey guide. Larger PHAs should request HUD's survey guide entitled ''Random Digit Dialing Surveys: A Guide to Assist Larger Public Housing Agencies in Preparing Fair Market Rent Comments.'' Smaller PHAs should obtain the guide entitled ''Rental Housing Surveys: A Guide to Assist Smaller Public Housing Agencies in Preparing Fair Market Rent Comments.'' These guides are available from HUD USER on 800–245–2691, or from HUD's Web site, in Microsoft Word or Adobe Acrobat format, at the following address: *http://www.huduser.org/datasets/fmr.html*.

Other survey methodologies are acceptable in providing data to support comments if the survey methodology can provide statistically reliable, unbiased estimates of the gross rent. Survey samples should preferably be randomly drawn from a complete list of rental units for the FMR area. If this is not feasible, the selected sample must be drawn to be statistically representative of the entire rental housing stock of the FMR area. Surveys must include units at all rent levels and be representative by structure type (including single-family, duplex, and other small rental properties), age of housing unit, and geographic location. The 2005–2009 5-year ACS data should be used as a means of verifying if a sample is representative of the FMR area's rental housing stock.

Most surveys cover only one- and two-bedroom units, which has statistical advantages. If the survey is statistically acceptable, HUD will estimate FMRs for other bedroom sizes using ratios based on the 2000 Decennial Census. A PHA or contractor that cannot obtain the recommended number of sample responses after reasonable efforts should consult with HUD before abandoning its survey; in such situations, HUD may find it appropriate to relax normal sample size requirements.

HUD will consider increasing manufactured home space FMRs where public comment demonstrates that 40 percent of the two-bedroom FMR is not adequate. In order to be accepted as a basis for revising the manufactured home space FMRs, comments must include a pad rental survey of the mobile home parks in the area, identify the utilities included in each park's rental fee, and provide a copy of the applicable public housing authority's utility schedule.

HUD is also soliciting comments on its proposal to give the publication of Median Family Income estimates and income limits a certain date. Commenters should provide their assessments of the advantages and disadvantages of a certain publication date as well as their preference among the dates proposed herein.

VIII. Environmental Impact

This Notice involves the establishment of fair market rent schedules, which do not constitute a development decision affecting the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(6), this Notice is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Accordingly, the Fair Market Rent Schedules, which will not be codified in 24 CFR part 888, are proposed to be amended as shown in the Appendix to this notice:

Raphael W. Bostic,

Assistant Secretary for Policy Development and Research.

Fair Market Rents for the Housing Choice Voucher Program

Schedules B and D—General Explanatory Notes

1. Geographic Coverage

a. Metropolitan Areas—Most FMRs are market-wide rent estimates that are intended to provide housing opportunities throughout the geographic area in which rental-housing units are in direct competition. HUD is using the metropolitan CBSAs, which are made up of one or more counties, as defined by the Office of Management and Budget (OMB), with some modifications. HUD is generally assigning separate FMRs to the component counties of CBSA Micropolitan Areas.

b. Modifications to OMB Definitions—Following OMB guidance, the estimation procedure for the FY 2012 proposed FMRs incorporates the current OMB definitions of metropolitan areas based on the CBSA standards as implemented with 2000 Census data, but makes adjustments to the definitions to separate subparts of these areas where FMRs or median incomes would otherwise change significantly if the new area definitions were used without modification. In CBSAs where subareas are established, it is HUD's view for programmatic purposes that the geographic extent of the housing markets are not yet the same as the geographic extent of the CBSAs, but may become so in the future as the social and economic integration of the CBSA component areas increases. Modifications to metropolitan CBSA definitions are made according to a formula as described below.

Metropolitan area CBSAs (referred to as MSAs) may be modified to allow for subarea FMRs within MSAs based on the boundaries of old FMR areas (OFAs) within the boundaries of new MSAs. (OFAs are the FMR areas defined for the FY 2005 FMRs. Collectively they include 1999-definition MSAs/Primary Metropolitan Statistical Areas (PMSAs), metro counties deleted from 1999-definition MSAs/PMSAs by HUD for FMR purposes, and counties and county parts outside of 1999-definition MSAs/PMSAs referred to as nonmetropolitan counties.) Subareas of MSAs are assigned their own FMRs when the subarea 2000 Census Base Rent differs

by at least 5 percent from (*i.e.,* is at most 95 percent or at least 105 percent of) the MSA 2000 Census Base Rent, or when the 2000 Census Median Family Income for the subarea differs by at least 5 percent from the MSA 2000 Census Median Family Income. MSA subareas, and the remaining portions of MSAs after subareas have been determined, are referred to as HMFAs to distinguish these areas from OMB's official definition of MSAs.

The specific counties and New England towns and cities within each state in MSAs and HMFAs are listed in Schedule B.

2. Bedroom Size Adjustments

Schedule B shows the FMRs for zero-bedroom through four-bedroom units. The Schedule B addendum shows Small Area FMRs for PHAs operating using Small Area FMRs within the Dallas, TX HMFA. The FMRs for unit sizes larger than four bedrooms are calculated by adding 15 percent to the four-bedroom FMR for each extra bedroom. For example, the FMR for a five-bedroom unit is 1.15 times the four-bedroom FMR, and the FMR for a six-bedroom unit is 1.30 times the four-bedroom FMR. FMRs for single-room-occupancy (SRO) units are 0.75 times the zero-bedroom FMR.

3. Arrangement of FMR Areas and Identification of Constituent Parts

a. The FMR areas in Schedule B are listed alphabetically by metropolitan FMR area and by nonmetropolitan county within each state. The exception FMRs for manufactured home spaces in Schedule D are listed alphabetically by state.

b. The constituent counties (and New England towns and cities) included in each metropolitan FMR area are listed immediately following the listings of the FMR dollar amounts. All constituent parts of a metropolitan FMR area that are in more than one state can be identified by consulting the listings for each applicable state.

c. Two nonmetropolitan counties are listed alphabetically on each line of the non-metropolitan county listings.

d. The New England towns and cities included in a nonmetropolitan county are listed immediately following the county name.

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SCHEDULE B - FY 2012 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 1

ALABAMA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Anniston-Oxford, AL MSA	461	509	632	835	981	Calhoun
Auburn-Opelika, AL MSA	454	541	697	917	942	Lee
Birmingham-Hoover, AL HMFA	605	673	750	952	980	Bibb, Blount, Jefferson, St. Clair, Shelby
Chilton County, AL HMFA	360	498	554	696	797	Chilton
Columbus, GA-AL MSA	558	588	673	895	1059	Russell
Decatur, AL MSA	451	507	583	763	791	Lawrence, Morgan
Dothan, AL HMFA	434	510	578	739	844	Geneva, Houston
Florence-Muscle Shoals, AL MSA	481	484	587	748	928	Colbert, Lauderdale
Gadsden, AL MSA	398	504	612	784	810	Etowah
Henry County, AL HMFA	326	449	499	596	615	Henry
Huntsville, AL MSA	514	560	661	905	993	Limestone, Madison
Mobile, AL MSA	591	633	714	935	1104	Mobile
Montgomery, AL MSA	543	642	723	959	1266	Autauga, Elmore, Lowndes, Montgomery
Tuscaloosa, AL MSA	504	582	754	969	999	Greene, Hale, Tuscaloosa
Walker County, AL HMFA	461	462	554	692	756	Walker

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Baldwin	483	581	691	916	1049	Barbour	415	416	499	618	636
Bullock	360	407	499	598	644	Butler	360	407	499	598	644
Chambers	432	469	521	707	729	Cherokee	414	415	499	594	613
Choctaw	531	560	640	812	1084	Clarke	324	448	499	597	877
Clay	415	417	499	617	768	Cleburne	416	418	501	614	764
Coffee	405	463	524	717	920	Conecuh	486	513	586	743	993
Coosa	425	471	524	710	797	Covington	415	416	499	681	702
Crenshaw	374	424	519	622	670	Cullman	425	438	513	690	709
Dale	386	445	499	721	874	Dallas	331	460	510	643	690
DeKalb	372	396	499	664	683	Escambia	414	420	499	622	765
Fayette	327	379	499	728	878	Franklin	325	421	499	673	876
Jackson	415	449	499	636	876	Lamar	334	415	499	666	875
Macon	420	452	582	776	802	Marengo	414	440	499	646	664
Marion	324	379	499	634	877	Marshall	415	445	502	678	746
Monroe	414	450	499	691	763	Perry	414	440	499	646	664
Pickens	346	429	516	689	905	Pike	398	428	499	641	661
Randolph	415	417	499	617	768	Sumter	334	427	499	666	875
Talladega	435	436	522	704	920	Tallapoosa	398	407	499	704	817
Washington	414	437	499	633	845	Wilcox	414	437	499	633	845
Winston	333	379	499	597	615						

ALASKA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Anchorage, AK HMFA	706	803	1007	1450	1766	Anchorage
Fairbanks, AK MSA	653	785	1004	1454	1535	Fairbanks North Star
Matanuska-Susitna Borough, AK HMFA	611	712	908	1291	1568	Matanuska-Susitna

SCHEDULE B - FY 2012 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 2

ALASKA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Aleutians East	405	461	584	722	744	Aleutians West	992	1127	1429	1766	1821
Bethel	892	1117	1356	1622	2381	Bristol Bay	672	765	969	1198	1235
Denali	683	843	1053	1478	1665	Dillingham	661	752	953	1178	1214
Haines	461	570	711	998	1124	Hoonah-Angoon	644	732	928	1147	1182
Juneau	744	912	1147	1550	1932	Kenai Peninsula	560	640	779	1067	1368
Ketchikan Gateway	586	748	899	1310	1579	Kodiak Island	630	738	971	1395	1477
Lake and Peninsula	473	538	682	843	869	Nome	831	1068	1226	1480	1524
North Slope	652	762	1001	1197	1232	Northwest Arctic	712	810	1026	1268	1307
Petersburg	734	834	1057	1306	1347	Prince of Wales-Hyder	552	627	795	983	1013
Sitka	733	845	1008	1469	1769	Skagway	702	798	1011	1250	1288
Southeast Fairbanks	564	696	869	1220	1374	Valdez-Cordova	503	621	775	1088	1225
Wade Hampton	476	541	686	848	874	Wrangell	520	591	749	926	954
Yakutat	640	727	922	1140	1175	Yukon-Koyukuk	487	554	702	868	894

ARIZONA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Flagstaff, AZ MSA	660	785	887	1141	1439	Coconino
Lake Havasu City-Kingman, AZ MSA	599	659	768	1062	1185	Mohave
*Phoenix-Mesa-Glendale, AZ MSA	619	721	870	1267	1483	Maricopa, Pinal
Prescott, AZ MSA	612	632	798	1163	1198	Yavapai
*Tucson, AZ MSA	570	670	860	1238	1309	Pima
Yuma, AZ MSA	519	613	732	1038	1272	Yuma

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Apache	424	519	614	852	1079	Cochise	484	561	704	972	1195
Gila	487	570	750	1030	1061	Graham	508	547	613	847	975
Greenlee	586	651	817	1123	1270	La Paz	564	565	678	959	988
Navajo	490	524	691	931	1103	Santa Cruz	525	525	666	971	1000

ARKANSAS

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Fayetteville-Springdale-Rogers, AR HMFA	482	508	635	925	951	Benton, Madison, Washington
Fort Smith, AR-OK HMFA	393	446	556	741	807	Crawford, Sebastian
Franklin County, AR HMFA	340	445	523	663	809	Franklin
Grant County, AR HMFA	410	423	516	747	770	Grant
Hot Springs, AR MSA	394	489	608	759	782	Garland
Jonesboro, AR HMFA	465	485	559	787	811	Craighead
Little Rock-North Little Rock-Conway, AR HMFA	526	598	667	893	922	Faulkner, Lonoke, Perry, Pulaski, Saline
Memphis, TN-MS-AR HMFA	594	645	717	955	985	Crittenden
Pine Bluff, AR MSA	375	444	557	668	793	Cleveland, Jefferson, Lincoln
Poinsett County, AR HMFA	335	434	516	687	822	Poinsett
Texarkana, TX-Texarkana, AR MSA	500	505	622	759	825	Miller

SCHEDULE B - FY 2012 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 3

ARKANSAS continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Arkansas	429	452	562	816	839
Baxter	392	455	550	739	932
Bradley	384	390	516	640	678
Carroll	457	458	550	694	966
Clark	437	444	571	736	758
Cleburne	447	448	537	736	945
Conway	441	455	531	731	795
Dallas	334	463	516	657	836
Drew	334	429	516	649	905
Greene	349	486	538	787	810
Hot Spring	430	431	516	676	698
Independence	382	455	550	711	772
Jackson	347	456	516	728	751
Lafayette	393	449	516	617	738
Lee	366	414	516	688	799
Logan	335	433	516	738	826
Mississippi	353	394	516	681	821
Montgomery	440	511	644	810	834
Newton	428	429	516	666	748
Phillips	428	431	516	672	693
Polk	429	465	516	671	816
Prairie	429	430	516	647	667
St. Francis	463	480	560	790	981
Searcy	428	429	516	666	748
Sharp	429	430	516	657	679
Union	453	477	545	706	917
White	445	446	536	728	749
Yell	426	449	516	707	730

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Ashley	380	393	516	618	680
Boone	442	443	533	683	766
Calhoun	334	463	516	657	836
Chicot	384	390	516	640	678
Clay	415	418	516	661	704
Columbia	341	438	525	644	738
Cross	442	444	533	777	849
Desha	384	390	516	656	678
Fulton	411	412	516	678	756
Hempstead	394	441	516	618	710
Howard	394	458	516	665	686
Izard	411	412	516	678	756
Johnson	345	474	533	710	849
Lawrence	336	412	516	635	839
Little River	393	449	516	630	738
Marion	435	436	524	690	759
Monroe	429	430	516	647	667
Nevada	393	449	516	617	738
Ouachita	334	464	516	710	832
Pike	393	449	516	617	738
Pope	402	432	559	788	810
Randolph	335	420	516	617	905
Scott	429	430	516	714	905
Sevier	430	445	516	713	826
Stone	411	412	516	678	756
Van Buren	335	392	516	639	825
Woodruff	429	430	516	647	667

CALIFORNIA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bakersfield-Delano, CA MSA	617	665	793	1146	1373	Kern
Chico, CA MSA	625	743	896	1263	1508	Butte
El Centro, CA MSA	538	609	751	1033	1317	Imperial
Fresno, CA MSA	638	702	829	1206	1299	Fresno
Hanford-Corcoran, CA MSA	659	702	815	1188	1432	Kings
Los Angeles-Long Beach, CA HMFA	961	1159	1447	1943	2338	Los Angeles
Madera-Chowchilla, CA MSA	599	629	802	1166	1202	Madera
Merced, CA MSA	570	649	789	1125	1314	Merced
Modesto, CA MSA	732	808	952	1365	1577	Stanislaus
Napa, CA MSA	898	1006	1307	1808	2053	Napa
Oakland-Fremont, CA HMFA	980	1183	1402	1901	2354	Alameda, Contra Costa
*Orange County, CA HMFA	1226	1384	1652	2338	2691	Orange

SCHEDULE B - FY 2012 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 4

CALIFORNIA continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Oxnard-Thousand Oaks-Ventura, CA MSA	1022	1129	1436	2058	2354	Ventura
Redding, CA MSA	595	693	843	1230	1482	Shasta
*Riverside-San Bernardino-Ontario, CA MSA	886	974	1149	1617	1886	Riverside, San Bernardino
*Sacramento--Arden-Arcade--Roseville, CA HMFA	736	837	1021	1473	1689	El Dorado, Placer, Sacramento
Salinas, CA MSA	919	1034	1187	1677	1757	Monterey
San Benito County, CA HMFA	799	1082	1204	1706	2112	San Benito
San Diego-Carlsbad-San Marcos, CA MSA	984	1126	1378	1960	2421	San Diego
San Francisco, CA HMFA	1238	1522	1905	2543	2688	Marin, San Francisco, San Mateo
San Jose-Sunnyvale-Santa Clara, CA HMFA	1165	1350	1623	2334	2569	Santa Clara
San Luis Obispo-Paso Robles, CA MSA	806	954	1162	1693	1742	San Luis Obispo
Santa Barbara-Santa Maria-Goleta, CA MSA	1073	1198	1344	1770	2020	Santa Barbara
Santa Cruz-Watsonville, CA MSA	978	1154	1504	2164	2230	Santa Cruz
Santa Rosa-Petaluma, CA MSA	767	933	1178	1672	1954	Sonoma
Stockton, CA MSA	643	733	904	1241	1563	San Joaquin
Vallejo-Fairfield, CA MSA	995	1072	1229	1723	2122	Solano
Visalia-Porterville, CA MSA	558	624	725	1037	1065	Tulare
Yolo, CA HMFA	767	811	992	1445	1538	Yolo
Yuba City, CA MSA	618	697	857	1247	1334	Sutter, Yuba

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Alpine	605	679	866	1235	1271	Amador	707	829	1088	1581	1629
Calaveras	707	708	851	1241	1368	Colusa	579	581	756	976	1327
Del Norte	585	593	767	1117	1151	Glenn	548	562	739	961	987
Humboldt	572	670	882	1265	1401	Inyo	578	606	788	1148	1354
Lake	586	687	895	1297	1444	Lassen	576	675	887	1290	1329
Mariposa	581	652	831	1185	1220	Mendocino	648	799	971	1325	1703
Modoc	404	446	584	832	864	Mono	796	959	1225	1678	2152
Nevada	709	828	1091	1575	1917	Plumas	613	718	946	1380	1661
Sierra	520	606	800	1134	1403	Siskiyou	469	563	720	1025	1056
Tehama	524	595	777	1129	1356	Trinity	512	537	705	967	1073
Tuolumne	605	719	929	1284	1323						

COLORADO

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Boulder, CO MSA	679	787	987	1439	1725	Boulder
Colorado Springs, CO HMFA	534	599	756	1079	1276	El Paso
Denver-Aurora-Broomfield, CO MSA	619	705	893	1268	1478	Adams, Arapahoe, Broomfield, Clear Creek, Denver, Douglas, Elbert, Gilpin, Jefferson, Park
Fort Collins-Loveland, CO MSA	513	615	746	1086	1266	Larimer
Grand Junction, CO MSA	569	571	685	997	1206	Mesa
Greeley, CO MSA	530	561	687	1002	1182	Weld
Pueblo, CO MSA	460	484	636	833	943	Pueblo
Teller County, CO HMFA	483	565	743	1082	1303	Teller

SCHEDULE B - FY 2012 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 5

COLORADO continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Alamosa	432	534	593	806	1042
Baca	447	524	584	832	898
Chaffee	442	557	679	989	1019
Conejos	475	558	621	884	954
Crowley	465	480	584	766	941
Delta	581	593	699	959	988
Eagle	797	931	1225	1541	2105
Garfield	767	873	968	1195	1230
Gunnison	567	623	810	1121	1422
Huerfano	447	524	584	832	898
Kiowa	465	480	584	766	941
Lake	577	727	878	1093	1541
Las Animas	459	609	675	870	898
Logan	462	463	590	768	889
Moffat	477	522	655	859	1150
Montrose	466	611	708	940	1165
Otero	469	495	601	832	857
Phillips	479	495	602	789	970
Prowers	448	526	584	792	1027
Rio Grande	448	524	584	847	899
Saguache	457	537	598	852	919
San Miguel	521	626	799	1165	1200
Summit	773	908	1187	1690	2083
Yuma	465	480	584	766	941

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Archuleta	535	630	792	963	1243
Bent	468	483	588	771	947
Cheyenne	465	480	584	766	941
Costilla	447	524	584	832	898
Custer	447	523	689	965	1110
Dolores	430	505	584	773	998
Fremont	404	482	619	888	1018
Grand	552	630	801	1165	1201
Hinsdale	472	595	718	894	1260
Jackson	537	621	689	888	1072
Kit Carson	465	480	584	766	941
La Plata	634	773	885	1242	1413
Lincoln	521	538	655	859	1055
Mineral	584	736	889	1107	1560
Montezuma	432	506	584	697	931
Morgan	568	615	686	914	1104
Ouray	648	817	987	1229	1732
Pitkin	809	945	1244	1728	2184
Rio Blanco	462	533	592	763	921
Routt	676	800	1040	1244	1826
San Juan	613	719	832	1102	1422
Sedgwick	465	480	584	766	941
Washington	466	482	586	768	944

CONNECTICUT

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Bridgeport, CT HMFA	829	1071	1277	1526	1853	Fairfield County towns of Bridgeport town, Easton town, Fairfield town, Monroe town, Shelton town, Stratford town, Trumbull town
Colchester-Lebanon, CT HMFA	731	858	1126	1347	1389	New London County towns of Colchester town, Lebanon town
Danbury, CT HMFA	981	1191	1512	1810	2244	Fairfield County towns of Bethel town, Brookfield town, Danbury town, New Fairfield town, Newtown town, Redding town, Ridgefield town, Sherman town
*Hartford-West Hartford-East Hartford, CT HMFA	709	849	1038	1247	1548	Hartford County towns of Avon town, Berlin town, Bloomfield town, Bristol town, Burlington town, Canton town, East Granby town, East Hartford town, East Windsor town, Enfield town, Farmington town, Glastonbury town, Granby town, Hartford town, Hartland town, Manchester town, Marlborough town, New Britain town, Newington town, Plainville town, Rocky Hill town, Simsbury town, Southington town, South Windsor town, Suffield town, West Hartford town, Wethersfield town, Windsor town, Windsor Locks town

SCHEDULE B - FY 2012 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 6

CONNECTICUT continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
						Middlesex County towns of Chester town, Cromwell town, Durham town, East Haddam town, East Hampton town, Haddam town, Middlefield town, Middletown town, Portland town Tolland County towns of Andover town, Bolton town, Columbia town, Coventry town, Ellington town, Hebron town, Mansfield town, Somers town, Stafford town, Tolland town, Union town, Vernon town, Willington town
Milford-Ansonia-Seymour, CT HMFA	1001	1160	1298	1652	1815	New Haven County towns of Ansonia town, Beacon Falls town, Derby town, Milford town, Oxford town, Seymour town
*New Haven-Meriden, CT HMFA	987	1119	1352	1618	1850	New Haven County towns of Bethany town, Branford town, Cheshire town, East Haven town, Guilford town, Hamden town, Madison town, Meriden town, New Haven town, North Branford town, North Haven town, Orange town, Wallingford town, West Haven town, Woodbridge town
Norwich-New London, CT HMFA	834	989	1145	1401	1548	New London County towns of Bozrah town, East Lyme town, Franklin town, Griswold town, Groton town, Ledyard town, Lisbon town, Lyme town, Montville town, New London town, North Stonington town, Norwich town, Old Lyme town, Preston town, Salem town, Sprague town, Stonington town, Voluntown town, Waterford town
Southern Middlesex County, CT HMFA	806	849	1080	1386	1580	Middlesex County towns of Clinton town, Deep River town, Essex town, Killingworth town, Old Saybrook town, Westbrook town
Stamford-Norwalk, CT HMFA	1162	1415	1769	2305	2784	Fairfield County towns of Darien town, Greenwich town, New Canaan town, Norwalk town, Stamford town, Weston town, Westport town, Wilton town
Waterbury, CT HMFA	699	904	1075	1287	1339	New Haven County towns of Middlebury town, Naugatuck town, Prospect town, Southbury town, Waterbury town, Wolcott town
NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
Litchfield County, CT	691	900	1063	1365	1535	Barkhamsted town, Bethlehem town, Bridgewater town, Canaan town, Colebrook town, Cornwall town, Goshen town, Harwinton town, Kent town, Litchfield town, Morris town, New Hartford town, New Milford town, Norfolk town, North Canaan town, Plymouth town, Roxbury town, Salisbury town, Sharon town, Thomaston town, Torrington town, Warren town, Washington town, Watertown town, Winchester town, Woodbury town
Windham County, CT	685	829	998	1255	1332	Ashford town, Brooklyn town, Canterbury town, Chaplin town, Eastford town, Hampton town, Killingly town, Plainfield town, Pomfret town, Putnam town, Scotland town, Sterling town, Thompson town, Windham town, Woodstock town

DELAWARE

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Dover, DE MSA	666	725	803	1050	1410	Kent

SCHEDULE B - FY 2012 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 7

DELAWARE continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
*Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA..	788	899	1075	1315	1586	New Castle

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Sussex	615	670	744	1018	1048

DISTRICT OF COLUMBIA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
*Washington-Arlington-Alexandria, DC-VA-MD HMFA...	1166	1328	1506	1943	2542	District of Columbia

FLORIDA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Baker County, FL HMFA	432	599	665	972	998	Baker
Cape Coral-Fort Myers, FL MSA	674	728	829	1127	1160	Lee
Crestview-Fort Walton Beach-Destin, FL MSA	641	750	844	1231	1352	Okaloosa
Deltona-Daytona Beach-Ormond Beach, FL MSA	596	696	866	1120	1153	Volusia
*Fort Lauderdale, FL HMFA	883	988	1187	1642	2084	Broward
Gainesville, FL MSA	648	715	814	1190	1227	Alachua, Gilchrist
Jacksonville, FL HMFA	630	716	834	1047	1199	Clay, Duval, Nassau, St. Johns
Lakeland-Winter Haven, FL MSA	604	666	767	973	1141	Polk
Miami-Miami Beach-Kendall, FL HMFA	819	927	1125	1439	1682	Miami-Dade
Naples-Marco Island, FL MSA	813	932	1049	1304	1357	Collier
*North Port-Bradenton-Sarasota, FL MSA	755	827	995	1271	1396	Manatee, Sarasota
Ocala, FL MSA	603	621	729	957	986	Marion
Orlando-Kissimmee-Sanford, FL MSA	753	819	936	1172	1380	Lake, Orange, Osceola, Seminole
Palm Bay-Melbourne-Titusville, FL MSA	583	713	840	1131	1262	Brevard
Palm Coast, FL MSA	601	693	872	1221	1302	Flagler
Panama City-Lynn Haven-Panama City Beach, FL MSA..	686	724	829	1145	1273	Bay
Pensacola-Ferry Pass-Brent, FL MSA	619	674	748	1084	1311	Escambia, Santa Rosa
Port St. Lucie, FL MSA	737	739	936	1237	1275	Martin, St. Lucie
Punta Gorda, FL MSA	638	668	867	1266	1523	Charlotte
Sebastian-Vero Beach, FL MSA	558	673	858	1068	1099	Indian River
Tallahassee, FL HMFA	596	662	817	1090	1122	Gadsden, Jefferson, Leon
Tampa-St. Petersburg-Clearwater, FL MSA	690	766	926	1173	1417	Hernando, Hillsborough, Pasco, Pinellas
Wakulla County, FL HMFA	571	620	690	907	936	Wakulla
*West Palm Beach-Boca Raton, FL HMFA	823	964	1138	1609	1658	Palm Beach

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Bradford	423	586	650	805	831	Calhoun	486	488	584	736	839
Citrus	653	710	786	1140	1372	Columbia	473	547	646	806	1133
DeSoto	655	671	788	950	978	Dixie	482	526	584	729	813
Franklin	549	550	660	831	946	Glades	717	764	868	1060	1132
Gulf	581	582	697	878	1002	Hamilton	495	541	600	749	835
Hardee	657	713	791	971	997	Hendry	616	736	821	987	1218

SCHEDULE B - FY 2012 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 8

FLORIDA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Highlands	637	640	767	992	1186	Holmes	498	529	601	782	821
Jackson	409	524	584	723	844	Lafayette	550	601	667	833	928
Levy	521	559	629	803	827	Liberty	486	488	584	736	839
Madison	486	488	584	736	839	Monroe	946	1152	1419	2065	2211
Okeechobee	774	801	933	1257	1294	Putnam	543	589	654	785	808
Sumter	531	577	641	842	1126	Suwannee	414	564	625	788	863
Taylor	484	525	584	698	718	Union	479	551	619	819	844
Walton	631	650	761	941	969	Washington	429	488	644	923	949

GEORGIA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Albany, GA MSA	463	494	580	778	803	Baker, Dougherty, Lee, Terrell, Worth
Athens-Clarke County, GA MSA	516	573	719	958	988	Clarke, Madison, Oconee, Oglethorpe
Atlanta-Sandy Springs-Marietta, GA HMFA	699	757	842	1025	1118	Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, Dawson, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Heard, Henry, Jasper, Newton, Paulding, Pickens, Pike, Rockdale, Spalding, Walton
Augusta-Richmond County, GA-SC MSA	568	616	692	927	974	Burke, Columbia, McDuffie, Richmond
Brunswick, GA MSA	588	639	709	1010	1245	Brantley, Glynn, McIntosh
Butts County, GA HMFA	469	626	723	1055	1256	Butts
Chattanooga, TN-GA MSA	504	533	628	773	909	Catoosa, Dade, Walker
Columbus, GA-AL MSA	558	588	673	895	1059	Chattahoochee, Harris, Marion, Muscogee
Dalton, GA HMFA	509	553	612	757	780	Whitfield
Gainesville, GA MSA	643	674	777	954	1106	Hall
Haralson County, GA HMFA	446	467	536	780	946	Haralson
Hinesville-Fort Stewart, GA HMFA	530	576	641	902	1026	Liberty
Lamar County, GA HMFA	445	447	536	706	941	Lamar
Long County, GA HMFA	444	482	536	734	757	Long
Macon, GA MSA	536	581	646	797	830	Bibb, Crawford, Jones, Twiggs
Meriwether County, GA HMFA	495	501	597	720	742	Meriwether
Monroe County, GA HMFA	483	526	583	698	722	Monroe
Murray County, GA HMFA	475	514	572	684	704	Murray
Rome, GA MSA	499	508	656	805	831	Floyd
Savannah, GA MSA	677	733	816	1083	1118	Bryan, Chatham, Effingham
Valdosta, GA MSA	534	535	644	873	900	Brooks, Echols, Lanier, Lowndes
Warner Robins, GA MSA	608	619	735	1066	1227	Houston

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Appling	444	483	536	653	673	Atkinson	445	465	536	683	777
Bacon	445	465	536	683	777	Baldwin	423	510	633	756	779
Banks	446	483	536	651	925	Ben Hill	358	461	551	667	685
Berrien	440	441	536	664	684	Bleckley	376	440	536	664	760
Bulloch	450	466	552	662	680	Calhoun	445	482	536	688	845
Camden	541	542	653	950	1146	Candler	444	483	536	653	673
Charlton	473	494	569	725	825	Chattooga	349	427	536	643	935

SCHEDULE B - FY 2012 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 9

GEORGIA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Clay	469	509	565	725	890
Coffee	444	459	536	667	816
Cook	445	455	536	729	942
Decatur	350	407	536	641	712
Dooly	445	460	536	676	912
Elbert	445	465	536	673	694
Evans	444	483	536	653	673
Franklin	446	483	536	651	925
Glascock	389	412	543	650	763
Grady	349	482	537	744	770
Habersham	466	468	561	672	985
Hart	445	482	536	640	940
Jackson	525	570	634	770	1006
Jefferson	384	428	536	642	754
Johnson	392	481	536	693	723
Lincoln	445	465	536	673	694
Macon	445	460	536	676	912
Mitchell	385	488	590	707	982
Morgan	466	467	576	689	710
Pierce	445	465	536	683	777
Pulaski	406	475	536	780	818
Quitman	445	482	536	688	845
Randolph	445	482	536	688	845
Screven	384	407	536	642	754
Stephens	356	494	548	656	677
Sumter	413	465	571	683	1003
Taliaferro	445	465	536	673	694
Taylor	445	460	536	676	912
Thomas	518	562	624	801	1095
Toombs	348	482	536	747	827
Treutlen	406	475	536	717	820
Turner	445	472	536	680	829
Upson	348	471	536	641	660
Warren	445	465	536	673	694
Wayne	384	434	536	708	941
Wheeler	406	475	536	717	820
Wilcox	406	475	536	717	820
Wilkinson	392	481	536	693	723

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Clinch	445	465	536	683	777
Colquitt	446	481	536	642	807
Crisp	445	449	536	677	698
Dodge	423	425	536	717	738
Early	445	482	536	688	845
Emanuel	350	406	536	653	835
Fannin	359	499	553	662	794
Gilmer	524	568	633	835	1008
Gordon	483	487	625	748	771
Greene	445	465	536	673	694
Hancock	565	590	680	854	881
Irwin	445	472	536	680	829
Jeff Davis	444	483	536	653	673
Jenkins	384	407	536	642	754
Laurens	445	484	536	720	873
Lumpkin	437	568	675	911	1010
Miller	413	481	536	671	800
Montgomery	406	475	536	717	820
Peach	490	492	593	849	892
Polk	457	508	620	764	789
Putnam	433	437	574	834	858
Rabun	528	548	636	820	989
Schley	460	475	553	697	941
Seminole	413	481	536	671	800
Stewart	445	482	536	688	845
Talbot	475	476	574	707	728
Tattnall	446	482	536	707	773
Telfair	406	475	536	717	820
Tift	470	509	564	720	832
Towns	513	532	618	794	961
Troup	496	502	629	796	821
Union	489	507	589	756	916
Ware	449	485	542	694	728
Washington	384	441	536	655	754
Webster	445	460	536	676	912
White	492	614	682	861	1036
Wilkes	445	465	536	673	694

HAWAII

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
*Honolulu, HI MSA	1235	1449	1767	2564	2870	Honolulu

SCHEDULE B - FY 2012 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 10

HAWAII continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Hawaii	860	1033	1159	1634	1791	Kalawao	1003	1157	1359	1718	1956
Kauai	952	1072	1413	1773	1930	Maui	1166	1293	1503	2011	2154

IDAHO

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Boise City-Nampa, ID HMFA	522	619	730	1061	1129	Ada, Boise, Canyon, Owyhee
Coeur d'Alene, ID MSA	555	599	721	1048	1172	Kootenai
Gem County, ID HMFA	491	595	661	961	989	Gem
Idaho Falls, ID MSA	466	490	626	858	1077	Bonneville, Jefferson
Lewiston, ID-WA MSA	479	498	623	885	1078	Nez Perce
Logan, UT-ID MSA	461	498	622	834	1030	Franklin
Pocatello, ID MSA	382	445	573	828	971	Bannock, Power

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	437	455	573	776	924	Bear Lake	389	448	573	814	961
Benewah	448	456	573	819	844	Bingham	403	447	573	788	814
Blaine	736	800	888	1261	1557	Bonner	468	491	602	852	877
Boundary	448	456	573	819	844	Butte	419	449	573	810	963
Camas	420	460	573	755	808	Caribou	389	448	573	814	961
Cassia	420	460	573	755	808	Clark	419	449	573	810	963
Clearwater	448	462	573	827	954	Custer	425	454	580	820	974
Elmore	383	446	587	744	912	Fremont	456	488	623	881	1047
Gooding	420	460	573	755	808	Idaho	406	435	573	685	810
Jerome	420	460	573	755	808	Latah	485	507	612	892	1032
Lemhi	419	449	573	810	963	Lewis	448	462	573	827	954
Lincoln	420	460	573	755	808	Madison	447	448	575	835	909
Minidoka	371	489	573	759	780	Oneida	389	448	573	814	961
Payette	374	451	573	725	947	Shoshone	474	475	573	755	799
Teton	492	526	672	950	1129	Twin Falls	393	477	605	780	923
Valley	488	508	640	867	1032	Washington	437	455	573	776	924

ILLINOIS

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bloomington-Normal, IL MSA	527	582	735	983	1229	McLean
Bond County, IL HMFA	502	537	696	1012	1190	Bond
Cape Girardeau-Jackson, MO-IL MSA	400	457	596	771	947	Alexander
Champaign-Urbana, IL MSA	561	682	802	1007	1383	Champaign, Ford, Piatt
Chicago-Joliet-Naperville, IL HMFA	745	853	958	1171	1323	Cook, DuPage, Kane, Lake, McHenry, Will
Danville, IL MSA	407	486	626	749	795	Vermilion
Davenport-Moline-Rock Island, IA-IL MSA	467	521	656	836	872	Henry, Mercer, Rock Island
DeKalb County, IL HMFA	565	638	839	1088	1335	DeKalb
Decatur, IL MSA	424	504	640	853	880	Macon

ILLINOIS continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Grundy County, IL HMFA	574	672	881	1109	1493	Grundy
Kankakee-Bradley, IL MSA	519	565	745	966	1036	Kankakee
Kendall County, IL HMFA	819	820	985	1385	1500	Kendall
Macoupin County, IL HMFA	485	486	584	728	753	Macoupin
Peoria, IL MSA	468	553	689	887	1007	Marshall, Peoria, Stark, Tazewell, Woodford
Rockford, IL MSA	505	569	721	943	971	Boone, Winnebago
Springfield, IL MSA	453	533	689	899	1004	Menard, Sangamon
St. Louis, MO-IL HMFA	588	638	792	1020	1068	Calhoun, Clinton, Jersey, Madison, Monroe, St. Clair

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	385	457	591	768	793	Brown	378	460	584	780	804
Bureau	394	458	605	745	817	Carroll	411	464	584	727	748
Cass	517	520	655	833	858	Christian	395	506	605	782	914
Clark	422	589	652	949	979	Clay	411	513	628	838	862
Coles	423	541	650	917	1141	Crawford	381	450	584	768	805
Cumberland	388	484	584	777	1024	De Witt	478	479	584	763	892
Douglas	400	502	617	878	905	Edgar	380	444	584	735	757
Edwards	476	485	584	769	847	Effingham	484	485	584	738	780
Fayette	484	498	584	808	833	Franklin	378	464	584	725	1024
Fulton	419	500	603	771	956	Gallatin	476	485	584	769	847
Greene	399	445	584	740	777	Hamilton	476	485	584	769	847
Hancock	487	488	584	702	726	Hardin	476	485	584	769	847
Henderson	403	471	584	738	881	Iroquois	474	526	637	801	940
Jackson	430	525	661	900	1120	Jasper	378	470	584	769	791
Jefferson	477	490	584	735	757	Jo Daviess	484	518	616	821	846
Johnson	477	486	585	770	849	Knox	380	444	584	776	799
La Salle	522	563	742	936	1204	Lawrence	379	444	584	777	801
Lee	416	511	614	820	954	Livingston	409	502	631	753	784
Logan	516	517	619	850	974	McDonough	492	580	730	936	1223
Marion	426	488	584	747	822	Mason	389	493	600	843	869
Massac	485	486	584	850	877	Montgomery	485	486	584	700	867
Morgan	396	460	606	752	816	Moultrie	380	449	584	736	894
Ogle	490	523	685	896	957	Perry	379	495	584	705	906
Pike	378	463	584	785	809	Pope	476	485	584	769	847
Pulaski	476	485	584	769	847	Putnam	399	467	614	776	849
Randolph	380	443	584	774	949	Richland	435	527	584	804	963
Saline	380	490	584	791	1024	Schuyler	378	463	584	785	809
Scott	399	445	584	740	777	Shelby	493	494	594	774	876
Stephenson	395	462	609	728	752	Union	486	487	584	716	889
Wabash	476	485	584	769	847	Warren	417	488	641	800	912
Washington	408	467	589	757	780	Wayne	378	460	584	743	765
White	476	485	584	769	847	Whiteside	461	543	669	828	851
Williamson	411	481	630	908	936						

SCHEDULE B - FY 2012 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 12

INDIANA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Anderson, IN MSA	532	532	640	823	857	Madison
Bloomington, IN HMFA	513	594	724	1029	1063	Monroe
Carroll County, IN HMFA	388	456	598	787	810	Carroll
Cincinnati-Middleton, OH-KY-IN HMFA	471	558	723	968	1005	Dearborn, Franklin, Ohio
Columbus, IN MSA	603	605	726	890	953	Bartholomew
Elkhart-Goshen, IN MSA	513	572	707	889	931	Elkhart
Evansville, IN-KY HMFA	460	537	668	824	896	Posey, Vanderburgh, Warrick
Fort Wayne, IN MSA	477	507	634	791	813	Allen, Wells, Whitley
Gary, IN HMFA	538	671	818	978	1009	Lake, Newton, Porter
Gibson County, IN HMFA	490	491	587	751	1033	Gibson
Greene County, IN HMFA	453	454	584	847	876	Greene
Indianapolis, IN HMFA	543	629	747	967	1023	Boone, Brown, Hamilton, Hancock, Hendricks, Johnson, Marion, Morgan, Shelby
Jasper County, IN HMFA	560	561	697	909	937	Jasper
Kokomo, IN MSA	506	511	649	827	851	Howard, Tipton
Lafayette, IN HMFA	501	592	727	947	1083	Benton, Tippecanoe
Louisville, KY-IN HMFA	509	588	698	975	1036	Clark, Floyd, Harrison
Michigan City-La Porte, IN MSA	458	529	671	891	917	LaPorte
Muncie, IN MSA	500	511	618	832	874	Delaware
Owen County, IN HMFA	490	493	590	747	1036	Owen
Putnam County, IN HMFA	554	555	668	798	900	Putnam
South Bend-Mishawaka, IN HMFA	534	594	715	917	945	St. Joseph
Sullivan County, IN HMFA	378	444	584	698	719	Sullivan
Terre Haute, IN HMFA	420	479	616	760	874	Clay, Vermillion, Vigo
Washington County, IN HMFA	444	497	584	718	957	Washington

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	485	526	584	764	901	Blackford	485	487	584	743	803
Cass	415	447	588	749	773	Clinton	497	527	644	804	844
Crawford	416	475	584	722	765	Daviess	485	488	584	760	931
Decatur	516	519	623	807	832	DeKalb	445	476	604	831	853
Dubois	380	456	584	797	821	Fayette	389	481	597	790	813
Fountain	429	516	584	781	817	Fulton	496	515	598	844	871
Grant	489	490	592	747	871	Henry	494	496	594	764	854
Huntington	442	527	623	778	941	Jackson	571	572	696	894	1085
Jay	379	465	584	791	816	Jefferson	438	469	618	740	915
Jennings	378	447	584	707	974	Knox	406	463	584	723	902
Kosciusko	424	495	650	827	963	LaGrange	572	573	687	828	919
Lawrence	395	466	608	727	748	Marshall	463	534	663	874	901
Martin	416	459	584	719	841	Miami	379	446	584	850	917
Montgomery	414	487	620	844	889	Noble	512	513	617	737	758
Orange	377	443	584	735	802	Parke	486	488	584	736	926
Perry	380	444	584	758	783	Pike	379	448	584	756	780
Pulaski	484	485	584	775	800	Randolph	485	486	584	833	859
Ripley	579	580	699	842	963	Rush	486	488	586	702	769
Scott	469	525	665	859	995	Spencer	383	453	590	763	788

SCHEDULE B - FY 2012 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 13

INDIANA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Starke	484	510	584	772	812	Steuben	442	504	662	798	822
Switzerland	409	444	584	731	815	Union	379	463	584	727	751
Wabash	381	444	584	798	909	Warren	380	466	584	718	834
Wayne	412	485	608	825	851	White	394	545	605	723	1021

IOWA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Ames, IA MSA	557	587	726	1039	1229	Story
Benton County, IA HMFA	350	413	539	671	899	Benton
Bremer County, IA HMFA	392	483	601	719	972	Bremer
Cedar Rapids, IA HMFA	418	487	641	908	1032	Linn
Davenport-Moline-Rock Island, IA-IL MSA	467	521	656	836	872	Scott
Des Moines-West Des Moines, IA MSA	502	599	731	936	1043	Dallas, Guthrie, Madison, Polk, Warren
Dubuque, IA MSA	417	449	590	793	864	Dubuque
Iowa City, IA HMFA	491	585	738	1075	1258	Johnson
Jones County, IA HMFA	452	453	543	761	785	Jones
Omaha-Council Bluffs, NE-IA HMFA	529	602	751	1003	1031	Harrison, Mills, Pottawattamie
Sioux City, IA-NE-SD MSA	407	478	627	789	813	Woodbury
Washington County, IA HMFA	370	446	567	723	869	Washington
Waterloo-Cedar Falls, IA HMFA	424	522	624	766	938	Black Hawk, Grundy

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adair	382	426	560	683	764	Adams	366	408	536	654	731
Allamakee	379	417	534	692	736	Appanoose	347	405	534	674	739
Audubon	399	410	534	702	735	Boone	399	481	613	798	859
Buchanan	443	444	534	689	708	Buena Vista	427	432	565	678	778
Butler	379	417	534	692	736	Calhoun	423	424	534	686	718
Carroll	347	405	534	637	657	Cass	348	425	534	655	705
Cedar	406	448	591	764	827	Cerro Gordo	421	468	616	765	787
Cherokee	399	410	534	702	735	Chickasaw	379	417	534	692	736
Clarke	356	406	534	639	712	Clay	347	405	534	648	812
Clayton	379	417	534	692	736	Clinton	361	423	556	709	810
Crawford	399	422	534	702	735	Davis	365	406	534	651	728
Decatur	365	406	534	651	728	Delaware	367	405	534	690	747
Des Moines	442	483	612	769	867	Dickinson	346	427	534	676	937
Emmet	382	412	543	665	780	Fayette	379	417	534	692	736
Floyd	375	405	534	668	688	Franklin	386	425	534	682	716
Fremont	348	425	534	655	705	Greene	399	410	534	702	735
Hamilton	475	476	611	770	805	Hancock	392	432	543	694	728
Hardin	451	453	542	648	689	Henry	452	454	543	776	800
Howard	379	417	534	692	736	Humboldt	423	424	534	686	718
Ida	399	410	534	702	735	Iowa	407	430	534	698	721
Jackson	367	405	534	690	747	Jasper	421	460	604	768	802

SCHEDULE B - FY 2012 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 14

IOWA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Jefferson	497	505	598	753	916
Kossuth	386	425	534	682	716
Louisa	431	482	596	771	816
Lyon	375	405	534	654	767
Marion	419	514	642	793	816
Mitchell	386	425	534	682	716
Monroe	381	425	558	681	761
Muscatine	406	502	624	768	828
Osceola	375	405	534	654	767
Palo Alto	375	405	534	654	767
Pocahontas	423	424	534	686	718
Ringgold	370	412	542	661	739
Shelby	348	425	534	655	705
Tama	425	449	557	729	752
Union	400	445	585	714	798
Wapello	407	473	624	744	776
Webster	404	411	534	739	763
Winneshiek	347	406	534	694	940
Wright	423	424	534	686	718

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Keokuk	365	406	534	651	728
Lee	403	469	553	701	721
Lucas	365	406	534	651	728
Mahaska	374	424	540	647	854
Marshall	414	480	599	770	884
Monona	399	410	534	702	735
Montgomery	386	471	592	726	781
O'Brien	375	405	534	654	767
Page	345	406	534	637	656
Plymouth	484	485	584	787	810
Poweshiek	370	432	568	726	748
Sac	399	410	534	702	735
Sioux	434	440	534	722	743
Taylor	365	406	534	651	728
Van Buren	365	406	534	651	728
Wayne	365	406	534	651	728
Winnebago	386	425	534	682	716
Worth	386	425	534	682	716

KANSAS

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Franklin County, KS HMFA	588	589	730	930	994	Franklin
Kansas City, MO-KS HMFA	547	657	754	1020	1073	Johnson, Leavenworth, Linn, Miami, Wyandotte
Lawrence, KS MSA	556	571	734	1072	1289	Douglas
Manhattan, KS MSA	481	554	673	937	1101	Geary, Pottawatomie, Riley
St. Joseph, MO-KS MSA	395	487	606	763	905	Doniphan
Sumner County, KS HMFA	360	424	557	750	872	Sumner
Topeka, KS MSA	487	530	649	823	865	Jackson, Jefferson, Osage, Shawnee, Wabaunsee
Wichita, KS HMFA	437	489	643	822	925	Butler, Harvey, Sedgwick

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Allen	407	411	540	716	779
Atchison	396	441	540	787	948
Barton	350	423	540	718	929
Brown	396	441	540	787	948
Chautauqua	390	434	540	696	757
Cheyenne	404	410	540	691	711
Clay	468	514	632	811	999
Coffey	377	411	540	687	708
Cowley	394	482	590	748	769
Decatur	404	410	540	691	711

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Anderson	466	518	644	829	903
Barber	351	414	540	703	829
Bourbon	421	447	580	838	944
Chase	377	411	540	687	708
Cherokee	450	467	540	756	928
Clark	440	444	540	657	721
Cloud	419	427	540	709	732
Comanche	351	414	540	703	829
Crawford	387	454	597	804	897
Dickinson	352	409	540	650	801

SCHEDULE B - FY 2012 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 15

KANSAS continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Edwards	351	414	540	703	829
Ellis	399	451	594	822	860
Finney	470	470	607	737	934
Gove	404	410	540	691	711
Grant	440	444	540	657	721
Greeley	566	571	695	846	928
Hamilton	470	474	577	702	770
Haskell	475	480	584	711	780
Jewell	419	427	540	709	732
Kingman	351	414	540	703	829
Labette	351	420	540	732	753
Lincoln	419	427	540	709	732
Lyon	384	449	590	788	933
Marion	377	411	540	687	708
Meade	475	479	583	710	778
Montgomery	387	432	540	664	827
Morton	501	506	616	750	822
Neosho	350	421	540	643	944
Norton	404	410	540	691	711
Ottawa	419	427	540	709	732
Phillips	404	410	540	691	711
Rawlins	404	410	540	691	711
Republic	419	427	540	709	732
Rooks	404	410	540	691	711
Russell	404	410	540	691	711
Scott	440	444	540	657	721
Sheridan	412	418	550	704	724
Smith	404	410	540	691	711
Stanton	440	444	540	657	721
Thomas	402	410	540	686	707
Wallace	416	422	555	710	731
Wichita	523	528	642	781	857
Woodson	390	434	540	696	757

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Elk	390	434	540	696	757
Ellsworth	419	427	540	709	732
Ford	511	513	617	760	811
Graham	404	410	540	691	711
Gray	440	444	540	657	721
Greenwood	377	411	540	687	708
Harper	351	414	540	703	829
Hodgeman	440	444	540	657	721
Kearny	440	444	540	657	721
Kiowa	351	414	540	703	829
Lane	524	529	644	784	860
Logan	404	410	540	691	711
McPherson	496	497	596	780	802
Marshall	400	439	540	693	853
Mitchell	419	427	540	709	732
Morris	400	439	540	693	853
Nemaha	396	441	540	787	948
Ness	440	444	540	657	721
Osborne	404	410	540	691	711
Pawnee	354	417	544	708	836
Pratt	404	472	620	804	948
Reno	408	453	595	815	839
Rice	391	427	540	716	738
Rush	351	414	540	703	829
Saline	453	455	599	798	822
Seward	445	548	633	777	942
Sherman	397	410	540	678	699
Stafford	351	414	540	703	829
Stevens	528	533	649	790	866
Trego	404	410	540	691	711
Washington	419	427	540	709	732
Wilson	390	433	540	694	755

KENTUCKY

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bowling Green, KY MSA	449	536	652	869	1024	Edmonson, Warren
Cincinnati-Middleton, OH-KY-IN HMFA	471	558	723	968	1005	Boone, Bracken, Campbell, Gallatin, Kenton, Pendleton
Clarksville, TN-KY HMFA	565	587	682	986	1015	Christian, Trigg
Elizabethtown, KY MSA	428	477	575	818	1007	Hardin, Larue
Evansville, IN-KY HMFA	460	537	668	824	896	Henderson, Webster
Grant County, KY HMFA	436	526	669	824	923	Grant

SCHEDULE B - FY 2012 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 16

KENTUCKY continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Huntington-Ashland, WV-KY-OH MSA	422	499	599	739	763	Boyd, Greenup
Lexington-Fayette, KY MSA	447	537	662	890	918	Bourbon, Clark, Fayette, Jessamine, Scott, Woodford
Louisville, KY-IN HMFA	509	588	698	975	1036	Bullitt, Henry, Jefferson, Oldham, Spencer, Trimble
Meade County, KY HMFA	514	515	617	792	887	Meade
Nelson County, KY HMFA	379	457	553	806	872	Nelson
Owensboro, KY MSA	416	463	609	845	895	Daviess, Hancock, McLean
Shelby County, KY HMFA	572	573	692	911	938	Shelby

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adair	372	413	491	599	668	Allen	321	417	491	655	848
Anderson	455	487	643	930	1109	Ballard	405	448	552	707	797
Barren	345	403	523	652	718	Bath	367	398	491	613	634
Bell	323	440	491	586	719	Boyle	391	432	568	680	703
Breathitt	408	428	491	610	638	Breckinridge	380	382	491	656	677
Butler	340	404	491	646	665	Caldwell	409	410	492	623	707
Calloway	469	470	565	696	992	Carlisle	373	412	508	651	734
Carroll	413	414	514	680	738	Carter	318	424	491	585	662
Casey	372	413	491	599	668	Clay	318	441	491	586	603
Clinton	372	413	491	599	668	Crittenden	408	409	491	641	728
Cumberland	372	413	491	599	668	Elliott	407	408	491	624	737
Estill	441	442	531	679	894	Fleming	367	398	491	613	634
Floyd	372	417	491	644	742	Franklin	437	463	609	826	849
Fulton	360	398	491	629	709	Garrard	393	440	528	630	925
Graves	401	402	499	596	727	Grayson	409	409	491	640	751
Green	370	409	491	594	662	Harlan	407	437	491	604	764
Harrison	398	400	523	686	708	Hart	365	399	491	627	730
Hickman	360	398	491	629	709	Hopkins	410	411	495	621	868
Jackson	444	467	536	648	667	Johnson	320	418	491	670	688
Knott	408	428	491	614	638	Knox	322	388	491	692	716
Laurel	416	450	501	615	841	Lawrence	338	395	522	697	718
Lee	408	428	491	614	638	Leslie	486	511	586	733	761
Letcher	408	428	491	610	638	Lewis	367	398	491	613	634
Lincoln	324	443	491	588	777	Livingston	407	408	491	631	717
Logan	462	502	558	764	846	Lyon	434	441	523	678	703
McCracken	362	455	559	750	773	McCreary	408	440	491	633	650
Madison	396	420	538	759	890	Magoffin	408	411	491	604	631
Marion	408	410	527	705	726	Marshall	475	476	574	748	973
Martin	408	411	491	604	631	Mason	320	409	495	722	829
Menifee	367	398	491	613	634	Mercer	454	483	548	722	849
Metcalfe	365	399	491	627	730	Monroe	365	399	491	627	730
Montgomery	319	372	491	586	604	Morgan	367	398	491	613	634
Muhlenberg	405	406	491	624	640	Nicholas	375	375	491	601	663
Ohio	406	431	491	651	715	Owen	419	477	545	734	955

SCHEDULE B - FY 2012 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 17

KENTUCKY continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Owsley	408	428	491	614	638
Pike	407	408	491	589	606
Pulaski	356	395	502	619	656
Rockcastle	407	428	491	594	611
Russell	372	413	491	599	668
Taylor	354	484	538	693	911
Union	406	408	491	598	628
Wayne	321	392	491	636	655
Wolfe	408	428	491	614	638
Perry	408	429	491	587	720
Powell	318	402	491	587	605
Robertson	520	563	695	868	897
Rowan	398	441	491	616	636
Simpson	383	450	591	735	757
Todd	409	416	493	639	663
Washington	380	382	491	656	677
Whitley	359	378	498	595	613

LOUISIANA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Alexandria, LA MSA	509	551	656	853	878	Grant, Rapides
Baton Rouge, LA HMFA	599	651	752	959	1054	Ascension, East Baton Rouge, East Feliciana, Livingston, Pointe Coupee, St. Helena, West Baton Rouge, West Feliciana
Houma-Bayou Cane-Thibodaux, LA MSA	546	550	682	895	1021	Lafourche, Terrebonne
Iberville Parish, LA HMFA	453	455	547	741	763	Iberville
Lafayette, LA MSA	549	630	698	896	1136	Lafayette, St. Martin
Lake Charles, LA MSA	498	561	683	843	1186	Calcasieu, Cameron
Monroe, LA MSA	456	517	642	852	879	Ouachita, Union
New Orleans-Metairie-Kenner, LA MSA	732	811	948	1217	1258	Jefferson, Orleans, Plaquemines, St. Bernard, St. Charles, St. John the Baptist, St. Tammany
Shreveport-Bossier City, LA MSA	532	612	715	907	936	Bossier, Caddo, De Soto

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Acadia	409	409	497	628	721
Assumption	413	414	497	606	623
Beauregard	421	432	508	740	890
Caldwell	392	419	497	629	702
Claiborne	425	433	512	612	670
East Carroll	392	419	497	629	702
Franklin	392	419	497	629	702
Jackson	392	419	497	629	702
La Salle	377	406	497	630	761
Madison	392	419	497	629	702
Natchitoches	447	448	537	643	831
Richland	392	419	497	629	702
St. James	350	408	500	614	633
St. Mary	447	455	547	715	738
Tensas	392	419	497	629	702
Vernon	571	629	697	1012	1208
Webster	392	393	497	670	691
Winn	413	447	497	627	667
Allen	412	414	497	722	802
Avoyelles	322	438	497	676	808
Bienville	413	420	497	594	650
Catahoula	377	406	497	630	761
Concordia	377	406	497	644	761
Evangeline	411	413	497	637	655
Iberia	465	477	562	694	809
Jefferson Davis	447	449	539	682	701
Lincoln	492	508	591	769	794
Morehouse	438	440	547	656	710
Red River	413	420	497	594	650
Sabine	413	420	497	594	650
St. Landry	325	389	497	671	714
Tangipahoa	432	502	631	756	897
Vermilion	414	414	497	681	705
Washington	433	437	522	695	716
West Carroll	392	419	497	629	702

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MAINE

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Bangor, ME HMFA	521	608	776	986	1114	Penobscot County towns of Bangor city, Brewer city, Eddington town, Glenburn town, Hampden town, Hermon town, Holden town, Kenduskeag town, Milford town, Old Town city, Orono town, Orrington town, Penobscot Indian Island Reservation, Veazie town
Cumberland County, ME (part) HMFA	562	670	864	1032	1322	Cumberland County towns of Baldwin town, Bridgton town, Brunswick town, Harpswell town, Harrison town, Naples town, New Gloucester town, Pownal town, Sebago town
Lewiston-Auburn, ME MSA	475	595	727	921	1020	Androscoggin County towns of Auburn city, Durham town, Greene town, Leeds town, Lewiston city, Lisbon town, Livermore town, Livermore Falls town, Mechanic Falls town, Minot town, Poland town, Sabattus town, Turner town, Wales town
Penobscot County, ME (part) HMFA	485	486	584	730	895	Penobscot County towns of Alton town, Argyle UT, Bradford town, Bradley town, Burlington town, Carmel town, Carroll plantation, Charleston town, Chester town, Clifton town, Corinna town, Corinth town, Dexter town, Dixmont town, Drew plantation, East Central Penobscot UT, East Millinocket town, Edinburg town, Enfield town, Etna town, Exeter town, Garland town, Greenbush town, Howland town, Hudson town, Kingman UT, Lagrange town, Lakeville town, Lee town, Levant town, Lincoln town, Lowell town, Mattawamkeag town, Maxfield town, Medway town, Millinocket town, Mount Chase town, Newburgh town, Newport town, North Penobscot UT, Passadumkeag town, Patten town, Plymouth town, Prentiss UT, Seboeis plantation, Springfield town, Stacyville town, Stetson town, Twombly UT, Webster plantation, Whitney UT, Winn town, Woodville town
Portland, ME HMFA	640	760	985	1241	1330	Cumberland County towns of Cape Elizabeth town, Casco town, Cumberland town, Falmouth town, Freeport town, Frye Island town, Gorham town, Gray town, Long Island town, North Yarmouth town, Portland city, Raymond town, Scarborough town, South Portland city, Standish town, Westbrook city, Windham town, Yarmouth town York County towns of Buxton town, Hollis town, Limington town, Old Orchard Beach town
Sagadahoc County, ME HMFA	664	665	797	962	1380	Sagadahoc County towns of Arrowsic town, Bath city, Bowdoin town, Bowdoinham town, Georgetown town, Perkins UT, Phippsburg town, Richmond town, Topsham town, West Bath town, Woolwich town
York County, ME (part) HMFA	625	649	826	988	1079	York County towns of Acton town, Alfred town, Arundel town, Biddeford city, Cornish town, Dayton town, Kennebunk town, Kennebunkport town, Lebanon town, Limerick town, Lyman town, Newfield town, North Berwick town, Ogunquit town, Parsonsfield town, Saco city, Sanford town, Shapleigh town, Waterboro town, Wells town
York-Kittery-South Berwick, ME HMFA	832	837	1004	1462	1593	York County towns of Berwick town, Eliot town, Kittery town, South Berwick town, York town

SCHEDULE B - FY 2012 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 19

MAINE continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
Aroostook County, ME	395	487	584	762	840	Allagash town, Amity town, Ashland town, Bancroft town, Blaine town, Bridgewater town, Caribou city, Cary plantation, Castle Hill town, Caswell town, Central Aroostook UT, Chapman town, Connor UT, Crystal town, Cyr plantation, Dyer Brook town, Eagle Lake town, Easton town, Fort Fairfield town, Fort Kent town, Frenchville town, Garfield plantation, Glenwood plantation, Grand Isle town, Hamlin town, Hammond town, Haynesville town, Hersey town, Hodgdon town, Houlton town, Island Falls town, Limestone town, Linneus town, Littleton town, Ludlow town, Macwahoc plantation, Madawaska town, Mapleton town, Mars Hill town, Masardis town, Merrill town, Monticello town, Moro plantation, Nashville plantation, New Canada town, New Limerick town, New Sweden town, Northwest Aroostook UT, Oakfield town, Orient town, Oxbow plantation, Penobscot Indian Island Reservation, Perham town, Portage Lake town, Presque Isle city, Reed plantation, St. Agatha town, St. Francis town, St. John plantation, Sherman town, Smyrna town, South Aroostook UT, Square Lake UT, Stockholm town, Van Buren town, Wade town, Wallagrass town, Washburn town, Westfield town, Westmanland town, Weston town, Winterville plantation, Woodland town
Franklin County, ME	466	503	613	732	950	Avon town, Carrabassett Valley town, Carthage town, Chesterville town, Coplin plantation, Dallas plantation, East Central Franklin UT, Eustis town, Farmington town, Industry town, Jay town, Kingfield town, Madrid town, New Sharon town, New Vineyard town, North Franklin UT, Phillips town, Rangeley town, Rangeley plantation, Sandy River plantation, South Franklin UT, Strong town, Temple town, Weld town, West Central Franklin UT, Wilton town, Wyman UT
Hancock County, ME	548	631	735	1035	1065	Amherst town, Aurora town, Bar Harbor town, Blue Hill town, Brooklin town, Brooksville town, Bucksport town, Castine town, Central Hancock UT, Cranberry Isles town, Dedham town, Deer Isle town, Eastbrook town, East Hancock UT, Ellsworth city, Franklin town, Frenchboro town, Gouldsboro town, Great Pond town, Hancock town, Lamoine town, Mariaville town, Mount Desert town, Northwest Hancock UT, Orland town, Osborn town, Otis town, Penobscot town, Sedgwick town, Sorrento town, Southwest Harbor town, Stonington town, Sullivan town, Surry town, Swans Island town, Tremont town, Trenton town, Verona town, Waltham town, Winter Harbor town
Kennebec County, ME	455	545	679	927	990	Albion town, Augusta city, Belgrade town, Benton town, Chelsea town, China town, Clinton town, Farmingdale town, Fayette town, Gardiner city, Hallowell city, Litchfield town, Manchester town, Monmouth town, Mount Vernon town, Oakland town, Pittston town, Randolph town, Readfield town,

SCHEDULE B - FY 2012 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 20

MAINE continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
						Rome town, Sidney town, Unity UT, Vassalboro town, Vienna town, Waterville city, Wayne town, West Gardiner town, Windsor town, Winslow town, Winthrop town
Knox County, ME	514	679	775	1049	1211	Appleton town, Camden town, Criehaven UT, Cushing town, Friendship town, Hope town, Isle au Haut town, Matinicus Isle plantation, North Haven town, Owls Head town, Rockland city, Rockport town, St. George town, South Thomaston town, Thomaston town, Union town, Vinalhaven town, Warren town, Washington town
Lincoln County, ME	603	647	781	943	972	Alna town, Boothbay town, Boothbay Harbor town, Bremen town, Bristol town, Damariscotta town, Dresden town, Edgecomb town, Hibberts gore, Jefferson town, Monhegan plantation, Newcastle town, Nobleboro town, Somerville town, South Bristol town, Southport town, Waldoboro town, Westport town, Whitefield town, Wiscasset town
Oxford County, ME	434	576	664	884	1109	Andover town, Bethel town, Brownfield town, Buckfield town, Byron town, Canton town, Denmark town, Dixfield town, Fryeburg town, Gilead town, Greenwood town, Hanover town, Hartford town, Hebron town, Hiram town, Lincoln plantation, Lovell town, Magalloway plantation, Mexico town, Milton UT, Newry town, North Oxford UT, Norway town, Otisfield town, Oxford town, Paris town, Peru town, Porter town, Roxbury town, Rumford town, South Oxford UT, Stoneham town, Stow town, Sumner town, Sweden town, Upton town, Waterford town, West Paris town, Woodstock town
Piscataquis County, ME	447	509	630	799	856	Abbot town, Atkinson town, Beaver Cove town, Blanchard UT, Bowerbank town, Brownville town, Dover-Foxcroft town, Greenville town, Guilford town, Kingsbury plantation, Lake View plantation, Medford town, Milo town, Monson town, Northeast Piscataquis UT, Northwest Piscataquis UT, Parkman town, Sangerville town, Sebec town, Shirley town, Southeast Piscataquis UT, Wellington town, Willimantic town
Somerset County, ME	422	524	621	877	930	Anson town, Athens town, Bingham town, Brighton plantation, Cambridge town, Canaan town, Caratunk town, Central Somerset UT, Cornville town, Dennistown plantation, Detroit town, Embden town, Fairfield town, Harmony town, Hartland town, Highland plantation, Jackman town, Madison town, Mercer town, Moose River town, Moscow town, New Portland town, Norridgewock town, Northeast Somerset UT, Northwest Somerset UT, Palmyra town, Pittsfield town, Pleasant Ridge plantation, Ripley town, St. Albans town, Seboomook Lake UT, Skowhegan town, Smithfield town, Solon town, Starks town, The Forks plantation, West Forks plantation
Waldo County, ME	512	550	663	813	865	Belfast city, Belmont town, Brooks town, Burnham town, Frankfort town, Freedom town, Islesboro town, Jackson town, Knox town, Liberty town, Lincolnville town, Monroe town, Montville town, Morrill town, Northport town, Palermo town, Prospect town, Searsmont town, Searsport town,

MAINE continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
Washington County, ME	474	512	611	757	825	Stockton Springs town, Swanville town, Thorndike town, Troy town, Unity town, Waldo town, Winterport town Addison town, Alexander town, Baileyville town, Baring plantation, Beals town, Beddington town, Calais city, Centerville town, Charlotte town, Cherryfield town, Codyville plantation, Columbia town, Columbia Falls town, Cooper town, Crawford town, Cutler town, Danforth town, Deblois town, Dennysville town, East Central Washington UT, East Machias town, Eastport city, Grand Lake Stream plantation, Harrington town, Jonesboro town, Jonesport town, Lubec town, Machias town, Machiasport town, Marshfield town, Meddybemps town, Milbridge town, Northfield town, North Washington UT, Passamaquoddy Indian Township Reservation, Passamaquoddy Pleasant Point Reservation, Pembroke town, Perry town, Princeton town, Robbinston town, Roque Bluffs town, Steuben town, Talmadge town, Topsfield town, Vanceboro town, Waite town, Wesley town, Whiting town, Whitneyville town

MARYLAND

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
*Baltimore-Towson, MD HMFA	907	1025	1231	1581	1952	Anne Arundel, Baltimore, Carroll, Harford, Howard, Queen Anne's, Baltimore city
Columbia city, MD HMFA	1316	1368	1587	2157	2512	Columbia city
Cumberland, MD-WV MSA	411	498	584	788	919	Allegany
Hagerstown, MD HMFA	574	658	842	1215	1254	Washington
*Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA	788	899	1075	1315	1586	Cecil
Salisbury, MD HMFA	625	778	914	1132	1299	Wicomico
Somerset County, MD HMFA	584	621	732	906	1190	Somerset
*Washington-Arlington-Alexandria, DC-VA-MD HMFA	1166	1328	1506	1943	2542	Calvert, Charles, Frederick, Montgomery, Prince George's

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Caroline	713	737	862	1165	1197
Garrett	380	470	584	753	999
St. Mary's	793	823	1071	1407	1853
Worcester	751	781	905	1321	1406

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Dorchester	510	613	781	1054	1084
Kent	696	697	839	1029	1382
Talbot	747	749	901	1219	1288

MASSACHUSETTS

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Barnstable Town, MA MSA	798	934	1229	1466	1513	Barnstable County towns of Barnstable Town city, Bourne town, Brewster town, Chatham town, Dennis town, Eastham town, Falmouth town, Harwich town, Mashpee town, Orleans town, Provincetown town, Sandwich town, Truro town, Wellfleet town,

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MASSACHUSETTS continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
						Yarmouth town
Berkshire County, MA (part) HMFA.....	618	694	800	1095	1126	Berkshire County towns of Alford town, Becket town, Clarksburg town, Egremont town, Florida town, Great Barrington town, Hancock town, Monterey town, Mount Washington town, New Ashford town, New Marlborough town, North Adams city, Otis town, Peru town, Sandisfield town, Savoy town, Sheffield town, Tyringham town, Washington town, West Stockbridge town, Williamstown town, Windsor town
Boston-Cambridge-Quincy, MA-NH HMFA.....	1099	1166	1369	1637	1799	Essex County towns of Amesbury town, Beverly city, Danvers town, Essex town, Gloucester city, Hamilton town, Ipswich town, Lynn city, Lynnfield town, Manchester-by-the-Sea town, Marblehead town, Middleton town, Nahant town, Newbury town, Newburyport city, Peabody city, Rockport town, Rowley town, Salem city, Salisbury town, Saugus town, Swampscott town, Topsfield town, Wenham town Middlesex County towns of Acton town, Arlington town, Ashby town, Ashland town, Ayer town, Bedford town, Belmont town, Boxborough town, Burlington town, Cambridge city, Carlisle town, Concord town, Everett city, Framingham town, Holliston town, Hopkinton town, Hudson town, Lexington town, Lincoln town, Littleton town, Malden city, Marlborough city, Maynard town, Medford city, Melrose city, Natick town, Newton city, North Reading town, Reading town, Sherborn town, Shirley town, Somerville city, Stoneham town, Stow town, Sudbury town, Townsend town, Wakefield town, Waltham city, Watertown city, Wayland town, Weston town, Wilmington town, Winchester town, Woburn city Norfolk County towns of Bellingham town, Braintree town, Brookline town, Canton town, Cohasset town, Dedham town, Dover town, Foxborough town, Franklin city, Holbrook town, Medfield town, Medway town, Millis town, Milton town, Needham town, Norfolk town, Norwood town, Plainville town, Quincy city, Randolph town, Sharon town, Stoughton town, Walpole town, Wellesley town, Westwood town, Weymouth town, Wrentham town Plymouth County towns of Carver town, Duxbury town, Hanover town, Hingham town, Hull town, Kingston town, Marshfield town, Norwell town, Pembroke town, Plymouth town, Rockland town, Scituate town, Wareham town Suffolk County towns of Boston city, Chelsea city, Revere city, Winthrop town
Brockton, MA HMFA.....	876	912	1148	1373	1721	Norfolk County towns of Avon town Plymouth County towns of Abington town, Bridgewater town, Brockton city, East Bridgewater town, Halifax town, Hanson town, Lakeville town, Marion town, Mattapoisett town, Middleborough town, Plympton town, Rochester town, West Bridgewater town, Whitman town
Eastern Worcester County, MA HMFA.....	677	756	995	1189	1746	Worcester County towns of Berlin town, Blackstone town, Bolton town, Harvard town, Hopedale town, Lancaster town,

SCHEDULE B - FY 2012 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 23

MASSACHUSETTS continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
						Mendon town, Milford town, Millville town, Southborough town, Upton town
Easton-Raynham, MA HMFA	793	1051	1222	1462	2113	Bristol County towns of Easton town, Raynham town
Fitchburg-Leominster, MA HMFA	582	669	839	1027	1116	Worcester County towns of Ashburnham town, Fitchburg city, Gardner city, Leominster city, Lunenburg town, Templeton town, Westminster town, Winchendon town
Franklin County, MA (part) HMFA	585	683	846	1129	1363	Franklin County towns of Ashfield town, Bernardston town, Buckland town, Charlemont town, Colrain town, Conway town, Deerfield town, Erving town, Gill town, Greenfield town, Hawley town, Heath town, Leverett town, Leyden town, Monroe town, Montague town, New Salem town, Northfield town, Orange town, Rowe town, Shelburne town, Shutesbury town, Warwick town, Wendell town, Whately town
Lawrence, MA-NH HMFA	713	907	1097	1310	1350	Essex County towns of Andover town, Boxford town, Georgetown town, Groveland town, Haverhill city, Lawrence city, Merrimac town, Methuen city, North Andover town, West Newbury town
Lowell, MA HMFA	720	861	1107	1322	1450	Middlesex County towns of Billerica town, Chelmsford town, Dracut town, Dunstable town, Groton town, Lowell city, Pepperell town, Tewksbury town, Tyngsborough town, Westford town
New Bedford, MA HMFA	559	717	820	982	1325	Bristol County towns of Acushnet town, Dartmouth town, Fairhaven town, Freetown town, New Bedford city
Pittsfield, MA HMFA	576	673	835	1073	1106	Berkshire County towns of Adams town, Cheshire town, Dalton town, Hinsdale town, Lanesborough town, Lee town, Lenox town, Pittsfield city, Richmond town, Stockbridge town
Providence-Fall River, RI-MA HMFA	710	790	910	1087	1341	Bristol County towns of Attleboro city, Fall River city, North Attleborough town, Rehoboth town, Seekonk town, Somerset town, Swansea town, Westport town
Springfield, MA HMFA	566	673	855	1023	1188	Franklin County towns of Sunderland town Hampden County towns of Agawam city, Blandford town, Brimfield town, Chester town, Chicopee city, East Longmeadow town, Granville town, Hampden town, Holland town, Holyoke city, Longmeadow town, Ludlow town, Monson town, Montgomery town, Palmer town, Russell town, Southwick town, Springfield city, Tolland town, Wales town, Westfield city, West Springfield town, Wilbraham town Hampshire County towns of Amherst town, Belchertown town, Chesterfield town, Cummington town, Easthampton city, Goshen town, Granby town, Hadley town, Hatfield town, Huntington town, Middlefield town, Northampton city, Pelham town, Plainfield town, Southampton town, South Hadley town, Ware town, Westhampton town, Williamsburg town, Worthington town
Taunton-Mansfield-Norton, MA HMFA	659	831	1015	1245	1344	Bristol County towns of Berkley town, Dighton town, Mansfield town, Norton town, Taunton city
Western Worcester County, MA HMFA	463	636	713	851	1093	Worcester County towns of Athol town, Hardwick town, Hubbardston town, New Braintree town, Petersham town, Phillipston town, Royalston town, Warren town
Worcester, MA HMFA	640	736	897	1073	1137	Worcester County towns of Auburn town, Barre town,

SCHEDULE B - FY 2012 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 24

MASSACHUSETTS continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
						Boylston town, Brookfield town, Charlton town, Clinton town, Douglas town, Dudley town, East Brookfield town, Grafton town, Holden town, Leicester town, Millbury town, Northborough town, Northbridge town, North Brookfield town, Oakham town, Oxford town, Paxton town, Princeton town, Rutland town, Shrewsbury town, Southbridge town, Spencer town, Sterling town, Sturbridge town, Sutton town, Uxbridge town, Webster town, Westborough town, West Boylston town, West Brookfield town, Worcester city

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
Dukes County, MA	958	1215	1447	1729	1783	Aquinnah town, Chilmark town, Edgartown town, Gosnold town, Oak Bluffs town, Tisbury town, West Tisbury town
Nantucket County, MA	1171	1621	1799	2152	2216	Nantucket town

MICHIGAN

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Ann Arbor, MI MSA	641	718	874	1099	1132	Washtenaw
Barry County, MI HMFA	435	549	671	967	1064	Barry
Battle Creek, MI MSA	473	542	664	809	833	Calhoun
Bay City, MI MSA	456	510	620	828	852	Bay
Cass County, MI HMFA	465	532	588	779	905	Cass
Detroit-Warren-Livonia, MI HMFA	586	667	798	954	984	Lapeer, Macomb, Oakland, St. Clair, Wayne
Flint, MI MSA	510	538	646	800	826	Genesee
*Grand Rapids-Wyoming, MI HMFA	578	618	744	949	995	Kent
Holland-Grand Haven, MI MSA	581	591	709	981	1059	Ottawa
Ionia County, MI HMFA	441	512	624	747	832	Ionia
Jackson, MI MSA	511	570	680	845	870	Jackson
Kalamazoo-Portage, MI MSA	530	566	688	914	954	Kalamazoo, Van Buren
Lansing-East Lansing, MI MSA	551	598	740	938	1017	Clinton, Eaton, Ingham
Livingston County, MI HMFA	643	678	798	1151	1400	Livingston
Monroe, MI MSA	591	593	714	932	1027	Monroe
Muskegon-Norton Shores, MI MSA	461	481	625	826	850	Muskegon
Newaygo County, MI HMFA	491	519	592	801	824	Newaygo
Niles-Benton Harbor, MI MSA	460	515	628	768	985	Berrien
Saginaw-Saginaw Township North, MI MSA	450	515	650	779	800	Saginaw

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Alcona	412	477	584	787	833	Alger	386	489	584	720	811
Allegan	468	564	676	847	909	Alpena	461	524	584	807	892
Antrim	526	527	636	884	1116	Arenac	464	489	584	781	865
Baraga	386	489	584	720	811	Benzie	548	549	665	831	855
Branch	443	473	622	746	767	Charlevoix	550	595	660	949	979
Cheboygan	407	473	584	784	824	Chippewa	411	511	631	765	857

MICHIGAN continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Clare	441	457	601	810	834
Delta	405	482	584	769	815
Emmet	479	589	734	989	1047
Gogebic	403	482	584	714	849
Gratiot	487	488	584	778	870
Houghton	415	486	584	759	870
Iosco	480	509	588	855	887
Isabella	532	575	641	922	1007
Keweenaw	403	482	584	714	849
Leelanau	548	549	665	831	855
Luce	403	492	584	766	835
Manistee	450	466	611	731	820
Mason	404	475	622	814	894
Menominee	485	486	584	770	1027
Missaukee	414	498	587	771	848
Montmorency	443	514	643	847	896
Ogemaw	449	472	584	755	835
Osceola	485	486	584	799	1007
Otsego	432	505	664	796	837
Roscommon	485	487	584	759	934
Sanilac	489	527	587	826	849
Shiawassee	412	507	631	869	969
Wexford	406	536	625	827	911

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Crawford	403	468	584	770	816
Dickinson	384	466	590	712	969
Gladwin	464	489	584	781	865
Grand Traverse	632	634	794	1039	1072
Hillsdale	445	547	652	917	1002
Huron	485	488	584	774	940
Iron	403	482	584	714	849
Kalkaska	572	622	690	838	864
Lake	463	506	605	792	953
Lenawee	411	516	633	808	881
Mackinac	380	472	584	704	767
Marquette	386	501	596	750	815
Mecosta	412	491	594	789	1041
Midland	448	510	629	867	926
Montcalm	471	546	625	844	870
Oceana	423	490	584	707	753
Ontonagon	403	482	584	714	849
Oscoda	451	522	639	861	911
Presque Isle	412	477	584	787	833
St. Joseph	458	510	602	743	833
Schoolcraft	410	501	594	779	849
Tuscola	403	460	584	701	838

MINNESOTA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Duluth, MN-WI MSA	447	545	687	863	1099	Carlton, St. Louis
Fargo, ND-MN MSA	433	514	654	944	1091	Clay
Grand Forks, ND-MN MSA	432	542	665	843	1145	Polk
La Crosse, WI-MN MSA	424	496	653	867	1064	Houston
Mankato-North Mankato, MN MSA	487	567	659	919	1066	Blue Earth, Nicollet
Minneapolis-St. Paul-Bloomington, MN-WI MSA	632	745	904	1183	1330	Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey, Scott, Sherburne, Washington, Wright
Rochester, MN HMFA	515	549	722	936	978	Dodge, Olmsted
St. Cloud, MN MSA	517	569	682	964	1120	Benton, Stearns
Wabasha County, MN HMFA	409	456	584	731	1026	Wabasha

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Aitkin	378	444	583	728	787
Beltrami	398	470	598	822	1049
Brown	427	486	583	698	718
Chippewa	447	486	583	697	719
Cook	435	553	671	841	866

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Becker	378	448	583	730	758
Big Stone	378	460	583	745	771
Cass	378	484	583	735	757
Clearwater	408	460	583	736	1023
Cottonwood	427	466	583	743	778

SCHEDULE B - FY 2012 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 26

MINNESOTA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Crow Wing	411	481	634	813	951
Faribault	427	466	583	743	778
Freeborn	380	445	585	697	920
Grant	378	460	583	745	771
Itasca	426	526	655	793	930
Kanabec	472	553	727	907	981
Kittson	384	459	583	742	870
Lac qui Parle	447	486	583	697	719
Lake of the Woods	475	536	679	857	1191
Lincoln	447	486	583	697	719
McLeod	530	532	659	944	974
Marshall	384	459	583	742	870
Meeker	537	595	690	902	927
Morrison	379	451	583	697	1023
Murray	427	466	583	743	778
Norman	384	459	583	742	870
Pennington	381	448	583	736	804
Pipestone	427	466	583	743	778
Red Lake	384	459	583	742	870
Renville	454	473	583	762	784
Rock	427	466	583	743	778
Sibley	454	473	583	762	784
Stevens	379	476	583	703	949
Todd	420	472	583	704	935
Wadena	420	472	583	704	935
Watonwan	427	466	583	743	778
Winona	408	482	629	869	1103

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Douglas	398	474	596	864	945
Fillmore	388	468	583	761	954
Goodhue	465	546	717	913	987
Hubbard	428	484	613	774	1075
Jackson	427	466	583	743	778
Kandiyohi	458	470	583	785	810
Koochiching	378	484	583	735	757
Lake	429	545	661	828	853
Le Sueur	554	572	688	958	988
Lyon	422	474	583	727	748
Mahnomen	408	460	583	736	1023
Martin	483	484	583	847	872
Mille Lacs	476	490	645	799	888
Mower	399	467	596	740	763
Nobles	384	480	583	774	798
Otter Tail	380	452	583	711	732
Pine	430	466	602	786	811
Pope	408	496	629	804	832
Redwood	447	486	583	697	719
Rice	561	585	770	920	1070
Roseau	378	449	583	727	851
Steele	443	538	679	854	1114
Swift	378	460	583	745	771
Traverse	378	460	583	745	771
Waseca	378	444	583	697	729
Wilkin	378	460	583	745	771
Yellow Medicine	447	486	583	697	719

MISSISSIPPI

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Gulfport-Biloxi, MS MSA	608	645	753	981	1008	Hancock, Harrison, Stone
Hattiesburg, MS MSA	475	541	644	938	968	Forrest, Lamar, Perry
Jackson, MS HMFA	558	630	731	879	906	Copiah, Hinds, Madison, Rankin
Marshall County, MS HMFA	341	427	527	769	793	Marshall
Memphis, TN-MS-AR HMFA	594	645	717	955	985	DeSoto
Pascagoula, MS MSA	486	556	668	920	987	George, Jackson
Simpson County, MS HMFA	469	496	567	679	981	Simpson
Tate County, MS HMFA	529	613	682	955	1198	Tate
Tunica County, MS HMFA	455	547	701	842	1033	Tunica

SCHEDULE B - FY 2012 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 27

MISSISSIPPI continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	343	475	527	632	905
Amite	421	473	527	637	724
Benton	425	475	527	632	649
Calhoun	432	445	527	706	884
Chickasaw	366	450	527	631	663
Claiborne	438	439	527	661	775
Clay	437	438	527	768	792
Covington	438	439	527	661	775
Greene	409	438	539	704	741
Holmes	409	473	527	630	660
Issaquena	409	473	527	630	660
Jasper	414	447	527	633	674
Jefferson Davis	438	439	527	661	775
Kemper	413	458	527	690	714
Lauderdale	426	478	560	769	794
Leake	446	482	568	683	726
Leflore	342	401	527	700	823
Lowndes	453	464	544	790	815
Monroe	437	466	527	659	705
Neshoba	356	480	550	655	962
Noxubee	437	453	527	722	770
Panola	354	491	547	655	755
Pike	470	510	567	746	769
Prentiss	343	399	527	632	651
Scott	449	477	540	646	697
Smith	414	447	527	633	674
Tallahatchie	356	399	527	699	732
Tishomingo	342	445	527	662	684
Walthall	511	575	640	774	879
Washington	346	451	532	691	844
Webster	432	445	527	706	884
Winston	366	450	527	631	663
Yazoo	475	504	574	685	708

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Alcorn	438	472	527	732	926
Attala	432	445	527	706	884
Bolivar	461	521	599	718	1053
Carroll	500	561	741	983	1029
Choctaw	432	445	527	706	884
Clarke	413	458	527	690	714
Coahoma	386	399	527	630	925
Franklin	421	473	527	637	724
Grenada	411	451	527	742	883
Humphreys	356	399	527	699	732
Itawamba	341	465	527	696	822
Jefferson	438	439	527	661	775
Jones	383	444	566	745	770
Lafayette	434	513	633	758	780
Lawrence	438	439	527	661	775
Lee	453	473	545	744	839
Lincoln	384	474	527	723	925
Marion	417	473	530	696	792
Montgomery	432	445	527	706	884
Newton	413	458	527	690	714
Oktibbeha	397	483	588	766	789
Pearl River	496	497	595	726	1024
Pontotoc	437	438	527	717	737
Quitman	418	447	527	631	792
Sharkey	409	473	527	630	660
Sunflower	383	471	527	751	775
Tippah	437	475	527	686	854
Union	342	475	527	631	764
Warren	492	540	603	721	742
Wayne	399	428	527	688	725
Wilkinson	421	473	527	637	724
Yalobusha	437	450	533	714	894

MISSOURI

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bates County, MO HMFA	412	485	633	889	918	Bates
Calloway County, MO HMFA	453	458	579	791	815	Callaway
Cape Girardeau-Jackson, MO-IL MSA	400	457	596	771	947	Bollinger, Cape Girardeau
Columbia, MO MSA	431	516	641	933	1041	Boone, Howard
Dallas County, MO HMFA	361	469	555	758	782	Dallas
Jefferson City, MO HMFA	395	434	564	799	888	Cole, Osage

SCHEDULE B - FY 2012 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 28

MISSOURI continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Joplin, MO MSA	389	467	595	757	779	Jasper, Newton
Kansas City, MO-KS HMFA	547	657	754	1020	1073	Caldwell, Cass, Clay, Clinton, Jackson, Lafayette, Platte, Ray
McDonald County, MO HMFA	442	443	555	790	815	McDonald
Moniteau County, MO HMFA	374	437	577	698	930	Moniteau
Polk County, MO HMFA	361	422	555	809	927	Polk
Springfield, MO HMFA	405	478	611	871	995	Christian, Greene, Webster
St. Joseph, MO-KS MSA	395	487	606	763	905	Andrew, Buchanan, DeKalb
St. Louis, MO-IL HMFA	588	638	792	1020	1068	Sullivan city part of Crawford, Franklin, Jefferson, Lincoln, St. Charles, St. Louis, Warren, St. Louis city
Washington County, MO HMFA	425	495	555	730	815	Washington

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adair	368	428	564	741	818	Atchison	445	446	555	691	855
Audrain	467	469	564	712	904	Barry	362	456	555	724	748
Barton	361	455	555	672	738	Benton	361	430	555	770	798
Butler	459	460	555	769	823	Camden	465	472	580	845	869
Carroll	452	453	572	717	801	Carter	460	461	555	771	829
Cedar	361	430	555	770	798	Chariton	438	440	555	696	777
Clark	408	421	555	687	809	Cooper	422	444	577	770	896
Crawford	361	458	555	739	973	Dade	401	422	555	710	767
Daviess	445	446	555	691	855	Dent	416	452	555	732	931
Douglas	410	460	555	734	851	Dunklin	430	468	555	709	792
Gasconade	394	428	555	695	884	Gentry	445	446	555	691	855
Grundy	445	446	555	691	855	Harrison	467	468	582	725	897
Henry	385	447	590	708	729	Hickory	361	430	555	770	798
Holt	445	446	555	691	855	Howell	382	438	555	688	974
Iron	376	422	555	709	821	Johnson	481	513	622	832	935
Knox	408	421	555	687	809	Laclede	455	456	555	726	952
Lawrence	460	461	555	755	871	Lewis	414	427	563	696	821
Linn	408	421	555	687	809	Livingston	449	450	571	763	999
Macon	448	450	555	664	714	Madison	400	450	591	755	874
Maries	416	452	555	732	931	Marion	361	421	555	722	743
Mercer	452	453	563	701	868	Miller	478	479	572	764	796
Mississippi	389	423	555	733	845	Monroe	376	439	579	744	765
Montgomery	367	428	565	726	747	Morgan	461	462	555	754	877
New Madrid	395	454	555	740	762	Nodaway	445	446	555	664	775
Oregon	410	460	555	734	851	Ozark	410	460	555	734	851
Pemiscot	362	424	555	698	718	Perry	430	468	614	736	1080
Pettis	476	477	618	771	923	Phelps	474	510	640	885	1090
Pike	386	452	595	779	851	Pulaski	490	529	588	854	935
Putnam	464	478	631	781	920	Ralls	360	421	555	713	734
Randolph	388	456	597	757	778	Reynolds	460	461	555	771	829

SCHEDULE B - FY 2012 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 29

MISSOURI continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Ripley	460	461	555	771	829
Ste. Genevieve	386	434	570	728	843
Saline	360	422	555	720	845
Scotland	408	421	555	687	809
Shannon	410	460	555	734	851
Stoddard	436	453	563	767	830
Sullivan	408	421	555	687	809
Texas	438	462	555	764	880
Wayne	460	461	555	771	829
Wright	407	426	555	700	721

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
St. Clair	361	430	555	770	798
St. Francois	490	493	593	828	862
Schuyler	408	421	555	687	809
Scott	456	457	572	713	843
Shelby	408	421	555	687	809
Stone	458	533	704	923	1016
Taney	532	533	673	803	1022
Vernon	386	458	555	777	801
Worth	445	446	555	691	855

MONTANA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Billings, MT MSA	464	551	713	962	1158	Carbon, Yellowstone
Great Falls, MT MSA	401	483	619	837	1008	Cascade
Missoula, MT MSA	517	595	751	973	1165	Missoula

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Beaverhead	383	446	586	758	919
Blaine	379	453	574	765	874
Carter	466	483	574	774	823
Custer	374	519	574	836	864
Dawson	466	483	574	774	823
Fallon	466	483	574	774	823
Flathead	417	513	644	911	1117
Garfield	466	483	574	774	823
Golden Valley	466	483	574	774	823
Hill	373	460	574	828	879
Judith Basin	379	453	574	765	874
Lewis and Clark	451	516	644	935	965
Lincoln	374	459	574	794	890
Madison	409	477	627	811	983
Mineral	404	457	574	736	881
Park	424	495	650	777	1028
Phillips	466	483	574	774	823
Powder River	466	483	574	774	823
Prairie	479	497	590	795	846
Richland	466	483	574	774	823
Rosebud	426	443	574	708	755
Sheridan	466	483	574	774	823
Stillwater	466	483	574	774	823
Teton	379	453	574	765	874

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Big Horn	428	445	574	711	758
Broadwater	394	452	574	776	833
Chouteau	379	453	574	765	874
Daniels	466	483	574	774	823
Deer Lodge	394	452	574	776	833
Fergus	418	436	574	695	740
Gallatin	466	555	722	964	1265
Glacier	379	453	574	765	874
Granite	427	490	622	841	903
Jefferson	394	452	574	776	833
Lake	471	474	574	774	833
Liberty	379	453	574	765	874
McCone	466	483	574	774	823
Meagher	375	437	574	743	900
Musselshell	466	483	574	774	823
Petroleum	479	497	590	795	846
Pondera	379	453	574	765	874
Powell	394	452	574	776	833
Ravalli	478	521	669	876	1037
Roosevelt	466	483	574	774	823
Sanders	374	459	574	794	890
Silver Bow	415	446	574	750	821
Sweet Grass	469	486	577	778	827
Toole	379	453	574	765	874

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MONTANA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Treasure	466	483	574	774	823	Valley	466	483	574	774	823
Wheatland	479	497	590	795	846	Wibaux	466	483	574	774	823

NEBRASKA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Lincoln, NE HMFA	466	523	665	933	1131	Lancaster
Omaha-Council Bluffs, NE-IA HMFA	529	602	751	1003	1031	Cass, Douglas, Sarpy, Washington
Saunders County, NE HMFA	584	586	704	1026	1057	Saunders
Seward County, NE HMFA	378	467	584	776	985	Seward
Sioux City, IA-NE-SD MSA	407	478	627	789	813	Dakota, Dixon

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	411	480	632	799	823	Antelope	485	486	584	732	756
Arthur	463	535	613	809	834	Banner	437	443	584	758	909
Blaine	509	511	613	758	883	Boone	485	486	584	732	756
Box Butte	437	443	584	764	909	Boyd	437	443	584	758	909
Brown	437	443	584	758	909	Buffalo	439	514	676	919	1069
Burt	538	539	647	811	837	Butler	485	486	584	741	776
Cedar	485	486	584	732	756	Chase	441	509	584	771	795
Cherry	482	490	645	837	1004	Cheyenne	437	443	584	758	909
Clay	379	444	584	747	867	Colfax	554	556	667	836	863
Cuming	485	486	584	732	756	Custer	485	486	584	722	842
Dawes	378	445	584	700	870	Dawson	521	565	629	765	789
Deuel	507	515	678	880	1055	Dodge	443	519	682	814	994
Dundy	441	509	584	771	795	Fillmore	492	493	593	752	788
Franklin	379	444	584	747	867	Frontier	477	551	632	834	860
Furnas	441	509	584	771	795	Gage	540	541	650	793	817
Garden	437	443	584	758	909	Garfield	485	486	584	722	842
Gosper	478	552	633	836	862	Grant	461	532	610	805	830
Greeley	485	486	584	722	842	Hall	526	527	661	826	1069
Hamilton	542	543	652	806	940	Harlan	379	444	584	747	867
Hayes	463	535	613	809	834	Hitchcock	441	509	584	771	795
Holt	437	443	584	758	909	Hooker	463	535	613	809	834
Howard	510	511	614	759	885	Jefferson	485	486	584	741	776
Johnson	544	546	656	832	872	Kearney	387	454	597	764	887
Keith	572	660	757	999	1030	Keya Paha	437	443	584	758	909
Kimball	437	443	584	758	909	Knox	485	486	584	732	756
Lincoln	482	542	690	846	1065	Logan	549	634	727	960	989
Loup	509	511	613	758	883	McPherson	463	535	613	809	834
Madison	446	470	618	842	869	Merrick	485	486	584	722	842
Morrill	454	461	607	788	944	Nance	485	486	584	732	756
Nemaha	485	486	584	741	776	Nuckolls	379	444	584	747	867

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NEBRASKA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Otoe	520	522	626	776	813
Perkins	441	509	584	771	795
Pierce	485	486	584	732	756
Polk	485	486	584	741	776
Richardson	485	486	584	741	776
Saline	566	597	682	833	861
Sheridan	437	443	584	758	909
Sioux	437	443	584	758	909
Thayer	511	513	616	781	819
Thurston	489	491	589	738	762
Wayne	485	486	584	732	756
Wheeler	509	511	613	758	883

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Pawnee	485	486	584	741	776
Phelps	379	444	584	747	867
Platte	514	515	618	902	928
Red Willow	404	526	584	850	876
Rock	437	443	584	758	909
Scotts Bluff	511	513	616	785	1035
Sherman	485	486	584	722	842
Stanton	485	486	584	732	756
Thomas	445	514	590	779	803
Valley	485	486	584	722	842
Webster	379	444	584	747	867
York	386	456	597	724	870

NEVADA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Carson City, NV MSA	592	713	859	1252	1509	Carson
*Las Vegas-Paradise, NV MSA	739	870	1024	1423	1713	Clark
Reno-Sparks, NV MSA	630	752	930	1351	1633	Storey, Washoe

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Churchill	636	638	801	1013	1190
Elko	510	555	720	897	1155
Eureka	513	592	755	1003	1109
Lander	405	468	597	793	877
Lyon	499	561	738	1075	1108
Nye	507	705	783	1141	1175
White Pine	466	539	687	912	1009

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Douglas	616	758	921	1282	1421
Esmeralda	397	458	584	776	858
Humboldt	416	488	640	766	788
Lincoln	558	644	822	1092	1208
Mineral	513	592	755	1003	1109
Pershing	418	483	616	818	905

NEW HAMPSHIRE

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Boston-Cambridge-Quincy, MA-NH HMFA	1099	1166	1369	1637	1799	Rockingham County towns of Seabrook town, South Hampton town
Hillsborough County, NH (part) HMFA	641	652	855	1246	1501	Hillsborough County towns of Antrim town, Bennington town, Deering town, Francestown town, Greenfield town, Hancock town, Hillsborough town, Lyndeborough town, New Boston town, Peterborough town, Sharon town, Temple town, Windsor town
Lawrence, MA-NH HMFA	713	907	1097	1310	1350	Rockingham County towns of Atkinson town, Chester town, Danville town, Derry town, Fremont town, Hampstead town, Kingston town, Newton town, Plaistow town, Raymond town, Salem town, Sandown town, Windham town
Manchester, NH HMFA	686	842	1007	1203	1240	Hillsborough County towns of Bedford town, Goffstown town, Manchester city, Weare town

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NEW HAMPSHIRE continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Nashua, NH HMFA	750	882	1103	1475	1578	Hillsborough County towns of Amherst town, Brookline town, Greenville town, Hollis town, Hudson town, Litchfield town, Mason town, Merrimack town, Milford town, Mont Vernon town, Nashua city, New Ipswich town, Pelham town, Wilton town
Portsmouth-Rochester, NH HMFA	727	858	1070	1412	1593	Rockingham County towns of Brentwood town, East Kingston town, Epping town, Exeter town, Greenland town, Hampton town, Hampton Falls town, Kensington town, New Castle town, Newfields town, Newington town, Newmarket town, North Hampton town, Portsmouth city, Rye town, Stratham town Strafford County towns of Barrington town, Dover city, Durham town, Farmington town, Lee town, Madbury town, Middleton town, Milton town, New Durham town, Rochester city, Rollinsford town, Somersworth city, Strafford town
Western Rockingham County, NH HMFA	948	949	1142	1510	1557	Rockingham County towns of Auburn town, Candia town, Deerfield town, Londonderry town, Northwood town, Nottingham town

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
Belknap County, NH	572	704	879	1160	1492	Alton town, Barnstead town, Belmont town, Center Harbor town, Gilford town, Gilmanton town, Laconia city, Meredith town, New Hampton town, Sanbornton town, Tilton town
Carroll County, NH	636	672	886	1205	1480	Albany town, Bartlett town, Brookfield town, Chatham town, Conway town, Eaton town, Effingham town, Freedom town, Hale's location, Hart's Location town, Jackson town, Madison town, Moultonborough town, Ossipee town, Sandwich town, Tamworth town, Tuftonboro town, Wakefield town, Wolfeboro town
Cheshire County, NH	711	760	952	1148	1398	Alstead town, Chesterfield town, Dublin town, Fitzwilliam town, Gilsum town, Harrisville town, Hinsdale town, Jaffrey town, Keene city, Marlborough town, Marlow town, Nelson town, Richmond town, Rindge town, Roxbury town, Stoddard town, Sullivan town, Surry town, Swanzey town, Troy town, Walpole town, Westmoreland town, Winchester town
Coos County, NH	393	514	604	847	951	Atkinson and Gilmanton Academy grant, Beans grant, Beans purchase, Berlin city, Cambridge township, Carroll town, Chandlers purchase, Clarksville town, Colebrook town, Columbia town, Crawfords purchase, Cutts grant, Dalton town, Dixs grant, Dixville township, Dummer town, Errol town, Ervings location, Gorham town, Greens grant, Hadleys purchase, Jefferson town, Kilkenny township, Lancaster town, Low and Burbanks grant, Martins location, Milan town, Millsfield township, Northumberland town, Odell township, Pinkhams grant, Pittsburg town, Randolph town, Sargents purchase, Second College grant, Shelburne town, Stark town, Stewartstown town, Stratford town, Success township,

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NEW HAMPSHIRE continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
						Thompson and Meserves purchase, Wentworth location, Whitefield town
Grafton County, NH	653	719	911	1225	1292	Alexandria town, Ashland town, Bath town, Benton town, Bethlehem town, Bridgewater town, Bristol town, Campton town, Canaan town, Dorchester town, Easton town, Ellsworth town, Enfield town, Franconia town, Grafton town, Groton town, Hanover town, Haverhill town, Hebron town, Holderness town, Landaff town, Lebanon city, Lincoln town, Lisbon town, Littleton town, Livermore town, Lyman town, Lyme town, Monroe town, Orange town, Orford town, Piermont town, Plymouth town, Rumney town, Sugar Hill town, Thornton town, Warren town, Waterville Valley town, Wentworth town, Woodstock town
Merrimack County, NH	645	763	996	1230	1577	Allenstown town, Andover town, Boscawen town, Bow town, Bradford town, Canterbury town, Chichester town, Concord city, Danbury town, Dunbarton town, Epsom town, Franklin city, Henniker town, Hill town, Hooksett town, Hopkinton town, Loudon town, Newbury town, New London town, Northfield town, Pembroke town, Pittsfield town, Salisbury town, Sutton town, Warner town, Webster town, Wilmot town
Sullivan County, NH	536	649	827	1121	1211	Acworth town, Charlestown town, Claremont city, Cornish town, Croydon town, Goshen town, Grantham town, Langdon town, Lempster town, Newport town, Plainfield town, Springfield town, Sunapee town, Unity town, Washington town

NEW JERSEY

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Atlantic City-Hammonton, NJ MSA	852	939	1120	1420	1593	Atlantic
*Bergen-Passaic, NJ HMFA	1212	1326	1515	1910	2313	Bergen, Passaic
Jersey City, NJ HMFA	1027	1085	1266	1534	1652	Hudson
Middlesex-Somerset-Hunterdon, NJ HMFA	1086	1125	1324	1662	1960	Hunterdon, Middlesex, Somerset
Monmouth-Ocean, NJ HMFA	1005	1161	1417	1846	2004	Monmouth, Ocean
Newark, NJ HMFA	923	1128	1289	1543	1707	Essex, Morris, Sussex, Union
Ocean City, NJ MSA	841	858	1079	1413	1456	Cape May
*Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA	788	899	1075	1315	1586	Burlington, Camden, Gloucester, Salem
Trenton-Ewing, NJ MSA	916	1054	1267	1514	1699	Mercer
Vineland-Millville-Bridgeton, NJ MSA	804	807	1017	1236	1302	Cumberland
Warren County, NJ HMFA	849	950	1111	1330	1369	Warren

NEW MEXICO

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Albuquerque, NM MSA	472	555	701	1021	1224	Bernalillo, Sandoval, Torrance, Valencia
Farmington, NM MSA	513	542	653	863	974	San Juan
Las Cruces, NM MSA	471	508	566	781	867	Dona Ana

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NEW MEXICO continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Santa Fe, NM MSA	583	723	880	1152	1377	Santa Fe

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Catron	402	453	542	790	814	Chaves	423	424	542	709	731
Cibola	451	487	542	788	855	Colfax	473	505	568	717	746
Curry	451	467	542	734	954	De Baca	450	464	542	731	890
Eddy	379	483	568	762	926	Grant	411	477	542	764	785
Guadalupe	449	455	542	681	710	Harding	450	464	542	731	890
Hidalgo	402	453	542	790	814	Lea	472	514	570	750	789
Lincoln	420	529	644	811	1132	Los Alamos	617	719	944	1133	1167
Luna	450	488	542	691	830	McKinley	351	412	542	648	839
Mora	449	455	542	681	710	Otero	414	490	542	792	954
Quay	450	464	542	731	890	Rio Arriba	533	542	641	829	920
Roosevelt	449	461	542	751	929	San Miguel	422	456	561	746	866
Sierra	368	458	568	830	999	Socorro	457	458	549	658	932
Taos	647	703	779	932	961	Union	450	464	542	731	890

NEW YORK

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Albany-Schenectady-Troy, NY MSA	687	713	870	1041	1138	Albany, Rensselaer, Saratoga, Schenectady, Schoharie
Binghamton, NY MSA	590	593	709	925	1085	Broome, Tioga
Buffalo-Niagara Falls, NY MSA	597	599	719	889	982	Erie, Niagara
Elmira, NY MSA	639	641	769	988	1030	Chemung
Glens Falls, NY MSA	631	667	839	1059	1192	Warren, Washington
Ithaca, NY MSA	802	825	966	1169	1212	Tompkins
Kingston, NY MSA	845	917	1098	1391	1728	Ulster
Nassau-Suffolk, NY HMFA	1233	1425	1682	2232	2432	Nassau, Suffolk
New York, NY HMFA	1183	1280	1424	1752	1970	Bronx, Kings, New York, Putnam, Queens, Richmond, Rockland
Poughkeepsie-Newburgh-Middletown, NY MSA	826	971	1189	1458	1553	Dutchess, Orange
Rochester, NY MSA	591	654	799	960	1016	Livingston, Monroe, Ontario, Orleans, Wayne
Syracuse, NY MSA	621	623	750	960	1040	Madison, Onondaga, Oswego
Utica-Rome, NY MSA	598	599	721	884	1004	Herkimer, Oneida
Westchester County, NY Statutory Exception Area	1139	1359	1580	1905	2349	Westchester

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Allegany	577	579	694	865	1063	Cattaraugus	599	601	723	950	1090
Cayuga	596	597	716	953	1106	Chautauqua	595	598	717	925	1010
Chenango	579	584	699	881	1227	Clinton	655	657	788	1001	1301
Columbia	693	707	834	1007	1074	Cortland	618	620	757	962	1181
Delaware	578	580	696	860	1132	Essex	642	643	772	1027	1116
Franklin	604	605	723	928	1027	Fulton	463	565	714	855	907
Genesee	661	662	796	987	1117	Greene	597	644	785	1021	1112
Hamilton	608	610	732	912	1057	Jefferson	696	697	838	1080	1135

NEW YORK continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Lewis	565	568	681	852	951	Montgomery	623	668	750	949	1028
Otsego	699	716	841	1118	1162	St. Lawrence	595	597	718	909	993
Schuyler	558	560	672	896	925	Seneca	632	634	760	1000	1265
Steuben	593	595	715	917	1012	Sullivan	624	692	888	1063	1245
Wyoming	612	629	738	1075	1173	Yates	572	579	688	891	918

NORTH CAROLINA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Anson County, NC HMFA	486	522	584	821	867	Anson
Asheville, NC HMFA	528	617	704	943	1236	Buncombe, Henderson, Madison
Burlington, NC MSA	594	614	716	972	1002	Alamance
Charlotte-Gastonia-Rock Hill, NC-SC HMFA	657	713	791	997	1160	Cabarrus, Gaston, Mecklenburg, Union
Durham-Chapel Hill, NC HMFA	507	695	779	1018	1098	Chatham, Durham, Orange
Fayetteville, NC HMFA	570	617	689	978	1158	Cumberland
Goldsboro, NC MSA	449	533	624	781	1044	Wayne
Greene County, NC HMFA	485	486	584	825	852	Greene
Greensboro-High Point, NC HMFA	513	586	653	827	885	Guilford, Randolph
Greenville, NC HMFA	536	556	685	949	980	Pitt
Haywood County, NC HMFA	512	513	640	829	1073	Haywood
Hickory-Lenoir-Morganton, NC MSA	491	516	593	761	886	Alexander, Burke, Caldwell, Catawba
Hoke County, NC HMFA	485	527	584	799	975	Hoke
Jacksonville, NC MSA	580	621	698	980	1150	Onslow
Pender County, NC HMFA	508	510	613	806	829	Pender
Person County, NC HMFA	533	534	644	769	882	Person
Raleigh-Cary, NC MSA	681	763	849	1067	1105	Franklin, Johnston, Wake
Rockingham County, NC HMFA	466	493	584	725	748	Rockingham
Rocky Mount, NC MSA	401	484	616	765	788	Edgecombe, Nash
*Virginia Beach-Norfolk-Newport News, VA-NC MSA	882	919	1064	1454	1753	Currituck
Wilmington, NC HMFA	605	668	807	1131	1163	Brunswick, New Hanover
Winston-Salem, NC MSA	468	533	618	842	990	Davie, Forsyth, Stokes, Yadkin

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Alleghany	434	510	584	766	790	Ashe	484	485	584	772	913
Avery	464	574	678	811	957	Beaufort	397	518	610	734	755
Bertie	400	507	584	699	721	Bladen	384	466	591	861	930
Camden	545	711	839	1133	1161	Carteret	566	567	681	992	1194
Caswell	477	478	584	714	745	Cherokee	380	492	584	849	1023
Chowan	439	572	675	911	934	Clay	486	489	586	769	895
Cleveland	505	507	609	802	901	Columbus	409	526	584	700	720
Craven	558	637	730	984	1229	Dare	797	798	979	1294	1331
Davidson	513	515	620	808	923	Duplin	485	524	584	739	762
Gates	387	504	595	803	823	Graham	485	487	584	766	892
Granville	598	599	720	899	1068	Halifax	390	541	599	762	874
Harnett	564	613	680	918	1194	Hertford	387	533	594	779	801

NORTH CAROLINA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Hyde	499	650	767	1035	1062	Iredell	594	599	717	950	1240
Jackson	499	516	614	806	832	Jones	451	488	584	808	1028
Lee	409	559	631	775	1107	Lenoir	474	476	626	748	1074
Lincoln	395	547	608	734	755	McDowell	379	452	584	721	742
Macon	468	508	655	796	1149	Martin	485	515	584	756	778
Mitchell	400	494	584	698	825	Montgomery	484	526	584	728	1026
Moore	516	517	651	936	1142	Northampton	381	515	584	743	764
Pamlico	429	545	641	807	830	Pasquotank	447	577	686	996	1026
Perquimans	380	495	584	788	808	Polk	483	484	594	743	766
Richmond	420	526	584	734	757	Robeson	416	503	584	701	780
Rowan	552	597	663	946	1010	Rutherford	475	478	584	699	720
Sampson	485	495	584	811	1028	Scotland	494	495	628	763	951
Stanly	469	506	619	843	917	Surry	436	525	584	780	802
Swain	541	544	652	855	996	Transylvania	431	600	664	838	884
Tyrrell	380	495	584	788	808	Vance	541	543	653	782	806
Warren	486	487	584	714	734	Washington	380	512	584	701	719
Watauga	508	621	781	950	1226	Wilkes	427	489	584	749	780
Wilson	607	608	738	883	937	Yancey	484	485	584	697	718

NORTH DAKOTA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bismarck, ND MSA	464	486	604	875	899	Burleigh, Morton
Fargo, ND-MN MSA	433	514	654	944	1091	Cass
Grand Forks, ND-MN MSA	432	542	665	843	1145	Grand Forks

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	409	476	584	774	808	Barnes	549	552	662	926	1163
Benson	478	480	584	805	1016	Billings	433	504	618	819	855
Bottineau	452	496	617	869	946	Bowman	409	476	584	774	808
Burke	433	476	592	834	908	Cavalier	478	480	584	805	1016
Dickey	511	514	625	862	1087	Divide	409	476	584	774	808
Dunn	409	476	584	774	808	Eddy	478	480	584	805	1016
Emmons	427	470	584	822	896	Foster	478	480	584	805	1016
Golden Valley	409	476	584	774	808	Grant	430	500	613	812	848
Griggs	478	480	584	805	1016	Hettinger	409	476	584	774	808
Kidder	427	470	584	822	896	LaMoure	532	534	650	896	1130
Logan	427	470	584	822	896	McHenry	489	537	668	941	1025
McIntosh	451	495	616	867	945	McKenzie	409	476	584	774	808
McLean	427	470	584	822	896	Mercer	409	476	584	774	808
Mountrail	489	537	668	941	1025	Nelson	394	489	584	790	877
Oliver	409	476	584	774	808	Pembina	394	489	584	790	877

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NORTH DAKOTA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Pierce	427	470	584	822	896	Ramsey	443	455	599	746	944
Ransom	554	556	677	934	1177	Renville	427	470	584	822	896
Richland	384	461	584	759	900	Rolette	427	470	584	822	896
Sargent	515	517	629	867	1094	Sheridan	427	470	584	822	896
Sioux	417	485	595	788	823	Slope	433	504	618	819	855
Stark	484	588	681	991	1197	Steele	394	489	584	790	877
Stutsman	542	544	652	903	1146	Towner	478	480	584	805	1016
Traill	416	517	617	835	927	Walsh	406	504	601	813	903
Ward	449	558	686	947	1124	Wells	478	480	584	805	1016
Williams	394	480	605	797	845						

OHIO

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Akron, OH MSA	496	580	742	944	973	Portage, Summit
Brown County, OH HMFA	453	475	626	808	973	Brown
Canton-Massillon, OH MSA	459	509	643	812	860	Carroll, Stark
Cincinnati-Middleton, OH-KY-IN HMFA	471	558	723	968	1005	Butler, Clermont, Hamilton, Warren
Cleveland-Elyria-Mentor, OH MSA	520	603	727	932	990	Cuyahoga, Geauga, Lake, Lorain, Medina
Columbus, OH HMFA	537	625	790	994	1080	Delaware, Fairfield, Franklin, Licking, Madison, Morrow, Pickaway
Dayton, OH HMFA	487	556	685	922	1100	Greene, Miami, Montgomery
Huntington-Ashland, WV-KY-OH MSA	422	499	599	739	763	Lawrence
Lima, OH MSA	501	507	628	774	795	Allen
Mansfield, OH MSA	387	473	596	774	805	Richland
Parkersburg-Marietta-Vienna, WV-OH MSA	442	473	606	805	868	Washington
Preble County, OH HMFA	510	526	638	826	856	Preble
Sandusky, OH MSA	449	541	691	902	949	Erie
Springfield, OH MSA	487	542	652	843	1083	Clark
Steubenville-Weirton, OH-WV MSA	387	474	584	729	792	Jefferson
Toledo, OH MSA	483	537	665	858	935	Fulton, Lucas, Ottawa, Wood
Union County, OH HMFA	646	647	777	930	959	Union
Wheeling, WV-OH MSA	380	457	584	734	857	Belmont
Youngstown-Warren-Boardman, OH HMFA	444	499	603	759	819	Mahoning, Trumbull

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	475	493	584	774	817	Ashland	384	458	593	765	787
Ashtabula	405	476	607	771	899	Athens	533	579	642	826	859
Auglaize	438	471	617	802	824	Champaign	379	463	584	720	774
Clinton	457	565	626	912	1071	Columbiana	458	484	584	722	878
Coshocton	406	490	584	755	861	Crawford	486	493	588	757	829
Darke	379	485	584	777	800	Defiance	420	481	584	736	897
Fayette	481	553	675	813	1084	Gallia	397	527	584	743	975
Guernsey	411	507	584	771	793	Hancock	417	487	632	860	913
Hardin	487	529	587	736	964	Harrison	390	465	584	748	769
Henry	415	508	615	792	815	Highland	521	522	628	846	874

SCHEDULE B - FY 2012 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 38

OHIO continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Hocking	378	527	584	833	857	Holmes	485	486	584	770	817
Huron	405	490	599	831	915	Jackson	485	488	584	700	722
Knox	519	523	628	804	921	Logan	518	523	622	782	808
Marion	407	513	627	795	967	Meigs	485	526	584	800	824
Mercer	394	511	603	812	837	Monroe	485	486	584	717	802
Morgan	485	486	584	717	802	Muskingum	473	485	584	748	943
Noble	485	486	584	717	802	Paulding	429	470	584	762	785
Perry	485	486	584	731	752	Pike	380	488	584	700	728
Putnam	401	443	584	725	756	Ross	455	516	602	744	854
Sandusky	489	500	588	731	799	Scioto	467	489	584	767	917
Seneca	431	452	584	734	756	Shelby	472	483	628	784	868
Tuscarawas	380	444	586	742	764	Van Wert	380	454	584	711	734
Vinton	426	526	584	799	995	Wayne	404	502	618	739	808
Williams	472	479	594	786	869	Wyandot	485	486	584	801	825

OKLAHOMA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Fort Smith, AR-OK HMFA	393	446	556	741	807	Sequoyah
Grady County, OK HMFA	392	437	544	736	845	Grady
Lawton, OK MSA	471	508	639	934	1123	Comanche
Le Flore County, OK HMFA	354	413	524	648	794	Le Flore
Lincoln County, OK HMFA	433	435	524	690	712	Lincoln
Oklahoma City, OK HMFA	526	574	697	941	1009	Canadian, Cleveland, Logan, McClain, Oklahoma
Okmulgee County, OK HMFA	398	448	590	801	850	Okmulgee
Pawnee County, OK HMFA	510	525	611	792	815	Pawnee
Tulsa, OK HMFA	551	599	732	967	998	Creek, Osage, Rogers, Tulsa, Wagoner

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adair	437	439	524	625	644	Alfalfa	438	453	526	714	736
Atoka	379	425	524	681	795	Beaver	436	451	524	712	734
Beckham	511	553	614	803	1077	Blaine	436	451	524	712	734
Bryan	425	427	524	678	807	Caddo	361	399	524	627	784
Carter	457	487	551	685	734	Cherokee	421	453	524	658	757
Choctaw	433	470	524	743	765	Cimarron	436	451	524	712	734
Coal	379	425	524	681	795	Cotton	384	416	524	758	888
Craig	353	412	542	649	953	Custer	425	426	550	787	810
Delaware	376	423	524	704	726	Dewey	487	504	585	794	819
Ellis	436	451	524	712	734	Garfield	450	473	569	788	811
Garvin	339	396	524	689	839	Grant	436	451	524	712	734
Greer	406	421	524	704	738	Harmon	406	421	524	704	738
Harper	462	478	555	754	777	Haskell	341	409	524	660	723
Hughes	386	439	524	668	686	Jackson	362	470	528	741	763
Jefferson	384	416	524	758	888	Johnston	379	425	524	681	795

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OKLAHOMA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Kay	385	477	592	818	845	Kingfisher	486	503	584	821	844
Kiowa	406	421	524	704	738	Latimer	341	409	524	660	723
Love	379	425	524	681	795	McCurtain	340	397	524	680	702
McIntosh	387	438	524	656	744	Major	436	451	524	712	734
Marshall	379	425	524	681	795	Mayes	340	472	524	656	750
Murray	479	480	575	773	990	Muskogee	395	465	552	698	771
Noble	375	435	524	728	750	Nowata	421	446	553	737	832
Okfuskee	386	439	524	668	686	Ottawa	438	439	524	714	737
Payne	420	481	590	835	860	Pittsburg	384	448	590	743	906
Pontotoc	368	411	524	714	737	Pottawatomie	452	514	572	725	841
Pushmataha	341	409	524	660	723	Roger Mills	419	434	540	726	760
Seminole	340	420	524	629	648	Stephens	343	398	524	716	738
Texas	415	497	560	708	847	Tillman	384	416	524	758	888
Washington	453	454	553	774	852	Washita	406	421	524	704	738
Woods	389	416	524	762	785	Woodward	364	425	524	653	673

OREGON

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bend, OR MSA	596	693	826	1203	1241	Deschutes
Corvallis, OR MSA	512	622	774	1125	1293	Benton
Eugene-Springfield, OR MSA	525	637	806	1128	1255	Lane
Medford, OR MSA	541	642	807	1174	1209	Jackson
Portland-Vancouver-Hillsboro, OR-WA MSA	665	771	891	1297	1558	Clackamas, Columbia, Multnomah, Washington, Yamhill
Salem, OR MSA	559	620	742	1078	1301	Marion, Polk

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Baker	380	443	584	850	875	Clatsop	478	595	735	1064	1097
Coos	417	505	640	849	978	Crook	437	563	673	911	1066
Curry	541	622	734	1072	1294	Douglas	388	463	597	810	1002
Gilliam	493	577	697	944	1105	Grant	413	484	584	791	926
Harney	425	494	622	860	914	Hood River	384	475	592	842	869
Jefferson	484	516	584	849	956	Josephine	490	561	678	964	1070
Klamath	407	478	609	852	946	Lake	399	464	584	807	858
Lincoln	453	517	659	913	1031	Linn	457	553	690	952	1178
Malheur	420	479	584	844	869	Morrow	425	498	601	814	953
Sherman	425	498	601	814	953	Tillamook	430	513	660	923	950
Umatilla	407	464	593	833	929	Union	384	447	590	861	886
Wallowa	398	464	612	876	941	Wasco	462	518	645	917	1135
Wheeler	413	484	584	791	926						

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PENNSYLVANIA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Allentown-Bethlehem-Easton, PA HMFA	662	806	954	1234	1306	Carbon, Lehigh, Northampton
Altoona, PA MSA	453	496	600	786	811	Blair
Armstrong County, PA HMFA	479	521	576	737	967	Armstrong
Erie, PA MSA	471	532	687	822	934	Erie
Harrisburg-Carlisle, PA MSA	523	598	753	950	985	Cumberland, Dauphin, Perry
Johnstown, PA MSA	450	458	563	709	812	Cambria
Lancaster, PA MSA	560	665	819	1039	1092	Lancaster
Lebanon, PA MSA	452	540	696	944	974	Lebanon
*Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA	788	899	1075	1315	1586	Bucks, Chester, Delaware, Montgomery, Philadelphia
Pike County, PA HMFA	839	872	1011	1369	1676	Pike
Pittsburgh, PA HMFA	528	579	693	861	930	Allegheny, Beaver, Butler, Fayette, Washington, Westmoreland
Reading, PA MSA	591	660	814	1088	1123	Berks
Scranton--Wilkes-Barre, PA MSA	438	523	628	796	841	Lackawanna, Luzerne, Wyoming
Sharon, PA HMFA	498	521	635	778	855	Mercer
State College, PA MSA	642	716	843	1007	1039	Centre
Williamsport, PA MSA	526	604	728	956	983	Lycoming
York-Hanover, PA MSA	545	626	795	960	995	York

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	550	601	719	968	1073	Bedford	429	487	563	673	893
Bradford	367	491	563	704	863	Cameron	469	486	563	747	803
Clarion	468	508	563	718	751	Clearfield	429	473	563	807	952
Clinton	519	520	627	751	771	Columbia	459	503	613	784	929
Crawford	464	515	583	774	884	Elk	469	490	563	730	882
Forest	469	498	563	730	750	Franklin	454	516	651	857	1050
Fulton	376	479	563	694	812	Greene	467	498	563	673	692
Huntingdon	366	453	563	727	749	Indiana	468	487	563	672	735
Jefferson	383	473	563	745	768	Juniata	432	468	563	765	789
Lawrence	422	551	648	775	910	McKean	481	506	578	775	833
Mifflin	396	459	563	731	915	Monroe	545	672	840	1073	1200
Montour	428	491	565	676	697	Northumberland	387	504	563	698	722
Potter	468	508	563	746	767	Schuylkill	375	489	563	703	773
Snyder	366	480	565	707	763	Somerset	468	468	563	692	732
Sullivan	367	491	563	705	840	Susquehanna	450	490	574	690	761
Tioga	464	510	567	745	796	Union	512	533	616	809	871
Venango	437	477	569	719	815	Warren	366	470	563	731	774
Wayne	478	481	604	754	850						

RHODE ISLAND

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Newport-Middleton-Portsmouth, RI HMFA	745	909	1123	1525	1971	Newport County towns of Middletown town, Newport city, Portsmouth town
Providence-Fall River, RI-MA HMFA	710	790	910	1087	1341	Bristol County towns of Barrington town, Bristol town, Warren town

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RHODE ISLAND continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
						Kent County towns of Coventry town, East Greenwich town, Warwick city, West Greenwich town, West Warwick town Newport County towns of Jamestown town, Little Compton town, Tiverton town Providence County towns of Burrillville town, Central Falls city, Cranston city, Cumberland town, East Providence city, Foster town, Glocester town, Johnston town, Lincoln town, North Providence town, North Smithfield town, Pawtucket city, Providence city, Scituate town, Smithfield town, Woonsocket city Washington County towns of Charlestown town, Exeter town, Narragansett town, North Kingstown town, Richmond town, South Kingstown town
Westerly-Hopkinton-New Shoreham, RI HMFA.....	605	760	889	1062	1387	Washington County towns of Hopkinton town, New Shoreham town, Westerly town

SOUTH CAROLINA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Anderson, SC MSA.....	413	536	609	771	793	Anderson
Augusta-Richmond County, GA-SC MSA.....	568	616	692	927	974	Aiken, Edgefield
Charleston-North Charleston-Summerville, SC MSA...	697	773	874	1139	1326	Berkeley, Charleston, Dorchester
Charlotte-Gastonia-Rock Hill, NC-SC HMFA.....	657	713	791	997	1160	York
Columbia, SC HMFA.....	634	690	769	950	980	Calhoun, Fairfield, Lexington, Richland, Saluda
Darlington County, SC HMFA.....	369	473	568	682	735	Darlington
Florence, SC HMFA.....	465	524	606	727	913	Florence
Greenville-Mauldin-Easley, SC MSA.....	516	560	623	822	845	Greenville, Pickens
Kershaw County, SC HMFA.....	379	477	587	738	856	Kershaw
Laurens County, SC HMFA.....	466	507	561	709	827	Laurens
Myrtle Beach-North Myrtle Beach-Conway, SC MSA....	629	692	808	966	1170	Horry
Spartanburg, SC MSA.....	516	533	623	784	807	Spartanburg
Sumter, SC MSA.....	495	538	596	766	811	Sumter

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Abbeville.....	342	475	528	641	660	Allendale.....	439	475	528	655	847
Bamberg.....	438	440	528	704	725	Barnwell.....	437	460	528	636	822
Beaufort.....	642	772	873	1064	1131	Cherokee.....	432	433	528	632	671
Chester.....	439	440	528	631	671	Chesterfield.....	373	465	528	631	927
Clarendon.....	439	440	528	633	721	Colleton.....	343	427	528	747	767
Dillon.....	438	446	528	660	725	Georgetown.....	524	525	633	820	990
Greenwood.....	451	472	542	786	811	Hampton.....	447	455	538	663	753
Jasper.....	567	616	686	818	928	Lancaster.....	374	472	553	760	837
Lee.....	361	442	528	649	813	McCormick.....	439	460	528	730	754
Marion.....	436	437	528	641	658	Marlboro.....	438	439	528	666	789
Newberry.....	467	509	565	718	884	Oconee.....	344	402	528	655	929
Orangeburg.....	447	484	538	668	828	Union.....	439	440	528	729	819

SCHEDULE B - FY 2012 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 42

SOUTH CAROLINA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Williamsburg	439	440	528	633	721

SOUTH DAKOTA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Meade County, SD HMFA	371	443	573	833	930	Meade
Rapid City, SD HMFA	445	519	654	866	890	Pennington
Sioux City, IA-NE-SD MSA	407	478	627	789	813	Union
Sioux Falls, SD MSA	499	525	670	875	968	Lincoln, McCook, Minnehaha, Turner

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Aurora	345	401	528	676	722	Beadle	450	451	541	787	893
Bennett	398	414	528	706	786	Bon Homme	345	401	528	676	722
Brookings	368	462	568	801	998	Brown	374	401	528	670	796
Brule	345	401	528	676	722	Buffalo	405	471	620	794	848
Butte	445	463	590	789	878	Campbell	384	402	528	697	828
Charles Mix	345	401	528	676	722	Clark	353	411	528	714	842
Clay	405	431	566	781	993	Codington	368	429	565	730	834
Corson	398	414	528	706	786	Custer	398	414	528	706	786
Davison	374	440	577	740	796	Day	384	402	528	697	828
Deuel	353	411	528	714	842	Dewey	398	414	528	706	786
Douglas	345	401	528	676	722	Edmunds	411	430	565	746	886
Fall River	442	460	605	785	873	Faulk	384	402	528	697	828
Grant	363	422	543	734	866	Gregory	345	401	528	676	722
Haakon	398	414	528	706	786	Hamlin	353	411	528	714	842
Hand	384	402	528	697	828	Hanson	345	401	528	676	722
Harding	404	420	536	717	798	Hughes	370	464	573	719	741
Hutchinson	345	401	528	676	722	Hyde	345	401	528	676	722
Jackson	398	414	528	706	786	Jerauld	384	402	528	697	828
Jones	398	414	528	706	786	Kingsbury	353	411	528	714	842
Lake	353	411	528	714	842	Lawrence	363	440	542	755	806
Lyman	345	401	528	676	722	McPherson	390	408	536	708	841
Marshall	384	402	528	697	828	Mellette	398	414	528	706	786
Miner	353	411	528	714	842	Moody	353	411	528	714	842
Perkins	483	503	641	858	954	Potter	398	414	528	706	786
Roberts	384	402	528	697	828	Sanborn	365	425	559	716	765
Shannon	398	414	528	706	786	Spink	384	402	528	697	828
Stanley	466	543	714	915	977	Sully	392	457	601	770	822
Todd	398	414	528	706	786	Tripp	362	421	554	710	758
Walworth	384	402	528	697	828	Yankton	367	435	565	741	761
Ziebach	398	414	528	706	786						

SCHEDULE B - FY 2012 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 43

TENNESSEE

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Chattanooga, TN-GA MSA	504	533	628	773	909	Hamilton, Marion, Sequatchie
Clarksville, TN-KY HMFA	565	587	682	986	1015	Montgomery
Cleveland, TN MSA	477	487	628	788	1002	Bradley, Polk
Hickman County, TN HMFA	345	479	531	774	798	Hickman
Jackson, TN MSA	500	546	689	923	947	Chester, Madison
Johnson City, TN MSA	384	464	575	714	890	Carter, Unicoi, Washington
Kingsport-Bristol-Bristol, TN-VA MSA	422	453	563	754	902	Hawkins, Sullivan
Knoxville, TN MSA	477	549	661	886	914	Anderson, Blount, Knox, Loudon, Union
Macon County, TN HMFA	330	402	508	605	672	Macon
Memphis, TN-MS-AR HMFA	594	645	717	955	985	Fayette, Shelby, Tipton
Morristown, TN MSA	463	465	558	732	825	Grainger, Hamblen, Jefferson
Nashville-Davidson--Murfreesboro--Franklin, TN MSA	572	653	751	974	1003	Cannon, Cheatham, Davidson, Dickson, Robertson, Rutherford, Sumner, Trousdale, Williamson, Wilson
Smith County, TN HMFA	441	443	530	707	730	Smith
Stewart County, TN HMFA	329	429	506	690	711	Stewart

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Bedford	357	437	549	687	708	Benton	399	400	506	625	687
Bledsoe	331	415	506	664	685	Campbell	420	421	506	652	776
Carroll	419	420	506	624	697	Claiborne	329	419	506	677	759
Clay	409	410	506	657	676	Cocke	330	407	506	606	826
Coffee	476	477	573	777	849	Crockett	420	456	506	660	681
Cumberland	447	448	540	766	947	Decatur	378	416	506	650	740
DeKalb	436	437	525	758	783	Dyer	347	407	534	712	778
Fentress	409	410	506	657	676	Franklin	349	419	538	782	942
Gibson	418	427	510	641	708	Giles	337	396	522	628	646
Greene	328	414	506	686	704	Grundy	331	415	506	664	685
Hancock	419	420	506	648	779	Hardeman	366	453	506	685	888
Hardin	370	413	506	671	691	Haywood	413	428	560	669	735
Henderson	360	476	556	663	683	Henry	328	385	506	605	737
Houston	399	400	506	625	687	Humphreys	420	455	506	721	745
Jackson	409	410	506	657	676	Johnson	330	410	509	683	716
Lake	376	420	506	657	696	Lauderdale	419	420	506	615	635
Lawrence	348	391	506	626	714	Lewis	337	392	506	645	664
Lincoln	419	420	506	618	637	McMinn	450	452	543	649	866
McNairy	329	387	506	731	752	Marshall	429	456	598	719	902
Maury	396	494	609	775	798	Meigs	331	415	506	664	685
Monroe	398	399	506	605	772	Moore	422	423	506	668	689
Morgan	430	431	521	652	760	Obion	347	419	506	667	703
Overton	330	415	506	618	636	Perry	337	392	506	645	664
Pickett	409	410	506	657	676	Putnam	430	431	537	773	829
Rhea	341	422	527	700	720	Roane	450	465	540	722	741
Scott	420	428	506	670	891	Sevier	499	540	609	733	1070
Van Buren	409	410	506	657	676	Warren	389	393	506	678	807

SCHEDULE B - FY 2012 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 44

TENNESSEE continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Wayne	337	392	506	645	664
White	398	405	532	752	772
Weakley	367	452	506	740	892

TEXAS

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Abilene, TX MSA	541	569	718	935	1183	Callahan, Jones, Taylor
Amarillo, TX MSA	514	557	696	959	1075	Armstrong, Carson, Potter, Randall
Aransas County, TX HMFA	460	570	679	990	1020	Aransas
Atascosa County, TX HMFA	405	471	622	786	809	Atascosa
Austin County, TX HMFA	556	558	671	890	919	Austin
*Austin-Round Rock-San Marcos, TX MSA	713	812	989	1331	1516	Bastrop, Caldwell, Hays, Travis, Williamson
Beaumont-Port Arthur, TX MSA	515	578	691	857	888	Hardin, Jefferson, Orange
Brazoria County, TX HMFA	614	684	786	1084	1164	Brazoria
Brownsville-Harlingen, TX MSA	463	535	613	758	856	Cameron
Calhoun County, TX HMFA	438	519	665	838	1122	Calhoun
College Station-Bryan, TX MSA	538	609	743	941	970	Brazos, Burleson, Robertson
Corpus Christi, TX HMFA	645	663	823	1130	1231	Nueces, San Patricio
Dallas, TX HMFA***	649	719	868	1130	1337	Collin, Dallas, Delta, Denton, Ellis, Hunt, Kaufman, Rockwall
El Paso, TX MSA	521	559	666	955	1133	El Paso
*Fort Worth-Arlington, TX HMFA	667	709	863	1153	1277	Johnson, Parker, Tarrant
*Houston-Baytown-Sugar Land, TX HMFA	694	772	937	1249	1570	Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, San Jacinto, Waller
Kendall County, TX HMFA	661	661	796	1159	1398	Kendall
Killeen-Temple-Fort Hood, TX HMFA	484	535	680	989	1192	Bell, Coryell
Lampasas County, TX HMFA	380	484	584	852	998	Lampasas
Laredo, TX MSA	531	582	696	910	1192	Webb
Longview, TX HMFA	549	577	662	906	932	Gregg, Upshur
Lubbock, TX MSA	478	582	735	1041	1074	Crosby, Lubbock
McAllen-Edinburg-Mission, TX MSA	483	532	627	752	864	Hidalgo
Medina County, TX HMFA	464	516	607	726	883	Medina
Midland, TX MSA	552	598	787	1147	1358	Midland
Odessa, TX MSA	518	549	719	1036	1204	Ector
Rusk County, TX HMFA	486	487	584	699	719	Rusk
San Angelo, TX MSA	504	581	740	1058	1157	Irion, Tom Green
San Antonio-New Braunfels, TX HMFA	553	616	760	980	1191	Bandera, Bexar, Comal, Guadalupe, Wilson
Sherman-Denison, TX MSA	572	603	708	930	1076	Grayson
Texarkana, TX-Texarkana, AR MSA	500	505	622	759	825	Bowie
Tyler, TX MSA	582	684	770	1055	1153	Smith
Victoria, TX HMFA	493	568	727	905	1072	Goliad, Victoria
Waco, TX MSA	605	606	754	944	975	McLennan
Wichita Falls, TX MSA	566	596	709	995	1025	Archer, Clay, Wichita
Wise County, TX HMFA	592	593	713	871	968	Wise

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Anderson	553	580	668	879	1153
Angelina	575	654	732	947	977
Baylor	408	484	602	767	910
Andrews	502	516	606	811	906
Bailey	678	755	879	1144	1449
Bee	508	509	610	819	917

SCHEDULE B - FY 2012 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 45

TEXAS continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Blanco	524	563	712	935	1071
Bosque	508	509	612	744	891
Briscoe	475	478	584	778	802
Brown	493	536	676	859	986
Camp	474	475	584	797	822
Castro	475	478	584	778	802
Childress	511	514	628	836	863
Coke	399	459	584	840	916
Collingsworth	475	478	584	778	802
Comanche	460	493	584	743	811
Cooke	603	604	762	940	969
Crane	570	603	687	892	1059
Culberson	484	513	584	758	900
Dawson	482	484	584	753	778
DeWitt	432	448	584	763	825
Dimmit	479	481	584	795	943
Duval	403	506	584	778	828
Edwards	479	481	584	795	943
Falls	380	519	584	745	773
Fayette	454	515	624	775	798
Floyd	450	502	584	760	963
Franklin	448	514	621	761	915
Frio	391	480	584	739	880
Garza	450	502	584	760	963
Glasscock	524	525	634	818	844
Gray	451	453	584	733	756
Hale	403	509	599	734	819
Hamilton	430	462	584	767	878
Hardeman	397	470	585	745	885
Hartley	506	509	622	829	855
Hemphill	475	478	584	778	802
Hill	435	603	668	946	1032
Hood	662	717	798	1054	1400
Houston	522	560	628	752	814
Hudspeth	484	513	584	758	900
Jack	450	534	664	846	1004
Jasper	504	506	607	751	868
Jim Hogg	485	521	584	835	929
Karnes	433	446	584	764	827
Kent	594	596	770	1101	1196
Kimble	532	533	644	831	858
Kinney	479	481	584	795	943

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Borden	524	525	634	818	844
Brewster	595	621	817	977	1059
Brooks	485	521	584	835	929
Burnet	446	522	686	863	888
Cass	381	526	584	802	944
Cherokee	477	523	587	785	817
Cochran	450	502	584	760	963
Coleman	430	462	584	767	878
Colorado	535	590	669	884	909
Concho	809	811	980	1264	1305
Cottle	430	510	634	808	959
Crockett	489	490	592	764	789
Dallam	451	494	652	779	799
Deaf Smith	421	536	647	940	1071
Dickens	450	502	584	760	963
Donley	526	529	646	860	888
Eastland	460	493	584	743	811
Erath	490	531	663	809	833
Fannin	548	552	658	821	845
Fisher	451	452	584	835	907
Foard	396	470	584	744	883
Freestone	458	625	704	920	948
Gaines	485	517	584	758	908
Gillespie	538	629	827	1145	1179
Gonzales	400	457	584	849	874
Grimes	528	579	645	840	865
Hall	475	478	584	778	802
Hansford	496	499	609	811	837
Harrison	477	480	632	817	841
Haskell	451	452	584	835	907
Henderson	512	530	697	914	942
Hockley	523	556	672	933	962
Hopkins	484	558	681	864	1195
Howard	526	530	634	890	915
Hutchinson	486	487	584	699	869
Jackson	432	558	663	808	1166
Jeff Davis	526	557	634	823	977
Jim Wells	448	601	669	889	917
Kenedy	631	678	760	1086	1209
Kerr	644	697	784	1011	1043
King	489	545	634	825	1045
Kleberg	591	632	710	1037	1250

SCHEDULE B - FY 2012 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 46

TEXAS continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Knox	396	470	584	744	883
Lamb	450	502	584	760	963
Lavaca	467	515	584	771	793
Leon	498	547	609	793	817
Lipscomb	513	516	630	839	866
Llano	534	537	707	846	871
Lynn	450	502	584	760	963
McMullen	437	550	634	844	899
Marion	530	532	653	891	919
Mason	482	484	584	753	778
Maverick	486	488	584	849	875
Milam	380	470	584	756	803
Mitchell	451	452	584	835	907
Moore	450	554	638	929	956
Motley	450	502	584	760	963
Navarro	593	604	729	886	914
Nolan	453	454	584	753	1023
Oldham	554	557	680	906	934
Panola	486	526	584	711	1026
Pecos	482	526	584	708	857
Presidio	484	513	584	758	900
Reagan	534	535	646	833	860
Red River	421	484	584	715	860
Refugio	457	575	663	883	940
Runnels	482	484	584	753	778
San Augustine	484	485	584	759	1023
Schleicher	501	503	607	783	809
Shackelford	451	452	584	835	907
Sherman	519	522	637	848	875
Starr	485	528	584	851	1029
Sterling	524	525	634	818	844
Sutton	482	484	584	753	778
Terrell	484	513	584	758	900
Throckmorton	510	512	661	945	1027
Trinity	485	521	584	699	757
Upton	482	484	584	753	778
Val Verde	418	500	590	734	855
Walker	605	647	782	1006	1303
Washington	611	694	769	1079	1114
Wheeler	475	478	584	778	802
Willacy	530	576	639	930	1035
Wood	458	462	610	889	1069

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Lamar	428	496	622	784	876
La Salle	479	481	584	795	943
Lee	477	542	602	824	849
Limestone	421	586	647	828	857
Live Oak	464	583	673	896	954
Loving	526	557	634	823	977
McCulloch	493	495	594	865	892
Madison	478	524	584	760	783
Martin	600	601	726	937	967
Matagorda	430	564	660	962	1160
Menard	482	484	584	753	778
Mills	430	462	584	767	878
Montague	467	597	665	839	1166
Morris	421	484	584	715	860
Nacogdoches	510	639	754	900	1234
Newton	497	498	600	780	1051
Ochiltree	481	484	591	826	850
Palo Pinto	555	556	689	952	978
Parmer	475	478	584	778	802
Polk	537	544	646	773	796
Rains	518	519	646	871	897
Real	479	481	584	795	943
Reeves	485	517	584	749	908
Roberts	516	519	634	844	871
Sabine	484	485	584	759	1023
San Saba	462	497	628	825	945
Scurry	385	456	584	850	933
Shelby	485	486	584	839	1023
Somervell	460	493	584	746	811
Stephens	501	512	674	928	1008
Stonewall	451	452	584	835	907
Swisher	475	478	584	778	802
Terry	449	500	584	767	961
Titus	434	514	610	733	1071
Tyler	555	557	669	862	1116
Uvalde	500	681	767	999	1345
Van Zandt	559	562	687	960	989
Ward	485	491	584	728	864
Wharton	530	596	661	875	901
Wilbarger	448	534	690	886	988
Winkler	554	587	668	867	1029
Yoakum	517	576	671	873	1106

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TEXAS continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Young	457	532	701	890	1035
Zavala	479	481	584	795	943
Zapata	485	521	584	835	929

UTAH

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Logan, UT-ID MSA	461	498	622	834	1030	Cache
Ogden-Clearfield, UT MSA	493	593	730	1004	1187	Davis, Morgan, Weber
Provo-Orem, UT MSA	531	585	683	994	1197	Juab, Utah
Salt Lake City, UT HMFA	591	642	774	1089	1268	Salt Lake
St. George, UT MSA	603	632	751	1092	1228	Washington
Summit County, UT HMFA	574	797	886	1240	1554	Summit
Tooele County, UT HMFA	519	581	691	873	1211	Tooele

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Beaver	477	478	584	827	880
Carbon	485	486	584	767	901
Duchesne	496	538	597	771	1049
Garfield	477	478	584	827	880
Iron	509	537	618	900	1086
Millard	477	478	584	827	880
Rich	657	697	872	1172	1422
Sanpete	480	481	588	833	886
Uintah	531	577	640	840	945
Wayne	732	734	897	1270	1352
Box Elder	388	475	598	791	920
Daggett	510	554	614	796	1079
Emery	485	527	584	757	1026
Grand	546	594	659	849	1157
Kane	477	478	584	827	879
Piute	534	535	654	926	986
San Juan	485	527	584	757	1026
Sevier	477	478	584	827	880
Wasatch	573	670	883	1055	1267

VERMONT

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Burlington-South Burlington, VT MSA	809	896	1124	1439	1613	Chittenden County towns of Bolton town, Buels gore, Burlington city, Charlotte town, Colchester town, Essex town, Hinesburg town, Huntington town, Jericho town, Milton town, Richmond town, St. George town, Shelburne town, South Burlington city, Underhill town, Westford town, Williston town, Winooski city Franklin County towns of Bakersfield town, Berkshire town, Enosburg town, Fairfax town, Fairfield town, Fletcher town, Franklin town, Georgia town, Highgate town, Montgomery town, Richford town, St. Albans city, St. Albans town, Sheldon town, Swanton town Grand Isle County towns of Alburg town, Grand Isle town, Isle La Motte town, North Hero town, South Hero town

SCHEDULE B - FY 2012 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 48

VERMONT continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
Addison County, VT	629	787	947	1245	1661	Addison town, Bridport town, Bristol town, Cornwall town, Ferrisburg town, Goshen town, Granville town, Hancock town, Leicester town, Lincoln town, Middlebury town, Monkton town, New Haven town, Orwell town, Panton town, Ripton town, Salisbury town, Shoreham town, Starksboro town, Vergennes city, Waltham town, Weybridge town, Whiting town
Bennington County, VT	584	732	852	1110	1304	Arlington town, Bennington town, Dorset town, Glastenbury town, Landgrove town, Manchester town, Peru town, Pownal town, Readsboro town, Rupert town, Sandgate town, Searsburg town, Shaftsbury town, Stamford town, Sunderland town, Winhall town, Woodford town
Caledonia County, VT	577	599	752	952	986	Barnet town, Burke town, Danville town, Groton town, Hardwick town, Kirby town, Lyndon town, Newark town, Peacham town, Ryegate town, St. Johnsbury town, Sheffield town, Stannard town, Sutton town, Walden town, Waterford town, Wheelock town
Essex County, VT	534	599	728	928	1088	Averill town, Avery's gore, Bloomfield town, Brighton town, Brunswick town, Canaan town, Concord town, East Haven town, Ferdinand town, Granby town, Guildhall town, Lemington town, Lewis town, Lunenburg town, Maidstone town, Norton town, Victory town, Warner's grant, Warren's gore
Lamoille County, VT	678	814	948	1321	1665	Belvidere town, Cambridge town, Eden town, Elmore town, Hyde Park town, Johnson town, Morristown town, Stowe town, Waterville town, Wolcott town
Orange County, VT	638	721	839	1168	1204	Bradford town, Braintree town, Brookfield town, Chelsea town, Corinth town, Fairlee town, Newbury town, Orange town, Randolph town, Strafford town, Thetford town, Topsham town, Tunbridge town, Vershire town, Washington town, West Fairlee town, Williamstown town
Orleans County, VT	483	668	746	942	1185	Albany town, Barton town, Brownington town, Charleston town, Coventry town, Craftsbury town, Derby town, Glover town, Greensboro town, Holland town, Irasburg town, Jay town, Lowell town, Morgan town, Newport city, Newport town, Troy town, Westfield town, Westmore town
Rutland County, VT	560	734	853	1128	1443	Benson town, Brandon town, Castleton town, Chittenden town, Clarendon town, Danby town, Fair Haven town, Hubbardton town, Ira town, Killington town, Mendon town, Middletown Springs town, Mount Holly town, Mount Tabor town, Pawlet town, Pittsfield town, Pittsford town, Poultney town, Proctor town, Rutland city, Rutland town, Shrewsbury town, Sudbury town, Tinmouth town, Wallingford town, Wells town, West Haven town, West Rutland town
Washington County, VT	632	740	926	1251	1400	Barre city, Barre town, Berlin town, Cabot town, Calais town, Duxbury town, East Montpelier town, Fayston town, Marshfield town, Middlesex town, Montpelier city, Moretown town, Northfield town, Plainfield town, Roxbury town, Waitsfield town, Warren town, Waterbury town, Woodbury town, Worcester town
Windham County, VT	664	692	909	1098	1133	Athens town, Brattleboro town, Brookline town, Dover town,

SCHEDULE B - FY 2012 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 49

VERMONT continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
						Dummerston town, Grafton town, Guilford town, Halifax town, Jamaica town, Londonderry town, Marlboro town, Newfane town, Putney town, Rockingham town, Somerset town, Stratton town, Townshend town, Vernon town, Wardsboro town, Westminster town, Whitingham town, Wilmington town, Windham town
Windsor County, VT	782	876	1030	1402	1668	Andover town, Baltimore town, Barnard town, Bethel town, Bridgewater town, Cavendish town, Chester town, Hartford town, Hartland town, Ludlow town, Norwich town, Plymouth town, Pomfret town, Reading town, Rochester town, Royalton town, Sharon town, Springfield town, Stockbridge town, Weathersfield town, Weston town, West Windsor town, Windsor town, Woodstock town

VIRGINIA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Blacksburg-Christiansburg-Radford, VA HMFA	591	647	724	993	1272	Montgomery, Radford city
Charlottesville, VA MSA	723	870	1029	1334	1476	Albemarle, Fluvanna, Greene, Nelson, Charlottesville city
Danville, VA MSA	410	471	608	758	814	Pittsylvania, Danville city
Franklin County, VA HMFA	396	474	610	730	777	Franklin
Giles County, VA HMFA	352	457	541	690	952	Giles
Harrisonburg, VA MSA	580	644	784	1098	1128	Rockingham, Harrisonburg city
Kingsport-Bristol-Bristol, TN-VA MSA	422	453	563	754	902	Scott, Washington, Bristol city
Louisa County, VA HMFA	533	604	688	823	847	Louisa
Lynchburg, VA MSA	529	543	654	806	900	Amherst, Appomattox, Bedford, Campbell, Bedford city, Lynchburg city
Pulaski County, VA HMFA	437	462	576	825	887	Pulaski
Richmond, VA HMFA	725	786	878	1171	1399	Amelia, Caroline, Charles, Chesterfield, Cumberland, Dinwiddie, Goochland, Hanover, Henrico, King and Queen, King William, New Kent, Powhatan, Prince George, Sussex, Colonial Heights city, Hopewell city, Petersburg city, Richmond city
Roanoke, VA HMFA	532	567	732	929	1014	Botetourt, Craig, Roanoke, Roanoke city, Salem city
*Virginia Beach-Norfolk-Newport News, VA-NC MSA	882	919	1064	1454	1753	Gloucester, Isle of Wight, James, Mathews, Surry, York, Chesapeake city, Hampton city, Newport News city, Norfolk city, Poquoson city, Portsmouth city, Suffolk city, Virginia Beach city, Williamsburg city
Warren County, VA HMFA	582	678	844	1187	1223	Warren
*Washington-Arlington-Alexandria, DC-VA-MD HMFA	1166	1328	1506	1943	2542	Arlington, Clarke, Fairfax, Fauquier, Loudoun, Prince William, Spotsylvania, Stafford, Alexandria city, Fairfax city, Falls Church city, Fredericksburg city, Manassas city, Manassas Park city
Winchester, VA-WV MSA	653	678	895	1235	1271	Frederick, Winchester city

SCHEDULE B - FY 2012 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 50

VIRGINIA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Accomack	418	572	643	781	962
Augusta	469	482	629	899	1035
Bland	451	466	541	690	767
Buchanan	451	466	541	690	767
Carroll	450	488	541	649	721
Culpeper	641	652	772	998	1061
Essex	452	558	687	935	964
Grayson	451	466	541	690	767
Halifax	352	489	541	727	951
Highland	419	436	541	747	901
Lancaster	525	646	787	968	1042
Lunenburg	493	509	593	739	1024
Mecklenburg	352	439	541	664	885
Northampton	440	542	660	804	874
Nottoway	539	582	648	920	1054
Page	400	467	613	791	815
Prince Edward	525	527	633	758	1014
Richmond	424	522	636	775	842
Russell	353	467	541	662	683
Smyth	447	486	541	687	889
Tazewell	451	452	541	695	786
Wise	450	459	541	704	887
Buena Vista city	489	550	612	891	1073
Covington city	352	451	541	657	685
Franklin city	453	627	695	860	1223
Lexington city	489	550	612	891	1073
Norton city	450	459	541	704	887
Waynesboro city	469	482	629	899	1035

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Alleghany	352	451	541	657	685
Bath	430	448	556	767	926
Brunswick	450	464	541	675	934
Buckingham	450	486	541	695	880
Charlotte	450	486	541	695	880
Dickenson	451	483	541	706	726
Floyd	448	488	541	753	953
Greensville	475	514	571	690	857
Henry	417	434	541	694	795
King George	678	680	817	1188	1223
Lee	351	423	541	695	736
Madison	524	585	706	977	1008
Middlesex	407	501	610	743	808
Northumberland	438	539	656	799	869
Orange	509	700	780	1135	1369
Patrick	448	489	541	670	690
Rappahannock	587	655	791	1095	1130
Rockbridge	489	550	612	891	1073
Shenandoah	496	532	650	867	961
Southampton	453	627	695	860	1223
Westmoreland	529	645	814	1117	1150
Wythe	352	445	541	709	952
Clifton Forge city	352	451	541	657	685
Emporia city	475	514	571	690	857
Galax city	450	488	541	649	721
Martinsville city	417	434	541	694	795
Staunton city	469	482	629	899	1035

WASHINGTON

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bellingham, WA MSA	614	677	850	1240	1397	Whatcom
Bremerton-Silverdale, WA MSA	678	760	936	1339	1463	Kitsap
Kennewick-Pasco-Richland, WA MSA	549	599	751	1015	1203	Benton, Franklin
Lewiston, ID-WA MSA	479	498	623	885	1078	Asotin
Longview, WA MSA	478	601	698	1017	1159	Cowlitz
Mount Vernon-Anacortes, WA MSA	599	742	920	1259	1570	Skagit
Olympia, WA MSA	626	703	898	1304	1577	Thurston
Portland-Vancouver-Hillsboro, OR-WA MSA	665	771	891	1297	1558	Clark, Skamania
Seattle-Bellevue, WA HMFA	800	912	1098	1551	1895	King, Snohomish
Spokane, WA MSA	489	573	755	1037	1176	Spokane
Tacoma, WA HMFA	638	745	929	1354	1523	Pierce
Wenatchee-East Wenatchee, WA MSA	545	577	729	983	1132	Chelan, Douglas

SCHEDULE B - FY 2012 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 51

WASHINGTON continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Yakima, WA MSA	460	540	698	919	970	Yakima

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	385	459	588	789	814	Clallam	540	598	777	1135	1170
Columbia	379	443	584	789	941	Ferry	382	452	584	784	808
Garfield	379	443	584	789	941	Grant	392	466	603	815	836
Grays Harbor	446	523	687	967	994	Island	743	744	898	1307	1577
Jefferson	587	720	880	1280	1316	Kittitas	517	603	794	1064	1104
Klickitat	509	516	613	861	886	Lewis	494	631	759	1014	1060
Lincoln	438	518	669	898	926	Mason	559	657	788	1076	1275
Okanogan	456	550	646	884	973	Pacific	487	525	688	976	1014
Pend Oreille	426	505	652	875	902	San Juan	696	748	925	1329	1623
Stevens	421	507	648	888	969	Wahkiakum	483	600	701	1021	1171
Walla Walla	463	540	713	1025	1057	Whitman	501	552	716	1010	1238

WEST VIRGINIA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Boone County, WV HMFA	329	426	505	625	692	Boone
Charleston, WV HMFA	459	501	626	798	821	Clay, Kanawha, Lincoln, Putnam
Cumberland, MD-WV MSA	411	498	584	788	919	Mineral
Huntington-Ashland, WV-KY-OH MSA	422	499	599	739	763	Cabell, Wayne
Jefferson County, WV HMFA	591	797	908	1326	1596	Jefferson
Martinsburg, WV HMFA	577	651	782	1046	1255	Berkeley, Morgan
Morgantown, WV MSA	537	558	660	856	1015	Monongalia, Preston
Parkersburg-Marietta-Vienna, WV-OH MSA	442	473	606	805	868	Pleasants, Wirt, Wood
Steubenville-Weirton, OH-WV MSA	387	474	584	729	792	Brooke, Hancock
Wheeling, WV-OH MSA	380	457	584	734	857	Marshall, Ohio
Winchester, VA-WV MSA	653	678	895	1235	1271	Hampshire

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Barbour	406	423	527	690	727	Braxton	412	430	535	701	738
Calhoun	345	411	499	648	745	Doddridge	354	451	532	641	758
Fayette	416	417	499	617	664	Gilmer	384	401	499	654	688
Grant	421	486	546	715	887	Greenbrier	396	451	499	600	789
Hardy	417	481	541	709	879	Harrison	479	480	576	722	806
Jackson	345	411	499	648	745	Lewis	393	426	499	626	644
Logan	348	423	499	613	630	McDowell	416	431	499	681	865
Marion	362	463	556	665	810	Mason	414	423	499	632	675
Mercer	429	445	516	698	883	Mingo	325	438	499	629	816
Monroe	415	450	499	622	643	Nicholas	415	450	499	635	695
Pendleton	383	442	499	651	808	Pocahontas	420	436	505	618	733
Raleigh	440	468	528	674	694	Randolph	386	387	499	644	662

SCHEDULE B - FY 2012 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 52

WEST VIRGINIA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Ritchie	345	411	499	648	745	Roane	345	411	499	648	745
Summers	427	464	514	640	663	Taylor	356	453	535	641	762
Tucker	384	401	499	654	688	Tyler	345	411	499	648	745
Upshur	348	435	536	720	743	Webster	415	431	499	611	725
Wetzel	332	452	508	647	736	Wyoming	416	431	499	681	865

WISCONSIN

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Appleton, WI MSA	510	524	650	937	964	Calumet, Outagamie
Columbia County, WI HMFA	454	530	698	942	972	Columbia
Duluth, MN-WI MSA	447	545	687	863	1099	Douglas
Eau Claire, WI MSA	434	518	648	878	914	Chippewa, Eau Claire
Fond du Lac, WI MSA	512	549	661	869	942	Fond du Lac
Green Bay, WI HMFA	531	543	684	962	991	Brown, Kewaunee
Iowa County, WI HMFA	452	528	695	831	854	Iowa
Janesville, WI MSA	493	577	718	940	967	Rock
Kenosha County, WI HMFA	658	685	850	1169	1345	Kenosha
La Crosse, WI-MN MSA	424	496	653	867	1064	La Crosse
Madison, WI HMFA	576	719	850	1141	1413	Dane
Milwaukee-Waukesha-West Allis, WI MSA	577	688	822	1036	1067	Milwaukee, Ozaukee, Washington, Waukesha
Minneapolis-St. Paul-Bloomington, MN-WI MSA	632	745	904	1183	1330	Pierce, St. Croix
Oconto County, WI HMFA	434	526	584	756	788	Oconto
Oshkosh-Neenah, WI MSA	461	542	642	842	1091	Winnebago
Racine, WI MSA	494	578	725	902	990	Racine
Sheboygan, WI MSA	418	537	634	784	962	Sheboygan
Wausau, WI MSA	413	515	635	848	937	Marathon

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	430	472	584	760	784	Ashland	451	453	584	742	1005
Barron	408	515	614	783	806	Bayfield	399	465	584	748	776
Buffalo	402	457	584	741	773	Burnett	399	465	584	748	776
Clark	377	446	584	798	822	Crawford	485	519	584	725	893
Dodge	585	587	707	895	966	Door	421	538	647	869	974
Dunn	462	498	625	911	936	Florence	391	471	584	743	780
Forest	430	472	584	760	784	Grant	485	486	584	756	1025
Green	467	504	661	839	980	Green Lake	439	503	584	764	933
Iron	399	465	584	748	776	Jackson	415	471	602	763	796
Jefferson	474	555	731	876	1104	Juneau	383	472	589	775	799
Lafayette	431	454	584	748	838	Langlade	485	486	584	770	840
Lincoln	488	489	586	853	880	Manitowoc	379	444	584	698	869
Marinette	486	526	584	765	788	Marquette	453	508	618	796	884
Menominee	457	512	623	802	891	Monroe	389	454	598	759	829
Oneida	453	495	650	831	1144	Pepin	402	457	584	741	773

SCHEDULE B - FY 2012 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 53

WISCONSIN continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Polk	448	524	688	846	873	Portage	526	533	636	842	866
Price	399	465	584	748	776	Richland	411	458	584	749	773
Rusk	399	465	584	748	776	Sauk	475	631	724	973	1004
Sawyer	399	470	584	748	776	Shawano	402	474	584	729	837
Taylor	405	473	593	759	788	Trempealeau	459	461	584	798	822
Vernon	464	466	584	738	805	Vilas	433	475	587	799	824
Walworth	505	594	775	967	998	Washburn	422	493	618	791	821
Waupaca	416	523	635	829	854	Waushara	446	500	608	783	869
Wood	384	471	584	711	778						

WYOMING

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Casper, WY MSA	436	477	603	877	1057	Natrona
Cheyenne, WY MSA	482	508	644	876	1129	Laramie

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Albany	442	506	642	881	933	Big Horn	467	488	584	762	912
Campbell	582	627	702	951	1035	Carbon	380	454	584	732	889
Converse	380	470	584	797	1027	Crook	467	488	584	762	912
Fremont	471	474	602	754	961	Goshen	484	485	584	720	991
Hot Springs	467	488	584	762	912	Johnson	455	474	584	742	887
Lincoln	539	570	649	866	1025	Niobrara	467	488	584	762	912
Park	459	527	620	779	1026	Platte	467	488	584	762	912
Sheridan	482	519	638	816	996	Sublette	727	765	888	1162	1376
Sweetwater	492	598	750	1049	1088	Teton	622	694	873	1151	1185
Uinta	406	513	584	798	947	Washakie	467	488	584	762	912
Weston	467	488	584	762	912						

GUAM

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Pacific Islands	765	821	1003	1461	1747						

PUERTO RICO

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Aguadilla-Isabela-San Sebastián, PR MSA	362	393	436	560	627	Aguada, Aguadilla, Añasco, Isabela, Lares, Moca, Rincón, San Sebastián
Arecibo, PR HMFA	381	414	460	627	735	Arecibo, Camuy, Hatillo
Barranquitas-Aibonito-Quebradillas, PR HMFA	375	405	451	574	660	Aibonito, Barranquitas, Ciales, Maunabo, Orocovis, Quebradillas
Caguas, PR HMFA	419	453	505	700	843	Caguas, Cayey, Cidra, Gurabo, San Lorenzo

SCHEDULE B - FY 2012 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 54

PUERTO RICO continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Fajardo, PR MSA	433	472	524	762	919	Ceiba, Fajardo, Luquillo
Guayama, PR MSA	383	413	460	653	809	Arroyo, Guayama, Patillas
Mayagüez, PR MSA	411	446	495	592	817	Hormigueros, Mayagüez
Ponce, PR MSA	443	480	532	739	843	Juana Díaz, Ponce, Villalba
San Germán-Cabo Rojo, PR MSA	357	372	430	562	606	Cabo Rojo, Lajas, Sabana Grande, San Germán
San Juan-Guaynabo, PR HMFA	459	499	554	733	868	Aguas Buenas, Barceloneta, Bayamón, Canóvanas, Carolina, Cataño, Comerío, Corozal, Dorado, Florida, Guaynabo, Humacao, Juncos, Las Piedras, Loíza, Manatí, Morovis, Naguabo, Naranjito, Río Grande, San Juan, Toa Alta, Toa Baja, Trujillo Alto, Vega Alta, Vega Baja, Yabucoa
Yauco, PR MSA	354	374	425	536	682	Guánica, Guayanilla, Peñuelas, Yauco

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adjuntas	353	381	425	582	632	Coamo	353	381	425	582	632
Culebra	353	381	425	582	632	Jayuya	353	381	425	582	632
Las Marías	353	381	425	582	632	Maricao	353	381	425	582	632
Salinas	353	381	425	582	632	Santa Isabel	353	381	425	582	632
Utuado	353	381	425	582	632	Vieques	353	381	425	582	632

VIRGIN ISLANDS

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
St. Croix	562	586	710	887	1015	St. John	638	763	982	1217	1272
St. Thomas	638	763	982	1217	1272						

Note1: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom.
Note2: 50th percentile FMRs are indicated by an * before the FMR Area name.
Note3: FMR areas designated by 3 asterisks (***) are part of the Small Area Demonstration Program and will use the FMRs found on Schedule B Addendum.

08/05/2011

SCHEDULE B ADDENDUM
Proposed FY 2012 Small Area FMRs for Dallas, TX HMFA

County	ZIP	Efficiency	One Bedroom	Two Bedrooms	Three Bedrooms	Four Bedrooms
Collin County	75002	$820	$900	$1,090	$1,420	$1,680
	75009	$640	$710	$860	$1,120	$1,320
	75013	$850	$940	$1,130	$1,470	$1,740
	75023	$760	$840	$1,020	$1,330	$1,570
	75024	$760	$840	$1,020	$1,330	$1,570
	75025	$790	$870	$1,050	$1,370	$1,620
	75034	$760	$840	$1,010	$1,320	$1,560
	75035	$970	$1,080	$1,300	$1,690	$2,000
	75048	$660	$730	$880	$1,150	$1,360
	75069	$630	$700	$840	$1,090	$1,290
	75070	$900	$990	$1,200	$1,560	$1,850
	75071	$670	$750	$900	$1,170	$1,390
	75074	$700	$770	$930	$1,210	$1,430
	75075	$700	$780	$940	$1,220	$1,450
	75078	$730	$810	$980	$1,280	$1,510
	75080	$750	$830	$1,000	$1,300	$1,540
	75082	$850	$940	$1,140	$1,480	$1,760
	75093	$760	$840	$1,020	$1,330	$1,570
	75094	$730	$810	$980	$1,280	$1,510
	75098	$760	$840	$1,020	$1,330	$1,570
	75121	$730	$810	$980	$1,280	$1,510
	75164	$730	$810	$980	$1,280	$1,510
	75166	$730	$810	$980	$1,280	$1,510
	75173	$730	$810	$980	$1,280	$1,510
	75189	$810	$890	$1,080	$1,410	$1,660
	75248	$700	$780	$940	$1,220	$1,450
	75252	$590	$650	$790	$1,030	$1,220
	75287	$640	$700	$850	$1,110	$1,310
	75407	$730	$810	$980	$1,280	$1,510
	75409	$730	$810	$980	$1,280	$1,510
	75424	$670	$750	$900	$1,170	$1,390
	75442	$700	$780	$940	$1,220	$1,450
	75452	$730	$810	$980	$1,280	$1,510
	75454	$730	$810	$980	$1,280	$1,510
	75491	$730	$810	$980	$1,280	$1,510
	75495	$730	$810	$980	$1,280	$1,510
	Other	$730	$810	$980	$1,280	$1,510

SCHEDULE B ADDENDUM
Proposed FY 2012 Small Area FMRs for Dallas, TX HMFA

County	ZIP	Efficiency	One Bedroom	Two Bedrooms	Three Bedrooms	Four Bedrooms
Dallas County	75001	$650	$720	$870	$1,130	$1,340
	75006	$660	$730	$880	$1,150	$1,360
	75007	$720	$790	$960	$1,250	$1,480
	75019	$810	$890	$1,080	$1,410	$1,660
	75038	$650	$720	$870	$1,130	$1,340
	75044	$730	$800	$970	$1,260	$1,490
	75044	$730	$800	$970	$1,260	$1,490
	75047	$640	$700	$850	$1,110	$1,310
	75048	$660	$730	$880	$1,150	$1,360
	75050	$610	$670	$810	$1,050	$1,250
	75051	$580	$650	$780	$1,020	$1,200
	75052	$770	$850	$1,030	$1,340	$1,590
	75054	$640	$700	$850	$1,110	$1,310
	75060	$580	$650	$780	$1,020	$1,200
	75061	$550	$600	$730	$950	$1,120
	75062	$610	$680	$820	$1,070	$1,260
	75063	$730	$810	$980	$1,280	$1,510
	75080	$750	$830	$1,000	$1,300	$1,540
	75081	$760	$840	$1,020	$1,330	$1,570
	75082	$850	$940	$1,140	$1,480	$1,760
	75088	$830	$920	$1,110	$1,450	$1,710
	75089	$970	$1,080	$1,300	$1,690	$2,000
	75098	$760	$840	$1,020	$1,330	$1,570
	75104	$850	$940	$1,130	$1,470	$1,740
	75115	$660	$730	$880	$1,150	$1,360
	75116	$700	$780	$940	$1,220	$1,450
	75125	$650	$720	$870	$1,130	$1,340
	75134	$730	$810	$980	$1,280	$1,510
	75137	$820	$900	$1,090	$1,420	$1,680
	75141	$640	$700	$850	$1,110	$1,310
	75146	$630	$700	$840	$1,090	$1,290
	75149	$690	$760	$920	$1,200	$1,420
	75150	$670	$740	$890	$1,160	$1,370
	75154	$790	$870	$1,050	$1,370	$1,620
	75159	$640	$700	$850	$1,110	$1,310
	75172	$550	$600	$730	$950	$1,120
	75180	$590	$650	$790	$1,030	$1,220
	75181	$640	$700	$850	$1,110	$1,310

SCHEDULE B ADDENDUM
Proposed FY 2012 Small Area FMRs for Dallas, TX HMFA

County	ZIP	Efficiency	One Bedroom	Two Bedrooms	Three Bedrooms	Four Bedrooms
Dallas County	75182	$640	$700	$850	$1,110	$1,310
	75201	$960	$1,060	$1,280	$1,670	$1,970
	75202	$940	$1,040	$1,260	$1,640	$1,940
	75203	$490	$550	$660	$860	$1,020
	75204	$800	$890	$1,070	$1,390	$1,650
	75205	$810	$890	$1,080	$1,410	$1,660
	75206	$660	$730	$880	$1,150	$1,360
	75207	$640	$700	$850	$1,110	$1,310
	75208	$550	$610	$740	$960	$1,140
	75209	$640	$700	$850	$1,110	$1,310
	75210	$500	$550	$670	$870	$1,030
	75211	$560	$620	$750	$980	$1,160
	75212	$560	$620	$750	$980	$1,160
	75214	$610	$680	$820	$1,070	$1,260
	75215	$530	$590	$710	$920	$1,090
	75216	$580	$640	$770	$1,000	$1,190
	75217	$640	$710	$860	$1,120	$1,320
	75218	$740	$820	$990	$1,290	$1,520
	75219	$670	$740	$890	$1,160	$1,370
	75220	$550	$600	$730	$950	$1,120
	75221	$640	$700	$850	$1,110	$1,310
	75223	$600	$660	$800	$1,040	$1,230
	75224	$550	$600	$730	$950	$1,120
	75225	$640	$700	$850	$1,110	$1,310
	75226	$700	$780	$940	$1,220	$1,450
	75227	$590	$650	$790	$1,030	$1,220
	75228	$520	$580	$700	$910	$1,080
	75229	$610	$670	$810	$1,050	$1,250
	75230	$550	$600	$730	$950	$1,120
	75231	$510	$560	$680	$890	$1,050
	75232	$640	$700	$850	$1,110	$1,310
	75233	$610	$680	$820	$1,070	$1,260
	75234	$630	$700	$840	$1,090	$1,290
	75235	$640	$710	$860	$1,120	$1,320
	75236	$620	$690	$830	$1,080	$1,280
	75237	$570	$630	$760	$990	$1,170
	75238	$560	$620	$750	$980	$1,160
	75240	$560	$620	$750	$980	$1,160

SCHEDULE B ADDENDUM
Proposed FY 2012 Small Area FMRs for Dallas, TX HMFA

County	ZIP	Efficiency	One Bedroom	Two Bedrooms	Three Bedrooms	Four Bedrooms
Dallas County	75241	$660	$730	$880	$1,150	$1,360
	75242	$640	$700	$850	$1,110	$1,310
	75243	$570	$630	$760	$990	$1,170
	75244	$790	$870	$1,050	$1,370	$1,620
	75246	$500	$550	$670	$870	$1,030
	75247	$640	$700	$850	$1,110	$1,310
	75248	$700	$780	$940	$1,220	$1,450
	75249	$850	$940	$1,140	$1,480	$1,760
	75251	$900	$990	$1,200	$1,560	$1,850
	75252	$590	$650	$790	$1,030	$1,220
	75253	$620	$690	$830	$1,080	$1,280
	75254	$650	$720	$870	$1,130	$1,340
	76051	$720	$790	$960	$1,250	$1,480
	Other	$640	$700	$850	$1,110	$1,310
Delta County	75415	$550	$600	$730	$950	$1,120
	75432	$550	$600	$730	$950	$1,120
	75448	$550	$600	$730	$950	$1,120
	75450	$550	$600	$730	$950	$1,120
	75469	$550	$600	$730	$950	$1,120
	Other	$550	$600	$730	$950	$1,120
Denton County	75007	$720	$790	$960	$1,250	$1,480
	75007	$720	$790	$960	$1,250	$1,480
	75009	$640	$710	$860	$1,120	$1,320
	75010	$820	$910	$1,100	$1,430	$1,690
	75019	$810	$890	$1,080	$1,410	$1,660
	75022	$680	$750	$910	$1,180	$1,400
	75024	$760	$840	$1,020	$1,330	$1,570
	75028	$970	$1,080	$1,300	$1,690	$2,000
	75034	$760	$840	$1,010	$1,320	$1,560
	75056	$880	$970	$1,170	$1,520	$1,800
	75057	$690	$760	$920	$1,200	$1,420
	75065	$680	$750	$910	$1,180	$1,400
	75067	$670	$750	$900	$1,170	$1,390
	75067	$670	$750	$900	$1,170	$1,390
	75068	$680	$750	$910	$1,180	$1,400
	75077	$860	$950	$1,150	$1,500	$1,770

SCHEDULE B ADDENDUM
Proposed FY 2012 Small Area FMRs for Dallas, TX HMFA

County	ZIP	Efficiency	One Bedroom	Two Bedrooms	Three Bedrooms	Four Bedrooms
Denton County	75078	$730	$810	$980	$1,280	$1,510
	75093	$760	$840	$1,020	$1,330	$1,570
	75287	$640	$700	$850	$1,110	$1,310
	75287	$640	$700	$850	$1,110	$1,310
	76052	$640	$700	$850	$1,110	$1,310
	76078	$610	$670	$810	$1,050	$1,250
	76092	$640	$700	$850	$1,110	$1,310
	76177	$680	$750	$910	$1,180	$1,400
	76201	$520	$570	$690	$900	$1,060
	76204	$680	$750	$910	$1,180	$1,400
	76205	$610	$680	$820	$1,070	$1,260
	76207	$610	$670	$810	$1,050	$1,250
	76208	$690	$760	$920	$1,200	$1,420
	76209	$630	$700	$840	$1,090	$1,290
	76210	$680	$750	$910	$1,180	$1,400
	76226	$680	$750	$910	$1,180	$1,400
	76227	$680	$750	$910	$1,180	$1,400
	76234	$610	$670	$810	$1,050	$1,250
	76247	$680	$750	$910	$1,180	$1,400
	76249	$790	$880	$1,060	$1,380	$1,630
	76258	$680	$750	$910	$1,180	$1,400
	76259	$680	$750	$910	$1,180	$1,400
	76262	$790	$870	$1,050	$1,370	$1,620
	76266	$680	$750	$910	$1,180	$1,400
	76272	$680	$750	$910	$1,180	$1,400
	Other	$680	$750	$910	$1,180	$1,400
Ellis County	75101	$660	$730	$880	$1,150	$1,360
	75104	$850	$940	$1,130	$1,470	$1,740
	75119	$610	$670	$810	$1,050	$1,250
	75120	$660	$730	$880	$1,150	$1,360
	75125	$650	$720	$870	$1,130	$1,340
	75146	$630	$700	$840	$1,090	$1,290
	75152	$640	$700	$850	$1,110	$1,310
	75154	$790	$870	$1,050	$1,370	$1,620
	75165	$640	$710	$860	$1,120	$1,320
	75167	$660	$730	$880	$1,150	$1,360
	76041	$660	$730	$880	$1,150	$1,360

SCHEDULE B ADDENDUM
Proposed FY 2012 Small Area FMRs for Dallas, TX HMFA

County	ZIP	Efficiency	One Bedroom	Two Bedrooms	Three Bedrooms	Four Bedrooms
Ellis County						
	76050	$620	$690	$830	$1,080	$1,280
	76055	$660	$730	$880	$1,150	$1,360
	76063	$770	$850	$1,030	$1,340	$1,590
	76064	$660	$730	$880	$1,150	$1,360
	76065	$670	$740	$890	$1,160	$1,370
	76065	$670	$740	$890	$1,160	$1,370
	76084	$720	$790	$960	$1,250	$1,480
	76623	$660	$730	$880	$1,150	$1,360
	76651	$660	$730	$880	$1,150	$1,360
	76670	$550	$610	$740	$960	$1,140
	Other	$660	$730	$880	$1,150	$1,360
Hunt County	75135	$540	$600	$720	$940	$1,110
	75169	$550	$610	$740	$960	$1,140
	75189	$810	$890	$1,080	$1,410	$1,660
	75401	$530	$590	$710	$920	$1,090
	75402	$530	$590	$710	$920	$1,090
	75422	$540	$600	$720	$940	$1,110
	75423	$540	$600	$720	$940	$1,110
	75428	$540	$600	$720	$940	$1,110
	75428	$540	$600	$720	$940	$1,110
	75442	$700	$780	$940	$1,220	$1,450
	75448	$540	$600	$720	$940	$1,110
	75449	$540	$600	$720	$940	$1,110
	75452	$540	$600	$720	$940	$1,110
	75453	$680	$750	$910	$1,180	$1,400
	75469	$550	$600	$730	$950	$1,120
	75474	$540	$600	$720	$940	$1,110
	75496	$540	$600	$720	$940	$1,110
	Other	$540	$600	$720	$940	$1,110
Kaufman County	75114	$650	$720	$870	$1,130	$1,340
	75126	$650	$720	$870	$1,130	$1,340
	75142	$650	$720	$870	$1,130	$1,340
	75143	$650	$720	$870	$1,130	$1,340
	75147	$650	$720	$870	$1,130	$1,340
	75156	$650	$720	$870	$1,130	$1,340

SCHEDULE B ADDENDUM
Proposed FY 2012 Small Area FMRs for Dallas, TX HMFA

County	ZIP	Efficiency	One Bedroom	Two Bedrooms	Three Bedrooms	Four Bedrooms
Kaufman County	75157	$650	$720	$870	$1,130	$1,340
	75158	$650	$720	$870	$1,130	$1,340
	75159	$640	$700	$850	$1,110	$1,310
	75160	$630	$700	$840	$1,090	$1,290
	75160	$630	$700	$840	$1,090	$1,290
	75161	$650	$720	$870	$1,130	$1,340
	75169	$550	$610	$740	$960	$1,140
	75182	$640	$700	$850	$1,110	$1,310
	75474	$540	$600	$720	$940	$1,110
	Other	$650	$720	$870	$1,130	$1,340
Rockwall County	75032	$970	$1,080	$1,300	$1,690	$2,000
	75087	$850	$940	$1,140	$1,480	$1,760
	75087	$850	$940	$1,140	$1,480	$1,760
	75088	$830	$920	$1,110	$1,450	$1,710
	75089	$970	$1,080	$1,300	$1,690	$2,000
	75098	$760	$840	$1,020	$1,330	$1,570
	75126	$650	$720	$870	$1,130	$1,340
	75132	$660	$730	$880	$1,150	$1,360
	75189	$810	$890	$1,080	$1,410	$1,660
	Other	$650	$720	$870	$1,130	$1,340

SCHEDULE D - FY 2012 FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES IN THE SECTION 8 HOUSING CHOICE VOUCHER PROGRAM

State	Area Name	Space Rent
California	*Orange County, CA HUD Metro FMR Area	$790
	*Riverside-San Bernardino-Ontario, CA MSA	$513
	Los Angeles-Long Beach, CA HUD Metro FMR A	$651
	San Diego-Carlsbad-San Marcos, CA MSA	$795
	Santa Rosa-Petaluma, CA MSA	$692
	Vallejo-Fairfield, CA MSA	$557
Colorado	Boulder, CO MSA	$453
Maryland	St. Mary's County	$478
Oregon	Bend, OR MSA	$343
	Salem, OR MSA	$472
Pennsylvania	Adams County	$546
Washington	Olympia, WA MSA	$572
	Seattle-Bellevue, WA HUD Metro FMR Area	$629
West Virginia	Logan County	$433
	McDowell County	$433
	Mercer County	$433
	Mingo County	$433
	Wyoming County	$433

* 50th percentile FMR areas.

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BILLING CODE 4210–67–C

FEDERAL REGISTER

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Part III

Department of Defense

Defense Acquisition Regulations System

48 CFR Parts 201, 209, 216, et al.

Defense Federal Acquisition Regulation Supplements; Nonavailability Exception for Procurement of Hand or Measuring Tools (DFARS Case 2011–D025), Contractors Performing Private Security Functions (DFARS Case 2011–D023), Identification of Critical Safety Items (DFARS Case 2010–D022), Government Property (DFARS Case 2009–D008); Final Rules

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 225

RIN 0750–AH17

Defense Federal Acquisition Regulation Supplement; Nonavailability Exception for Procurement of Hand or Measuring Tools (DFARS Case 2011–D025)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is adopting an interim rule as a final rule with minor changes. The interim rule implemented part of the National Defense Authorization Act for Fiscal Year 2011, which provides a domestic nonavailability exception to the requirement known as the Berry Amendment to acquire only domestic hand or measuring tools.

DATES: *Effective date:* August 19, 2011.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, telephone 703–602–0328.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published an interim rule in the **Federal Register** (76 FR 14588) on March 17, 2011, to implement section 847 of the National Defense Authorization Act for Fiscal Year 2011 (Pub. L. 111–383). Section 847 provides a domestic nonavailability exception to the requirement at 10 U.S.C. 2533a (Berry Amendment) to acquire only domestic hand or measuring tools. The domestic nonavailability exception was previously limited to the items covered in 10 U.S.C. 2533(b)(1) (food, clothing, fabrics, and fibers).

The public comment period closed on May 16, 2011. One respondent submitted comments on the interim rule.

II. Discussion/Analysis

A. Public Comments

The respondent noted high unemployment and recommended that, in order to create more employment for U.S. workers, the Government should minimize (if not eliminate) purchases from outside the United States, if the purchases can be procured within the United States.

The respondent suggested that sometimes nonavailability of domestic hand or measuring tools may be a planning issue. The respondent suggested forecasting DoD needs 12–18 months in advance, providing acquisition history for the past 2 or 3 years, and posting all this data on a Web site open to all CCR-registered organizations. According to the respondent, U.S. companies could then do a better job of planning, including the ramp-up of supply to ensure availability. The respondent believes that this action could potentially eliminate the need for DoD to source hand or measuring tools from sources outside of the United States.

Response: As required by 10 U.S.C. 2533a, DoD does not purchase foreign hand or measuring tools, if domestically manufactured tools can be acquired.

There is definitely a need to interface with the industry about DoD requirements. Better forecasting for everything that DOD purchases clearly benefits all stakeholders. U.S. companies already have access to acquisition history for National Stock Numbers (NSNs) through such sources as FedBizOpps and DIBBS (Defense Logistics Agency Internet Bid Board System). For items that DoD manages and stocks, Government demand planners are able to produce a 12-month forecast in order to assist the industry in understanding its requirements. However, not all items are centrally managed.

DoD does not manage acquisition of hand or measuring tools. These items are assigned to GSA for supply management. This makes it difficult for DoD to predict and aggregate planned purchases across the entire DoD. In FY 2010, DoD had 3,850 contract actions for acquisition of hand or measuring tools, for a total dollar value of $347 million.

Furthermore, adequate planning and notification to industry of an annual forecast will not be effective in obtaining domestic hand or measuring tools if there is an insufficient domestic supplier base. The fact that DoD only received one response to the interim rule may indicate that an insufficient pool of domestic contractors is available to supply DoD's requirements for hand or measuring tools as and when needed, in a satisfactory quality and sufficient quantity. The reason for enactment of the legislation is that market research has indicated that some types of commercial hand or measuring tools are no longer manufactured in the United States. Many hand or measuring tools are commercially available off-the-shelf (COTS) items. Revenue derived from Government sales is generally a very small percentage of overall revenue for manufacturers of commercially available off-the-shelf items. To the extent that the commercial market has transitioned to purchase of foreign hand or measuring tools, DoD does not generally buy sufficient quantities of these tools to influence the industry to produce domestic tools, unless there is also a commercial market for them.

B. Other Changes

The final rule includes a conforming change to 225.7002–2(c), which provides an exception to the restrictions of the Berry Amendment for acquisitions of items listed in FAR 25.104(a), Nonavailable articles. Previously, hand or measuring tools were excluded from this exception because the statute did not provide an exception based on domestic nonavailability. Now that domestic nonavailability is an authorized exception, there is no need to exclude them at 225.7002–2(c).

Additionally, the final rule includes language at 225.7002–1(b) that directs contracting officers to the corresponding site in DFARS Procedures, Guidance, and Information for additional guidance on interpretation of the Berry Amendment restriction on foreign acquisition of hand or measuring tools.

III. Regulatory Flexibility Act

DoD certifies that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act because the rule only allows purchase of hand or measuring tools from foreign sources when such tools are not available from domestic sources. If no domestic sources produce the tools, then allowing purchase from a foreign source will not impact any U.S. small business.

IV. Paperwork Reduction Act

The rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 225

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

Therefore, the interim rule published at 76 FR 14588 on March 17, 2011, is adopted as final with the following changes:

PART 225—FOREIGN ACQUISITION

■ 1. The authority citation for 48 CFR part 225 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

■ 2. Amend section 225.7002–1 by revising paragraph (b) to read as follows:

225.7002–1 Restrictions.

* * * * *

(b) Hand or measuring tools, unless the tools were produced in the United States. For additional guidance, see PGI 225.7002–1(b).

■ 3. Amend section 225–7002–2 by revising paragraph (c) to read as follows:

225.7002–2 Exceptions.

* * * * *

(c) Acquisitions of items listed in FAR 25.104(a).

* * * * *

[FR Doc. 2011–20531 Filed 8–18–11; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 216, 225, and 252

RIN 0750–AH28

Defense Federal Acquisition Regulation Supplement; Contractors Performing Private Security Functions (DFARS Case 2011–D023)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Interim rule.

SUMMARY: DoD is issuing an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement sections of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2008, which establish minimum processes and requirements for the selection, accountability, training, equipping, and conduct of personnel performing private security functions.

DATES: *Effective Date:* August 19, 2011.

Comment Date: Comments on the interim rule should be submitted in writing to the address shown below on or before October 18, 2011, to be considered in the formation of the final rule.

○ *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting ''DFARS Case 2011–D023'' under the heading ''Enter keyword or ID'' and selecting ''Search.'' Select the link ''Submit a Comment'' that corresponds with ''DFARS Case 2011–D023.'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''DFARS Case 2011–D023'' on your attached document.

○ *E-mail: dfars@osd.mil.* Include DFARS Case 2011–D023 in the subject line of the message.

○ *Fax:* 703–602–0350.

○ *Mail:* Defense Acquisition Regulations System, Attn: Meredith Murphy, OUSD (AT&L) DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Meredith Murphy, Defense Acquisition Regulations System, OUSD (AT&L) DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060. Telephone 703–602–1302; facsimile 703–602–0350.

SUPPLEMENTARY INFORMATION:

I. Background

The NDAA for FY 2008 (Pub. L. 110–181, enacted October 28, 2008), section 862, entitled ''Contractors Performing Private Security Functions in Areas of Combat Operations or Other Significant Military Operations,'' was amended by section 853 of the NDAA for FY 2009 (Pub. L. 110–417, enacted October 14, 2008) and sections 831 and 832 of the NDAA for FY 2011 (Pub. L. 111–383, enacted January 7, 2011). An interim final rule was published in the **Federal Register** on July 17, 2009, to meet the mandate of section 862 of the FY 2008 NDAA to provide policy and guidance regulating the actions of DoD and other Governmental private security contractors. A clause to cover the interagency requirements will be covered by a separate and subsequent FAR rule currently under development.

This interim rule is focused solely on providing implementing contractual language and a contract clause mandated by statute and applicable to DoD contracts only. While section 862 of the 2008 NDAA required standardization of rules for private security contractors among Government agencies, DOD's underlying instruction, the Department of Defense Instruction (DoDI) 3020.50, entitled ''Private Security Contractors Operating in Areas of Contingency Operations, Combat Operations, or Other Significant Operations'' at *http://www.dtic.mil/whs/directives/corres/pdf* was written to cover both DoD private security contractors (in all contingency operations) and interagency private security contractors (in combat operations). This interim rule implements the legislation by establishing (1) regulations addressing the selection, training, equipping, and conduct of personnel performing private security functions in areas of contingency operations, complex contingency operations, or other military operations or exercises that are designated by the combatant commander, (2) a contract clause, and (3) remedies.

Section 833 of the NDAA for FY 2011 is entitled ''Standards and Certification for Private Security Contractors.'' This provision mandates the establishment of third-party certification processes for determining whether private security contractors adhere to standards for operational and business practices. The required industry standard is currently under development and will be incorporated in the DFARS once the standard is published.

The regulations implementing the referenced statutory provisions are in DFARS subpart 225.3, entitled ''Contracts Performed Outside the United States.'' DFARS 225.302–3, Definitions, provides the definition of ''private security functions'' from section 862, as amended, and the definition of ''complex contingency operations'' from JP–102 (DoD Dictionary). This coverage does not apply to the performance of private security functions within the United States or outside the United States in areas that are not (a) contingency operations, (b) complex contingency operations, or (c) other military operations designated by the combatant commander. Importantly, DFARS 225.302 applies to the performance of private security functions in the applicable areas, without regard to whether the DoD contractor is a private security contractor. For example, a contractor delivering construction materials in an area of contingency operations might subcontract with a private security contractor to protect its supplies and employees during delivery. Although the supplier of the construction materials is not a private security contractor, the requirements of DFARS 252.225–7039, Contractors Performing Private Security Functions, are applicable. As a further example, the same contractor, if delivering construction materials to a base in Germany is not governed, at this time, by the requirements and limitations of DFARS 252.225.7039 because Germany is not an area of contingency operations,

complex contingency operations, or other significant military operations or exercises that are designated by the combatant commander. This is further clarified at DFARS 225.302–4, Policy. This subsection implements the relevant policy document, DoDI 3020.50, and assigns contractor responsibilities for the selection, accountability, training, equipping, and conduct of personnel performing private security functions under contracts in the covered areas. It also assigns responsibilities and establishes procedures for incident reporting, use of and accountability for equipment, and rules for the use of force.

The statutes also include specific remedies for violations of the responsibilities and procedures in the law, DoDI 3020.50, and DFARS 225.302–4. Without impinging on the Government's usual contractual remedies (*e.g.,* termination for default), the Government may, at its discretion, direct the contractor to remove or replace any personnel who fail to comply with, or violate, applicable requirements of the clause at 252.225–7039, Contractors Performing Private Security Functions. Such corrective actions must be taken at the contractor's own expense and without prejudice to any other contractual rights. The statute prescribes additional remedies as follows:

1. Contracting officers must include a contractor's failure to comply in appropriate past-performance databases.

2. If the contract is an award-fee contract, the contracting officer must include performance failure in the assessment of award fees for the relevant period (as well as authorizing the treatment of such failures as a basis for reducing or denying award fees for the relevant period or recovering all or part of award fees previously paid for such period).

3. If the contractor fails to comply with the Government's direction to remove or replace personnel, and such failure to comply is severe, prolonged, or repeated, the statute specifies the authority of the contracting officer to terminate the contract for default.

II. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action, and therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

III. Regulatory Flexibility Act

DoD does not expect this interim rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the statute impacts only private security contractors performing outside the United States. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

DoD is issuing an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 862 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2008, as amended by section 853 of the NDAA for FY 2009 and sections 831 and 832 of the NDAA for FY 2011. The statutory provisions add requirements and limitations for contractors performing private security functions outside the United States in areas of contingency operations, complex contingency operations, or other military operations or exercises that are designated by the combatant commanders. The specific requirements are included in Department of Defense Instruction 3020.50, entitled ''Private Security Contractors Operating in Contingency Operations, Combat Operations, or Other Significant Military Operations.'' These requirements are that contractors performing in areas such as Iraq and Afghanistan ensure that contractor personnel performing private security functions comply with the DoDI, including (1) accounting for Government-acquired and contractor-furnished property and (2) reporting incidents in which a weapon is discharged, personnel are attacked or killed or property is destroyed, or active, lethal countermeasures are employed.

In FY 2010, DoD awarded 1,839 contracts for performance in Iraq and Afghanistan. Of this total, 361, or 20 percent, were awarded to small businesses. Firms performing private security functions in these areas were already required to report the occurrence of incidences such as those listed in the clause at DFARS 252.225–7039, Contractors Performing Private Security Functions, but there was no consistency in the manner of reporting or the individual to whom the report was to be made. This DFARS interim rule and DoDI 3020.50 provide this consistency and clarity and, in that sense, serve to relieve any burden on small businesses.

The interim rule contains information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Burden Act (44 U.S.C. chapter 35). There is an approved information collection, OMB control number 0704–0460, Synchronized Predeployment and Operational Tracker (SPOT) System, in the amount of approximately 150,000 hours. DoD has determined that the currently approved burden hours are sufficient to cover these requirements.

The rule does not duplicate, overlap, or conflict with any other Federal rules. There are no alternatives that accomplish the stated objectives of the applicable statutes.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2011–D023) in correspondence.

IV. Paperwork Reduction Act

The rule contains information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35). The clause at DFARS 252.225–7039, Contractors Performing Private Security Functions, requires contractors to use the Synchronized Predeployment and Operational Tracker (SPOT) system to (1) register personnel performing private security functions; (2) register weapons to be carried by or available to be used by personnel performing private security functions; (3) register armored vehicles, helicopters, and other military vehicles operated by contractors performing private security functions; and (4) report certain incidents in which personnel performing private security functions are involved. These requirements are covered by an approved information collection, OMB control number 0704–0460, Synchronized Predeployment and Operational Tracker (SPOT) System, in the amount of approximately 150,000 hours.

DoD has determined that the currently approved burden hours are sufficient to

cover these requirements. However, DoD will accept comments on how the interim rule would impact either the burden or other aspects of the approved information collection.

V. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule without prior opportunity for public comment pursuant to 41 U.S.C. 1707 (formerly 41 U.S.C. 418b) and FAR 1.501–3(b). This action is necessary because the requirements mandated for inclusion in DoD contracts by the FY 2011 NDAA became effective immediately upon enactment on January 7, 2011. Congress has expressed continuing concern that regulations for the oversight of private security contractors are not yet in place. The rule imposes new accountability requirements and limitations on DoD contractors' use of private security personnel. It is imperative that these requirements and limitations be included in DoD contracts as soon as possible in order to ensure that all employees of the Contractor who are responsible for personnel performing private security functions under DoD contracts are briefed on and understand their obligation to comply with all qualification, training, screening (including, if applicable, thorough background checks), and security requirements established by DoDI 3020.50, Private Security Contractors Operating in Areas of Contingency Operations, Combat Operations, or Other Significant Operations, as well as applicable laws and regulations of the United States and the host country and applicable treaties and international agreements regarding performance of private security functions. However, DoD will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 216, 225, and 252

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 216, 225, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 216, 225, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 216—TYPES OF CONTRACTS

216.405–270 [Redesignated as 216.405–2–70]

■ 2. Redesignate section 216.405–270 as 216.405–2–70.

■ 3. Add section 216.405–2–71 to read as follows:

216.405–2–71 Award fee reduction or denial for failure to comply with requirements relating to performance of private security functions.

(a) In accordance with section 862 of the National Defense Authorization Act for Fiscal Year 2008, as amended, the contracting officer shall include in any award-fee plan a requirement to review contractor compliance with, or violation of, applicable requirements of the contract with regard to the performance of private security functions in an area of contingency operations, complex contingency operations, or other military operations or exercises that are designated by the combatant commander (see 225.370).

(b) In evaluating the contractor's performance under a contract that includes the clause at 252.225–7039, Contractors Performing Private Security Functions, the contracting officer shall consider reducing or denying award fees for a period if the contractor fails to comply with the requirements of the clause during such period. The contracting officer's evaluation also shall consider recovering all or part of award fees previously paid for such period.

PART 225—FOREIGN ACQUISITION

■ 4. Add sections 225.370 through 225.370–6 to subpart 225.3 to read as follows:

Subpart 225.3—Contracts Performed Outside the United States

Sec.

* * * * *

225.370 Contractors performing private security functions.
225.370–1 Scope.
225.370–2 Applicability.
225.370–3 Definitions.
225.370–4 Policy.
225.370–5 Remedies.
225.370–6 Contract clause.

225.370 Contractors performing private security functions.

225.370–1 Scope.

This section prescribes policy for implementing section 862 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181), as amended by section 853 of the National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417) and sections 831 and 832 of the National Defense Authorization Act for Fiscal Year 2011 (Pub. L. 111–383).

225.370–2 Applicability.

This section applies to acquisitions for supplies and services that require the performance of private security functions in areas of—

(a) Contingency operations (see FAR 2.101);

(b) Complex contingency operations; or

(c) Other military operations or exercises that are designated by the combatant commander.

225.370–3 Definitions.

As used in this section—

Complex contingency operations means large-scale peace operations (or elements thereof) conducted by a combination of military forces and nonmilitary organizations that involve one or more of the elements of peace operations that include one or more elements of other types of operations, such as foreign humanitarian assistance, nation assistance, support to insurgency, or support to counterinsurgency.

Private security functions means activities engaged in by a contractor, including—

(1) Guarding of personnel, facilities, designated sites, or property of a Federal agency, the contractor or subcontractor, or a third party; and

(2) Any other activity for which personnel are required to carry weapons in the performance of their duties.

225.370–4 Policy.

(a) The policy, responsibilities, procedures, accountability, training, equipping, and conduct of personnel performing private security functions in designated areas are addressed in Department of Defense Instruction (DoDI) 3020.50, Private Security Contractors Operating in Contingency Operations, Combat Operations, or Other Significant Military Operations, at *http://www.dtic.mil/whs/directives/corres/pdf/302050p.pdf.*

(b) The requirements of this section apply to contractors that employ private security contractors in areas of contingency operations, complex contingency operations, or other military operations or exercises that are designated by the combatant commander, whether the contract is for the performance of private security functions or other supplies or services.

(c) DoD requires contractors described in paragraph (b) above to—

(1) Ensure that all employees of the contractor who are responsible for

performing private security functions comply with orders, directives, and instructions to contractors performing private security functions for—

(i) Registering, processing, accounting for, managing, overseeing, and keeping appropriate records of personnel performing private security functions. This includes ensuring the issuance, maintenance, and return of Personal Identity Verification credentials in accordance with FAR clause 52.204–9, Personal Identity Verification of Contractor Personnel, and DoD procedures, including revocation of any physical and/or logistical access (as defined by Homeland Security Presidential Directive (HSPD–12)) granted to such personnel;

(ii) Authorizing and accounting for weapons to be carried by or available to be used by personnel performing private security functions;

(A) All weapons must be registered in the Synchronized Predeployment Operational Tracker (SPOT) materiel tracking system.

(B) In addition, all weapons that are Government-furnished property must be assigned a unique identifier in accordance with the clauses at 252.211–7003 and 252.245.7001 and physically marked in accordance with MIL–STD 130 (current version) and DoD directives and instructions. The items must be registered in the DoD Item Unique Identification (IUID) Registry (*https://www.bpn.gov/iuid/*);

(iii) Registering and identifying armored vehicles, helicopters, and other military vehicles operated by contractors performing private security functions;

(A) All armored vehicles, helicopters, and other military vehicles must be registered in SPOT.

(B) In addition, all armored vehicles, helicopters, and other military vehicles that are Government-furnished property must be assigned a unique identifier in accordance with the clauses at 252.211–7003 and 252.245.7001 and physically marked in accordance with MIL–STD 130 (current version) and DoD directives and instructions. The items must be registered in the DoD IUID Registry; and

(iv) Reporting incidents in which—

(A) A weapon is discharged by personnel performing private security functions;

(B) Personnel performing private security functions are attacked, killed, or injured;

(C) Persons are killed or injured or property is destroyed as a result of conduct by contractor personnel;

(D) A weapon is discharged against personnel performing private security functions or personnel performing such functions believe a weapon was so discharged; or

(E) Active, non-lethal countermeasures (other than the discharge of a weapon) are employed by personnel performing private security functions in response to a perceived immediate threat;

(2) Ensure that all employees of the contractor who are responsible for personnel performing private security functions are briefed on and understand their obligation to comply with—

(i) Qualification, training, screening (including, if applicable, thorough background checks), and security requirements established by DoDI 3020.50;

(ii) Applicable laws and regulations of the United States and the host country and applicable treaties and international agreements regarding performance of the functions of the private security contractors;

(iii) Orders, directives, and instructions issued by the applicable commander of a combatant command relating to weapons, equipment, force protection, security, health, safety, or relations and interaction with locals; and

(iv) Rules on the use of force issued by the applicable commander of a combatant command for personnel performing private security functions; and

(3) Cooperate with any Government-authorized investigation by providing access to employees performing private security functions and relevant information in the possession of the contractor.

225.370–5 Remedies.

(a) In addition to other remedies available to the Government—

(1) The contracting officer may direct the contractor, at its own expense, to remove and replace any contractor personnel who fail to comply with or violate applicable requirements. Such action may be taken at the Government's discretion without prejudice to its rights under any other contract provision, including termination for default. Required contractor actions include—

(i) Ensuring the return of personal identity verification credentials;

(ii) Ensuring the return of any other equipment issued to the employee under the contract; and

(iii) Revocation of any physical and/or logistical access granted to such personnel;

(2) The contracting officer shall include the contractor's failure to comply with the requirements of this subpart in appropriate databases of past performance and consider any such failure in any responsibility determination or evaluation of past performance;

(3) In the case of award-fee contracts, the contracting officer shall consider a contractor's failure to comply with the requirements of this subpart in the evaluation of the contractor's performance during the relevant evaluation period, and may treat such failure as a basis for reducing or denying award fees for such period or for recovering all or part of award fees previously paid for such period; and

(4) If the contractor fails to comply with the Government's direction to remove or replace personnel (see paragraph (a)(1) of this subsection), and such failure to comply is severe, prolonged, or repeated, the contracting officer may terminate the contract for default.

(b) If the performance failures are significant or repeated, the contracting officer shall refer the contractor to the appropriate suspension and debarment official.

225.370–6 Contract clause.

Use the clause at 252.225–7039, Contractors Performing Private Security Functions, in all solicitations and contracts to be performed in areas of—

(a) Contingency operations;

(b) Complex contingency operations; or

(c) Other military operations or exercises, when designated by the combatant commander.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 5. Amend section 252.212–7001 as follows:

■ a. Revise the clause date to read ''(AUG 2011)'';

■ b. Redesignate paragraphs (b)(16) through (b)(27) as (b)(17) through (b)(28);

■ c. Add new paragraph (b)(16); and

■ d. Revise paragraph (c).

252.212–7001 Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items.

* * * * *

(b) * * *

(16) ____ 252.225–7039, Contractors Performing Private Security Functions (AUG 2011) (Section 862 of Pub. L. 110–181, as amended by section 853 of Pub. L. 110–417 and sections 831 and 832 of Pub. L. 111–383).

* * * * *

(c) In addition to the clauses listed in paragraph (e) of the Contract Terms and Conditions Required to Implement

Statutes or Executive Orders—Commercial Items clause of this contract (FAR 52.212–5), the Contractor shall include the terms of the following clauses, if applicable, in subcontracts for commercial items or commercial components, awarded at any tier under this contract:

(1) 252.225–7039, Contractors Performing Private Security Functions (AUG 2011) (Section 862 of Pub. L. 110–181, as amended by section 853 of Pub. L. 110–417 and sections 831 and 832 of Pub. L. 111–383).

(2) 252.237–7010, Prohibition on Interrogation of Detainees by Contractor Personnel (NOV 2010) (Section 1038 of Pub. L. 111–84).

(3) 252.237–7019, Training for Contractor Personnel Interacting with Detainees (SEP 2006) (Section 1092 of Pub. L. 108–375).

(4) 252.247–7003, Pass-Through of Motor Carrier Fuel Surcharge Adjustment to the Cost Bearer (SEP 2010) (Section 884 of Pub. L. 110–417).

(5) 252.247–7023, Transportation of Supplies by Sea (MAY 2002) (10 U.S.C. 2631).

(6) 252.247–7024, Notification of Transportation of Supplies by Sea (MAR 2000) (10 U.S.C. 2631).

* * * * *

■ 6. Add section 252.225–7039 to read as follows:

252.225–7039 Contractors Performing Private Security Functions.

As prescribed in 225.370–6, insert the following clause:

CONTRACTORS PERFORMING PRIVATE SECURITY FUNCTIONS (AUG 2011)

(a) *Definition.*

Private security functions means activities engaged in by a contractor, including—

(i) Guarding of personnel, facilities, designated sites, or property of a Federal agency, the contractor or subcontractor, or a third party; or

(ii) Any other activity for which personnel are required to carry weapons in the performance of their duties.

(b) *Requirements.* The Contractor is required to—

(1) Ensure that all employees of the Contractor who are responsible for performing private security functions under this contract comply with any orders, directives, and instructions to Contractors performing private security functions that are identified in the contract for—

(i) Registering, processing, accounting for, managing, overseeing, and keeping appropriate records of personnel performing private security functions. This includes ensuring the issuance, maintenance, and return of Personal Identity Verification credentials in accordance with FAR 52.204–19, Personnel Identity Verification of Contractor Personnel, and DoD procedures, including revocation of any physical and/or logistical access (as defined by Homeland Security Presidential Directive (HSPD–12)) granted to such personnel;

(ii) Authorizing and accounting for weapons to be carried by or available to be used by personnel performing private security functions;

(A) All weapons must be registered in the Synchronized Predeployment Operational Tracker (SPOT) materiel tracking system.

(B) In addition, all weapons that are Government-furnished property must be assigned a unique identifier in accordance with the clauses at DFARS 252.211–7003, Item Identification and Valuation, and DFARS 252.245.7001, Tagging, Labeling, and Marking of Government-Furnished Property, and physically marked in accordance with MIL–STD 130 (current version) and DoD directives and instructions. The items must be registered in the DoD Item Unique Identification (IUID) Registry (*https://www.bpn.gov/iuid/*);

(iii) Registering and identifying armored vehicles, helicopters, and other military vehicles operated by Contractors performing private security functions;

(A) All armored vehicles, helicopters, and other military vehicles must be registered in SPOT.

(B) In addition, all armored vehicles, helicopters, and other military vehicles that are Government-furnished property must be assigned a unique identifier in accordance with the clauses at DFARS 252.211–7003 and DFARS 252.245.7001 and physically marked in accordance with MIL–STD 130 (current version) and DoD directives and instructions. The items must be registered in the DoD IUID Registry (*https://www.bpn.gov/iuid/*); and

(iv) Reporting incidents in which—

(A) A weapon is discharged by personnel performing private security functions;

(B) Personnel performing private security functions are attacked, killed, or injured;

(C) Persons are killed or injured or property is destroyed as a result of conduct by contractor personnel;

(D) A weapon is discharged against personnel performing private security functions or personnel performing such functions believe a weapon was so discharged; or

(E) Active, non-lethal countermeasures (other than the discharge of a weapon) are employed by personnel performing private security functions in response to a perceived immediate threat;

(2) Ensure that all employees of the Contractor who are responsible for personnel performing private security functions under this contract are briefed on and understand their obligation to comply with—

(i) Qualification, training, screening (including, if applicable, thorough background checks), and security requirements established by DoDI 3020.50, Private Security Contractors Operating in Areas of Contingency Operations, Combat Operations, or Other Significant Operations, at *http://www.dtic.mil/whs/directives/corres/pdf;*

(ii) Applicable laws and regulations of the United States and the host country and applicable treaties and international agreements regarding performance of private security functions;

(iii) Orders, directives, and instructions issued by the applicable commander of a combatant command relating to weapons, equipment, force protection, security, health, safety, or relations and interaction with locals; and

(iv) Rules on the use of force issued by the applicable commander of a combatant command for personnel performing private security functions; and

(3) Cooperate with any Government-authorized investigation by providing access to employees performing private security functions and relevant information in the possession of the Contractor regarding the incident concerned.

(c) *Remedies.* In addition to other remedies available to the Government—

(1) The Contracting Officer may direct the Contractor, at its own expense, to remove and replace any Contractor personnel who fail to comply with or violate applicable requirements of this contract. Such action may be taken at the Government's discretion without prejudice to its rights under any other provision of this contract, including termination for default. Required Contractor actions include—

(i) Ensuring the return of personal identity verification credentials;

(ii) Ensuring the return of other equipment issued to the employee under the contract; and

(iii) Revocation of any physical and/or logistical access granted to such personnel;

(2) The Contractor's failure to comply with the requirements of this clause will be included in appropriate databases of past performance and may be considered in any responsibility determination or evaluation of past performance;

(3) If this is an award-fee contract, the Contractor's failure to comply with the requirements of this clause shall be considered in the evaluation of the Contractor's performance during the relevant evaluation period, and the Contracting Officer may treat such failure to comply as a basis for reducing or denying award fees for such period or for recovering all or part of award fees previously paid for such period; and

(4) This contract may be terminated for default if the Contractor fails to comply with the requirements of paragraph (b) of this clause or, if directed by the Contracting Officer, fails to remove or replace, at its own expense, any of its personnel who violate the requirements of paragraph (b) of this clause.

(d) *Rule of construction.* The duty of the Contractor to comply with the requirements of this clause shall not be reduced or diminished by the failure of a higher- or lower-tier Contractor to comply with the clause requirements or by a failure of the contracting activity to provide required oversight.

(e) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (e), in all subcontracts that will be performed in areas of contingency operations, complex contingency operations, or other military operations or exercises designated by the Combatant Commander.

(End of clause)

■ 7. Revise section 252.244–7000 to read as follows:

252.244–7000 Subcontracts for Commercial Items and Commercial Components (DoD Contracts).

As prescribed in 244.403, use the following clause:

SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS (DOD CONTRACTS) (AUG 2011)

In addition to the clauses listed in paragraph (c) of the Subcontracts for Commercial Items clause of this contract (Federal Acquisition Regulation 52.244–6), the Contractor shall include the terms of the following clauses, if applicable, in subcontracts for commercial items or commercial components, awarded at any tier under this contract:

(a) 252.225–7009 Restriction on Acquisition of Certain Articles Containing Specialty Metals (JAN 2011) (10 U.S.C. 2533b).

(b) 252.225–7039, Contractors Performing Private Security Functions (AUG 2011) (Section 862 of Pub. L. 110–181, as amended by section 853 of Pub. L. 110–417 and sections 831 and 832 of Pub. L. 111–383).

(c) 252.236–7013 Requirement for Competition Opportunity for American Steel Producers, Fabricators, and Manufacturers (JAN 2009) (Pub. L. 110–329, Division E, Section 108).

(d) 252.237–7010 Prohibition on Interrogation of Detainees by Contractor Personnel (NOV 2010) (Section 1038 of Pub. L. 111–84).

(e) 252.237–7019 Training for Contractor Personnel Interacting with Detainees (SEP 2006) (Section 1092 of Pub. L. 108–375).

(f) 252.246–7003 Notification of Potential Safety Issues (JAN 2007).

(g) 252.247–7023 Transportation of Supplies by Sea (MAY 2002) (10 U.S.C. 2631).

(h) 252.247–7024 Notification of Transportation of Supplies by Sea (MAR 2000) (10 U.S.C. 2631).

(End of clause)

[FR Doc. 2011–20528 Filed 8–18–11; 8:45 am]

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 209 and 252

RIN 0750–AG92

Defense Federal Acquisition Regulation Supplement; Identification of Critical Safety Items (DFARS Case 2010–D022)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to add a contract clause that clearly identifies any items being purchased that are critical safety items so that the proper risk-based surveillance can be performed.

DATES: *Effective Date:* August 19, 2011.

FOR FURTHER INFORMATION CONTACT: Ms. Meredith Murphy, 703–602–1302.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule at 76 FR 14641 on March 17, 2011, to add a contract clause that clearly identifies any items being purchased that are critical safety items so that the proper risk-based surveillance can be performed. One public comment was received in response to the proposed rule.

II. Discussion and Analysis of the Public Comment

Comment: The respondent noted that the DFARS case specifically addresses aviation and ship critical safety items, but states that protective personal equipment, such as body armor and helmets, can also have catastrophic results if they fail. The respondent asked how DoD ensures that contract administration activities apply increased surveillance procedures in these types of contracts.

Response: The additional risk-based surveillance required for aviation and ship critical safety items is mandated by law (section 802 of the National Defense Authorization Act for Fiscal Year 2004 and section 130 of the National Defense Authorization Act for Fiscal Year 2007). There is no equivalent statutory requirement for protective personal equipment, and instituting such a requirement is outside the scope of this case. However, the respondent's comment has been forwarded to the Defense Contract Management Agency for future consideration.

The respondent also asked about the process that ensures that contract administration activities apply increased surveillance procedures when aviation and ship critical safety items have been identified. The process was summarized in the preamble to the proposed rule published at 76 FR 14642 on March 17, 2011. Briefly, the combination of the actions of the design control activities, joint agency instructions (*e.g.,* Management of Aviation Critical Safety Items), limitations on contracting with sources that have not been approved by the design control activity, and focus on contract administration will ensure the proper surveillance for these critical items.

The respondent did not recommend changes to the DFARS text or clause, and the final rule does not revise the DFARS text or clause from that published in the proposed rule.

II. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

The Department of Defense certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Its purpose is internal to the Government only by alerting Government quality-assurance activities to existing heightened surveillance requirements that are imposed by DoD requiring activities. The process for identifying an item as a critical safety item occurs entirely outside the acquisition process, as does the process of approving a source for production of a critical safety item. No comments from small entities were received in response to publication of the proposed rule.

V. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 209 and 252

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 209 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 209 and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 209—CONTRACTOR QUALIFICATIONS

■ 2. Add section 209.270–5 to read as follows:

209.270–5 Contract clause.

The contracting officer shall insert the clause at 252.209–7010, Critical Safety Items, in solicitations and contracts when the acquisition includes one or more items designated by the design control activity as critical safety items.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Add section 252.209–7010 to read as follows:

252.209–7010 Critical Safety Items.

As prescribed in 209.270–5, use the following clause:

CRITICAL SAFETY ITEMS (AUG 2011)

(a) *Definitions.*

Aviation critical safety item means a part, an assembly, installation equipment, launch equipment, recovery equipment, or support equipment for an aircraft or aviation weapon system if the part, assembly, or equipment contains a characteristic any failure, malfunction, or absence of which could cause—

(i) A catastrophic or critical failure resulting in the loss of, or serious damage to, the aircraft or weapon system;

(ii) An unacceptable risk of personal injury or loss of life; or

(iii) An uncommanded engine shutdown that jeopardizes safety.

Design control activity. (i) With respect to an aviation critical safety item, means the systems command of a military department that is specifically responsible for ensuring the airworthiness of an aviation system or equipment, in which an aviation critical safety item is to be used; and

(ii) With respect to a ship critical safety item, means the systems command of a military department that is specifically responsible for ensuring the seaworthiness of a ship or ship equipment, in which a ship critical safety item is to be used.

Ship critical safety item means any ship part, assembly, or support equipment containing a characteristic, the failure, malfunction, or absence of which could cause—

(i) A catastrophic or critical failure resulting in loss of, or serious damage to, the ship; or

(ii) An unacceptable risk of personal injury or loss of life.

(b) *Identification of critical safety items.* One or more of the items being procured under this contract is an aviation or ship critical safety item. The following items have been designated aviation critical safety items or ship critical safety items by the designated design control activity:

_____

_____

_____

_____

(Insert additional lines as necessary)

(c) *Heightened quality assurance surveillance.* Items designated in paragraph (b) of this clause are subject to heightened, risk-based surveillance by the designated quality assurance representative.

(End of clause)

[FR Doc. 2011–20529 Filed 8–18–11; 8:45 am]

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 201, 245, and 252

RIN Number 0750–AG38

Defense Federal Acquisition Regulation Supplement; Government; Property (DFARS Case 2009–D008)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) regarding Government Property, to reflect the recent revisions to Government Property elsewhere in the Code of Federal Regulations.

DATES: *Effective Date:* August 19, 2011.

FOR FURTHER INFORMATION CONTACT: Ms. Meredith Murphy, 703–602–1302.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is revising subparts 245.6 and 245.7 to be consistent with the changes to FAR subparts 45.6 and 45.7, published in the **Federal Register** at 72 FR 27364 on May 15, 2007. A proposed DFARS rule was published in the **Federal Register** at 75 FR 75444 on December 3, 2010. The public comment period for the proposed rule closed February 1, 2011. Comments were received from three respondents. A discussion and analysis of the comments is provided in section II of this notice. Any revisions to the final rule based on public comments are addressed in the DoD responses to the comments received.

II. Discussion and Analysis

Comments received in response to the proposed rule are organized into six categories and are discussed in the paragraphs that follow.

A. Clarifying Responsibilities

Comment: A respondent recommended that ''* * * or the head of the contract administration office'' be added to DFARS 201.670(a).

DoD response: DFARS 201.670(a) has been revised to specify that the appropriate agency authority may delegate contract administration functions to the cognizant contract administration office, in which case the contract administration office appoints the property administrators and plant clearance officers in writing. This language was formerly found at DFARS 245.70.

Comment: A respondent recommended that DFARS 252.245–70XX(i) be revised to make the contractor's responsibility for compliance with export control law and regulations a ''due diligence responsibility.''

DoD Response: In the context of surplus sales, it is the buyer's responsibility to adhere to export control laws and regulations. Therefore, the referenced paragraph has been deleted and a new paragraph (g) has been inserted to specify that disposition shall be in accordance with foreign and U.S. laws and regulations, including regulations involving export controls, host nation requirements, Final Governing Standards, and Government-to-Government agreements, and that the contractor's responsibility to comply with all applicable laws and regulations regarding export-controlled items exists independent of the information provided by the clause. The new language is consistent with the respondent's recommendation and current DFARS language at 252.204–7008.

B. Inventory Schedules

Comment: A respondent stated that the requirement at DFARS 245.602–1 for ''obtaining bills of material and reviewing recent purchases, and stock record entries'' is not a part of the disposal process. The respondent commented that these duties require the plant clearance officer to have a working knowledge of every contract and that the process will drive up costs.

DoD Response: The proposed language at 245.602–1 exists today in the current DFARS at 245.7201. The proposed rule moved 245.7201 to subpart 245.6, and renamed the subpart Reporting, Reutilization, and Disposal, to conform with the FAR; however, the language at DFARS 245.602–1 has been

clarified to specify applicability only to termination inventory.

Comment: In reference to DFARS 245.602–1, Inventory disposal schedules, a respondent asked for guidance on when a physical count was required and suggested ways of addressing efficiency.

DoD response: Generally, the Government relies on quantity data provided by the contractor, and physical counts are usually required only if the plant clearance officer suspects data integrity issues; however, 245.602–1(2) has been clarified to specify potential methods of verifying quantities.

Comment: A respondent was concerned about the requirement at 252.245–70XX(b)(1)(i)(A) and (B) to provide Federal Supply Codes (FSCs) and manufacturer name, because this information is not always available or known.

DoD Response: The language at 252.245–7004(b)(1)(i)(A) and (B) has been modified in the final rule to require the FSC and manufacturer name only if the information is assigned and/or available.

Comment: A respondent recommended that new definitions for the terms ''manufacturer name'' and ''manufacturer part number'' be added at the clause at 252.245–70XX.

DoD response: These terms are used commonly; therefore, they have not been added to the definitions section of the clause.

Comment: In reference to 252.245–70XX(b), Inventory disposal schedules, a respondent recommended that the supplier name and part number be required for all items in Federal condition code A1 being reported as excess on inventory schedules.

DoD Response: The respondent's recommendation would require reprogramming of the Plant Clearance Automated Redistribution and Screening System (PCARSS). The cost of such reprogramming would largely offset the marginal increase in reutilization realized.

C. Sales of Surplus Property

Comment: In reference to 245.604–3, Sale of surplus property, a respondent suggested that risk-based techniques be used. For example, high value items should be treated differently, according to the respondent, from items with little potential for proceeds.

DoD Response: The language at 245.604–3(1) has been clarified to ensure that plant clearance officers consider the market potential of items prior to authorizing surplus sales and determine the best value sales approach.

Comment: A respondent recommended that 252.245–70XX(c), be changed to read ''net proceeds.'' The respondent cited the Federal Property Administration Act of 1949, which states that a portion of the proceeds goes to the ''cost of the work.'' The respondent also claimed that paragraph (c) conflicts with FAR 31.201–5 and ASTM International standard 2279–09, Establishing the Guiding Principles of Property Management (costs of sales may outweigh the return).

DoD response: The respondent's recommendation implies that contractors are entitled to a share of sales proceeds to cover the contractor costs of conducting the sale. There is no basis for such policy or for otherwise directly reimbursing a contractor for costs incurred in conducting surplus property sales. Such action is a normal part of contractor responsibilities under the clause at FAR 52.245–1(b)(2). FAR 31.201–5 pertains to income, rebates, allowances, or other credits made to allowable costs. Because surplus property sales are a normal part of a contractor's property management responsibilities under the clause at FAR 52.245–1(b)(2) and are typically provided by the contractor as an overhead function, FAR 31.201–5 has no application here. ASTM International standard 2279–09 is not germane to the issue of proper deposit of sales proceeds received under surplus sales.

Comment: A respondent recommended that a certification statement or a standard form providing the terms and conditions of the sale between the Government and buyer be provided at 252.245–70XX(e). The respondent also asked what the expectation is here.

DoD Response: The language exists today in 245.604. As indicated in the proposed rule, 245.604 has been updated and the language moved to the final rule clause at 252.245.70XX. Its requirements are an important policy safeguard to ensure the integrity of the surplus sales process.

Comment: A respondent requested that the language at 252.245–70XX(l)(2) be changed as follows, ''(t)he Contractor shall solicit a sufficient number of bidders to obtain adequate competition and use informal invitations for bid unless the plant clearance officer approves use of formal bid procedures.''

DoD Response: The language, which has been revised and relocated to 252.245–7004(j)(4), specifies that informal bid procedures shall be used unless the plant clearance officer directs otherwise.

Comment: A respondent recommended that formal sales be considered a part of the Contract Data Requirements List (CDRL).

DoD Response: There is no basis for such policy. Including this on the CDRL would make the Government liable for directly reimbursing a contractor for costs incurred in conducting surplus property sales. However, such expenses are a normal part of contractor responsibilities under FAR 52.245–1(b)(2) and are not subject to direct reimbursement.

Comment: A respondent recommended removing the dollar threshold at 252.245–70XX(l)(6) and requiring the plant clearance officer, not the contractor, to send the sales notice to FedBizOps.

DoD Response: The plant clearance officer, not the contractor, is the appropriate sender of the sales notice; therefore, the requirement has been deleted. A more general requirement on the use of FedBizOps has been included in the DFARS companion resource, Procedures, Guidance, and Information (PGI) for the plant clearance officer.

Comment: A respondent recommended changing the second sentence of 252.245–70XX(e)(9)(7) to, ''(b)id openings will be submitted to the plant clearance officer, either electronically or manually, two copies of the bid abstract.''

DoD Response: The language has been revised and relocated to paragraph (j)(8) of 252.245–7004, and clarifies that the contractor shall provide two copies of the bid abstract to the plant clearance officer.

Comment: A respondent recommended deleting the phrase ''(f)orwarded to the plant clearance officer'' from 252.245–70XX(c), Proceeds from sale of surplus inventory.

DoD Response: The language at 252.245–7004(c) has been clarified to require proceeds to be forwarded to the contracting officer or plant clearance officer, credited to the Government through a settlement agreement, credited to the contract, applied to the contract as directed by the contracting officer, or forwarded to the plant clearance officer unless otherwise provided for in the contract.

Comment: In reference to 252.245–70XX (l), a respondent asked if plant clearance officers must draw up and provide terms and conditions for the contractor to use on surplus sales. The respondent also requested that terms and conditions be included in this clause.

DoD Response: Contractors are required to use Government-provided sales terms and conditions. This is not

a new requirement. DCMA is leading an effort to revise and update the sales terms and conditions found today at 245.7309. Once completed, and in coordination with the Services, the sales terms and conditions will be incorporated into the DFARS. It should be noted that sales terms and conditions specific to demilitarization, mutilation, and destruction will remain within the clause at 252.245–7004 due to the general sensitivity of demilitarization, mutilation, and destruction actions.

D. Demilitarization, Mutilation, and Destruction

Comment: A respondent recommended that 252.245–70XX(e)(8) be deleted in its entirety and that special conditions be placed into the PGI, including that the agency must provide direction and funding.

DoD Response: It is incumbent upon the Government to provide the contractor, as part of contract terms and conditions, any demilitarization, mutilation, or destruction requirements (reference DoD 5000.2–R, paragraph C2.8.7., Demilitarization and Disposal Planning). No additional clarification is necessary.

Comment: A respondent requested confirmation that the requirement to validate disposal of contractor inventory in foreign countries at paragraph (d) of the clause at 252.245–70XX is a Government responsibility. The respondent also asked if validation takes place when the plant clearance officer reviews and accepts the bid and whether DCMA International should get involved. The respondent recommended indicating who has the responsibility, specifying that State Department approval is required, and adding a certification statement to the SF 1428 providing the validation to the contractor.

DoD Response: The language at DFARS 252.245–70XX(d) pertaining to disposal of contractor inventory overseas has been removed from the final rule. DFARS 252.245–7004, paragraph (g), has been clarified to ensure that disposal of contractor inventory located overseas is governed by contract terms and conditions. Additionally, the DoD responsibilities contained in the PGI sufficiently address this issue.

Comment: A respondent expressed concern that the language at DFARS 252.245–70XX could be interpreted as requiring the contractor to determine the appropriate level of demilitarization required; the respondent suggested clarifying the intent.

DoD Response: It is incumbent upon the Government to provide the contractor with, as part of contract terms and conditions, any demilitarization, mutilation, or destruction requirements (reference DoD 5000.2–R, paragraph C2.8.7., Demilitarization and Disposal Planning). No additional clarification is needed.

E. Scrap Procedures

Comment: A respondent recommended deleting DFARS 252.245–70XX(j)(1), Contractor with an approved scrap procedure, in its entirety because the scrap procedures are typically incorporated within the contractor's property management system.

DoD Response: DoD agrees that a separate approval of contractor scrap procedures is neither practical nor necessary; however, the basic minimum requirements of an adequate scrap procedure are integral to proper application of the clause. Accordingly, the language referring to scrap procedure approvals at DFARS 252.245–70XX(j)(1) has been deleted from the final rule; the remaining language has been retained at paragraph (h) of 252.245–7004.

Comment: In reference to DFARS 252.245–70XX(j)(i)(ii), a respondent recommended retaining the current language found in DFARS 245.610–3(1)(iv)(B), as follows: ''When commingling is approved, the net proceeds for contractors with an approved scrap procedure will ensure (that sales) proceeds are appropriately applied to an overhead account.''

DoD Response: While the requirement is still relevant, it is a normal part of a property administrator's oversight function; therefore, the language is more suitable to internal DoD component guidance, *e.g.,* DCMA instructions.

Comment: A respondent recommended deleting the requirement for a scrap warranty at DFARS 252.245–70XX(j)(3).

DoD Response: The referenced language has been modified to allow Government discretion in requiring a scrap warranty.

Comment: A respondent recommended moving the requirements of DFARS 252.245–70XX(k), Disposal of contractor inventory for NATO cooperative services, to DFARS part 245 or providing clarification that its requirements are a Government responsibility.

DoD Response: The language has been deleted from the final rule clause, as DoD support to NATO cooperative projects is already covered under DFARS 225.871.

F. Other Changes

1. *Comment:* A respondent identified ''untability'' as a typographical error at DFARS 252.245–70XX(j)(1)(i).

DoD Response: The term has been changed to ''accountability.''

2. *Comment:* A respondent stated that the proposed changes do a good job of cleaning up and consolidating the plant clearance process and that the new PGI for DFARS Case 2009–D008 also looks good.

DoD Response: Noted.

3. The following changes have been incorporated into the final rule based on internal DoD coordinations:

- Deleted the reference to FAR 52.245–2 at 245.107 because the FAR clause 52.245–2 is not a stand-alone clause and can only be used in conjunction with FAR 52.245–1;
- Added clarifying language on property condition at 245.602–1(3);
- Clarified that 245.602–1 applies only to termination inventory and that such inventory may be verified by appropriate technical personnel;
- Added clarifying language at 245.602–3 on disposition of contractor inventory in overseas locations; arrangement of inspection of property and security requirements; and consideration by the plant clearance officer of any special disposition requirements, such as demilitarization; and trade security requirements;
- Added 245.7101–5(d), Other disposal actions, to conform to the DD Form 1641;
- Added a caveat in the clause at 252.245–7004(b)(1) to use the Plant Clearance Automated Reutilization Screening System unless disposition instructions are otherwise included in the contract;
- Relocated paragraph (e) of the 252.245 clause to paragraph (j) to better align language with actual process;
- Deleted ''Commerce control list'' and ''Munitions list items'' from the definitions and added definitions of ''Export-controlled items'' and ''Ineligible transferees'' to the clause at 252.245–7004(a);
- Added the terms ''mutilation/destruction'' and ''mutilate/destroy,'' as appropriate, after each instance of the term ''demilitarization'' for consistency with DoD policy;
- Deleted supply condition codes from 252.245–7004(b)(1), and added a hyperlink to DoD 4000.25–2–M;
- Added clarifying language for disposition of contractor inventory located in foreign countries to the clause at 252.245–7004;
- Modified language at 252.245–7004(h)(2) to allow the plant clearance

officer discretion in requiring scrap warranties;

• Added clarifying language at 252.245–7004(j)(9)(i) on verification of demilitarization actions by Government representatives, including use of DRMS Form 145 or equivalent; and

• Renumbered the DFARS text and clauses, as necessary.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because this final rule imposes no new requirements on small entities. The rule revises DFARS part 245, Government Property, to reflect the recent revisions to FAR part 45, Government Property. It makes no significant change to DoD policy for the management of Government property in the possession of contractors. No comments were received on the expected impact of this rule on small entities in response to publication of the proposed rule.

V. Paperwork Reduction Act

The information collection requirements of the Defense Federal Acquisition Regulation Supplement (DFARS) part 245, Government Property, related clauses in DFARS part 252, and related forms in DFARS part 253, have been approved by the Office of Management and Budget (OMB) under OMB Control Number 0704–0246. No new information collection requirements are imposed by this final rule.

List of Subjects in 48 CFR Parts 201, 245, and 252

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 201, 245, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 201; 245, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 201—FEDERAL ACQUISITION REGULATIONS SYSTEM

■ 2. Add section 201.670 to read as follows:

201.670 Appointment of property administrators and plant clearance officers.

(a) The appropriate agency authority shall appoint or terminate (in writing) property administrators and plant clearance officers.

(b) In appointing qualified property administrators and plant clearance officers, the appointing authority shall consider experience, training, education, business acumen, judgment, character, and ethics.

PART 245—GOVERNMENT PROPERTY

■ 3. Amend section 245.107 by adding paragraph (e) to read as follows:

245.107 Contract clauses.

* * * * *

(d) Use the clause at 252.245–7004, Reporting, Reutilization, and Disposal, in solicitations and contracts that contain the clause at FAR 52.245–1, Government Property.

■ 4. Add subpart 245.5, consisting of section 245.570, to read as follows:

Subpart 245.5—Support Government Property Administration

245.570 Storage at the Government's expense.

All storage contracts or agreements shall be separately priced and shall include all costs associated with the storage.

■ 5. Revise subpart 245.6 to read as follows:

Subpart 245.6—Reporting, Reutilization, and Disposal

Sec.
245.602 Reutilization of Government property.
245.602–1 Inventory disposal schedules.
245.602–3 Screening.
245.602–70 Plant clearance procedures.
245.604 Disposal of surplus property.
245.604–3 Sale of surplus property.

Subpart 245.6—Reporting, Reutilization, and Disposal

245.602 Reutilization of Government property.

245.602–1 Inventory disposal schedules.

For termination inventory, plant clearance officers shall verify inventory schedules, either directly or through appropriate technical personnel, to determine the following:

(a) *Allocability.*

(1) Review contract requirements, delivery schedules, bills of material, and other pertinent documents to determine whether schedules include property that—

(i) Is appropriate for use on the contract; or

(ii) Exceeds the quantity required for completion of the contract, but could be diverted to other commercial work or Government use.

(2) Review the contractor's—

(i) Recent purchases of similar material;

(ii) Plans for current and scheduled production;

(iii) Stock record entries; and

(iv) Bills of material for similar items.

(b) *Quantity.* Take measures to provide assurance that available inventory is in accordance with quantities listed on the inventory schedules. Quantities may be verified by actual item count, acceptance of labeled quantities in unopened/sealed packages, scale counts, or other appropriate methods.

(c) *Condition.* Ensure that the physical condition of the property is reasonably consistent with the Federal Condition Code supplied by the contractor.

245.602–3 Screening.

Property will be screened DoD-wide, including the contracting agency, requiring agency, and, as appropriate, the General Services Administration. The requiring agency shall have priority for retention of listed items. All required screening must be completed before any sale of contractor inventory, including contractor inventory in overseas locations (foreign excess personal property) can take place. Upon request of the prospective reutilization, transfer, donation, or sales customer, the plant clearance officer shall arrange for inspection of property at the contractor's plant in such a manner as to avoid interruption of the contractor's operations, and consistent with any security requirements.

245.602–70 Plant clearance procedures.

Follow the procedures at PGI 245.602–70 for establishing and processing a plant clearance case.

245.604 Disposal of surplus property.

245.604–3 Sale of surplus property.

(a) Plant clearance officers shall determine a best value sales approach (formal or informal sales), to include due consideration for costs, risks, and benefits, e.g., potential sales proceeds.

(b) *Informal bid procedures.* The plant clearance officer may direct the contractor to issue informal invitations for bid (orally, telephonically, or by other informal media), provided—

(1) Maximum practical competition is obtained;

(2) Sources solicited are recorded; and

(3) Informal bids are confirmed in writing.

(c) *Sale approval and award.* Plant clearance officers shall—

(1) Evaluate bids to establish that the sale price is fair and reasonable, taking into consideration—

(i) Knowledge or tests of the market;

(ii) Current published prices for the property;

(iii) The nature, condition, quantity, and location of the property; and

(iv) Past sale history for like or similar items;

(2) Approve award to the responsible bidder whose bid is most advantageous to the Government. The plant clearance officer shall not approve award to any bidder who is an ineligible transferee, as defined in 252.245–7004, Reporting, Reutilization, and Disposal; and

(3) Notify the contractor of the bidder to whom an award will be made within five working days from receipt of bids.

(d) *Noncompetitive sales.*

(1) Noncompetitive sales include purchases or retention at less than cost by the contractor. Noncompetitive sales may be made when—

(i) The plant clearance officer determines that this method is essential to expeditious plant clearance; and

(ii) The Government's interests are adequately protected.

(2) Noncompetitive sales shall be at fair and reasonable prices, not less than those reasonably expected under competitive sales.

(3) Conditions justifying noncompetitive sales are—

(i) No acceptable bids are received under competitive sale;

(ii) Anticipated sales proceeds do not warrant competitive sale;

(iii) Specialized nature of the property would not create bidder interest;

(iv) Removal of the property would reduce its value or result in disproportionate handling expenses; or

(v) Such action is essential to the Government's interests.

(e) Plant clearance officers shall consider any special disposal requirements such as demilitarization or trade security control requirements in accordance with DoDM 4160.28–M, Defense Demilitarization Manual, and DoDI 2030.08, Implementation of Trade Security Controls, respectively (See PGI 245.6).]

Subpart 245.70—[Removed]

■ 6. Remove subpart 245.70.

Subpart 245.71—[Redesignated as Subpart 245.70]

■ 7a. Redesignate subpart 245.71 as subpart 245.70.

■ 7b. Revise newly redesignated subpart 245.70 to read as follows:

Subpart 245.70—Plant Clearance Forms

Sec.

245.7001 Forms.
245.7001–1 Standard Form 97, Certificate of Release of a Motor Vehicle (Agency Record Copy).
245.7001–2 DD Form 1149, Requisition and Invoice Shipping Document.
245.7001–3 DD Form 1348–1, DoD Single Line Item Release/Receipt Document.
245.7001–4 DD Form 1640, Request for Plant Clearance.
245.7001–5 DD Form 1641, Disposal Determination/Approval.
245.7001–6 Defense Logistics Agency Form 1822, End Use Certificate.

Subpart 245.70—Plant Clearance Forms

245.7001 Forms.

Use the forms listed below in performance of plant clearance actions.

245.7001–1 Standard Form 97, Certificate of Release of a Motor Vehicle (Agency Record Copy).

Use for transfers, donations, and sales of motor vehicles. The contracting officer shall execute the SF 97 and furnish it to the purchaser.

245.7001–2 DD Form 1149, Requisition and Invoice Shipping Document.

Use for transfer and donation of contractor inventory.

245.7001–3 DD Form 1348–1, DoD Single Line Item Release/Receipt Document.

Use when authorized by the plant clearance officer.

245.7001–4 DD Form 1640, Request for Plant Clearance.

Use to request plant clearance assistance or transfer plant clearance.

245.7001–5 DD Form 1641, Disposal Determination/Approval.

Use to record rationale for the following disposal determinations:

(a) Downgrade useable property to scrap.

(b) Abandonment or destruction.

(c) Noncompetitive sale of surplus property.

(d) Other disposal actions.

245.7001–6, DD Form 1822, End Use Certificate.

Use when directed by the plant clearance officer.

Subpart 245.72—[Removed]

■ 8. Subpart 245.72 is removed.

Subpart 245.73—[Removed]

■ 9. Subpart 245.73 is removed.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 10. Add section 252.245–7004 to read as follows:

252.245–7004 Reporting, Reutilization, and Disposal.

As prescribed in 245.107(e), use the following clause:

REPORTING, REUTILIZATION, AND DISPOSAL (AUG 2011)

(a) *Definitions.* As used in this clause—

(1) *Demilitarization* means the act of eliminating the functional capabilities and inherent military design features from DoD personal property. Methods and degree range from removal and destruction of critical features to total destruction by cutting, tearing, crushing, mangling, shredding, melting, burning, etc.

(2) *Export-controlled items* means items subject to the Export Administration Regulations (EAR) (15 CFR parts 730–774) or the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120–130). The term includes—

(i) *Defense items,* defined in the Arms Export Control Act, 22 U.S.C. 2778(j)(4)(A), as defense articles, defense services, and related technical data, etc.; and

(ii) *Items,* defined in the EAR as ''commodities,'' ''software,'' and ''technology,'' terms that are also defined in the EAR, 15 CFR 772.1.

(3) *Ineligible transferees* means individuals, entities, or countries—

(i) Excluded from Federal programs by the General Services Administration as identified in the Excluded Parties Listing System (EPLS) (*https://www.epls.gov/*);

(ii) Delinquent on obligations to the U.S. Government under surplus sales contracts;

(iii) Designated by the Department of Defense as ineligible, debarred, or suspended from defense contracts; or

(iv) Subject to denial, debarment, or other sanctions under export control laws and related laws and regulations, and orders

administered by the Department of State, the Department of Commerce, the Department of Homeland Security, or the Department of the Treasury.

(4) *Scrap* means property that has no value except for its basic material content. For purposes of demilitarization, scrap is defined as recyclable waste and discarded materials derived from items that have been rendered useless beyond repair, rehabilitation, or restoration such that the item's original identity, utility, form, fit, and function have been destroyed. Items can be classified as scrap if processed by cutting, tearing, crushing, mangling, shredding, or melting. Intact or recognizable components and parts are not ''scrap.''

(5) *Serviceable or usable property* means property with potential for reutilization or sale ''as is'' or with minor repairs or alterations.

(b) *Inventory disposal schedules.* Unless disposition instructions are otherwise included in this contract, the Contractor shall complete SF 1428, Inventory Schedule B, within the Plant Clearance Automated Reutilization Screening System (PCARSS). Information on PCARSS can be obtained from the plant clearance officer and at *http://www.dcma.mil/ITCSO/CBT/PCARSS/index.cfm.*

(1) The SF 1428 shall contain the following:

(i) If known, the applicable Federal Supply Code (FSC) for all items, except items in scrap condition.

(ii) If known, the manufacturer name for all aircraft components under Federal Supply Group (FSG) 16 or 17 and FSCs 2620, 2810, 2915, 2925, 2935, 2945, 2995, 4920, 5821, 5826, 5841, 6340, and 6615.

(iii) The manufacturer name, make, model number, model year, and serial number for all aircraft under FSCs 1510 and 1520.

(iv) Appropriate Federal Condition Codes. See Appendix 2 of DoD 4000.25–2, Military Standard Transaction Reporting and Accounting Procedures manual, edition in effect as of the date of this contract. Information on Federal Condition Codes can be obtained at *http://www.DLA.Mil/J–6/DLMSO/Elibrary/Manuals/Milstrap/AP2_Index.asp.*

(2) If the schedules are acceptable, the plant clearance officer shall complete and send the Contractor a DD Form 1637, Notice of Acceptance of Inventory.

(c) *Proceeds from sales of surplus property.* Unless otherwise provided in the contract, the proceeds of any sale, purchase, or retention shall be—

(1) Forwarded to the Contracting Officer;

(2) Credited to the Government as part of the settlement agreement;

(3) Credited to the price or cost of the contract; or

(4) Applied as otherwise directed by the Contracting Officer.

(d) *Demilitarization, mutilation, and destruction.* If demilitarization, mutilation, or destruction of contractor inventory is required, the Contractor shall demilitarize, mutilate, or destroy contractor inventory, in accordance with the terms and conditions of the contract and consistent with Defense Demilitarization Manual, DoDM 4160.28–M, edition in effect as of the date of this contract. The plant clearance officer may authorize the purchaser to demilitarize, mutilate, or destroy as a condition of sale provided the property is not inherently dangerous to public health and safety.

(e) *Classified Contractor inventory.* The Contractor shall dispose of classified contractor inventory in accordance with applicable security guides and regulations or as directed by the Contracting Officer.

(f) *Inherently dangerous Contractor inventory.* Contractor inventory dangerous to public health or safety shall not be disposed of unless rendered innocuous or until adequate safeguards are provided.

(g) *Contractor inventory located in foreign countries.* Consistent with contract terms and conditions, property disposition shall be in accordance with foreign and U.S. laws and regulations, including laws and regulations involving export controls, host nation requirements, Final Governing Standards, and Government-to-Government agreements. The Contractor's responsibility to comply with all applicable laws and regulations regarding export-controlled items exists independent of, and is not established or limited by, the information provided by this clause.

(h) *Disposal of scrap.* (1) *Contractor with scrap procedures.* (i) The Contractor shall include within its property management procedure, a process for the accountability and management of Government-owned scrap. The process shall, at a minimum, provide for the effective and efficient disposition of scrap, including sales to scrap dealers, so as to minimize costs, maximize sales proceeds, and, contain the necessary internal controls for mitigating the improper release of non-scrap property.

(ii) The Contractor may commingle Government and contractor-owned scrap and provide routine disposal of scrap, with plant clearance officer concurrence, when determined to be effective and efficient.

(2) *Scrap warranty.* The plant clearance officer may require the Contractor to secure from scrap buyers a DD Form 1639, Scrap Warranty.

(i) *Sale of surplus Contractor inventory.* (1) The Contractor shall conduct sales of contractor inventory (both useable property and scrap) in accordance with the requirements of this contract and plant clearance officer direction.

(2) Any sales contracts or other documents transferring title shall include the following statement:

''The Purchaser certifies that the property covered by this contract will be used in (name of country). In the event of resale or export by the Purchaser of any of the property, the Purchaser agrees to obtain the appropriate U.S. and foreign export or re-export license approval.''

(j) *Restrictions on purchase or retention of Contractor inventory.* (1) The Contractor may not knowingly sell the inventory to any person or that person's agent, employee, or household member if that person—

(i) Is a civilian employee of the DoD or the U.S. Coast Guard;

(ii) Is a member of the armed forces of the United States, including the U.S. Coast Guard; or

(iii) Has any functional or supervisory responsibilities for or within the DoD's property disposal/disposition or plant clearance programs or for the disposal of contractor inventory.

(2) The Contractor may conduct Internet-based sales, to include use of a third party.

(3) If the Contractor wishes to bid on the sale, the Contractor or its employees shall submit bids to the plant clearance officer prior to soliciting bids from other prospective bidders.

(4) The Contractor shall solicit a sufficient number of bidders to obtain adequate competition. Informal bid procedures shall be used, unless the plant clearance officer directs otherwise. The Contractor shall include in its invitation for bids, the sales terms and conditions provided by the plant clearance officer.

(5) The Contractor shall solicit bids at least 15 calendar days before bid opening to allow adequate opportunity to inspect the property and prepare bids.

(6) For large sales, the Contractor may use summary lists of items offered as bid sheets with detailed descriptions attached.

(7) In addition to mailing or delivering notice of the proposed sale to prospective bidders, the Contractor may (when the results are expected to justify the additional expense) display a notice of the proposed sale in appropriate public places, e.g., publish a sales notice on the Internet in appropriate trade journals or magazines and local newspapers.

(8) The plant clearance officer or representative will witness the bid opening. The Contractor shall submit, either electronically or manually, two copies of the bid abstract.

(9) The following terms and conditions shall be included in sales contracts involving the demilitarization, mutilation, or destruction of property:

(i) *Demilitarization, mutilation, or destruction on Contractor or subcontractor premises.* Item(s) ____ require demilitarization, mutilation, or destruction by the Purchaser. Insert item number(s) and specific demilitarization, mutilation, or destruction requirements for item(s) shown in Defense Demilitarization Manual, DoDM 4160.28–M, edition in effect as of the date of this contract. Demilitarization shall be witnessed and verified by a Government representative using DRMS Form 145 or equivalent.

(ii) *Demilitarization, mutilation, or destruction off Contractor or subcontractor premises.*

(A) Item(s) ____ require demilitarization, mutilation, or destruction by the Purchaser. Insert item number(s) and specific demilitarization, mutilation, or destruction requirements for item(s) shown in Defense Demilitarization Manual, DoDM 4160.28–M, edition in effect as of the date of this contract. Demilitarization shall be witnessed and verified by a Government representative using DRMS Form 145 or equivalent.

(B) Property requiring demilitarization shall not be removed, and title shall not pass to the Purchaser, until demilitarization has been accomplished and verified by a Government representative. Demilitarization

will be accomplished as specified in the sales contract. Demilitarization shall be witnessed and verified by a Government representative using DRMS Form 145 or equivalent.

(C) The Purchaser agrees to assume all costs incident to the demilitarization and to restore the working area to its present condition after removing the demilitarized property.

(iii) *Failure to demilitarize.* If the Purchaser fails to demilitarize, mutilate, or destroy the property as specified in the contract, the Contractor may, upon giving 10 days written notice from date of mailing to the Purchaser—

(A) Repossess, demilitarize, and return the property to the Purchaser, in which case the Purchaser hereby agrees to pay to the Contractor, prior to the return of the property, all costs incurred by the Contractor in repossessing, demilitarizing, and returning the property;

(B) Repossess, demilitarize, and resell the property, and charge the defaulting Purchaser with all costs incurred by the Contractor. The Contractor shall deduct these costs from the purchase price and refund the balance of the purchase price, if any, to the Purchaser. In the event the costs exceed the purchase price, the defaulting Purchaser hereby agrees to pay these costs to the Contractor; or

(C) Repossess and resell the property under similar terms and conditions. In the event this option is exercised, the Contractor shall charge the defaulting Purchaser with all costs incurred by the Contractor. The Contractor shall deduct these costs from the original purchase price and refund the balance of the purchase price, if any, to the defaulting Purchaser. Should the excess costs to the Contractor exceed the purchase price, the defaulting Purchaser hereby agrees to pay these costs to the Contractor.

(End of clause)

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Part IV

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 679

Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish of the Gulf of Alaska; Amendment 88; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 110314196–1432–01]

RIN 0648–BA97

Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish of the Gulf of Alaska; Amendment 88

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 88 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP), which regulates the Central Gulf of Alaska Rockfish Program. This proposed Rockfish Program would allocate exclusive harvest privileges to a specific group of license limitation program license holders who used trawl gear to target Pacific ocean perch, pelagic shelf rockfish, and northern rockfish during particular qualifying years. It would retain the conservation, management, safety, and economic gains realized under the Rockfish Pilot Program and resolve identified issues in the management and viability of the rockfish fisheries. This action is necessary to replace particular Rockfish Pilot Program regulations that are scheduled to expire at the end of 2011. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMP, and other applicable law.

DATES: Comments must be received no later than September 19, 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–BA97, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal Web site at *http://www.regulations.gov.*
- Mail: P.O. Box 21668, Juneau, AK 99802.
- Fax: 907–586–7557.
- Hand delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK.

All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All personal identifying information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

Electronic copies of Amendment 88 to the FMP, and the Environmental Assessment (EA), the Regulatory Impact Review (RIR), and the Initial Regulatory Flexibility Analysis (IRFA) (collectively, Analysis) prepared for this action are available from *http://www.regulations.gov* or from the NMFS 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: Gwen Herrewig, 907–586–7091.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fisheries in the exclusive economic zone of the Gulf of Alaska (GOA) under the FMP. The North Pacific Fishery Management Council (Council) prepared this FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), 16 U.S.C. 1801 *et seq.* Regulations implementing the FMP appear at 50 CFR part 679. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

This proposed rule would implement Amendment 88, the Central GOA Rockfish Program (Rockfish Program), to manage the rockfish fisheries in the Central GOA, which covers an area from 147° W. long. to 159° W. long. Rockfish in Federal waters of the Central GOA are harvested primarily by trawl vessels, and to a lesser extent by longline vessels.

The Council has submitted Amendment 88 for review by the Secretary of Commerce, and a Notice of Availability of this amendment was published in the **Federal Register** on July 28, 2011 (76 FR 45217) with comments invited through September 26, 2011. All relevant written comments received by the end of the applicable comment period, whether specifically directed to the FMP amendment, this proposed rule, or both, will be considered in the approval/disapproval decision for Amendment 88 and addressed in the response to comments in the final decision.

The Council recommended the Rockfish Program to replace the existing Rockfish Pilot Program (Pilot Program) that is scheduled to expire December 31, 2011. The proposed Rockfish Program would retain the net national conservation, management, safety, and economic benefits realized under the Pilot Program as well as resolve identified issues in the management and viability of the rockfish fisheries under the Pilot Program.

The Pilot Program and the proposed Rockfish Program are a type of a limited access privilege program (LAPP) developed to enhance resource conservation and improve economic efficiency in the Central GOA rockfish fisheries. LAPPs, also called catch share programs, are limited access systems in which Federal permits are issued to harvest a quantity of fish representing a portion of the total allowable catch (TAC). Under the Pilot Program, and as proposed under the Rockfish Program, participants exercise their exclusive harvest privileges when they join a rockfish cooperative. The Rockfish Program, like the Pilot Program, would benefit Central GOA fishermen, shoreside processors, catcher/processors, and communities by (1) providing greater security to harvesters in rockfish cooperatives, (2) allowing a slower-paced fishery to provide harvesters the ability to choose when to fish, (3) providing greater stability for processors by spreading production over a longer period of time, (4) allowing for a more stable workforce, (5) increasing product quality and diversity, and (6) allowing catcher/processors greater spatial and temporal flexibility to reduce bycatch and develop more stable markets.

Rockfish Pilot Program Overview

The following section provides a brief overview of the current Pilot Program. A detailed description of the Pilot Program is provided in the preamble to the Pilot Program's proposed rule (71 FR 33040; June 7, 2006).

The Pilot Program was enacted by Congress. Section 802 of the Consolidated Appropriations Act of 2004 (Section 802, Pub. L. 108–199) required that the Secretary of Commerce, in consultation with the Council, establish a program that recognized the historical participation of fishing vessels and fish processors in

the Central GOA rockfish fishery. Section 802 states that the program shall (1) include the Central GOA rockfish species of Pacific ocean perch, northern rockfish, and pelagic shelf rockfish; (2) recognize historical participation of fishing vessels in the Central GOA rockfish fisheries from 1996 to 2002; (3) recognize historical participation of processors in the Central GOA rockfish fisheries from 1996 to 2000; (4) establish catch limits for non-rockfish species and non-target rockfish species harvested with the Central GOA rockfish species and base such allocations on historical harvesting of these incidentally caught species; (5) set aside up to 5 percent of the TAC of the Central GOA rockfish fisheries for catcher vessels that are not eligible to participate in the program; and (6) have a 2-year duration.

The Council developed the Pilot Program to meet the requirements of Section 802. The Pilot Program was designed to enhance resource conservation and improve economic efficiency in the Central GOA rockfish fisheries by establishing cooperatives that receive exclusive harvest privileges. Following extensive public comment, the Council recommended the Pilot Program to the Secretary on June 6, 2005. NMFS published regulations implementing the Pilot Program on November 20, 2006 (71 FR 67210). Fishing began under the Pilot Program on May 1, 2007.

Section 802 authorized the Pilot Program for 2 years, from January 1, 2007, until December 31, 2008. The Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, which became public law on January 12, 2007 (Pub. L. 109–479), extended the Pilot Program for an additional 3 years, until December 31, 2011. NMFS implemented that regulatory extension on November 17, 2008 (73 FR 67809).

Prior to 2007, the Central GOA rockfish fisheries were managed under the License Limitation Program (LLP). The LLP required harvesters to hold an LLP license to participate in GOA fisheries, but did not provide specific exclusive harvest privileges to LLP license holders. Harvesters with LLP licenses competed with each other to harvest the TAC assigned to the fishery. Processors also competed with each other. The competition created economic inefficiencies and incentives to increase harvesting and processing capacity. Harvesters increased the fishing capacity of their vessels and accelerated their rate of fishing to outcompete other vessels. Similarly, processors increased their processing capacity to outcompete other processors. The rapid pace of fishing reduced the ability of harvesters and processors to improve product quality and extract more value from the fishery by producing high-value products that require additional processing time.

As anticipated, the Pilot Program provided greater security to harvesters through the formation of rockfish cooperatives. The program and cooperatives resulted in a slower-paced fishery that provided the ability for the harvester to choose when to fish. The Pilot Program also provided greater stability for processors by spreading out production over a broader period of time. Overall, the Pilot Program provided greater benefits to shoreside processors, catcher/processors, Central GOA fishermen, and communities than were realized under the LLP management scheme. For example, during the Pilot Program, fishermen made more rockfish and non-rockfish shoreside deliveries over a more extended period of time than under the LLP. This allowed for a more stable workforce and slower processing pace than the previous short periods of high volume rockfish processing. With a slower processing pace, product quality and diversity increased. Central GOA fishermen and processors noted fewer conflicts with other fisheries, especially the salmon fishery which traditionally overlapped with rockfish efforts. Catcher/processors noted greater flexibility in preparation and execution of the fishery which resulted in lower bycatch numbers, more stable markets, and a more efficient distribution of fishery effort.

The Pilot Program created a structure for fishery participants to form cooperatives to efficiently manage harvesting activities. Under the Pilot Program, exclusive harvesting and processing privileges were allocated for a specific set of rockfish species and for associated species harvested incidentally to those rockfish in the Central GOA. The primary features of the Pilot Program are described below.

Rockfish Quota Share. NMFS assigned Rockfish Quota Share (QS) for rockfish primary species to an LLP license with a trawl gear designation endorsed for the Central GOA. The rockfish primary species are northern rockfish, Pacific ocean perch, and pelagic shelf rockfish. A person holding an LLP license received rockfish QS if the LLP license had a history of rockfish primary species landings during a specific time period and the person holding the LLP license met other eligibility requirements. The amount of rockfish QS assigned to each license was based on the legal landings of these rockfish species associated with that LLP license. Rockfish QS assigned to a specific LLP license could not be divided or transferred separately from that LLP license.

On an annual basis for the duration of the Pilot Program, the LLP license holder assigns the LLP license, and rockfish QS assigned to that LLP license, for use in a rockfish cooperative, limited access fishery, or opt-out fishery.

Entry level fishery. Harvesters and processors not eligible to receive rockfish QS under the Pilot Program, but that hold an LLP license, may participate in a small entry level fishery for Central GOA rockfish. Section 802 specifically provided for ''a set-aside of up to 5 percent for the total allowable catch of such fisheries for catcher vessels not eligible to participate in the pilot program'' during the 1996 through 2002 eligibility time period. The Pilot Program implemented this provision by establishing an entry level fishery that was allocated 5 percent of the TAC for each of the three rockfish primary species. This 5 percent set-aside was further apportioned between trawl and longline vessels.

Rockfish cooperatives. A person holding an LLP license with rockfish QS may form a rockfish cooperative with other persons (*i.e.,* harvesters) on an annual basis. Each rockfish cooperative receives an annual cooperative quota (CQ), which is an amount of rockfish primary species and secondary species dedicated to that rockfish cooperative for harvest in a given year. Secondary species are those species incidentally caught during the harvest of rockfish primary species fisheries in the Central GOA. The secondary species for which annual CQ are allocated include Pacific cod, rougheye rockfish, shortraker rockfish, sablefish, and thornyhead rockfish. The amount of CQ assigned to a cooperative is a portion of the annual TAC based on the sum of the rockfish QS held by all the harvesters participating in the rockfish cooperative.

Each rockfish cooperative also receives an annual CQ that limits the amount of halibut prohibited species catch (PSC) the cooperative may use while harvesting its rockfish primary species and secondary species CQ. Cooperatives are allocated a portion of the total GOA halibut PSC limit, as annually specified under § 679.21, based on historic halibut mortality rates in the rockfish primary species fisheries. Halibut is incidentally caught and killed in a number of the rockfish primary species and secondary species fisheries. However, halibut caught as bycatch may

not be retained or sold commercially under regulations established under the authority of the Northern Pacific Halibut Act of 1982, or under regulations implementing the FMP at § 679.21. Therefore, the Pilot Program provides participants a fixed amount of incidental halibut mortality through a halibut CQ allocation.

A rockfish cooperative can transfer all or part of their CQ to other rockfish cooperatives, with some restrictions.

A rockfish cooperative may form only under specific conditions. A person holding an LLP license that allows them to catch and process their catch at sea (catcher/processor vessel LLP license) may form a rockfish cooperative with other persons holding catcher/processor LLP licenses. A person holding an LLP license that allows them only to deliver their catch onshore (catcher vessel LLP license) may only form a rockfish cooperative with other persons holding catcher vessel LLP licenses and only in association with the processor to whom those persons have historically delivered most of their catch.

Cooperatives may associate with processors that NMFS determined met eligibility criteria and were allocated an exclusive privilege to receive and process the rockfish primary species and secondary species allocated to harvesters. Processors cannot process catch outside the communities in which they have traditionally processed rockfish primary species and associated secondary species.

Limited access fishery. A person not in a rockfish cooperative, but holding an LLP license with rockfish QS, can decide annually to fish in a limited access fishery. NMFS does not allocate a specific amount of fish to a specific harvester in the limited access fishery. All harvesters in the limited access fishery compete with all other such harvesters to catch the TAC assigned to the limited access fishery. The TAC assigned to the limited access fishery represents the sum of QS assigned to all the LLP licenses designated for the limited access fishery. No exclusive harvest privilege exists in the limited access fishery.

Opt-out fishery. Each year, holders of catcher/processor LLP licenses with rockfish QS can decide to opt-out of the Pilot Program for that year, with certain limitations.

Sideboards. Limitations on the ability of harvesters under the Pilot Program to harvest fish in fisheries other than the Central GOA rockfish fisheries are commonly called ''sideboards.'' The Pilot Program provides certain economic efficiencies to harvesters. Harvesters could use their improved economic efficiency to increase their participation in other fisheries, adversely affecting the harvesters in other fisheries. Sideboards limit the total amount of catch in other groundfish fisheries that can be taken by eligible harvesters to historic levels, including harvests made in the State of Alaska (State) parallel groundfish fisheries. Parallel fisheries are fisheries authorized by the State in its waters concurrent with the Federal fisheries in which harvest amounts are deducted from the Federal TAC. Sideboards limit harvest in specific rockfish fisheries and the amount of halibut bycatch that can be used in certain flatfish fisheries. General sideboards apply to all vessels and LLP licenses with associated legal landings that can be used to generate rockfish QS. Additionally, specific sideboards apply to certain catcher/processor and catcher vessels and LLP licenses.

Enforcement and monitoring. NMFS implemented provisions to ensure that harvesters maintain catches within annual allocations and do not exceed sideboard limits.

Proposed Central GOA Rockfish Program

The Council designed the proposed Rockfish Program to meet the requirements for limited access privileges in section 303A of the MSA. The Rockfish Program would include similar implementation, management, monitoring, and enforcement measures to those developed under the Pilot Program. The Rockfish Program would (1) continue to assign QS and CQ to participants for primary and secondary species, (2) allow a participant holding an LLP license with rockfish QS to form a rockfish cooperative with other persons, (3) allow holders of catcher/processor LLP licenses to opt-out of rockfish cooperatives for a given year, (4) include an entry level longline fishery, (5) establish sideboard limits, and (6) include monitoring and enforcement provisions. However, the Council also recommended changes to improve the functionality of the Rockfish Program relative to the Pilot Program.

Key Differences Between the Pilot Program and the Proposed Rockfish Program

After considering program requirements and issues identified under the Pilot Program, in order to ensure that the Rockfish Program complies with section 303A of the MSA, the Council decided to modify some aspects of the Pilot Program under the proposed Rockfish Program. The Council recommended the Rockfish Program based on the analysis of rockfish management under the LLP, the Pilot Program, and anticipated changes under the proposed Rockfish Program. The rationale underlying the Council's decision and details of this analysis are briefly discussed in this preamble and are contained in the Analysis prepared for this proposed action (see **ADDRESSES**).

Some key differences between the Pilot Program and Rockfish Program are outlined in Table 1. In summary, the proposed Rockfish Program would:

- Change the qualifying years for eligibility for QS;
- Use a different suite of years to determine the allocation of QS and sideboard limits;
- Assign to rockfish cooperatives a specific portion of the Central GOA TAC of species historically harvested in the rockfish fisheries;
- Assign a specific amount of halibut PSC to cooperatives and conserve a portion of the halibut that will remain unallocated;
- Restrict the entry level fishery to longline gear only;
- Relax the requirements to form a cooperative;
- Specify the location where harvesters in cooperatives may deliver rockfish;
- Remove the requirement that harvesters in a catcher vessel cooperatives deliver to a specific processor;
- Discontinue the limited access fishery;
- Simplify sideboards, and slightly modify sideboards for catcher/processors;
- Implement a cost recovery program, except for the entry level longline fishery;
- Establish a catch monitoring and control plan (CMCP) specialist; and
- Be authorized for 10 years, from January 1, 2012, until December 31, 2021.

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Table 1. Key Differences between the Pilot Program and the Proposed Rockfish Program

Management Provision		Pilot Program	Rockfish Program
Eligibility to receive QS		Made targeted legal landings of rockfish primary species during the qualifying years 1996 - 2002.	Made targeted legal landings of rockfish primary species during the qualifying years 2000–2006, or participated in the Pilot Program entry level trawl fishery in 2007, 2008, or 2009.
• Voluntary exclusion from the Rockfish Program		May not apply for or receive initial allocation of QS, but may still have sideboard limitations	LLP license holder may forego QS and be exempted from specific sideboard limits if legal landings were made both in 2000–2006 and in the entry level trawl fishery during 2007, 2008, or 2009. Must apply for exclusion during initial application process.
Initial QS Allocations		Based on landings (best 5 of 7) years between 1996 and 2002	97.5% of the initial allocation is based on landings (best 5 of 7 years) between 2000 and 2006.
• Entry level trawl "transition" QS allocation		N/A	Participants in the Pilot Program entry level trawl fishery would be transferred into catch share management where 2.5% of the allocation would be given to licenses that participated in the Pilot Program entry level trawl fishery in 2007, 2008, 2009.
Rockfish Cooperatives		Yes	Yes
• Forming a catcher vessel (CV) cooperative		May only form cooperatives with other CVs and the processor to whom they historically delivered catch from 1996–2000. No minimum number of LLP licenses required for CVs to form a cooperative.	May only form a cooperative with other CVs with an association with any shoreside processor located within the geographic boundaries of the City of Kodiak. No minimum number of LLP licenses required.
• Annual CV allocation of CQ	Primary	Based on member QS	Based on member QS
	Secondary	• Pacific cod based on QS • Sablefish based on QS • Rougheye/shortraker maximum retainable amount (MRA), may not exceed 9.72% of TAC • Thornyhead based on QS	• 3.81% of Pacific cod TAC • 6.7% of sablefish TAC • 7.84% of thornyhead TAC • Rougheye/shortraker MRA may not exceed 9.72% of TAC.

	Halibut PSC	Based on member QS. Calculation based on 1996–2002 data.	Based on member QS. Calculation based on 2000–2006 data with a 12.5% reduction. 74.1 mt to cooperatives. 16.8 mt remains unallocated and stays "in the water."
• Forming a catcher/processor (C/P) cooperative		May join a cooperative with other C/Ps. Two minimum LLP licenses required for C/Ps.	May join a cooperative with other C/Ps. No minimum number of LLP licenses required.
• Annual C/P allocation of CQ	Primary	Amount based on member QS	Amount based on member QS
	Secondary	• Pacific cod MRA • Sablefish based on QS • 30.03% Shortraker • 58.87% Rougheye • Thornyhead based on QS	• Pacific cod MRA • 3.51% of sablefish TAC • 40% of shortraker TAC • 58.87% of rougheye TAC • 26.50% of thornyhead TAC
	Halibut PSC	Based on member QS. Calculation based on 1996–2002 data.	Amount based on member QS. Calculation based on 2000–2006 data with a 12.5% reduction. 117.3 mt allocated. 10.6 mt remains in the water.
Transfer of CQ		• C/P may transfer to C/P or CV • CV may transfer to CV only. No minimum number of LLP licenses required to transfer CQ.	• C/P may transfer to C/P or CV, except no shortraker or rougheye may transfer from C/P to CV • CV may transfer to CV only • Minimum of 2 LLP licenses in each cooperative required to transfer CQ
Limited access fishery		Yes	None
Opt-out option for catcher/processors		Yes, but subject to opt-out sideboards	Yes, but subject to opt-out sideboards
Halibut PSC % rollover of unused CQ		100% of unused CQ halibut PSC will be added to the last seasonal apportionment during the current fishing year	≤ 55% of unused CQ halibut PSC will be added to the last seasonal apportionment during the current fishing year. Resulting 45% of unused CQ halibut PSC remains in the water.
Use caps for rockfish primary species		A person may not hold or use more than: • 5% of the QS assigned to the CV sector. • 20% of the QS assigned to the C/P sector.	A person may not hold or use more than: • 4% of the QS assigned to the CV sector. • 40% of the QS assigned to the C/P sector.

	CV cooperative may not hold or use more CQ than: • 30% QS assigned to CV sector.	CV cooperative may not hold or use more CQ than: • 30% QS assigned to CV sector.
	A vessel may not harvest more than: • 60% CQ issued to the C/P sector.	A vessel may not harvest more than: • 8% CQ issued to the CV sector. • 60% CQ issued to the C/P sector.
	Processors may not receive or process more than: • 30% CQ issued to CV sector (rockfish primary species only).	Processors may not receive or process more than: • 30% CQ issued to CV sector (rockfish primary species, Pacific cod, and sablefish).
Sideboards (in effect July 1–31)	Yes	Yes
• Catcher vessel	Exemption from sideboard limits: (1) Any AFA CVs not exempt under AFA regulations	Exemptions from sideboard limits: (1) Any AFA CVs not exempt under AFA regulations; (2) vessels that have been selected as being voluntarily excluded from the Rockfish Program; and (3) any vessels assigned an LLP license that has been selected as being voluntarily excluded from the Rockfish Program.
	• Prohibited from fishing in the BSAI groundfish fisheries and limits on Pacific cod • Prohibited from fishing in the West Yakutat/ Western GOA (for rockfish) • Deep and shallow water complex halibut PSC	Prohibited fishing restrictions: • West Yakutat District/Western GOA (rockfish primary species) • Deep water complex—arrowtooth flounder, deep water flatfish, rex sole
• Catcher/processor	• Prohibited from fishing in the BSAI groundfish fisheries and non-program groundfish fisheries in the GOA • Deep and shallow water halibut PSC limit	• West Yakutat/Western GOA limitation (rockfish primary species) • Deep and shallow water halibut PSC limit • Prohibited from fishing rockfish primary species in the Western GOA and West Yakutat District for non-Amendment 80 vessels
	Subject to sideboards and would receive the portion of each rockfish	

• Catcher/processor Opt-out vessels	sideboard limit not assigned to rockfish cooperatives	
	Prevents directed fishing in GOA groundfish fisheries without previous participation in 1996–2002	• Would prevent directed fishing in GOA groundfish fisheries without previous participation in 2000–2006 • Prohibit directed fishing for rockfish primary species in Western GOA and West Yakutat for non-Amendment 80 vessels
Entry level fishery	Yes, trawl and longline gear	Yes, longline gear only
• Annual application	Yes. Processor affirmation required.	None. May deliver to any shoreside processing facility in the GOA.
• TAC	5% of the rockfish primary species TAC goes to the entry level fishery, divided equally between trawl (2.5%) and longline gear (2.5%).	Annual set aside of the TAC would increase annually, to a predetermined cap, if the fishery harvests ≥ 90% of their allocation of a species in the previous year.
Monitoring and enforcement	Observer coverage: • 100% CV in July and when checked-in	• 100% CV when checked-in,
	• 200% C/P cooperative for CQ or sideboards, and • 100% C/P opt-out vessels in July only.	
• Shoreside/stationary processors:	Catch Monitoring and Control Plan (CMCP) is required except for the entry level longline fishery.	
	Notify the observer at least one hour prior to offloading of each delivery of groundfish harvested in a Pilot Program fishery. An observer must be available to monitor each delivery	Notify a NMFS CMCP specialist at least one hour prior to receiving a CQ delivery.
Cost recovery	None	Yes, fee liability payment would be a maximum of 3% of the ex-vessel value of rockfish primary and secondary species. Payment due on February 15 of the following year. No fees for the entry level longline fishery.
Duration	5 years	10 years

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Rockfish Quota Share

This proposed rule uses the term ''quota share'' to describe the Rockfish Program's multi-year exclusive harvest privileges based on historic harvest activities, consistent with similar North Pacific programs. The Council did not use this term in recommending the Rockfish Program. Instead the Council used the terms ''qualifying catch,'' and ''catch history'' to describe the harvest privilege that is linked to historic harvests attributed to an LLP license. However, in implementing this program, NMFS has determined that the use of the term ''quota share'' does not alter the original intent of the Council.

Rockfish QS would be an attribute of the LLP license. Once NMFS calculates the amount of QS to allocate to an LLP license, NMFS would modify that LLP license and designate that amount on the license. QS assigned to an LLP license could not be transferred independent from that LLP license, except to comply with the use caps as described below under *Transfer of*

Rockfish QS. QS assigned to an LLP license would provide a harvest privilege, not a right, to its holder and would not confer a guaranteed harvest to the holder of that QS.

QS would be the basis for the annual calculation of the amount of fish that could be harvested or used if the QS were assigned to a rockfish cooperative. Once QS was assigned to an LLP license, it would authorize that LLP license holder to participate in the Rockfish Program. If an LLP license holder assigned that LLP license, and its associated QS, to a cooperative with other LLP license holders, the sum of the QS of all of the eligible harvesters would yield CQ—an exclusive annual catch limit of rockfish primary species, secondary species, and halibut PSC that could be harvested by the members of the rockfish cooperative. Cooperatives would be formed by eligible harvesters holding LLP licenses in the same sector, either the catcher/processor sector or the catcher vessel sector.

NMFS would not issue separate QS for the rockfish secondary species or halibut PSC. Instead, NMFS would use the amount of rockfish primary species QS to determine the specific annual catch amount for the rockfish secondary species or halibut PSC. The Council recommended that NMFS base the annual catch limit of rockfish secondary species and halibut PSC on the total historic harvests of rockfish primary species attributed to LLP licenses in that sector. NMFS would incorporate this recommendation in the annual determination of the catch limit. The methods for calculating the annual catch limit for rockfish primary species, secondary species, and halibut PSC are discussed below under ''TAC Apportionment to an Incidental Catch Allowance (ICA), Rockfish Cooperative, and Entry Level Fishery.''

Anticipated Changes in the Pelagic Shelf Rockfish Complex

NMFS notes that the Council's Science and Statistical Committee has been amenable to a recent recommendation by the GOA Groundfish Plan Team to dissolve the pelagic shelf rockfish complex. The proposed Rockfish Program would allocate QS based on harvests of all three species in the Pelagic shelf complex—dusky, widow, and yellowtail rockfish. Widow and yellowtail rockfish are currently managed with dusky rockfish in the pelagic shelf rockfish complex, but do not commonly coexist in the same geographic area and habitat. The GOA Groundfish Plan Team is considering a plan to rearrange some species in the GOA rockfish stock assessments for more precise management of yellowtail and widow rockfish. The Council derived the 2011 pelagic shelf rockfish TAC from NMFS projection models of acceptable biological catch that estimated 91 metric tons (mt) for widow and yellowtail rockfish, and 4,663 mt for dusky rockfish. These estimates yield the 2011 pelagic shelf rockfish TAC (4,754 mt). Observer data shows that 99.7 percent of pelagic shelf rockfish landed in 2010 were dusky rockfish, and the remaining 0.3 percent were widow and yellowtail rockfish. It is possible that the relatively large acceptable biological catch for pelagic shelf rockfish could be used to overharvest the small number of yellowtail and widow rockfish in this complex.

This action would not affect, or change, QS eligibility for primary species in the Rockfish Program. The GOA Groundfish Plan Team recommendation would remove dusky rockfish from the pelagic shelf rockfish complex and place the species into its own category. Dusky rockfish would then be a single species target, similar to northern rockfish or Pacific ocean perch. The GOA Groundfish Plan Team would combine the remaining rockfish species in the pelagic shelf rockfish complex (yellowtail and widow) with the Other Slope Rockfish complex and rename the complex ''Gulf of Alaska Other Rockfish.'' If the Council moves forward with this action, the three primary species of the Rockfish Program would then be Pacific ocean perch, northern rockfish, and dusky rockfish. If approved by the Secretary, NMFS would change every occurrence of ''pelagic shelf rockfish'' that appears in the Rockfish Program regulations and tables to ''dusky rockfish.''

NMFS anticipates this new arrangement would not have an impact on the Rockfish Program. If this recommendation would have been established in the 2011 season, removing yellowtail and widow rockfish from the complex and adopting a TAC based only on dusky rockfish would have resulted in a reduction of 91 mt to the pelagic shelf rockfish. This reduction is minimal relative to the overall 2011 pelagic shelf rockfish TAC of 4,754 mt.

Eligibility for Harvesters

Eligibility to receive QS would be based on the history of legal landings of rockfish primary species in the Central GOA associated with an LLP license. A person would be eligible to receive QS under the Rockfish Program if (1) that person held a permanent, fully transferable LLP license endorsed for Central GOA groundfish with a trawl designation at the time of application; (2) a vessel made legal landings of rockfish primary species under the authority of that LLP license during a specific time period; and (3) that person submitted a timely application that is subsequently approved by NMFS. A timely application would include a complete application for rockfish QS that is received by NMFS not later than 5 p.m. on January 3, 2012, or postmarked by that date. The application process and specific components required in the application are detailed under *Application and Appeal Process* below.

The amount of QS allocated to an LLP license would be based on the catch history associated with the LLP licenses held by that person at the time of application.

In addition, LLP license holders who would be eligible for rockfish QS could choose to be excluded from the Rockfish Program and not receive rockfish QS. These LLP license holders would be exempted from specific sideboard limitations applicable to LLP licenses that participate in the program. See ''Exclusion from the Rockfish Program'' for more information.

Legal Landings

NMFS would assign QS to an LLP license if legal landings of rockfish were made under the authority of an LLP license for any of the rockfish primary species during the directed fishing seasons described in Tables 2 and 3 of this preamble. A legal landing would include fish caught, retained, and reported in compliance with State and Federal regulations in effect at the time of landing. For catcher vessels, a legal landing would include the harvest of rockfish primary species from the Central GOA regulatory area that was offloaded and recorded on a State fish ticket during the directed fishing season for that rockfish primary fishery. For catcher/processors, a legal landing would include the harvest of groundfish from the Central GOA regulatory area that is recorded on NMFS weekly production reports (WPRs) during the directed fishing season for the applicable rockfish primary fisheries.

The LLP was effective on January 1, 2000 (63 FR 52642); however, NMFS did not track the use of an LLP license on a specific vessel during the 2000 and 2001 calendar years, which are two of the qualifying years for the Rockfish Program. Therefore, NMFS would create a presumption that legal landings for 2000 to 2001 were made under authority of the LLP license that was used aboard the same vessel whose history was the

basis for the LLP issuance in 2000 at the start of the program (the ''original qualifying vessel''). In order to refute that presumption an applicant for QS would be required to submit written documentation to NMFS for review during the application process to establish otherwise.

Under the LLP program, multiple LLP licenses can be used on a vessel. Therefore, landings made by a vessel could have been assigned to more than one LLP license. If the same LLP holder or the holders of more than one LLP claims the same landing and would like the resulting QS to be assigned to more than one LLP license, then NMFS would credit each LLP license with that landing. NMFS would credit landings assigned to more than one LLP license in another manner only if the applicants could provide written documentation of an agreement among the LLP license holders establishing an alternative means for distributing the landing credit. This written documentation would have to be provided to NMFS for review during the application process. Based on experience with the Pilot Program, NMFS anticipates very few landings would be claimed for more than one LLP license.

Qualifying Years

The Council recommended two different methodologies for determining the amount of rockfish QS assigned to an LLP license, depending on the specific fisheries in which an LLP license holder participated. For most LLP license holders, QS would be assigned based on rockfish legal landings made during the rockfish primary fisheries during 2000 through 2006. LLP license holders eligible to receive rockfish QS based on legal landings from 2000 through 2006 represent those participants active in the Central GOA rockfish fisheries from the implementation of the LLP through 2006, the last year before the Pilot Program was implemented. The Council recommended these years as best representative of historic and recent fishery participation, after analysis of a range of qualifying years from 1996 through 2006.

A smaller set of LLP license holders would qualify to receive QS based on participation in the entry level trawl fishery during 2007, 2008, or 2009. LLP license holders would be eligible to receive rockfish QS if they demonstrate participation in the Central GOA entry level trawl fishery during the first 3 years of the Pilot Program (1996, 1997, 1998) and prior to the Council's final action (2007, 2008, or 2009). This eligibility would be based on landings data that are retained by NMFS. After reviewing a range of options to either maintain the existing entry level trawl fishery, or choose alternative methods to assign rockfish QS, the Council recommended assigning rockfish QS to LLPs held by entry level trawl fishery participants to ensure that those participants benefit from catch share management. Assigning QS would also reduce the need to establish and manage a separate ''race for fish'' fishery that could be exceeded, or remain closed if the potential fishing effort in the fishery would likely exceed the limited allocation available to the fishery.

The following sections describe these two methods for determining the amount of rockfish QS assigned to an LLP license and the rationale supporting those allocation methods.

Assigning QS to LLP Licenses Used During 2000 Through 2006

NMFS would assign rockfish QS based on legal landings made under the authority of an LLP license for the directed fishing season dates for each of the rockfish primary species presented in Table 2.

TABLE 2—SEASON DATES IN EACH YEAR FOR LEGAL LANDINGS OF ROCKFISH PRIMARY SPECIES FISHERIES UNDER THE ROCKFISH PROGRAM

A rockfish legal landing includes	Year						
	2000	2001	2002	2003	2004	2005	2006
Northern rockfish that were harvested in the Central GOA between.	July 4–July 26.	July 1–July 23 and Oct. 1–Oct. 21.	June 30–July 21.	June 29–July 29.	July 4–July 25.	July 5–July 24.	July 1–July 21.
and landed by	Aug. 2	July 30 and Oct. 28, respectively.	July 28	Aug. 5	Aug. 1	July 31	July 28.
Pelagic shelf rockfish that were harvested in the Central GOA between.	July 4–July 26.	July 1–July 23 and Oct. 1–Oct. 21.	June 30–July 21.	June 29–July 31.	July 4–July 25.	July 5–July 24, Sept. 1, Sept 4, and Sept. 8–Sept. 10.	July 1–July 21 and Oct. 2–Oct. 8.
and landed by	Aug. 2	July 30 and Oct. 28, respectively.	July 28	Aug. 7	Aug. 1	July 31, Sept. 11, and Sept. 17, respectively.	July 28 and Oct. 15, respectively.
Pacific ocean perch that were harvested in the Central GOA between.	July 4–July 15.	July 1–July 12.	June 30–July 8.	June 29–July 8.	July 4–July 12.	July 5–July 14.	July 1–July 6.
and landed by	July 22	July 19	July 15	July 15	July 19	July 21	July 13.

As shown in Table 2, NMFS would consider legal landings for QS if the harvests were made when the directed fishing season was open and the landings were reported within 7 days after the end of the season. This 7-day extension would accommodate harvesters that caught rockfish during the directed fishing season but were not able to deliver that catch until after the season ended. Several days may be required for a harvesting vessel to reach processing facilities after the end of a season, and the 7-day extension would accommodate those harvesters. Additionally, this 7-day period would accommodate catcher/processors that submitted WPRs in a timely manner. Because the WPR is required on a weekly basis, the season could have ended before the WPR submission deadline had been reached. A 7-day period after the end of the directed fishing season to report landings would

accommodate catcher/processors submitting WPRs.

For each fully transferable LLP license under which a rockfish legal landing was made for one or more rockfish primary species during the season dates described in Table 2, NMFS would calculate the QS for each of the three rockfish primary species using the following procedures.

First, NMFS would sum the legal landings of each rockfish primary species for each year from 2000 through 2006, including years with zero pounds, during the fishery seasons listed in Table 2.

Second, NMFS would sum the 5 years with highest poundage of legal landings for that LLP license for that rockfish primary species (referred to as the highest 5 years for that LLP license). The highest 5 years could vary for each of the three rockfish primary species. This amount would yield the QS that would be issued for that LLP license in QS units. As with other catch share programs (*e.g.,* Bering Sea and Aleutian Islands (BSAI) Crab Rationalization Program), NMFS would assign rockfish QS using a subset of qualifying years to accommodate the variability in fishing patterns that may occur annually due to a range of factors. Using a subset of years would accommodate conditions that could adversely affect overall harvests, such as illness, mechanical problems, poor market conditions, or other factors. Using a subset of the years would allow NMFS to consider these factors without undertaking the administratively complicated task of reviewing specific landing records for each vessel and LLP license holder and determining if specific landings should or should not be included based on specific criteria.

Third, NMFS would sum the highest 5 years for each rockfish primary species for each LLP license qualified to receive rockfish QS based on rockfish legal landings for all LLP licenses receiving rockfish QS based on landings from 2000 through 2006. The result is the sum of all highest 5 years for each rockfish primary species.

Catcher/Processor QS. An LLP license endorsed for Central GOA groundfish fisheries with a catcher/processor trawl designation would be assigned rockfish QS to participate in the catcher/processor sector based on any rockfish legal landings of primary species that were harvested by and processed aboard the vessel designated on the LLP license during the qualifying periods.

NMFS would determine the amount of QS units for a rockfish primary species that would be assigned to the catcher/processor sector. NMFS would determine the percentage of legal landings in the highest 5 years for the LLP license used to calculate the QS assigned to the catcher/processor sector and would multiply the QS units for that license by this percentage. This yields the QS units that would be assigned to the catcher/processor sector for that LLP license. The total amount of QS assigned to the catcher/processor sector would be equal to the sum of all QS units assigned to all eligible rockfish harvesters in the catcher/processor sector.

The Council recommended that NMFS assign rockfish QS to the catcher/processor sector based on legal landings that were harvested at sea and processed onboard a vessel. The Council wanted to ensure that rockfish QS could be processed at sea only if the underlying legal landings that gave rise to that QS were harvested and processed at sea. Allocation of rockfish QS to the catcher/processor sector based on the designation on the LLP license alone would create the potential for allocations of rockfish QS based on landings that were not harvested and processed at sea.

Each year, the holder of a catcher/processor designated LLP license with QS could decide to opt-out of participating in a rockfish cooperative. Participants that choose to ''opt-out'' forgo the opportunity to fish rockfish primary species. CQ derived from the QS of LLP license holders that decide to ''opt-out'' would be reallocated to cooperatives within the catcher processor sector.

Catcher vessel QS. An LLP license endorsed for Central GOA groundfish fisheries with a trawl designation with rockfish legal landings that were not processed at sea would be assigned rockfish QS for the catcher vessel sector. The allocation would be based on any legal landings of primary species that were harvested aboard the vessel from which that LLP license was derived or used during the qualifying periods. The total amount of QS units assigned to the catcher vessel sector would be equal to the sum of all QS units assigned to all eligible rockfish harvesters in the catcher vessel sector.

If landings were made on a vessel assigned an LLP license with a catcher/processor designation, but the rockfish primary species legally landed by that vessel were not caught and processed onboard that vessel, NMFS would assign any QS resulting from those legal landings to the catcher vessel sector. Based on an initial review of rockfish legal landings data, NMFS does not anticipate any such allocations of rockfish QS.

Allocation of Rockfish QS from an interim LLP license. NMFS would assign rockfish legal landings and any resulting rockfish QS only to permanent and fully transferable LLP licenses, with one exception. NMFS would assign rockfish legal landings that were made under the authority of an interim LLP license endorsed for Central GOA groundfish with a trawl gear designation during the season dates for the rockfish primary species, as described in Table 2 of this preamble, provided that (1) NMFS has determined that the interim LLP license is ineligible to receive a designation as a permanent LLP license endorsed for Central GOA groundfish with a trawl gear designation; and (2) a permanent fully transferable LLP license endorsed for Central GOA groundfish with a trawl gear designation was assigned to the vessel that made legal rockfish landings under the authority of an interim LLP license endorsed for Central GOA groundfish prior to December 31, 2003, and was continuously assigned to that vessel through June 14, 2010.

The Council recommended this specific exemption to provide an opportunity for persons who were active in the Central GOA rockfish fisheries but who did not receive a permanent fully transferable LLP license to be eligible to receive rockfish QS provided they demonstrate a clear intent to remain active in the fishery. This particular exemption would apply only to a person who: (1) Held an interim LLP license that was determined to be invalid by NMFS prior to December 31, 2003; and (2) assigned a different permanent LLP license to the same vessel that made the rockfish legal landings prior to December 31, 2003; and (3) maintained the permanent LLP license on that vessel until at least June 14, 2010. The Council recommended this provision and the December 31, 2003, deadline based on data that demonstrated that at least two LLP license holders had been active in the Central GOA rockfish fisheries with an interim LLP license prior to December 31, 2003, but subsequently purchased a fully transferable LLP license before December 31, 2003. This provision would ensure that LLP license holders who demonstrated participation in the Central GOA rockfish fisheries during the qualifying period would continue to be eligible to receive rockfish QS from rockfish legal landings made under the authority of the interim LLP licenses. The Council also wanted to ensure that any permanent LLP license was continuously maintained on that vessel from the time it replaced the interim LLP license until the date of final

Council action (June 14, 2010) on the Rockfish Program. The Council recommended this requirement to ensure that an LLP license holder was continuously active in the Central GOA rockfish fisheries with the permanent LLP license and did not reassign that LLP license to another vessel while the Rockfish Program was being developed by the Council.

This proposed rule would, assign rockfish legal landings made under the authority of an interim LLP license to the permanent fully transferable LLP license assigned to that vessel. NMFS would not assign any rockfish legal landings to the permanent fully transferable LLP license based on fishing conducted under the authority of the permanent fully transferable LLP license before it was assigned to the vessel. This method would ensure that the Council's intent that rockfish legal landings made during the same time period from more than one LLP license would not be assigned rockfish QS. Effectively, a person holding the permanent fully transferable LLP license could receive rockfish QS for rockfish legal landings made prior to the assignment of a permanent LLP license to the vessel that made those landings, and rockfish QS based on rockfish legal landings that were made under the authority of the permanent LLP license after it was transferred to the vessel.

Rationale for assigning Rockfish QS based on rockfish legal landings from 2000 through 2006. During the development of the Rockfish Program, the Council considered a range of years that could be used to determine the appropriate allocation of rockfish QS to the eligible LLP license holders. Originally, the Pilot Program assigned rockfish legal landings and rockfish QS based on the specific guidance provided in Section 802:

> SEC. 802. GULF OF ALASKA ROCKFISH DEMONSTRATION PROGRAM. The Secretary of Commerce, in consultation with the North Pacific Fishery Management Council, shall establish a pilot program that recognizes the historic participation of fishing vessels (1996 to 2002, best 5 of 7 years) and historic participation of fish processors (1996 to 2000, best 4 of 5 years) for Pacific ocean perch, northern rockfish, and pelagic shelf rockfish harvested in Central Gulf of Alaska. * * *

The specific guidance that Congress provided limited the suite of years that the Council could consider in the development of the Pilot Program. Section 802, however, did not preclude the Council from considering additional qualifying periods once the Pilot Program expired. Moreover, nothing in Section 802 or the regulations implementing the Pilot Program indicates that the Council or NMFS should or must consider or adopt the qualifying years of 1996 through 2002 when developing the Rockfish Program.

Therefore, the Council examined a broad range of years from the first year identified in section 802 (1996) through the last year prior to the implementation of the Pilot Program (2006). The Council looked at but rejected harvest during the Pilot Program (2007 through 2011) because the analysis showed harvests under the Pilot Program cooperatives and limited access fishery were made under a combination of CQ and limited access fishing that were based on a combination of cooperative contract provisions and a race for fish in the limited access fishery that are not reflective of the harvest patterns the analysis shows likely would have occurred in the absence of the Pilot Program.

The Council considered both historic and recent participation in the rockfish fisheries when recommending the appropriate qualifying years for assigning rockfish legal landings. In balancing the interests of historic and recent participants, the Council considered fishing patterns over the 11-year period from 1996 through 2006. Several general patterns emerged in the Council's review that is described in detail in section 2.3.1 of the Analysis (see **ADDRESSES**). Participation in the rockfish fisheries by catcher/processor vessels has decreased substantially since 1999. From 1996 through 1999, 8 to 15 catcher/processor vessels harvested fish in the Central GOA rockfish fisheries annually, and from 2000 through 2006, 5 to 7 catcher/processor vessels were active in the fishery annually. The stable participation of catcher/processor vessels since 2000 indicates that more recent fishing patterns may better reflect dependence and consistent participation in the fishery. A more stable pattern is evident in the catcher vessel fleet. From 1996 through 1999, 26 to 32 catcher vessels retained catch in the Central GOA rockfish fisheries annually, and from 2000 through 2006, 25 to 33 catcher vessels were active in the fisheries annually. Section 2.3.1 of the Analysis also notes that the proportion of catch retained by catcher vessels generally increased after 2000.

The Council also considered the effects of allocating rockfish QS based on legal landings prior to the implementation of the LLP in 2000. Rockfish legal landings prior to 2000 were made under a different management regime than management under the LLP. The LLP limited potential increased effort in the Central GOA. Catch patterns prior to the implementation of the LLP are not indicative of more recent catch patterns. The Council also considered whether catch in 1996 through 1999 characterizes historic and recent participation given the observed changes in fishing patterns and management since 2000. The Council noted that using rockfish legal landings from 2000 through 2006 would include 3 of the 7 years used in the allocation of rockfish QS under the Pilot Program, yet would also consider more recent fishery participation patterns from 2003 through 2006.

The Council also considered the potential effects of modifying the qualifying years from 1996 through 2002 on current rockfish Pilot Program QS holders. The Council noted that the Pilot Program was a 5-year program. Congress initially established the Pilot Program as a 2-year program under section 802 of the Consolidated Appropriations Act of 2004, and subsequently extended the duration of the Pilot Program to 5 years under section 218 of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2007. Given the clear expiration dates for the Pilot Program established by Congress, LLP license holders should have reasonably assumed that the Council could set rockfish QS allocations under the Rockfish Program that could differ from those Congress established for the Pilot Program. In fact, the Council consistently considered a range of reasonable alternative qualifying years other than 1996 through 2002 while developing the Rockfish Program. The Council noted throughout the development of the Rockfish Program that, given the limited duration of the Pilot Program established by Congress, the qualifying years used to allocate rockfish QS were subject to change. The Council received public testimony through extensive hearings for consideration in determining the qualifying years during the deliberation process.

Given the observed changes in fishing patterns by catcher/processor vessels beginning in 2000, the changes in management of the fishery with the implementation of the LLP in 2000, and the consideration of both historic and more recent fishing patterns, the Council selected the qualifying years of 2000 through 2006.

Assigning QS to LLP Licenses Used During the Rockfish Entry Level Trawl Fishery During 2007, 2008, or 2009

The second method proposed for assigning rockfish QS to LLP licenses is based on the use of an LLP license in the entry level trawl fishery during any of the first 3 years of the Pilot Program; 2007, 2008, or 2009. The Council recommended a specific method to assign rockfish QS based on the number of years that the LLP license was assigned to a vessel that made a rockfish legal landing in the entry level trawl fishery in 2007, 2008, or 2009 during directed fishing season dates for each of the rockfish primary species presented in Table 3. NMFS notes that because only catcher vessels were eligible to participate in the entry level trawl fishery, the rockfish QS assigned to an eligible LLP license is designated as catcher vessel QS.

TABLE 3—SEASON DATES IN EACH YEAR FOR LEGAL LANDINGS OF ROCKFISH PRIMARY SPECIES FISHERIES UNDER THE ENTRY LEVEL TRAWL FISHERY

A rockfish legal landing includes . . .	2007	2008	2009
Northern rockfish that were harvested by vessels authorized to fish in the rockfish entry level trawl fishery between . . .	Sept.1–Nov. 8	Sept.1–Nov. 15	Sept.1–Nov. 15.
and landed by . . .	Nov. 15	Nov. 22	Nov. 22.
Pelagic shelf rockfish that were harvested by vessels authorized to fish in the rockfish entry level trawl fishery between . . .	July 4–July 25	July 5–July 24	July 1–July 21.
and landed by . . .	Aug 1	July 31	July 28.
Pacific ocean perch that were harvested by vessels authorized to fish in the rockfish entry level trawl fishery between . . .	July 4–July 12	July 5–July 14	July 1–July 6.
and landed by . . .	July 19	July 21	July 13.

As shown in Table 3, NMFS would consider legal landings for QS if the harvests were made when the directed fishing season was open and the landings were reported within 7 days after the end of the season. For each LLP license that made a rockfish legal landing for one or more rockfish primary species during the season dates established in Table 3, NMFS would calculate the QS for each of the three rockfish primary species for each fully transferable LLP license held by an eligible rockfish harvester using the following procedures.

First, NMFS would assign one Rockfish Landing Unit to an LLP license for each year a legal landing of any rockfish primary species was made under the authority of an LLP license during the season dates for the entry level trawl fishery in 2007, 2008, or 2009 as established in Table 3 of this preamble. This would yield the Rockfish Landing Units for that LLP license.

Second, NMFS would sum the Rockfish Landing Units of all eligible LLP licenses.

Third, NMFS would divide the Rockfish Landing Units for an LLP license by the sum of all Rockfish Landing Units of all LLP licenses. This calculation would result in the Percentage of the Total Entry Level Trawl Fishery Transition Rockfish QS pool that would be assigned to that LLP license.

Fourth, NMFS would determine the Total Entry Level Trawl Fishery Transition Rockfish QS pool for each rockfish primary species. NMFS would divide the sum of all highest 5 years for each rockfish primary species that was calculated for the LLP licenses receiving rockfish QS based on rockfish legal landings from 2000 through 2006, divide that amount by 97.5 percent, and then subtract the sum of the highest 5 years for that rockfish primary species. This calculation would yield the Total Entry Level Trawl Fishery Transition Rockfish QS pool for that rockfish primary species. This calculation is summarized in the calculation below. In this equation ''s'' represents the rockfish primary species.

$$(\Sigma \text{ All Highest Five Years}_s/0.975) - \Sigma \text{ All Highest Five Years}_s = \text{Total Entry Level Trawl Fishery Transition Rockfish QS pool}_s$$

This calculation ensures that 2.5 percent of the total rockfish QS pool for each rockfish primary species is established as a QS pool that would then be apportioned to each LLP license holder based on the number of years that the LLP license holder made a rockfish legal landing during the directed fishery season as defined in Table 3 of this preamble. This is consistent with the 2.5 percent of the combined TAC for the three rockfish fisheries assigned to trawl catcher vessels in the entry level fishery.

Fifth, NMFS would assign a portion of the Total Entry Level Trawl Fishery Transition Rockfish QS pool to each LLP license holder by multiplying the Percentage of the Total Entry Level Trawl Fishery Transition Rockfish QS pool for each LLP license, by the Total Entry Level Trawl Fishery Transition Rockfish QS pool for each rockfish primary species. This would yield the number of rockfish QS units for that LLP license for that rockfish primary species.

Rationale for assigning Rockfish QS based on rockfish legal landings in 2007, 2008, or 2009. NMFS noted throughout the development of the Pilot Program that the small allocations of TAC that were likely to be available to trawl catcher vessels could preclude the ability for NMFS to open the fishery if fishery effort was likely to exceed the allocation available. This concern was noted in the response to public comment section of the final rule implementing the Pilot Program.

> NMFS' ability to open an entry level fishery would only be curtailed if large numbers of participants with sufficient harvest capacity register to fish for the fishery. Under alternative methods of management (i.e., IFQ fishing), small allocations may be more manageable, however, the entry level fishery was designed to provide an opportunity to persons not otherwise eligible for the Program, and not to institute complex quota-based management for a small amount of TAC for a two-year Program. NMFS does not anticipate that large numbers of participants will choose to participate in the entry level fishery due to the small amount of TAC available for harvest. (71 FR 67228; November 20, 2006).

Under the Pilot Program, NMFS assigned TAC of northern rockfish, pelagic shelf rockfish, and Pacific ocean perch to the entry level fishery so that 50 percent (or 2.5 percent of the combined TAC for the three rockfish fisheries) was assigned to trawl catcher vessels and 50 percent (2.5 percent of the combined TAC for the three rockfish fisheries) was assigned for longline catcher vessels. Historically, Pacific ocean perch has been harvested almost exclusively with trawl gear. Northern rockfish and pelagic shelf rockfish have been harvested by longline vessels to a

limited degree. Rather than allocate Pacific ocean perch equally between the trawl and longline vessels, resulting in Pacific ocean perch remaining unharvested by longline vessels, NMFS allocated Pacific ocean perch to entry level trawl vessels first. NMFS allocated any remaining pounds up to the combined 2.5 percent TAC for the three rockfish species from the TAC that would be assigned to northern rockfish and pelagic shelf rockfish. NMFS made unharvested northern rockfish, pelagic shelf rockfish, or Pacific ocean perch available for harvest by trawl and longline on September 1. Any unharvested rockfish in either the longline or trawl gear allocations could be harvested by trawl and longline vessels beginning September 1.

During the Pilot Program, NMFS staff and entry level trawl fishery participants continued to express concerns about the potential for more than a limited number of participants to register for, and participate in, the entry level trawl fishery. Given the small amount of TAC assigned to the entry level trawl fishery (e.g., approximately 400 mt in 2010), if more than two or three vessels participated in the fishery, NMFS may need to close the fishery as a precautionary measure to avoid exceeding the entry level trawl allocation. Given these concerns, the Council recommended eliminating the entry level trawl fishery, yet providing an opportunity for those LLP license holders to receive rockfish QS for their participation in the years prior to the Council's final action in June 2010 (*e.g.,* 2007, 2008, or 2009). Allocating rockfish QS to participants in the entry level trawl fishery would recognize the participation of entry level trawl participants and ensure that those participants received the benefits of catch share management (*e.g.,* avoid a competitive and potentially wasteful race for fish, tailor fishing operations to specific catch limits to improve economic efficiency, and have the ability and incentive to adopt fishing practices with reduced bycatch).

The Council considered a variety of alternative methods to assign rockfish QS to entry level trawl participants. Through public testimony, the Council was made aware of some specific concerns and complexities that could arise if rockfish QS were allocated based on the amount of rockfish legal landings during 2007, 2008, and 2009. In all these years, the entry level fishery received an allocation of 5 percent of the Pacific ocean perch available to the Pilot Program or 346 mt per year in 2007 and 2008, and 339 mt in 2009. No allocation of northern rockfish or pelagic shelf rockfish was made to the trawl entry level fishery. Perhaps most problematic is a pending enforcement investigation concerning all catches from the fishery in 2008. At the extreme, the investigation could result in most catches from the 2008 entry level trawl fishery being determined to have been illegal, which would prevent their consideration for determining rockfish QS allocations under the Rockfish Program.

Section 2.4.1 of the Analysis (see **ADDRESSES**) notes that assigning rockfish QS to the trawl sector based on rockfish legal landings during 2007, 2008, or 2009, could result in some LLP licenses receiving a relatively large amount of rockfish QS compared to the total amount of rockfish QS issued to the catcher vessel sector. Under one allocation scenario considered, one LLP license could have received an allocation of Pacific ocean perch QS equal to roughly 10 percent of the available catcher vessel Pacific ocean perch QS. On the other hand, it is possible that an entry level participant could receive a very small allocation of northern rockfish or pelagic shelf rockfish QS, if that entry level participant recorded little or no landings of those species.

The Council considered an alternative approach to allocating rockfish QS to ensure that the initial allocation of rockfish QS more closely aligned with the years of participation in the entry level fishery rather than total catches, and to address concerns raised about the potential uncertainty about the legality of including catches from 2008 to allocate rockfish QS. Under the alternative approach, the Council considered assigning from 1.5 to 5 percent of the total rockfish QS to entry level trawl participants. This rockfish QS would be assigned to LLP licenses based on the proportion of the total number of years that rockfish legal landings were made under authority of the LLP licenses during 2007, 2008, or 2009. The Council ultimately chose to allocate 2.5 percent of the total rockfish QS to entry level trawl participants that apply for QS. This allocation is consistent with the proportion of the TAC that was initially assigned to entry level trawl vessels during the Pilot Program.

The Official Rockfish Program Record

NMFS would determine the amount of an eligible applicant's QS, or a person's eligibility as a processor, based on a review of the Official Rockfish Program Record (Official Record). NMFS would produce the Official Record from the best available data including State fish tickets, NMFS WPRs, and other relevant information. NMFS would presume the Official Record is correct and an applicant would have the burden of establishing otherwise through an evidentiary appeals process.

Exclusion From the Rockfish Program

The Council recommended a specific provision to allow an eligible LLP license holder to choose to be excluded permanently from the Rockfish Program and not receive rockfish QS. An LLP license holder eligible for this exclusion would be one who would qualify for rockfish legal landings made under the authority of an LLP license both during 2000 through 2006 and in the entry level trawl fishery during 2007, 2008, or 2009. If the LLP license were excluded from receiving rockfish QS, it would be exempted from specific sideboard limits that would otherwise apply to that LLP license.

The Council recommended this specific provision to recognize a situation in which a limited number of LLP licenses, possibly no more than one LLP license based on a review of the available information, had limited participation in Central GOA rockfish fisheries during 2000 through 2006, and during the entry level trawl fishery in 2007, 2008, or 2009. This license had also participated in rockfish fisheries in the West Yakutat District or the Western GOA in recent years. The one LLP license holder who had participated in the Central GOA rockfish fisheries during this time period testified that given the limited allocation of rockfish QS that would likely result from the Rockfish legal landings associated with that LLP license, the LLP license holder would prefer to have the option to forego an allocation of rockfish QS in order to continue to participate in the West Yakutat District and Western GOA rockfish fisheries consistent with recent participation patterns. NMFS would require that an LLP license holder submit an application for rockfish QS affirming their exclusion from the Rockfish Program and permanently forgo their rockfish QS. This requirement would ensure that an LLP license holder would have a one-time limited opportunity to be excluded from the Rockfish Program consistent with the Council's clear intent to provide a limited timeframe in which to seek an exclusion.

Application and Appeal Process

To receive rockfish QS, a potentially eligible LLP license holder must submit an application to participate in the Rockfish Program that is received by

NMFS by 5 p.m. on January 3, 2012, or postmarked by that date. The application form would be available on the NMFS Alaska Region Web site *http://alaskafisheries.noaa.gov*. Interested persons could contact NMFS to request an application package. Further and based on the official record, NMFS would mail an application package to all potentially eligible LLP license holders based on the address on record at the time the application period opens. An application could be submitted by mail, fax, or hand delivery. The proposed regulatory text (see § 679.81(f)) provides addresses and delivery locations. NMFS would determine if an application received by hand delivery or carrier is timely based on the receiving date of signature by NMFS staff. If the application is submitted by facsimile, the receiving date of the application is the date stamped received by NMFS. NMFS would not consider an application to have been received by the deadline if the applicant cannot provide objective written evidence that NMFS Alaska Region received it. Objective written evidence of timely application (*e.g.,* fax confirmation sheet, registered mail receipt) would be considered as proof of a timely application. This proposed regulation would serve to stress for participants that proof of filing should be maintained. Applicants who keep records of filing would effectively resolve any dispute prior to an administrative finding that an application was not filed. Adopting a practice of maintaining records of filings would aid applicants should NMFS dispute the timely filing of an application. Any application that is submitted by mail and postmarked, or submitted by hand delivery or fax, after the last day of the application period will be denied.

NMFS would require an application to participate in the Rockfish Program, or to be excluded, for potentially eligible processors and harvesters. Briefly, the application would contain the following elements:

- Identification and contact information for the applicant;
- Harvester information, including vessel identification and LLP licenses used on a vessel;
- Whether the applicant wishes to receive rockfish QS based on rockfish legal landings from 2000 through 2006, or during the entry level trawl fishery in 2007, 2008, or 2009, if eligible for both;
- If an applicant is choosing to exclude an LLP license from the Rockfish Program;
- Any other information deemed necessary by NMFS. NMFS may request additional information to clarify the application and determine if an applicant's LLP license is qualified to receive QS, or if an applicant is an eligible rockfish processor; and
- The applicant's signature and certification.

NMFS would evaluate applications submitted during the specified application period and compare all claims in an application with the information in the Official Record. NMFS would accept claims in an application it determines to be consistent with information in the Official Record. NMFS would not accept inconsistent claims in the applications, unless verified by documentation. An applicant who submits inconsistent claims, or an applicant who fails to submit information supporting his or her claims with their application, would be provided a single 30-day evidentiary period to submit the specified information, submit evidence to verify his or her inconsistent claims, or submit a revised application with claims consistent with information in the Official Record. An applicant who submits claims that are inconsistent with information in the Official Record would have the burden of proving that the submitted claims are correct.

NMFS would evaluate additional information or evidence to support an applicant's inconsistent claims submitted prior to or within the 30-day evidentiary period. If NMFS were to determine that the additional information or evidence met the applicant's burden of proving that the inconsistent claims in his or her application were correct, NMFS would amend the Official Record with that information or evidence. NMFS would use this information or evidence to determine the applicant's eligibility. However, if NMFS were to determine that the additional information or evidence did not meet the applicant's burden of proof that the inconsistent claims in his or her application were correct, NMFS would deny the inconsistent claims. NMFS would notify the applicant that the additional information or evidence did not meet the burden of proof to change the information in the Official Record through an initial administrative determination (IAD).

NMFS would prepare and send an IAD to the applicant following the expiration of the 30-day evidentiary period if NMFS were to determine that the information or evidence provided by the applicant failed to support the applicant's claims and was insufficient to rebut the presumption that the Official Record is correct. NMFS' IAD would indicate the deficiencies and discrepancies in the application, or revised application, including any deficiencies in the information, or the evidence submitted in support of the information. NMFS' IAD would indicate which claims could not be approved based on the available information or evidence. An applicant could appeal an IAD. The appeals process is described under 50 CFR 679.43. An applicant who appeals an IAD would not receive contested landing data until the appeal was resolved in the applicant's favor.

If an application is denied by final agency action, then all rockfish QS that would have been assigned to that applicant based on that LLP license would be redistributed among all other eligible rockfish harvesters in proportion to the amount of their rockfish primary species QS. If an LLP license holder applied to receive rockfish QS based on rockfish legal landings from 2000 through 2006 and that application is subsequently denied, NMFS would redistribute any rockfish QS that would have been assigned to that LLP license to all other eligible LLP licenses that applied to receive rockfish QS based on rockfish legal landings from 2000 through 2006. Similarly, if an LLP license holder applied to receive rockfish QS based on rockfish legal landings during the entry level trawl fishery in 2007, 2008, or 2009, NMFS would redistribute any rockfish QS that would have been assigned to that LLP license to all other eligible LLP licenses held by persons who applied to receive rockfish QS based on rockfish legal landings during the entry level trawl fishery in 2007, 2008, or 2009. This redistribution of rockfish QS would ensure that the total amount of rockfish QS assigned to LLP licenses eligible to receive rockfish QS from 2000 through 2006, and during the entry level trawl fishery in 2007, 2008, or 2009 is maintained at a constant proportion of 97.5 percent and 2.5 percent, respectively. The initial rockfish QS pool is the sum of the rockfish QS issued to all eligible LLP licenses.

Transfer of Rockfish QS and Excessive Share Caps

With one exception, rockfish QS would not be severable from an LLP license. The rockfish QS and LLP license would be subject to the LLP license transfer under 50 CFR 679.4(k)(7).

The exception recommended by the Council and proposed in this rule is intended to ensure that use caps apply to all persons except initial QS recipients. The Council recommended that an LLP license that is initially

assigned an amount of rockfish QS that exceeds the use caps can be transferred only if the amount of rockfish QS that exceeds the rockfish QS use cap is transferred to another LLP license so the LLP license would be transferred with a total amount of QS that is under the use cap. The excess QS could be transferred only to an LLP that has already been assigned rockfish QS of the same sector. For example, catcher/processor designated rockfish QS could only be transferred to an LLP license that is already assigned catcher/processor designated rockfish QS. Once the total amount of rockfish QS assigned to an LLP license is under the applicable use cap, it could be transferred under the LLP license transfer provisions. NMFS would require that, when transferring rockfish QS from one LLP license to another LLP license, the transferor and transferee submit an application to NMFS.

Rockfish Cooperatives

Holders of Rockfish QS may annually choose to be a member of a rockfish cooperative. The Rockfish Program would regulate the formation of rockfish cooperatives and the use of CQ. NMFS would issue a CQ permit to each rockfish cooperative that specified how much CQ it could harvest. This amount would be based on the sum of the QS of the cooperative members and any CQ that the rockfish cooperative subsequently receives by transfer from another rockfish cooperative.

The Council provided numerous recommendations on the specific requirements to form a rockfish cooperative under the Rockfish Program. The Council recommended carrying over from the Pilot Program many of the basic administrative requirements to form a harvesting cooperative. Provisions for cooperatives include requiring registration as a U.S. corporation, meeting the applicable monitoring and requirements, and adhering to applicable antitrust restrictions when undertaking price and delivery negotiations. These provisions have been consistently applied in other North Pacific cooperative programs. The Council recommended their application in the proposed Rockfish Program.

The Council did recommend several key changes in the proposed Rockfish Program from the Pilot Program. These include recommendations concerning (1) the requirements to form a cooperative, (2) the interests of traditional shorebased rockfish processing companies, (3) CQ transfer requirements, and (4) reporting requirements.

The Council relaxed the requirements to form a rockfish cooperative. The Council sought to balance the desire to encourage cooperative formation and the flexibility for LLP license holders to coordinate with whomever they wished. Ultimately, the Council recommended there would be no minimum number of LLP licenses with affixed rockfish QS required to form a cooperative. The Council did recommend, however, that if a cooperative wished to receive CQ by transfer the CQ would need to be assigned to a minimum of two LLP licenses. This limitation would encourage cooperative formation among LLP license holders by providing them greater flexibility to transfer CQ to meet operational demands.

The Council also recommended modifying the requirement of the Pilot Program that LLP license holders with rockfish QS designated for the catcher vessel sector form a cooperative only with the processor to whom a majority of their catch was delivered during 1996 through 2000. The Council modified this requirement because the specific requirement and authority provided in section 802 will expire with the Pilot Program, and this specific provision was not necessary to meet the goals of the Rockfish Program.

Eligibility for Processors

Unlike the Pilot Program, processors would not be required to meet historical eligibility requirements to receive primary or secondary species fish harvested by rockfish cooperatives. For the Rockfish Program, the Council recommended that a catcher vessel cooperative can only form if a ''rockfish processor'' is an ''associate'' of the rockfish cooperative and is designated on the application for CQ. A rockfish processor would be any shoreside processor with a Federal processor permit that receives groundfish harvested under the authority of a rockfish CQ permit. In order to receive rockfish CQ, that shorebased processor would also need to be located within the boundaries of the City of Kodiak and have an approved CMCP as described in the ''Monitoring and Enforcement'' section of this preamble. This requirement would not limit a catcher vessel cooperative to only one processor, and it would not obligate the cooperative to deliver catch to that specific processor. The association requirement only indicates that a processor may be willing to receive the catch. A catcher vessel cooperative could form an association with any qualified processor, whether old or new, that meets the requirements to receive rockfish CQ. The processor is not required to be in business at the effective date of this rule to qualify to receive rockfish CQ. The association between a catcher vessel cooperative and processor is a requirement and must be submitted to NMFS by the cooperative in the application for CQ. A catcher vessel rockfish cooperative may not receive rockfish CQ unless a shoreside processor eligible to receive rockfish CQ has indicated in the annual application for CQ that it may be willing to receive rockfish CQ from that cooperative. The proposed requirement would encourage harvesters and processors to discuss and possibly coordinate fishing plans as part of the application process to form a rockfish cooperative, but without the specific mandate established under the Pilot Program. Membership agreements must specify that processor affiliated cooperative members cannot participate in price setting negotiations except as permitted by antitrust laws.

The Council also sought to address concerns raised by processors that allocation of exclusive harvest privileges would provide an undue competitive advantage for harvesters and could reduce the incentive for harvesters to continue to deliver to the traditional port of Kodiak. The Council recommended a requirement that all primary and rockfish secondary species CQ in the catcher vessel sector be delivered to a shorebased processor operating within the geographic boundaries of the City of Kodiak. The port delivery requirement is intended to protect the fishing community of Kodiak and the traditional shorebased processors from changes in the location of shorebased processing activities that could occur under the Rockfish Program. This provision would ensure that Kodiak processors and the community continue to benefit from the fishery. During the 2000 through 2006 period, all catch was delivered within Kodiak to shorebased processors; therefore, this provision does not represent a change from traditional harvest patterns. This proposed rule would define the boundaries of the City of Kodiak using the boundary specified by the State of Alaska on the date that a final rule, if approved, were published. This method for determining the boundary would ensure that the specific geographic limits are based on the official source of municipal boundaries and that those boundaries would be established on a specific date and would not vary over time. Changes in municipal boundaries could complicate enforcement of processing provisions.

During the development of the Rockfish Program, the Council reviewed and considered a range of options to address concerns raised by shorebased processors about potential consolidation of processing capacity under catch share management and the effects of catch share allocations on processing operations. The Council considered management measures that included the linkage between shorebased processors and catcher vessel cooperatives required under the Pilot Program, regional landing requirements, allocations of harvest shares to processors, annual cooperative/processor linkages (which may be changed, without penalty or forfeiture), and caps on the amount of landings that may be processed by any single processor. Ultimately, the Council chose to recommend a specific landing requirement within the City of Kodiak and processing caps to preserve flexibility for harvesters to deliver to multiple markets. The Council's recommendation sought to maintain the traditional shorebased processing activity within Kodiak and limit the consolidation of processing effort among rockfish processors that could be detrimental to existing processors and harvesters.

Overall, the Council's recommendations were intended to meet goals of the Rockfish Program, which include stabilization of the processing work force, increasing shoreside deliveries of rockfish, and removing of processing conflicts with GOA salmon production. The Council did not consider linkages, or allocation of harvesting quota to processors as necessary or appropriate to meet the overall goals the Council established for the Rockfish Program. The demonstrated ability of cooperatives to coordinate with processors under the Pilot Program would be expected to continue under the Rockfish Program. These relationships have reduced processing capacity conflicts with the salmon fishery that is active during summer months, and have provided a stable processing workforce by ensuring rockfish deliveries during months when other fisheries are less active. Section 2.4.6 of the Analysis describes the likely benefits to processing operations under the Rockfish Program.

Requirements for Rockfish Cooperatives

Table 4 details the key requirements of a rockfish cooperative.

TABLE 4—REQUIREMENTS FOR A ROCKFISH COOPERATIVE AND THE LIMITATIONS ON THE USE OF CQ BY THE ROCKFISH COOPERATIVE

Requirement	Catcher vessel sector	Catcher/processor vessel sector
(i) Who may join a rockfish cooperative?	Only persons who hold rockfish QS may join a rockfish cooperative.	
(ii) What is the minimum number of LLP licenses that must be assigned to form a rockfish cooperative?	No minimum requirement.	
(iii) Is an association with a rockfish processor required?	Yes. By a cooperative. A rockfish QS holder may only be a member of a rockfish cooperative formed in association with a rockfish processor.	No.
(iv) Is a Rockfish cooperative member required to deliver catch to the rockfish processor with whom the rockfish cooperative is formed?	No.	N/A.
(v) Is there a minimum amount of rockfish QS that must be assigned to a rockfish cooperative for it to be allowed to form?	No.	
(vi) What is allocated to the rockfish cooperative?	CQ for rockfish primary species, rockfish secondary species, and rockfish halibut PSC, based on the rockfish QS assigned to all of the LLP licenses that are assigned to the cooperative.	
(vii) Is this CQ an exclusive harvest privilege?	Yes, the members of the rockfish cooperative have an exclusive harvest privilege to collectively catch this CQ, or a cooperative can transfer all or a portion of this CQ to another rockfish cooperative.	
(viii) Is there a season during which designated vessels may catch CQ?	Yes, any vessel designated to catch CQ for a rockfish cooperative is limited to catching CQ during the season beginning at 1200 hours, A.l.t. on May 1 through 1200 hours A.l.t. on November 15.	
(ix) Can any vessel catch a rockfish cooperative's CQ?	No, only vessels that are named on the application for CQ for that rockfish cooperative can catch the CQ assigned to that rockfish cooperative. A vessel may be assigned to only one rockfish cooperative in a calendar year.	
(x) Can the member of a rockfish cooperative transfer CQ individually to another rockfish cooperative without the approval of the other members of the rockfish cooperative?	No, only the rockfish cooperative's designated representative, and not individual members, may transfer its CQ to another rockfish cooperative. Any such transfer must be approved by NMFS.	
(xi) Can a rockfish cooperative in the catcher/processor sector transfer its sideboard limit?	N/A.	No, sideboard limits assigned to a rockfish cooperative in the catcher/processor sector is a limit applicable to a specific rockfish cooperative, and may not be transferred between rockfish cooperatives.

TABLE 4—REQUIREMENTS FOR A ROCKFISH COOPERATIVE AND THE LIMITATIONS ON THE USE OF CQ BY THE ROCKFISH COOPERATIVE—Continued

Requirement	Catcher vessel sector	Catcher/processor vessel sector
(xii) Is there a hired master requirement?	No, there is no hired master requirement.	
(xiii) Can an LLP license be assigned to more than one rockfish cooperative in a calendar year?	No. An LLP license can only be assigned to one rockfish cooperative in a calendar year. A person holding multiple LLP licenses with associated rockfish QS may assign different LLP licenses to different rockfish cooperatives subject to any other restrictions that may apply.	
(xiv) Can a rockfish processor be associated with more than one rockfish cooperative?	Yes.	N/A.
(xv) Can an opt-out vessel harvest a rockfish cooperative's CQ?	No. An opt-out vessel is any vessel named on an LLP license with QS that is not assigned to a rockfish cooperative. Opt-out vessels cannot harvest rockfish primary species or rockfish secondary species CQ.	
(xvi) Which members may harvest the rock-fish cooperative's CQ?	That is determined by the rockfish cooperative contract signed by its members. Any violations of this contract by one cooperative member may be subject to private civil claims by other members of the rockfish cooperative. NMFS will not enforce the cooperative contracts among its members.	
(xvii) Does a rockfish cooperative need a contract?	Yes, a rockfish cooperative must have a membership agreement, or contract, that specifies how the rockfish cooperative intends to harvest its CQ. A copy of this agreement or contract must be submitted to NMFS with the cooperative's application for CQ.	
(xviii) What happens if the rockfish cooperative exceeds its CQ amount?	A rockfish cooperative is not authorized to catch fish in excess of its CQ. Exceeding a CQ is a violation of the Rockfish Program regulations. Each member of the rockfish cooperative is jointly and severally liable for any violations of the Rockfish Program regulations while fishing under authority of a CQ permit. This liability extends to any persons who are hired to catch or receive CQ assigned to a rockfish cooperative. Each member of a rockfish cooperative is responsible for ensuring that all members of the rockfish cooperative comply with all regulations applicable to fishing under the Rockfish Program.	
(xix) It there a limit on how much CQ a rockfish cooperative may hold or use?	Yes, see the *Use Cap* section of the preamble and the proposed regulations for the provisions that apply.	
(xx) Is there a limit on how much CQ a vessel may harvest?	Yes, see the *Use Cap* section of the preamble and the proposed regulations for the provisions that apply.	
(xxi) Is there a requirement that a rockfish cooperative pay rockfish cost recovery fees?	Yes, see the *Cost Recovery* section of the preamble for the provisions that apply.	

TABLE 4—REQUIREMENTS FOR A ROCKFISH COOPERATIVE AND THE LIMITATIONS ON THE USE OF CQ BY THE ROCKFISH COOPERATIVE—Continued

Requirement	Catcher vessel sector	Catcher/processor vessel sector
(xxii) If my vessel is fishing in a directed flatfish fishery in the Central GOA and I catch groundfish and halibut PSC, does that count against the rock-fish cooperative's CQ?	(A) Any vessel fishing under the authority of a rockfish CQ permit must count any catch of rockfish primary species, rockfish secondary species, or rockfish halibut PSC against that rockfish cooperative's CQ from May 1 until November 15, or until the effective date of a rockfish cooperative termination of fishing declaration that has been approved by NMFS. (B) Groundfish harvests would not be debited against the rockfish cooperative's CQ if the vessel is not fishing under the authority of a rockfish CQ permit. In this case, any catch of halibut would be attributed to the halibut PSC limit for that directed target fishery and gear type.	
(xxiii) Can my rockfish cooperative negotiate prices for me?	The rockfish cooperatives formed under the Rockfish Program are intended to conduct and coordinate harvest activities for their members. Rockfish cooperatives formed under the Rockfish Program are subject to antitrust laws. Collective price negotiation by a rockfish cooperative must be conducted in accordance with existing antitrust laws.	
(xxiv) Are there any special reporting requirements?	Yes. A rockfish cooperative must submit an annual rockfish cooperative report to NMFS by December 15 of each year.	
(xxv) What is required in the annual rockfish cooperative report?	The annual rockfish cooperative report must include at a minimum: (A) The rockfish cooperative's CQ, sideboard limit (if applicable), and any rockfish sideboard fishery harvests made by the vessels in the rockfish cooperative on a vessel-by- vessel basis; (B) The rockfish cooperative's actual retained and discarded catch of CQ, and sideboard limit on an area-by-area and vessel-by-vessel basis; (C) A description of the method used by the rockfish cooperative to monitor fisheries in which rockfish cooperative vessels participated; (D) A description of any private civil actions taken by the rockfish cooperative in response to any members that exceeded their allowed catch.	

Transfer of CQ

A rockfish cooperative could transfer rockfish QS to another rockfish cooperative in the same sector. For example, a catcher vessel rockfish cooperative could not transfer CQ to a rockfish cooperative in the catcher/processor sector. The Council recommended this restriction during the development of the Pilot Program to addresses concerns about the potential losses of shorebased processing, as well as potential employment and tax revenue if catcher/processor rockfish cooperatives could receive rockfish harvested with CQ from catcher vessel rockfish cooperatives that historically delivered to shoreside processors. The Council also recommended that a catcher/processor rockfish cooperative could not transfer rougheye or shortraker rockfish CQ to a catcher vessel rockfish cooperative. Rougheye and shortraker are managed under a maximum retainable amount (MRA) for catcher vessels.

Transfer of CQ would be valid only during the calendar year of the transfer. There would be no restrictions on the number or size of post delivery transfers. All post delivery transfers would need to be completed by December 31. Vessels in a cooperative could not begin a new fishing trip for that cooperative unless the cooperative holds unused CQ for all rockfish primary species and secondary species. At the end of the calendar year a cooperative could not have a negative balance of CQ for any species for which CQ is assigned.

To standardize the reporting of information, transfers would have to be completed using an electronic online transfer application available on the

NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov.* A rockfish cooperative could only transfer CQ if:

- The rockfish cooperative identified the amount and type of CQ transferred and the rockfish cooperative and rockfish cooperative member to which that CQ was transferred. CQ received by a rockfish cooperative would have to be attributed to a member of that rockfish cooperative to apply the use caps. See *Use Caps* section for more detail;
- The transfer would not cause the receiving rockfish cooperative to exceed its use cap limitations. The rockfish cooperative would be responsible for ensuring that any transfer does not exceed rockfish cooperative use cap provisions; and
- All information was certified by the transferor and transferee as true, correct, and complete.

Participation in a Rockfish Cooperative or Opt-Out

Each year, an LLP license holder with rockfish QS would be required to assign all the QS associated with that LLP license to a specific rockfish cooperative to fish for rockfish primary species. A holder of a designated catcher/processor LLP license assigned rockfish QS could decide to opt-out of participating in a rockfish cooperative on an annual basis.

An LLP license holder could not assign portions of rockfish QS to different rockfish cooperatives within the same sector. Once an LLP license and its associated QS are assigned for a year, the LLP license holder could not reassign the LLP license or QS to a different cooperative during that year. The Council limited the LLP license holder to participating in only one cooperative per year to ensure that the catch derived from a specific LLP license could be reliably tracked and that the applicable cooperative management measures related to monitoring and enforcement, any voluntary codes of conduct, and the cost recovery requirements would be met.

Each year, an LLP license holder would be required to apply to use the LLP license and its associated QS to participate in a rockfish cooperative, or opt-out of participating in rockfish cooperative. Applications would be available on the NMFS Web site *http://www.alaskafisheries.noaa.gov,* or NMFS would mail applications to the applicant upon request. Applications would have to be submitted to NMFS by mail, fax, or hand delivery (see **ADDRESSES**). Applications would have to be submitted by a designated representative of the cooperative by March 1 each year. An eligible rockfish harvester could apply to participate in only one cooperative per year with an LLP license and its associated QS. The CQ issued under a NMFS approved application would be valid for 1 year. The contents of the specific applications are described below.

Application for Rockfish CQ

A designated representative of a rockfish cooperative that submits an application that is approved by NMFS would receive a CQ permit. The CQ permit would contain the rockfish cooperative's CQ of rockfish primary and secondary species and halibut PSC, based on the collective QS of the LLP licenses held by the cooperative members. The CQ permit also would identify the members of the rockfish cooperative and the vessels authorized to harvest the CQ. NMFS would consider a vessel named on a CQ permit as actively engaged in fishing the CQ for that rockfish cooperative and would be subject to all observers, permitting, and reporting requirements applicable to vessels when fishing under the cooperative's CQ permit. A rockfish cooperative would be required to submit an amended application for CQ to add or remove a vessel eligible to harvest the CQ assigned to that cooperative. NMFS would approve any amendments to the list of eligible vessels to the application for CQ unless otherwise prohibited. NMFS' issuance of a CQ permit to a rockfish cooperative, however, would not be a determination that the rockfish cooperative was formed or was operating in compliance with antitrust laws.

A complete application would be required to contain the following information:

- Identification and contact information of the rockfish cooperative;
- Names of the rockfish cooperative members, including information on the LLP licenses assigned to the rockfish cooperative;
- A copy of the business license and articles of incorporation or partnership agreement signed by the rockfish cooperative members;
- Processor associates of the cooperative (if a cooperative formed with catcher vessel designated rockfish QS), and a requirement that LLP license holders affiliated with a processor could not participate in price setting negotiations except as permitted by general antitrust law;
- The proposed fishing plan to be used by members of the cooperative, including any proposed cooperative specific monitoring procedures and any voluntary codes of conduct that would apply to the members of the cooperative, if applicable; and
- Signature and certification of applicant(s).

Application to Opt-Out of Rockfish Cooperatives

An LLP license holder with catcher/processor designated rockfish QS would be required to submit an application to opt-out of participating in a rockfish cooperative for a fishing year. An application would include the following information:

- Identification and contact information of the eligible rockfish harvester;
- Information on the LLP license(s) and vessels that would opt-out; and
- Applicant's signature and certification.

Removal of the Limited Access Fishery

The Council recommended eliminating the limited access fishery for the catcher vessel sector in the Rockfish Program because almost all QS holders joined cooperatives. The very few QS holders that did not join catcher vessel cooperatives received very limited amounts of QS. The amount of TAC available to the catcher vessel limited access fishery was very small in relation to potential harvest capacity during the Pilot Program and NMFS has never opened the limited access fishery.

The Council recommended eliminating the limited access fishery for the catcher/processor sector in the Rockfish Program because the Analysis showed the limited access fishery created incentives for the catcher/processor sector to avoid joining a cooperative. The Central GOA limited access fishery under the Pilot Program opened in the beginning of July, and then closed when participants were estimated to have fully harvested the target rockfish allocations in that fishery. The differences in sideboard limitations between catcher/processor cooperatives and the limited access fishery as well as the management of shortraker rockfish, and the halibut PSC mortality allowance may have affected a participant's decision to either join a catcher/processor cooperative or take part in the limited access fishery. The Council discussed an alternative that would keep the limited access fishery in the Rockfish Program but ease the management burden with a downward adjustment of the MRAs to limit the incentive for participants to target secondary species and maintain catch at a level below the allocation. But the Council also noted that participants with small allocations of QS could choose to fish in the limited access

fishery and attempt to take a share of the catch greater than their individual historical allocation.

Based on the analysis, the Council recognized that under the Pilot Program the limited access fishery functioned more like a cooperative than the way it was intended to function as a limited access fishery for individual catcher/processor participants. A review of the data showed that many participants registered for the limited access fishery, but then consolidated onto a few vessels in a cooperative-like system. This system of fishing would not be required to follow the constraining management provisions (e.g., sideboard limitations and secondary species management) that are intended to apply to cooperatives. Furthermore, participation in the limited access fishery could not be predicted from year to year and the possibility of a ''race for the fish'' was recognized along with concern that the fishery would exceed the TAC before the season could be closed. Ultimately the Council opted to discontinue the limited access fishery and require catcher/processors to either join a cooperative or opt-out.

TAC Apportionment to an Incidental Catch Allowance (ICA), Rockfish Cooperatives, and Entry Level Fishery

Annually, NMFS would determine the amount of primary species, secondary species, and halibut PSC that would be allocated to each fishery based on the total amount of QS assigned to each fishery.

Rockfish Primary Species Allocation

NMFS would calculate the amount of rockfish primary species TAC that would be assigned to the Rockfish Program on an annual basis. Before NMFS would calculate annual cooperatives allocations for primary species within the sectors, NMFS would first deduct the incidental catch allowance (ICA). The ICA subtracts from the TAC for that fishery an incidental catch of rockfish primary species harvested in fisheries other than the Rockfish Program. The ICA accounts for rockfish primary species that are incidentally harvested in other fisheries (e.g., trawl flatfish fisheries) and NMFS must set aside some bycatch amount for those fisheries. On an annual basis, the Regional Administrator determines how much ICA is required in other non-target fisheries.

After deducting the ICA, NMFS would set aside a percentage of the TAC for the entry level longline fishery, which allows catcher vessels who are not eligible to participate in the Rockfish Program an opportunity to harvest rockfish. The amount set aside would be equal to the amounts described in Table 10 in the ''Entry Level Longline Fishery'' section of this preamble, depending on the year and whether 90 percent or more of the species was harvested by entry level fishery participants the year before.

Then, for each rockfish primary species, the TAC would be apportioned between the catcher/processor sector and the catcher vessel sector. The amount of TAC assigned to the catcher/processor sector would be determined by multiplying the TAC by the ratio of QS units assigned to all LLP licenses that receive QS in the catcher/processor sector divided by the QS pool for that primary rockfish fishery. The amount of TAC assigned to the catcher vessel sector would be determined by multiplying the TAC by the ratio of QS units assigned to all LLP licenses that receive QS in the catcher vessel sector divided by the QS pool for that primary rockfish fishery.

LLP licenses assigned to a rockfish cooperative would yield CQ that would be based on the sum of all QS units associated with all LLP licenses assigned to the rockfish cooperative for a specific rockfish primary species. The annual CQ issued to a cooperative would be equal to the TAC assigned to that rockfish primary fishery in that sector multiplied by the QS units assigned to that cooperative divided by the QS pool for that sector in that fishery.

Opt-out: In the catcher/processor sector, an adjustment to the CQ assigned to rockfish cooperatives would be made to account for LLP licenses with QS that are not assigned to a rockfish cooperative. The QS assigned to LLP licenses that are opting-out in the catcher/processor sector would not yield any CQ for that LLP holder. Instead, the TAC would be assigned to rockfish cooperatives in the catcher/processor sector. See Table 4 for more information on the use of the CQ by a rockfish cooperative.

Rockfish Secondary Species Allocation

The proposed rule would define rockfish secondary species by listing the species that were historically harvested during the Central GOA directed rockfish fisheries. Secondary species would be allocated as an exclusive harvest privilege only to rockfish cooperatives. Rockfish cooperatives would receive CQ for specific secondary species. Secondary species allocated as CQ to rockfish cooperatives would be allocated differently between cooperatives in the catcher vessel and catcher/processor sectors. For participants in a rockfish cooperative, NMFS would issue secondary species CQ in relation to the amount of QS allocated to an LLP license.

The secondary species would be treated differently in the catcher/processor and catcher vessel sectors based on the previous harvest patterns in those sectors. Historically, harvesters in both sectors tended to retain all sablefish harvested with trawl gear and thornyhead rockfish caught in conjunction with rockfish harvests because they were high value species. Traditionally, catcher vessels retained Pacific cod during the course of their rockfish harvests; however, this was less common among catcher/processors. Consequently, the Council recommended managing Pacific cod in the catcher/processor sector using an MRA that would reflect historic harvest rates but provide more flexibility for the fleet than a fixed ''hard cap'' allocation of CQ might provide. Similarly, catcher/processors typically had markets for rougheye and shortraker rockfish and tended to retain these species in greater proportion than catcher vessels, and the Council recommended an allocation of these species to catcher/processors. However, the Council recommended an MRA for shortraker and rougheye rockfish for the catcher vessel fleet that would require the discarding of all shortraker or rougheye rockfish if the aggregate shortraker/rougheye MRA limit was exceeded. The MRA percentages recommended for the catcher vessel sector for shortraker and rougheye rockfish would provide some flexibility for the harvesters in these sectors yet maintain harvests within historic levels.

Rockfish cooperative allocations: The Council recommended specifying the percentage of the Central GOA TAC for each rockfish secondary species in regulation to provide clear allocations. For most species, these allocations are based on the average proportion of the Central GOA TAC harvested by vessels that were assigned LLP licenses during 2000 through 2006 that would be eligible to receive rockfish QS in each sector. For catcher/processors, 43.2 percent of the Central GOA TAC of shortraker rockfish was harvested using 2000 through 2006 qualifying years. The Council recommended slightly reducing the percentage of the TAC to 40 percent of the Central GOA TAC to provide slightly more harvest opportunities for vessels in the catcher vessel sector and non-Rockfish Program participants. The Council expressed concern that under an average percentage allocation, if all catcher/processors joined cooperatives, catches by Rockfish Program catcher

vessels and non-Rockfish Program fisheries could need to be constrained to prevent overharvest of the shortraker rockfish TAC.

The Council also recommended retaining the Pilot Program allocation of 58.87 percent of Central GOA TAC for rougheye rockfish. Although 34.3 percent of the rougheye rockfish catch was retained by vessels assigned an eligible catcher/processor LLP license from 2000 through 2006, the Council sought to ensure that rougheye rockfish catch would not unduly constrain catcher/processor cooperatives if a vessel were to unintentionally catch relatively large amounts of rougheye rockfish while targeting rockfish primary species. The Council determined that the allocation percentage available under the Pilot Program had not unduly constrained catcher/processor cooperatives and had not resulted in overharvest of the stock. These percentages and the details of this analysis are contained in section 2.4.1 of the Analysis (see **ADDRESSES**). Table 5 shows the specific secondary species that would be allocated as CQ to rockfish cooperatives in the catcher vessel sector and catcher/processor sector.

TABLE 5—SECONDARY SPECIES ALLOCATED TO ROCKFISH COOPERATIVES IN THE CENTRAL GOA BY FISHERY SECTOR

Secondary species	Rockfish cooperatives in the catcher vessel sector	Rockfish cooperatives in the catcher/processor sector
Pacific cod	3.81% of the Central GOA TAC	Not allocated. Managed under an MRA of 4.0% per trip.
Rougheye rockfish	Not allocated. Managed under an MRA of combined rougheye/shortraker rockfish up to 2.0% per trip.	58.87% of the Central GOA TAC.
Sablefish allocated to trawl gear	6.78% of the Central GOA TAC	3.51% of the Central GOA TAC.
Shortraker rockfish	Not allocated. Managed under an MRA of combined rougheye/shortraker rockfish up to 2.0% per trip. A maximum of 9.72% of the shortraker TAC on an annual basis may be retained.	40.0% of the Central GOA TAC.
Thornyhead rockfish	7.84% of the Central GOA TAC	26.50% of the Central GOA TAC.

''Hard cap'' management of shortraker and rougheye rockfish: The Council directed that allocations of shortraker and rougheye rockfish should be managed as a ''hard cap'' for the catcher/processor sector. NMFS has interpreted this provision to mean that NMFS should manage to limit the maximum amount of harvests to this amount for all participants in that sector. If the catcher/processor sector as a whole exceeded either 40.0 percent of the TAC for shortraker rockfish, or 58.87 percent of the TAC for rougheye rockfish, then NMFS would prohibit retention of that species for all catcher/processor vessels in the Rockfish Program. This prohibition would include any vessels operating in a rockfish cooperative even if that cooperative still had unused CQ. The Council also recommended that if the harvest of shortraker by the catcher vessel sector exceeded 9.72 percent of the TAC (the historic proportion of the shortraker TAC harvested by catcher vessels), then NMFS would prohibit further retention for the catcher vessel sector. These provisions are intended to ensure that the relatively small TACs assigned to these stocks are not subject to overharvest. Shortraker and rougheye rockfish would not be allocated to the entry level longline fishery, but would be limited to an MRA to minimize harvests and the incentive to ''top off'' on these species.

Entry level longline fishery: QS assigned to the entry level longline fishery would not result in an annual exclusive allocation. Instead, secondary species would be managed according to an MRA in the entry level fishery. A person directed fishing in the rockfish entry level longline fishery may harvest secondary species up to the amounts of the MRAs for those species.

Opt-out: LLP license holders that opt-out of participating in a rockfish cooperative would not receive exclusive harvest privileges for secondary species but vessels fishing under an opt-out license would be able to retain secondary species in non-Rockfish Program fisheries, subject to an MRA limit. The MRA for the opt-out vessels would be the same as MRAs currently applicable in the GOA directed fisheries. Opt-out vessels could not target Central GOA rockfish; therefore, a lowered MRA in the Central GOA is not necessary. Opt-out vessels would not be able to use Central GOA rockfish as a source for basis species against which to ''top-off'' secondary species.

Maximum Retainable Amounts and Fishing Non-Allocated Groundfish Species

Some other non-allocated species of groundfish would be encountered while fishing under the Rockfish Program and caught as incidental catch. All non-allocated secondary species harvested by rockfish cooperative vessels would be managed by an MRA. These non-allocated species include arrowtooth flounder, deep-water flatfish, shallow-water flatfish, flathead sole, rex sole, pollock, the other species category, Atka mackerel, other rockfish, aggregated forage fish, and skates. Pacific cod would also be managed by an MRA for the catcher/processor sector, as well as shortraker and rougheye rockfish for the catcher vessel sector. See the section *Rockfish Secondary Species Allocation* for a discussion of Pacific cod, shortraker rockfish, and rougheye rockfish MRA management.

The MRA of an incidental catch species would be calculated as a proportion of the basis species, or allocated primary and secondary species, retained onboard the vessel by using the percentages described in Table 6. The MRA would be a percentage of the total retained rockfish primary species and rockfish secondary species onboard the vessel.

TABLE 6—NON-ALLOCATED SECONDARY SPECIES FOR ROCKFISH COOPERATIVE VESSELS IN THE CATCHER VESSEL AND CATCHER/PROCESSOR SECTORS FISHING UNDER A ROCKFISH CQ PERMIT

Incidental catch species	MRA as a percentage of total retained rockfish primary species and rockfish secondary species (%)
Pollock	20.0
Deep-Water flatfish	20.0
Rex Sole	20.0
Flathead Sole	20.0
Shallow-water flatfish	20.0
Arrowtooth	35.0
Other Rockfish	15.0
Atka Mackerel	20.0
Aggregated forage fish	2.0
Skates	20.0
Other Species	20.0

The MRA for groundfish harvested in the Central GOA by a catcher/processor vessel fishing under a rockfish CQ permit would be calculated at the end of each weekly reporting period and is based on the basis species harvested since the previous weekly reporting period. If a vessel was taking part in another fishery and checked-out of the rockfish fishery for some time by a cooperative representative, the MRA would be based on the basis species harvested for any portion of a weekly reporting period that a vessel fished under a rockfish cooperative's CQ permit. The MRA would apply to catcher/processors fishing in an area closed to directed fishing for a species or species group for the duration of the fishing trip.

The MRA for catcher vessels fishing in areas closed to directed fishing is the lowest MRA applicable in any area, and this MRA would be applied at all times and to all areas for the duration of the fishing trip.

To calculate an individual retainable amount, one would multiply the retainable percentage for the incidental catch species (Table 6) by the basis species onboard the vessel. The MRA for that specific incidental catch species would be the sum of the individual retainable amount.

Halibut PSC Apportionment to Rockfish Cooperatives

Under the Rockfish Program, rockfish cooperatives would be allocated CQ for halibut PSC that could be used while fishing for rockfish primary species or secondary species. Halibut PSC CQ would represent the amount of halibut, in metric tons, that could be incidentally caught and killed by a rockfish cooperative. Under current regulations, halibut can only be harvested and retained commercially under the Halibut Individual Fishing Quota (IFQ) and the Western Alaska Community Development Quota Program; in all other fisheries halibut is considered a prohibited species and must be discarded at sea with a minimum of injury.

NMFS uses the halibut mortality rates established by the International Pacific Halibut Commission (IPHC) and observer data to estimate the amount of mortality of discarded halibut. The IPHC determines the halibut mortality rate for various gears and target fisheries based on data from prior years. These halibut mortality rates are published in the annual harvest specifications and the justification for these rates is published in Appendix A of the annual Stock Assessment and Fishery Evaluation Reports. NMFS estimates the amount of halibut that is killed in the various groundfish fisheries based on data from onboard observers and applies the mortality rate to the unobserved portion of the fleet. NMFS then apportions the available halibut mortality among fisheries. As halibut is caught, NMFS multiplies the estimated halibut caught by the mortality rates to produce a halibut bycatch mortality amount.

NMFS would allocate halibut PSC CQ to rockfish cooperatives within a sector based on the QS of LLP licenses assigned to the rockfish cooperatives. Halibut PSC CQ would be allocated only to participants in rockfish cooperatives.

Opt-out vessels would continue to be subject to the aggregate halibut PSC limits that NMFS establishes for that gear type and target fishery.

Assigning sector Halibut PSC CQ. The Council recommended allocating halibut PSC to each sector based on the average total halibut PSC used from 2000 through 2006, with a slight reduction in that amount. The Analysis (section 2.4.1, see **ADDRESSES**) shows that participants in rockfish cooperatives modified their fishing patterns and reduced halibut mortality during the Pilot Program. The Council sought to balance the need to provide adequate halibut PSC for use by rockfish cooperatives, recognize patterns of reduced halibut PSC use once exclusive harvest privileges are established, and meet broader goals to reduce halibut mortality. From 2000 through 2006, average halibut PSC mortality averaged 84.7 mt in the catcher vessel sector, and 134.1 mt in the catcher/processor sector.

The Council considered a range of alternative approaches that would have reduced total halibut PSC CQ assigned to each sector. Ultimately, the Council recommended reducing the amount of halibut PSC assigned to each sector to 87.5 percent of the 2000 through 2006 average annual usage. A total of 117.3 mt would be assigned as CQ to the catcher/processor sector, and 74.1 mt would be assigned to catcher vessel sector. The remaining 27.4 mt (16.8 mt from the catcher vessel sector and 10.6 mt from the catcher/processor sector) that would otherwise have been allocated using the 2000 through 2006 average use of halibut PSC would not be assigned as CQ or as halibut PSC for use by any other non-Rockfish Program fishery, and would not be made available for use by the halibut IFQ fishery. This 27.4 mt would remain ''in the water'' and contribute to the halibut biomass. The Council combined this reduction in the amount of halibut CQ initially available to rockfish cooperatives with other measures detailed later in this preamble to reduce the amount of halibut PSC that can be reassigned to non-Rockfish Program fisheries. Combined, these measures effectively reduce total halibut mortality in the Rockfish Program.

NMFS would assign each sector's portion of the halibut PSC among the rockfish cooperatives within that sector.

To determine the CQ assigned to a rockfish cooperative, NMFS would multiply the sector's assignment of halibut PSC TAC by the percentage of the aggregate rockfish primary species QS held by that cooperative in that sector.

Reassignment of Halibut PSC to Non-Rockfish Program Fisheries

The Rockfish Program would modify a provision from the Pilot Program to allow a rockfish cooperative to submit a Cooperative Termination of Fishing Declaration prior to the end of the fishing season. Once submitted, the primary and secondary rockfish CQ assigned to that cooperative would be set to zero, and the cooperative could not receive any CQ by transfer after NMFS has approved the termination of fishing declaration. NMFS would allow a portion of the halibut PSC CQ that was assigned to that rockfish cooperative to become available to trawl and non-trawl vessels during the last halibut PSC apportionment period of the year (currently November 1 through December 31). Under the Rockfish Program, up to 55 percent of any halibut PSC CQ remaining in a cooperative's account once a Termination of Fishing Declaration has been submitted, or after November 15, whichever occurs first, could be reassigned for any vessel to use while fishing during the last PSC apportionment period of the year.

The Council recommended reducing the amount of halibut PSC that could be reassigned to the last apportionment period to meet its overall goals of reducing halibut mortality, yet provide an incentive for participants in rockfish cooperatives to continue to operate in ways that minimized halibut mortality. Some of the participants eligible for the Rockfish Program are also active in a number of flatfish trawl fisheries that occur after November 1. Vessel operators that are active in rockfish cooperatives and these flatfish fisheries have consistently undertaken efforts to conserve their halibut PSC CQ while fishing in a rockfish cooperative to provide additional halibut PSC during the latter portion of the year. The Council recognized the importance of the reassigned halibut PSC to provide additional harvest opportunities in these flatfish fisheries. Typically, most flatfish fisheries are not fully harvested relative to their TAC. The Council reviewed a range of restrictions on the reassignment of halibut PSC and ultimately chose to recommend that no more than 55 percent of any unused halibut PSC be reassigned. The Council assessed the amount of halibut PSC that is typically used after November 1 and concluded that even with a limitation on the maximum amount of halibut PSC that could be reassigned, the fleet would continue to have an incentive to conserve halibut PSC CQ and have additional harvest opportunities in flatfish fisheries. The 45 percent of the unused halibut PSC CQ that is not reassigned is not made available as halibut PSC or to the commercial halibut IFQ fishery. This amount of halibut is conserved and contributes to the halibut biomass. The Rockfish Program would limit halibut mortality both by limiting the amount of halibut PSC that is initially allocated as halibut PSC CQ and by limiting the amount of halibut PSC that may be reassigned. NMFS cannot precisely predict the amount of halibut PSC that would be conserved because the amount of halibut PSC CQ reassigned would depend on fishing operations during a year, and those operations could vary from year-to-year.

Joint and Several Liability

A rockfish cooperative would not be authorized to harvest fish in excess of its CQ. Exceeding a CQ would be a violation. Each member of the rockfish cooperative would be jointly and severally liable for any violations of the Rockfish Program regulations while fishing under authority of a CQ permit. This liability extends to any persons who are hired to harvest or receive CQ assigned to a rockfish cooperative. Each member of a rockfish cooperative would be responsible for ensuring that all members of the rockfish cooperative comply with all regulations applicable to fishing under the Rockfish Program.

Use Caps

The Rockfish Program would apply use caps to limit the amount of rockfish QS and CQ that may be harvested by harvesters and processors. As with other rationalization programs, the intent of the use caps under the Rockfish Program is to limit the degree of consolidation that could occur in the Central GOA rockfish fisheries. These use caps would balance the goals of improving economic efficiency, maintaining employment opportunities for vessel crew, and providing financially affordable access opportunities for new participants. NMFS would require eligible rockfish harvesters, cooperatives, processors, and catcher/processor vessel operators to submit information through the annual applications, cooperative transfers, and annual catch reports. NMFS would use the information to enforce the use cap provisions, to track rockfish primary species QS use, and dissuade eligible rockfish harvesters from forming corporate arrangements that would frustrate the goal of the use caps. The use caps under the Rockfish Program would apply to the rockfish primary species. Use caps would not apply to the use of secondary species or halibut PSC.

There would be four types of use caps: (1) A cap on the amount of QS an eligible rockfish harvester could hold; (2) a cap on the amount of rockfish primary species CQ that a rockfish cooperative could hold; (3) a cap on the amount of rockfish primary species CQ that a vessel could harvest; and (4) a limit on the amount of rockfish primary species an eligible rockfish processor could receive and process. Different use caps would apply depending on whether the QS or CQ are for use in the catcher vessel sector or the catcher/processor sector. For example, if an eligible rockfish harvester holds an LLP license with QS in the catcher vessel sector, then that harvester would be subject to a use cap that applies to the holding of QS in that sector. If that same eligible rockfish harvester holds a different LLP license with QS in the catcher/processor sector, then that holder would have a different use cap that would apply to the holding of QS in that sector.

QS Use Caps

QS use caps would limit the amount of aggregate primary species rockfish QS that could be held by an eligible rockfish harvester. These QS use caps would be based on the aggregate initial QS pool assigned to each sector. An eligible rockfish harvester could not hold more than 4 percent of the aggregate rockfish primary species QS assigned to the catcher vessel sector, or more than 40 percent of the aggregate rockfish primary species QS assigned to the catcher/processor sector. The Council acknowledged that allowing the fleet to consolidate may enable the remaining companies to operate more efficiently. The Council also recognized that harvests may be liberally redistributed among vessels in cooperatives, and it is likely that gains in efficiency may be achieved without further ownership concentration of share in the fishery. Consolidation by license transfers may also be limited by the caps that apply to the Amendment 80 Program.

The Council considered that LLP license holders who want to leave the fishery would presumably prefer more liberal use caps, which would allow them to sell their holdings to the buyer willing to pay the most for the harvest privileges. Restrictive caps would

exclude some buyers from the market, which may reduce sale prices relative to the prices that might be possible under more liberal use caps. In the catcher vessel sector, up to 7 of the 32 eligible rockfish harvesters would exceed the 4 percent use cap based on the 2000 to 2006 qualifying years. These license holders would not be allowed to purchase additional harvest privileges, as long as their holdings exceed the cap. In the catcher/processor sector, seven companies hold licenses qualifying them for the sector. Depending on the initial distribution of QS, it is possible that half of the companies might be able to consolidate their QS holdings under a 40 percent cap, before the cap would be binding.

The Official Record would indicate the relative percentage of the legal landings in the catcher vessel sector and the catcher/processor sector. NMFS would not be able to determine the exact amount of the initial QS pool that would be assigned to each sector until the applications to participate in the Rockfish Program were processed. Therefore, NMFS would determine the number of QS units for the catcher vessel sector and catcher/processor sector QS use caps once the applications are processed. The QS use cap would be based on a percentage of the initial QS pool. NMFS would establish a QS use cap that would not fluctuate with the changes in the QS pool that could occur due to the resolution of appeals or other operations of law that would modify the QS pool. This would provide stability to QS holders.

NMFS would calculate the amount of QS held by an eligible rockfish harvester using the ''individual and collective rule.'' This method is similar to one used in the Halibut and Sablefish IFQ Program. NMFS would include the sum of all QS held individually by an eligible rockfish harvester and the percentage of any holdings used collectively by that eligible rockfish harvester through a corporation, partnership, or other entity.

CQ Use Caps

NMFS would apply CQ use caps to eligible rockfish harvesters, rockfish cooperatives, and processors. NMFS would apply CQ use caps to limit the amount of CQ derived from the QS held by an eligible rockfish harvester. For example, an eligible rockfish harvester could not harvest an amount of CQ greater than the amount derived from 4 percent of the aggregate initial QS pool in the catcher vessel sector, or 40 percent of the aggregate initial QS pool in the catcher/processor sector. An eligible rockfish harvester would be considered to use CQ if he or she assigns QS to a rockfish cooperative that results in CQ for use by that rockfish cooperative. The amount of CQ that is used by an eligible rockfish harvester also would include any CQ a rockfish cooperative receives by transfer that is attributed to an eligible rockfish harvester. All CQ received by transfer would have to be assigned to an eligible rockfish harvester who is a member of that cooperative for purposes of calculating use caps. This would limit cooperatives to use no more CQ than the maximum amount of CQ that could be derived from the maximum amount of QS that could be held by all of its members. Therefore, the total CQ usage by an eligible rockfish harvester would be the sum of the CQ derived from QS held by that eligible rockfish harvester and all CQ attributed to that eligible rockfish harvester as a result of a CQ transfer.

CQ use caps would limit the maximum amount of CQ that could be assigned to any one cooperative. NMFS would apply CQ use caps only to rockfish cooperatives in the catcher vessel sector. NMFS would apply the catcher vessel cooperative use cap as a percentage of the aggregate initial QS pool assigned to the catcher vessel sector. Catcher vessel rockfish cooperatives would each be limited to harvesting not more than 30 percent of the CQ allocated to the catcher vessel sector.

The amount of CQ used by an eligible rockfish harvester would be calculated using the ''individual and collective rule.'' An eligible rockfish harvester's holding of CQ would include all CQ attributed to that individual and the percentage of any CQ attributed to that individual through a corporation, partnership, or other entity. Therefore, CQ use would include all CQ derived from an eligible rockfish harvester's QS holdings, either individually or through corporate ownership, and all CQ attributed to an individual as a result of an inter-cooperative transfer of CQ.

NMFS would not apply CQ use caps to cooperatives in the catcher/processor sector. Although NMFS would not apply a CQ use cap to catcher/processor cooperatives, NMFS would limit the maximum amount of CQ that could be used on any one catcher/processor vessel.

Vessel Use Caps

NMFS would limit a vessel participating in the catch vessel sector from harvesting more than 8 percent of the CQ of rockfish primary species during a calendar year. This cap would ensure that harvest activity would not exceed the specified threshold and that a certain number of vessels remain active in the fishery. Historically, only a few vessels have exceeded the 8 percent cap. As with the Pilot Program, NMFS would also limit a vessel participating in the catcher/processor sector from harvesting more than 60 percent of the CQ of rockfish primary species during a calendar year.

Processing Use Caps

Processors would be subject to CQ use caps, similar to the Pilot Program. NMFS would limit an eligible rockfish processor from receiving or processing more than 30 percent of the aggregate rockfish primary species harvested with CQ that would be allocated to the catcher vessel sector during a calendar year. NMFS would also limit an eligible rockfish processor from receiving or processing more than 30 percent of Pacific cod and 30 percent of sablefish harvested with CQ assigned to the catcher vessel sector during a calendar year. NMFS would apply the use cap calculation to all rockfish primary species, Pacific cod, and sablefish received by an eligible processor and all fish received by any other eligible rockfish processor in which that eligible rockfish processor has a 10 percent or greater direct or indirect ownership interest. NMFS would apply this more stringent provision to dissuade eligible rockfish processors from forming corporate arrangements that would further consolidate the already limited number of distinct processors and counteract the goal of the use cap, which is to limit the degree of consolidation in the fishery.

Table 7 describes the use cap amounts and limits that would apply to eligible rockfish harvesters, rockfish cooperatives, and eligible rockfish processors.

TABLE 7—USE CAPS IN THE ROCKFISH PROGRAM

Entity	Primary species aggregate QS and CQ use cap based on the initial QS pool assigned to each sector

TABLE 7—USE CAPS IN THE ROCKFISH PROGRAM—Continued

	Catcher vessel sector			Catcher/processor sector
Eligible rockfish harvester	4.0%			40.0%
	Primary species aggregate CQ use cap based on the initial QS pool assigned to each sector			
	Catcher vessel sector			Catcher/processor sector
Rockfish cooperative	30.0%			N/A
Processor	Primary species	Pacific cod	Sablefish	N/A
	30.0%	30.0%	30.0%	
Vessel	8%			60.0%

Use Cap Exemptions, Grandfather Provisions

As with other catch share programs in the North Pacific, the Rockfish Program would allow those persons whose initial allocation of QS and resulting CQ is in excess of the use caps to retain that amount. Commonly called ''grandfather provisions,'' these provisions would accommodate participants who historically had greater participation in the fishery than the use caps would allow. Any person eligible for the grandfather provisions would be limited to their initial holdings. If a grandfathered eligible rockfish harvester or processor, or owner of a catcher/processor vessel transferred an LLP license and its associated QS, then the transferee would be limited to the use cap. The grandfather provisions would apply only to persons that held QS in excess of the use caps prior to the date of final Council action, June 14, 2010. This provision would reduce the incentive for QS holders to further consolidate their holdings after Council action and before the implementation of a final rule, if approved. This provision has been applied in other North Pacific catch share programs to reduce consolidation and ensure adherence to specific use caps. Table 8 defines the requirements that would apply for qualifying for a grandfather provision.

TABLE 8—ELIGIBILITY CRITERIA FOR A GRANDFATHER PROVISION

This entity . . .	meets the grandfather eligibility requirements if . . .
Eligible rockfish harvester	(1) he or she held LLP license(s) at the time of application to participate in the Rockfish Program that would result in QS or CQ in excess of the use caps; and (2) the LLP license(s) were held by that eligible rockfish harvester prior to June 14, 2010 (the time of final Council action on the Rockfish Program).
Catcher vessel rockfish cooperative	it is comprised of members who include eligible rockfish harvesters that meet the grandfather eligibility requirements.
Processor	it receives and processes CQ derived from a rockfish cooperative that meets the grandfather eligibility requirements.
Catcher/processor vessel	an LLP license used on that vessel prior to June 14, 2010, is assigned QS that results in CQ in excess of the use cap, and the CQ derived from that LLP license is used on that vessel.

Information Collection and Review Process

Section 303A(c)(1)(J) of the MSA notes that LAPPs should provide for the establishment of an information collection and review process to collect the information necessary to determine if any illegal acts of anticompetitive practice, antitrust, or related conduct, have occurred among persons receiving limited access program privileges. NMFS would establish a catch accounting system in the Rockfish Program that would allow for the collection of ownership, use caps, and landings information. These data can then be used to track and ensure that excessive consolidation among the fleet has not occurred and participants continue to deliver to different processors. In other LAPPs, NMFS has consulted with other federal agencies, including the Department of Justice Antitrust Division and the Federal Trade Commission, in identifying information that would be helpful in detecting antitrust and anticompetitive conduct among privilege holders, and would do so here, as well.

Sideboard Provisions

NMFS expects the Rockfish Program to improve the economic efficiency of eligible rockfish harvesters, primarily by encouraging a degree of consolidation through the use of rockfish cooperatives. NMFS anticipates that rockfish cooperatives would be likely to use fewer vessels to harvest the same amount of fish with less cost, resulting in greater net profits for rockfish cooperative members. NMFS also anticipates that some harvesters could use their vessels and LLP licenses to participate in other groundfish fisheries, particularly cod, flatfish, and rockfish fisheries in the West Yakutat District and Western GOA. With the added economic efficiency likely to be created by the Rockfish Program, harvesters could use this economic efficiency to offset operational costs in other fisheries, or expand into new fisheries. This could economically disadvantage harvesters in these other fisheries.

The Council recommended Rockfish Program elements that would limit the ability of rockfish harvesters to expand into other fisheries. These types of limitations are included in many of the North Pacific rationalization programs and are commonly called ''sideboards.''

Sideboards would limit the total amount of harvest by eligible rockfish harvesters in other fisheries. Sideboards would limit the amount of halibut PSC that may be used in certain directed groundfish fisheries. Some of the specific sideboard measures in the Rockfish Program would prohibit directed fishing for certain groundfish fisheries. Sideboard measures would be in effect only during the month of July. Traditionally, the Central GOA rockfish fishery was open in July, and therefore the sideboards would restrict fishing in other groundfish fisheries during the historic timing of the rockfish fishery, but allow eligible rockfish harvesters to participate in fisheries before or after the historic rockfish season.

A sideboard would limit both the LLP license with QS assigned to it and the vessel on which legal landings were made that could generate QS. This provision would restrict an LLP license holder from assigning an LLP license to a rockfish cooperative, and using the vessel that generated the QS to target other fisheries. Sideboards would apply to Federally permitted vessels fishing in Federal waters and waters adjacent to the Central GOA when the harvest of rockfish primary species by that vessel is deducted from the Federal TAC. The opening of a State water fishery in concurrence with the Federal fishing season is commonly known as a parallel fishery. The State opens a parallel fishery to accommodate harvesters as they target fish stocks that freely move between State and Federal jurisdictions. The State opens the parallel fisheries through emergency order by adopting the groundfish seasons, bycatch limits, and allowable gear types that apply in the adjacent Federal fisheries.

Specific sideboards would apply to specific fishery components in the Rockfish Program. The Council recommended a suite of sideboard measures to meet two broad, potentially competing, goals: To constrain eligible rockfish harvesters from expanding their harvesting capacity in other non-Rockfish Program fisheries; and to provide an opportunity for harvesters, particularly in the catcher/processor sector, to continue to participate in other fisheries they have historically fished. Sideboards would fall into two broad categories: Sideboard limits that constrain the amount of harvest in specific regions and fisheries during July; and directed fishery closures that prohibit fishing in specific fisheries and regions during July. The Rockfish Program would include three types of sideboards: (1) Catcher vessel sideboards, (2) catcher/processor rockfish cooperative sideboards, and (3) catcher/processor opt-out sideboards. In addition, if an LLP license holder chooses to be exempted from the Rockfish Program, that LLP license on which the legal landings were made that could generate QS would be exempted from sideboard restrictions.

The Council reviewed the suite of sideboard measures that were applied during the Pilot Program and modified the sideboards that would apply under this proposed rule to address changes in fishery management measures that have occurred since the implementation of the Pilot Program. Specifically, the Council recommended that sideboard measures applicable to the catcher vessel sector in this Rockfish Program should be simplified to prohibit fishing in specific rockfish fisheries in the West Yakutat District and Western GOA, and certain fisheries in the deep-water complex. The Council recommended that sideboard measures applicable to the catcher/processor cooperative sector in the Rockfish Program should be slightly modified from those applicable in the Pilot Program.

Catcher Vessel Sideboards

The Rockfish Program recommended by the Council provides for specific sideboard measures for catcher vessels. These sideboard measures include prohibitions on catcher vessels engaging in directed fishing in specific groundfish fisheries in the GOA. The prohibition on directed fishing in the West Yakutat District and the Western GOA Pacific ocean perch, northern rockfish, and pelagic shelf rockfish during July is based on a review of past participation by the catcher vessel fleet. Catcher vessels would be prohibited from directed fishing on these rockfish species in these areas because they have not historically harvested these species. The Council also recommended that catcher vessels would be prohibited from directed fishing in any target fishery in the deep-water complex in the month of July (except for Central GOA Rockfish). This limitation would prohibit catcher vessels from directed fishing in the Arrowtooth flounder, deep water flatfish, and rex sole fisheries from July 1 through 31. The Council recommended these restrictions to limit the ability of catcher vessels in these fisheries because they have not historically harvested these species in July.

The Council also recommended two exemptions from sideboards. The first would apply to catcher vessels and LLP licenses that (1) generated rockfish legal landings during 2000 through 2006 and in the entry level trawl fishery in the Pilot Program during 2007, 2008, or 2009; and (2) applied to be permanently exempted from the Rockfish Program and forego the ability to receive rockfish QS. This limited exemption would allow LLP license holders and catcher vessel operators who permanently forego their ability to participate in the Rockfish Program to be exempted from sideboard restrictions. The Council identified at least one vessel operator and LLP license holder who had limited participation during the qualifying years for the Rockfish Program but who were active in the West Yakutat District and Western GOA Rockfish fisheries and, to a limited extent, other flatfish fisheries. This exemption would allow the vessel operator and LLP license holder to choose either to participate in the Rockfish Program, receive rockfish QS, and be subject to sideboard limitations, or to forego participation in the Rockfish Program and participate in other GOA fisheries without sideboard restrictions.

The Council recommended a specific exemption from catcher vessels that would be otherwise subject to sideboard restrictions in the GOA under the American Fisheries Act (AFA). Based on a review of AFA sideboard limitations applicable to AFA vessels in the GOA, the Council believed the catcher vessels did not need further limits under this proposed rule. The Council reviewed AFA sideboard limits during the development of the Pilot Program and the proposed Rockfish Program and determined that those sideboard limitations effectively constrained AFA catcher vessels from expanding their ability to harvest in other fisheries. The Council considered that additional sideboard limitations under the Pilot Program and this proposed Rockfish Program were duplicative. This exemption to sideboard limits is the same as that currently applicable under the Pilot Program.

Catcher/Processor Cooperative Sideboards

The Council recommended sideboard limitations on cooperatives that are similar to those in place under the Pilot Program. The Council considered public testimony and catch data from the Pilot Program in its recommendation. The Council recommended these sideboard limitations to minimize potential adverse competition on non-Rockfish Program participants and potential conflicts among rockfish cooperatives in the Western GOA and West Yakutat District rockfish fisheries, as well as specific GOA flatfish fishermen.

Catcher/processor cooperatives would be subject to a sideboard limit in the Western GOA and West Yakutat District rockfish fisheries, and a limit on the

maximum amount of halibut PSC that could be used by that cooperative during the month of July.

The sideboard limit on participants in the Western GOA and West Yakutat District rockfish fisheries would be based on the historic share of catch for a specific rockfish fishery by catcher/processor vessels that generated legal landings that could generate QS under the Rockfish Program. The sideboard would be determined by measuring catch by these vessels during July from 2000 through 2006, as compared to the total harvests by all vessels during this period in the particular directed groundfish fishery. This would yield a percentage of the total harvests in that directed groundfish fishery. On an annual basis, this percentage would be multiplied by the TAC for that directed groundfish fishery. This amount would be the sideboard limit. This sideboard provision would apply only to Pacific ocean perch, pelagic shelf rockfish, and northern rockfish (see **ADDRESSES**). Other groundfish species would not be subject to specific sideboard limits, but would be subject to existing management measures such as MRAs. Sideboards are intended to limit rockfish participants from exceeding their historic levels of participation in a fishery. The Council did not apply sideboard limits for other rockfish species because those species were not traditionally harvested in July so additional management measures were not needed.

NMFS would establish the sideboard limit for Pacific ocean perch, pelagic shelf rockfish, and northern rockfish using the percentage of historic harvests of that rockfish species for that sector based on calculations in the Analysis prepared for this action. Table 9 displays the percentage of the annual TAC assigned as a sideboard limit in the Western GOA and West Yakutat District based on the information provided in section 2.5 of the Analysis. NMFS would not establish a sideboard limit for northern rockfish in the West Yakutat District because the fishery was not open for directed fishing during 2000 through 2006.

TABLE 9—CATCHER/PROCESSOR SIDEBOARD LIMITS BY SECTOR FOR WEST YAKUTAT DISTRICT AND WESTERN GOA ROCKFISH

Management area	Fishery	Catcher/processor sector (percent of the TAC)
West Yakutat District	Pelagic shelf rockfish	(Not released due to confidentiality requirements on fish ticket data established by the State of Alaska.)
	Pacific ocean perch	(Not released due to confidentiality requirements on fish ticket data established by the State of Alaska.)
Western GOA	Pelagic shelf rockfish	72.3 percent of the TAC.
	Pacific ocean perch	50.6 percent of the TAC.
	Northern rockfish	74.3 percent of the TAC.

The sideboard limits would limit the maximum amount of fish that the catcher/processor sector could harvest. A specific subset of this fixed percentage would be assigned to rockfish cooperatives in the catcher/processor sector only. Cooperatives in the catcher/processor sector would receive a sideboard limit equal to the percentage of rockfish sideboard limit assigned to that cooperative multiplied by the total sideboard limit assigned to the catcher/processor sector for a species in a specific management area. For example, if 72.3 percent of the Western GOA TAC for pelagic shelf rockfish were assigned to the catcher/processor sector, and a rockfish cooperative was assigned 10 percent of the total Pelagic shelf rockfish sideboard limit in the Western GOA, NMFS would assign that cooperative 10 percent of 72.3 percent, or 7.23 percent of the Western GOA TAC for pelagic shelf rockfish as a sideboard limit.

A sideboard limit specified for a catcher/processor cooperative would limit only that cooperative. This sideboard limit could not be transferred to another cooperative. Table 9 indicates that rockfish in the West Yakutat District have been harvested by a limited number of vessels, and data on the specific TAC percentage cannot be released due to the confidential nature of the catch. Cooperative-specific sideboards for the catcher/processor sector would reduce the incentive for cooperatives within the catcher/processor sector to race to catch the maximum amount allowed under a sideboard limit and potentially exceed the TAC established for these species.

NMFS would also establish a sideboard limit on the amount of halibut PSC that could be used in the month of July. The halibut PSC sideboard would indirectly limit the harvests of specific groundfish flatfish species, primarily flatfish species, that historically have been limited not by their TAC, but by halibut PSC.

NMFS would base the specific halibut PSC sideboard limit, the limit on the pounds of halibut PSC allocated to vessels fishing subject to a sideboard, on the historic use of halibut PSC in July by vessels in each sector. NMFS would establish distinct halibut PSC sideboards for a shallow-water species complex and a deep-water complex. Because halibut PSC limits in the GOA are established based on fishery complexes based on the depth of the targeted groundfish species, the halibut PSC sideboard limit for the shallow water complex would be based on average halibut PSC by vessels subject to sideboards in the shallow-water flatfish and flathead sole fisheries. The halibut PSC sideboard limit for the deep-waters species complex would be based on average halibut PSC by vessels subject to sideboards in the arrowtooth flounder, deep-water flatfish, rex sole, and rockfish fisheries.

NMFS proposes to establish the sideboard limits for the shallow-water fishery complex and the deep-water fishery complex for the catcher/processor sector based on the historic halibut PSC usage calculated in the Analysis prepared for this proposed action. The percentage assigned as a sideboard limit would be equal to the annual average halibut PSC by vessels and LLP licenses subject to the sideboard limit during July from 2000 through 2006 in that sector divided by the total average halibut mortality assigned to the GOA trawl sector during 2000 through 2006. During this time period, the average annual halibut PSC was equal to 2,000 mt. Based on these data, the deep-water halibut PSC limit assigned to the catcher/processor sector is equal to 2.5 percent of the GOA trawl PSC limit established in the harvest specifications. The shallow-water halibut PSC limit assigned to the catcher/processor sector is equal to 0.1 percent of the GOA trawl PSC limit established in the harvest specifications. A discussion of the data and analytic process used in the development of the

sideboard amounts is provided in section 2.5 of the Analysis.

As with the rockfish sideboard limits, NMFS would establish a specific subset of the halibut PSC limit to rockfish cooperatives in the catcher/processor sector only. Cooperatives in the catcher/processor sector would receive a portion of the catcher/processor sideboard limit equal to the percentage of QS assigned to that cooperative in the catcher/processor sector multiplied by the halibut PSC limit. For example, if 2.5 percent of the annual GOA Halibut PSC trawl limit is assigned to the catcher/processor sector, and a rockfish cooperative is assigned 10 percent of the total rockfish QS in the catcher/processor sector (i.e., 10 percent of the aggregate rockfish QS for Pacific ocean perch, pelagic shelf rockfish, and northern rockfish), NMFS would assign that cooperative 10 percent of 2.5 percent, or 0.25 percent of the GOA halibut PSC trawl limit. A sideboard limit specified for a catcher/processor cooperative would limit that cooperative. This sideboard limit could not be transferred to another cooperative. NMFS would not establish similar sideboard limits for cooperatives in the catcher vessel sector.

Catcher/Processor Opt-Out Sideboards

In addition to the catcher/processor cooperative sideboards, NMFS would prohibit any vessel fishing under a catcher/processor LLP license with QS that decided to opt-out of participating in a rockfish cooperative from (1) directed fishing in any of the primary rockfish fisheries in the Central GOA during the calendar year; and (2) directed fishing in any GOA groundfish fishery from July 1 through July 14, in which that vessel or LLP license does not have prior participation, except fixed gear sablefish. Fishing in the first two weeks of July would be prohibited because participants would have historically participated in the rockfish fisheries during that time.

The Rockfish Program would define prior participation as having at least one landing in a directed GOA groundfish fishery during any 2 years from 2000 through 2006 during specific time periods in early July. This provision is intended to prevent participants with multiple licenses and substantial history from opting out of the program with one license and entering other fisheries in which the license holder has no history. This specific time period during the qualifying years corresponds with the weeks in which participants were historically active. The specific time periods for each year during which a landing could be made are (1) July 9, 2000, through July 15, 2000, (2) July 1, 2001, through July 7, 2001, (3) June 30, 2002, through July 6, 2002, (4) June 29, 2003, through July 5, 2003, (5) July 4, 2004, through July 10, 2004, (6) July 3, 2005, through July 9, 2005, and (7) July 2, 2006, through July 8, 2006.

For species other than flatfish in a management area (*e.g.,* Western GOA or West Yakutat District rockfish), the target fisheries are defined based on the specific species that is being targeted. For flatfish, the Council recommended a broader definition of a flatfish target to accommodate the common practice of catcher/processor vessels switching between specific species within the deep-water or shallow water complexes within the same weekly reporting period. For example, it is common for catcher/processors to target both rex sole and arrowtooth flounder, which are species in the deep-water complex, during the same weekly reporting period. The Council recommended that participation in flatfish fisheries should be based on meeting a minimum of 2 years of participation in either the deep-water complex or the shallow-water complex fisheries during the 2000 through 2006 weekly reporting periods. Specifically, a vessel and its associated LLP license would be considered to have participated in the arrowtooth flounder, deep water flatfish, and rex sole fisheries if that vessel participated in a directed groundfish fishery for any of these three fisheries during any 2 years during the 2000 through 2006 qualifying periods. Similarly, a vessel and its associated LLP license would be considered to have participated in the flathead sole and shallow-water flatfish fishery if that vessel participated in a directed groundfish fishery for any of these two fisheries during any two years during the 2000 through 2006 qualifying periods.

If a sideboarded LLP license or vessel made a landing in a directed fishery in any 2 years during these time periods, it could continue to directed fish in that groundfish fishery during July 1 through July 14. If the vessel or LLP license did not meet these criteria, it could not directed fish in that groundfish fishery during July 1 through July 14—except the fixed-gear sablefish fishery that is managed under the existing IFQ program.

Catcher/Processor Sideboards for Non-Amendment 80 Vessels

General sideboard restrictions under the Pilot Program prohibit directed fishing for rockfish primary species in Western GOA, West Yakutat District, and adjacent waters to the Central GOA during the month of July. The Council motion for the Rockfish Program removes sideboard limits for Western GOA and West Yakutat District rockfish primary species for all catcher/processor vessels, except for non-Amendment 80 vessels. The Council initially included this option for consideration because of nearly identical sideboard restrictions on most eligible license holders from the Amendment 80 program. Implemented in 2008, the Amendment 80 program allows eligible members of the trawl catcher/processor sector to form cooperatives in the BSAI. To limit Amendment 80 vessels to their historical catch in the GOA from January 1 through December 31, the Amendment 80 program included sideboards for GOA pollock, Pacific cod, Pacific ocean perch, northern rockfish, pelagic shelf rockfish, and halibut PSC for Amendment 80 catcher/processor vessels. Amendment 80 sideboards are based on the retained catch of the rockfish species during the entire calendar year, while the sideboards for the Pilot Program are based on retained catch during the month of July.

The Council noted that if the Western GOA and West Yakutat rockfish sideboards were to be included in the proposed Rockfish Program, rockfish eligible license holders that were also Amendment 80 qualified would be limited in their catch of Western GOA and West Yakutat District rockfish during the month of July by both Rockfish Program sideboards and Amendment 80 sideboards. This duplication of Western GOA and West Yakutat District rockfish sideboards from the two programs would increase the management cost for NMFS and the industry and the complexity of these sideboarded fisheries. If the Western GOA and West Yakutat rockfish sideboards for the catcher/processor sector in the Rockfish Program were removed, most, but not all, of the eligible license holders would be limited to their historical catch of rockfish primary species during the month of July from Amendment 80 sideboard limits. However, two eligible catcher/processor participants in the Pilot Program do not qualify for the Amendment 80 program, and therefore would not be restricted by Amendment 80 sideboard limits, if the Council removed these sideboards in the proposed Rockfish Program. So, they would have no sideboards. Historically, the two eligible license holders have had very limited catch history in West Yakutat rockfish fisheries and no catch history in Western GOA rockfish fisheries during the month of July. The licenses do not have Western GOA

endorsements and the limited history in West Yakutat rockfish fisheries by these licenses was likely due to the small TACs, which corresponds with small sideboard limits of rockfish species in this area.

NMFS cannot predict whether these two eligible license holders would fish in West Yakutat District in the future. Despite the lack of history in the West Yakutat and Western GOA rockfish fisheries, these eligible licenses could be used to target West Yakutat and Western GOA rockfish during the month of July. To limit these participants from increasing their effort in Western GOA and West Yakutat rockfish fisheries, the Council included a sideboard limit for non-Amendment 80 licenses. Given these eligible licenses have little or no catch history in West Yakutat rockfish fisheries and no history in the Western GOA rockfish fisheries, the Council decided the simplest approach was to prohibit non-Amendment 80 catcher/processors from participating in the West Yakutat and Western GOA fisheries during the month of July. This would simplify management by eliminating the need to publish the annual sideboard limits for these fisheries and then a closure notice for these sideboard fisheries given there would not be a sufficient amount of catch available to conduct a directed fishery.

Assigning Sideboards

If NMFS determines that a specific sideboard limit for a directed fishery is small and insufficient to support any retained catch, then NMFS may set the directed fishing allowance for that sideboard fishery to zero for a particular sector, fishery, or area. This determination would be made based on the estimated harvest rates in the fishery, the size of the sideboard limit, and whether that limit can support a directed fishery. The notification of the directed fishing allowance would be established in the harvest specifications that define the allocations to the various fishery components.

After NMFS determines which vessels and LLP licenses would be subject to sideboards, NMFS would inform each vessel owner and LLP license holder in writing of the type of sideboard limitation, provide an opportunity to challenge these findings, and issue a revised Federal fisheries permit and/or LLP license that displays the limitation on the face of the permit or license.

A vessel owner or LLP license holder who believes that NMFS has incorrectly identified his or her vessel or LLP license as meeting the criteria for a sideboard limitation could request reconsideration. All requests for reconsideration would have to be submitted in writing to NMFS, together with any documentation or evidence supporting the request. If the request for reconsideration were denied, NMFS would notify the vessel owner or LLP license holder through an IAD. NMFS' IAD would indicate discrepancies or deficiencies in the information submitted with the evidence or supporting documentation. Affected persons could appeal that decision using existing appeals procedures (see § 679.43 for additional details). Until final agency action on the appeal, NMFS would not reissue that person an LLP license with associated QS. This would limit a person from assigning that LLP license to a rockfish cooperative.

Management of the Sideboards

NMFS would manage the sideboards to meet the intent of the Council, which is to limit rockfish harvests and halibut PSC during the month of July. NMFS would review the sideboard limits for specific fisheries, sectors, and regions in the Rockfish Program and would not open a fishery if a sideboard limit was not adequate to support harvests. NMFS would close fisheries for vessels subject to a sideboard if harvests in those fisheries result in the harvest of sideboard species in excess of the sideboard limit. NMFS would use the following standards and require the necessary monitoring to ensure adequate accounting:

First, NMFS would require any Rockfish Program vessel subject to sideboard limitations operating in the Central GOA, Western GOA, and West Yakutat District from July 1 until July 31 to adhere to all catch monitoring requirements. This would allow NMFS to assess harvest rates, and monitor harvests in that fishery (see the *Monitoring and Enforcement* section of the preamble for more information).

Second, NMFS would require all vessels subject to a sideboard limit to retain all rockfish caught during July 1 through July 31 in the Western GOA and the West Yakutat District. NMFS would require vessels to retain rockfish regardless of the specific target fishery. The goal of the sideboard limit would be to ensure historic harvest levels are not exceeded. NMFS would require retention of rockfish harvested incidental to other directed fisheries (*e.g.,* Western GOA arrowtooth flounder) with Rockfish Program vessel participation, and debit them against the sideboard limit applicable to that cooperative. NMFS would prohibit vessels from directed fishing in a specific rockfish fishery in a specific area for a specific sector, if that sideboard limit is reached.

Third, NMFS would debit all halibut PSC in a sector attributed to the shallow-water species complex or deep-water species complex in the GOA in July against the shallow-water halibut PSC sideboard or deep-water halibut PSC sideboard limit, as appropriate, for a cooperative. This would ensure that all halibut PSC caught in July is debited against the sideboard limit established for the appropriate complex and cooperative.

NMFS would close directed fishing by cooperatives for non-rockfish fisheries in specific species complexes once the halibut PSC sideboard limit is reached. Specifically, if the halibut PSC limit for the deep-water complex in a management area is reached, NMFS would close directed fishing for arrowtooth flounder, deep-water flatfish, and rex sole in that management area. If the halibut PSC sideboard limit for the shallow-water complex in a management area is reached, NMFS would close directed fishing for flathead sole and shallow water flatfish in that management area.

Fourth, the sideboard limits recommended by the Council that are proposed by this action are intended to limit harvests by vessels that are harvesting fish allocated under a TAC. NMFS would account for all catch by federally licensed vessels in Federal waters and the State parallel fishery against the sideboard limit. Additionally, federally permitted vessels would be precluded from fishing in the parallel fishery during July if the sideboard limit for that fishery is reached or the sideboarded fishery is not open. NMFS would not manage the activities of non-federally permitted vessels in the parallel fishery or in other state-managed fisheries.

Example of Annual Allocations

The following example details the allocation of TAC and halibut PSC within the catcher/processor sector. The calculation method would be similar for the catcher vessel sector except that catcher vessels would not be able to opt-out of participating in rockfish cooperatives.

First, an ICA amount would be deducted for bycatch needs in other fisheries.

Second, a percentage of the TAC would be set aside for the entry level fishery. This percent may change annually up to the capped amount depending on whether 90 percent or more of the entry level TAC was caught for each species the previous year. See Table 10.

Third, the remaining TAC of each of the three allocated rockfish species, Pacific ocean perch, pelagic shelf rockfish, and northern rockfish would be allocated to rockfish cooperatives. To simplify the example, assume that half the aggregate QS of the three allocated rockfish species would be allocated to the catcher/processor sector, and half to the catcher vessel sector. Fifty (50) percent of the remaining TAC of each of the three allocated rockfish species would be allocated to the catcher/processor sector and the other 50 percent of the remaining TAC for each of the three species would be allocated to the catcher vessel sector.

Fourth, assume that there are 10 LLP licenses, each with 10 percent of the QS assigned to the catcher/processor sector for the three allocated rockfish species. Two eligible rockfish harvesters holding three LLP licenses would assign those licenses to two different rockfish cooperatives. Based on these LLP licenses, each cooperative would be assigned 30 percent of the total rockfish primary species QS in the catcher/processor sector based on these LLP licenses. Other eligible rockfish harvesters holding four LLP licenses would decide to opt-out. This represents 40 percent of the total rockfish primary species QS in the catcher/processor sector.

Fifth, NMFS would reassign 100 percent of the TAC assigned to the catcher/processor sector to the rockfish cooperatives. This means that because each cooperative would be assigned an equal amount of QS, the TAC assigned to the catcher/processor sector would be assigned equally to each cooperative. The vessels that have opted-out would not be assigned any TAC for the rockfish primary species and would be prohibited from directed fishing for those species in the Central GOA.

Sixth, NMFS would determine the amount of CQ for secondary species and halibut PSC that would be allocated to the rockfish cooperatives. The allocation of CQ for secondary species and halibut PSC would be based on the percentage of the primary species QS allocation that would be assigned to the rockfish cooperatives in a sector—in the example, 50 percent of the total QS in the sector. NMFS would allocate each rockfish cooperative 50 percent of the total CQ of secondary species and halibut PSC that could be allocated to the catcher/processor sector.

Entry Level Longline Fishery

The entry level fishery would continue for harvesters who would be directed fishing for rockfish primary species using longline gear only. The industry and the Council commonly uses the term ''fixed gear'' to describe this fishery. However, NMFS notes that the regulatory text under Pilot Program as well as the proposed regulatory text for the Rockfish Program refer to the entry level ''longline'' fishery, not fixed gear, but is meant to be the same non-trawl fishery. Longline gear includes hook-and-line, jig, troll, and handline. Any vessel or gear type exempt from Central GOA LLP requirements (vessels that do not exceed 26 feet in length overall in the GOA or vessels that are using jig gear with less than 5 jigging machines, no more than 30 hooks per line and 150 hooks in total), or any holder of a Central GOA longline LLP license may enter a vessel in the entry level longline fishery. The start date for the entry level longline fishery would be January 1 of each year, and participants would not be required to apply annually. The Council discussed whether to require an annual application as was previously required under the Pilot Program when the entry level fishery included trawl and longline gear, but determined that the lack of registration may actually improve entry into these fisheries by removing an application deadline that would prevent a vessel from entering the fishery mid-season. Therefore, participants in the entry level longline fishery would not be required to submit an annual application in order to take part in the fishery. If a longline gear participant targets rockfish primary species in the Central GOA, then the catch would be deducted from the entry level longline TAC. If the longline participant is not directed fishing for rockfish primary species, and instead targets a different species such as Pacific cod, then the catch would be deducted from the ICA.

The entry level longline fishery would have a smaller initial TAC than was initially allocated in the Pilot Program. The smaller TAC allocation would be more in line with historical catch rates among the longline sector in the entry level fishery, since the sector has had minimal participation in the fisheries. Under the Pilot Program, longline harvests never exceeded one percent of the TAC for any of the target species during the qualifying years. Some longline fishermen who have small vessels and do not qualify for the Rockfish Program continue to express an interest in prosecuting the entry level fishery. Most have testified to the Council that they would participate primarily in the summer months when the weather is the best, allowing the fleet to more safely target these offshore rockfish. If some participants are successful in the fishery, additional entry can be expected, but NMFS cannot predict the potential success of these efforts.

The TAC for the entry level longline fishery would increase in a following year if most or all of the apportioned TAC in the fishery is caught. The set aside allocation for the entry level longline fishery would allow for a predetermined amount of rockfish primary species for the 2012 season that would increase incrementally each season if the sector harvests 90 percent or more of the allocation of a species. The incremental increase would continue each year until it reaches the cap set for the maximum percent of the TAC for that species. Table 10 shows the 2012 initial allocations for each rockfish primary species, the incremental increase for future seasons, and the cap for the entry level longline fishery.

TABLE 10—ENTRY LEVEL LONGLINE FISHERY ALLOCATION

Rockfish primary species	2012 Initial allocation	Incremental increase per season if ≥ 90% of allocation is harvested	Up to maximum % of TAC
Pacific ocean perch	5 metric tons	5 metric tons	1%
Northern rockfish	5 metric tons	5 metric tons	2%
Pelagic shelf rockfish	30 metric tons	20 metric tons	5%

The mechanism expressed in Table 10 increases the annual allocations as the sector grows. If the sector does not catch 90 percent or more of the TAC, then the allocation for the next year would be the same as the previous year. This process could help prevent unharvested portions of the TAC, which would occur

if the allocation to the longline sector was disproportionate to their catches.

Catcher vessels fishing under a CQ permit would be allowed to participate in the entry level longline fishery as long as the catcher vessel cooperative's designated representative submits a check-out report for the vessel. (see Application of Monitoring Requirements for Vessels for information on check-out procedures). Unlike catcher vessels fishing in cooperatives, participants in the entry level longline fishery may deliver their harvest to any shorebased processing facility in any community and are not restricted to delivery to a Kodiak processor. The Council noted that a requirement to deliver within the boundaries of Kodiak might discourage potential participants from attempting to develop the entry level longline fishery. The longline sector consists of relatively small vessels and the Central GOA extends to areas that are distant from Kodiak, but close to other ports such as Homer and Seward. Requiring entry level participants to comply with a landing requirement within the boundaries of Kodiak might present too great of an expense for the participants and expose participants to unacceptable safety risks.

Monitoring and Enforcement

Monitoring provisions would be necessary for accurate catch accounting and to monitor compliance with the Rockfish Program to ensure that rockfish QS holders maintain catches with annual rockfish CQ allocations, rockfish sideboard limits, and use caps. Monitoring and enforcement in the proposed Rockfish Program would be similar to monitoring and enforcement under the Pilot Program. The primary tools for monitoring would include (1) requiring observers aboard vessels operating in a rockfish cooperative or a rockfish sideboard fishery, (2) requiring that vessels participating in a rockfish cooperative or a rockfish sideboard fishery carry and use a NMFS-approved vessel monitoring system (VMS) transmitter, (3) requiring that catcher/processors in a rockfish cooperative or rockfish sideboard fishery follow specified catch handling procedures prior to processing, (4) requiring the weighing of all catch from rockfish cooperatives on NMFS or State approved scales, and (5) requiring that shoreside processors receiving rockfish CQ operate under NMFS approved CMCPs. Vessels participating in the entry level longline fishery would not be subject to specific Rockfish Program monitoring requirements, but would be subject to any applicable requirements as a result of participation in other fisheries. NMFS welcomes comment on any of the monitoring aspects of the Rockfish Program.

Application of Monitoring Requirements for Vessels

NMFS would require that owners and operators of all catcher vessels and catcher/processors harvesting under a cooperative CQ permit comply with the applicable observer and VMS requirements while fishing. In addition, NMFS would require that all vessels harvesting under a CQ permit or operating under a catcher/processor rockfish sideboard while fishing in July meet catch handling and catch weighing procedures to ensure proper accounting of catch.

Similar to the current Pilot Program, NMFS is proposing to establish a check-in designation procedure for a vessel that will fish under the authority of a CQ permit. This procedure would be necessary because vessels fish in the Rockfish Program fisheries, and non-Rockfish Program fisheries (e.g., pollock, Pacific cod, and various flatfish fisheries) that do not require the same catch monitoring provisions. The designated representative of a rockfish cooperative would be required to designate any vessel that intends to fish under the rockfish cooperative's CQ permit through a check-in procedure before that vessel may fish under that CQ permit. The designated representative for a rockfish cooperative must submit a check-in form for a vessel to NMFS at least 48 hours prior to the time the vessel would begin a fishing trip under a CQ permit. This check-in would provide adequate time for NMFS to properly track and account for catch against a cooperative CQ permit. A check-in designation for a vessel is effective at the beginning of the first fishing trip after the designation has been submitted.

NMFS would require that the designated representative of a rockfish cooperative specify any vessel that is no longer fishing under a CQ permit for that rockfish cooperative through a check-out procedure. A check-out report would need to be submitted within 6 hours after the effective date and time the rockfish cooperative ends the vessel's authority to fish under the CQ permit. A check-out designation would be effective at the end of a complete offload. If the vessel were fishing under a CQ permit for a catcher/processor cooperative, a check-out designation would be effective on the date at the end of the week as reported in a production report, or the end of a complete offload, whichever occurs first.

The proposed Rockfish Program includes several changes to the check-in and check-out procedures of the current Pilot Program. First, NMFS would require that the designated representative of the rockfish cooperative submit a vessel check-in or check-out report electronically, rather than by fax or email. The designated representative would need to certify that all information is true, correct, and complete. This procedure would ensure more timely collection of information. Second, NMFS would no longer limit or cap the number of check-in or check-out procedures for a vessel allowed in a season. NMFS would not need to limit check-in or check-out status to track vessels because the proposed electronic submission of the check-in and check-out report would efficiently facilitate tracking of vessel status.

NMFS would not require vessel operators to meet the monitoring provisions applicable to rockfish cooperatives once NMFS approves a Declaration of Termination of Fishing. Once this declaration is made, the CQ issued to that rockfish cooperative would be set to zero for all rockfish primary species, secondary species, and halibut PSC, and that cooperative could no longer receive CQ by transfer. This declaration procedure could occur after the cooperative has transferred its CQ to another cooperative, thereby limiting the loss of any unused CQ. A portion of any unused halibut CQ could be reassigned for use in other non-Rockfish groundfish fisheries as described under the *Transfer of CQ* section of this preamble.

Observer Coverage for Rockfish Cooperatives

Observers would be required aboard vessels participating in the Rockfish Program to adequately account for catch and bycatch in the fishery. NMFS must maintain timely and accurate records of harvest in fisheries with small allocations that are harvested by a fleet with a potentially high harvest rate. Ensuring adequate observer coverage would be particularly important for monitoring the complex suite of NMFS-managed quota allocations. Observer coverage would be essential to monitor halibut mortality rates in the fishery and ensure that a rockfish cooperative does not exceed its halibut PSC allocation.

Observer coverage issues were outlined in the Analysis prepared to support this action (see **ADDRESSES** for more information). NMFS would require 100-percent observer coverage for vessels fishing under a catcher vessel CQ permit. For catcher/processors, the level and type of observer coverage

proposed under the Rockfish Program follows models that have been developed for monitoring catcher/processor vessels under the Amendment 80, American Fisheries Act (AFA), and Community Development Quota programs. Catcher/processors fishing under the authority of a rockfish CQ permit would be required to carry two observers, and at least one of these observers must be lead level 2 certified. This proposed rule would mirror the observer coverage requirements established under the Pilot Program. The specific level of observer coverage required for catcher/processor vessels and catcher vessels is detailed in Table 11. Generally, observer coverage is greater for catcher/processors than catcher vessels due to the nature of shipboard operations and the difficulty for one observer to adequately monitor catch. Unless noted, the Rockfish Program would not affect existing observer coverage requirements that may apply to a vessel or processor when they are engaged in non-Rockfish Program fisheries.

Observer coverage under the Rockfish Program would maintain existing standards for observer workload restrictions for catcher/processors (see § 679.50 for more details on workload regulations). Additionally, regulations would clarify that observer coverage for catcher vessels required to monitor harvests would be separate from observer requirements in other fisheries. This provision would ensure that observer coverage necessary to meet the catch accounting and monitoring for the Rockfish Program would not affect observer coverage applicable for other non-Rockfish Program fisheries.

Observer Coverage for Sideboard Fisheries

NMFS would require observers on all catcher/processors subject to sideboard limits during July. This would help to ensure that vessels do not exceed the sideboard limits. Cather/processors assigned to a rockfish cooperative would receive a rockfish cooperative specific sideboard limit that could not be exceeded. NMFS proposes observer coverage that would ensure that these vessels do not exceed their specific limit. The sideboard limits established for a rockfish cooperative for the Western GOA and West Yakutat District rockfish fisheries are likely to be small relative to potential harvest rates and would need to be intensively managed to ensure adequate catch accounting and avoid exceeding sideboard limits. Additionally, the sideboard limits that would be established for halibut PSC in the deep-water and shallow-water fishery complex would need to be managed based on data gathered by observers. These halibut PSC limits are small relative to potential halibut PSC rates. NMFS would not require additional observer coverage for managing sideboard limits in the West Yakutat District, Central GOA, or Western GOA after July 31. Vessels fishing under a CQ permit in the Central GOA after July 31 would still be subject to any applicable additional observer requirements established under the Rockfish Program.

Catcher/processor opt-out vessels would be subject to less restrictive sideboard limits. Opt-out vessels would be assigned a Western Yakutat District, and Western GOA rockfish and GOA halibut PSC sideboard limit that would be managed by NMFS. This would allow NMFS to close a sideboard limit to these vessels if it appeared that the sideboard limit would not support directed fishing, therefore catch may be monitored with less observer coverage than applicable to catcher/processors assigned a cooperative-specific sideboard limit.

Observer Communication System

To ensure timely collection of data, NMFS would require that catcher vessels less than 125 feet (metric equiv.) length overall install and maintain a computer for use by an observer when the vessel is required to meet observer coverage requirements for the Rockfish Program. This would include all catcher vessels fishing under a rockfish CQ permit. Alternatively, vessels that already have computers meeting NMFS specifications could provide the observer access to that computer. NMFS would install custom software on each of these computers. This software would allow the vessel's observer to enter and edit data that could be transferred to a disk and sent electronically to NMFS from a shore based computer. These requirements mirror regulations already in place for catcher vessels in the Pilot Program.

Currently, all vessels that carry an observer 100 percent of the time as well as all shoreside and stationary floating processors required to have an observer present are required to maintain a computer for use by an observer as part of the Observer Communication System (OCS). The OCS was implemented in 1995 and is comprised of (1) electronic hardware that meets NMFS specifications and is supplied by the vessel, shoreside, or stationary floating processor, and (2) dedicated software provided by NMFS. This hardware and software allow observers to communicate with, and transmit data to, NMFS.

Although a component of the OCS allows observers to communicate with and transmit data directly to NMFS, all participating catcher vessels that are not currently required to carry an observer 100 percent of the time (those less than 125 feet length overall) would only be required to provide the computer component of the OCS. This is because these vessels make short duration trips and, at this time, the costs of requiring communications equipment outweigh the benefits of increased timeliness of data transmission.

NMFS anticipates that enabling observers to enter and send their data electronically would result in significant reductions in the time required to provide data to NMFS and rockfish cooperative managers. Under the Rockfish Program, vessels and rockfish cooperatives would be required to monitor their catch and stop fishing when target and PSC allocations are reached. For catcher vessels, target species would be required to be retained and delivered to a shore based processor where they can be weighed and accounted for on a trip by trip basis. Information on these species would be available within 2 to 3 days of delivery. However, halibut would be required to be returned to the sea with minimal injury and catch accounting would be based on expanded observer samples. Observer data from vessels are faxed to NMFS, keypunched by NMFS staff, and typically made available within a few days of receipt. However, observers are often not able to fax their data from the current trip. Rather, NMFS staff typically receives data from the previous trip. Altogether, delays with faxing data could result in up to 2 weeks' delay in making data available to rockfish cooperative and NMFS managers. When seasonal catch amounts are near allocation limits, vessels' departures could be delayed until halibut PSC data become available.

Data entered electronically by observers also result in significant improvements to overall data quality. Custom software provided by NMFS has several built-in data checking functions that will not allow some erroneous information to be entered and automatically checks for likely keypunch errors. Additionally, NMFS staff that identifies data errors may be able to resolve these errors quickly by working with the observer. This could result in improved management decisions by rockfish cooperatives and NMFS managers. The computer hardware and software requirements are specified in § 679.50.

Table 11 summarizes the observer requirements for the Rockfish Program. Unless noted, the Rockfish Program would not affect existing observer coverage that may apply to a vessel or processor that is engaged in non-Rockfish Program fisheries, for example, directed Pollock fishery.

TABLE 11—PROPOSED OBSERVER REQUIREMENTS IN THE ROCKFISH PROGRAM

Component	Requirement	When applicable
A catcher/processor fishing in a rockfish cooperative . . .	Must have aboard at least two observers for each day that the vessel is used to harvest, process, or take deliveries from a catcher vessel under a CQ permit. At least one of these observers must be endorsed as a lead level 2 observer. More than two observers are required if observer workload restrictions would preclude adequate sampling.	This coverage requirement would begin on May 1 for all vessels harvesting CQ for a rockfish cooperative and end on November 15, or upon NMFS approval of a Declaration of Termination of Fishing by the rockfish cooperative.
A catcher/processor assigned to a rockfish cooperative and subject to sideboard limits during the month of July.	Must have aboard at least two observers for each day that the vessel is used to harvest, process, or take deliveries from a catcher vessel. At least one of these observers must be endorsed as a lead level 2 observer. More than two observers would be required if observer workload restrictions would preclude adequate sampling.	This coverage requirement would begin on July 1 for all vessels participating in groundfish fisheries except fixed gear sablefish in the West Yakutat District, Central GOA, and Western GOA and end on July 31.
A catcher/processor opt-out vessel that is subject to sideboard limits during the month of July . . .	Must have aboard at least one observer for each day that the vessel is used to harvest, process, or take deliveries from a catcher vessel.	This coverage requirement would begin on July 1 for all vessels participating in groundfish fisheries except fixed gear sablefish in the West Yakutat District, Central GOA, and Western GOA and end on July 31.
A catcher vessel fishing in a rockfish cooperative . . .	Must have an observer aboard at all times the vessel is used to harvest fish under a CQ permit. The vessel must provide a computer for use by the observer for electronic data entry.	This coverage requirement would begin on May 1 for all vessels harvesting CQ for a rockfish cooperative and end on November 15, or upon NMFS approval of a Declaration of Termination of Fishing by the rockfish cooperative.
A catcher vessel fishing in the entry level longline fishery.	No additional requirements established by the Rockfish Program. Subject to observer provisions at 50 CFR 679.50.	

Vessel Monitoring System (VMS)

As is required for many other rationalization programs in the North Pacific, most vessels participating in the Rockfish Program would be required to install, maintain, and operate a VMS while fishing. A VMS allows NMFS to track a vessel's location, providing useful enforcement information and safety benefits by providing additional information during search and rescue operations. Currently, a VMS is required for any vessel with a Federal fisheries permit endorsed for Pacific cod, pollock, or Atka mackerel that is operating in any reporting area off Alaska when the fishery for which the vessel is endorsed is open. VMS is also required for vessels operating in the AFA fishery and BSAI Crab Rationalization Program. The Rockfish Program would extend existing VMS coverage to any vessel with a Federal fisheries permit endorsed for a Rockfish Program fishery and would require that those vessels have a transmitting VMS on board at all times when operating off Alaska when the Rockfish Program fishery for which they are endorsed is open. Non-trawl vessels participating only in the entry level longline fishery, for example longline vessels targeting Pacific ocean perch, would be exempted from the new VMS requirements but would still be required to use a VMS if endorsed for other species/gear combinations for which VMS is required. For example, vessels that participate in cooperatives and the entry-level longline fishery would still be required to use VMS because VMS is required for vessels participating in a cooperative. The existing VMS requirements are detailed in § 679.28(f).

The Rockfish Program would require that all vessels operating in a rockfish catcher vessel or catcher/processor cooperative use a VMS. The Analysis prepared for this action (see **ADDRESSES**) indicated that all the vessels that have legal landings in the Central GOA rockfish fishery are currently required to use a VMS. A VMS would not be required for vessels fishing in the longline portion of the entry level fishery. The Analysis prepared for the Rockfish Program indicates that there is likely to be relatively little participation by longline vessels in the entry level fishery. The Council recommended that longline entry level vessels would be exempt from the VMS requirements that apply to other vessels in the Rockfish Program. This exemption is applicable only to the Rockfish Program. If entry level vessels are required to use VMS for other fisheries in the GOA, then those VMS requirements would continue to apply.

Special Catch Handling Requirements for Catcher/Processors

NMFS recognizes that there would be a strong incentive for Rockfish Program participants to under report the amount of halibut caught as bycatch. Halibut PSC may not be retained by the vessel and thus has no economic value. However, it is quite possible that the lack of sufficient halibut PSC could limit the amount of rockfish primary species and rockfish secondary species harvested by Rockfish Program participants and under reported halibut PSC could potentially allow the under reporting vessel or rockfish cooperative to harvest a larger amount of target species. Lack of sufficient halibut PSC CQ could limit the ability of rockfish cooperatives to fully harvest their CQ for rockfish primary species and

secondary species. The special catch handling requirements proposed under the Rockfish Program mirror those implemented under the Pilot Program and those already established for catcher/processors operating under the Amendment 80 Program.

Both catcher vessels and catcher/processor vessels would be monitored to ensure proper compliance with all reporting requirements. However, the opportunity to under report halibut PSC would be greater on catcher/processor vessels than catcher vessels due to the placement of observer sampling stations and construction of the vessels. These factors reduce the ability for observers to adequately monitor the passage of fish, particularly halibut PSC, from the net through the processing facilities. In order to ensure proper catch accounting on catcher/processors, NMFS has developed a set of special catch handling requirements for catcher/processors assigned to a rockfish cooperative. The procedures proposed for the Rockfish Program are similar to those currently required for the Pilot Program with some modifications to accommodate a CMCP specialist at shorebased facilities. In brief, these special catch handling requirements would require the vessel owner or operator to ensure:

- No fish remain on deck unless an observer is present, except for fish that spilled outside the codend;
- The vessel has no more than one operational line or other conveyance for the mechanized movement of catch between the scale used to weigh the catch bins and the area where the observer collects species composition samples; and
- All crew activities within any bin or tank are observed and monitored prior to the observer sampling unsorted catch.

A vessel owner or operator of a catcher/processor may facilitate observation and monitoring of crew activities within a bin or tank by one of three options:

1. Prohibit crew members from entering bins unless the observer is able to monitor all crew activities within the bin;
2. Install viewing ports in the bins; or
3. Install video monitoring system in the bins.

Each vessel participating in a Program fishery must choose one of these options.

Vessel owners or operators who choose the first option would need to ensure that crew members do not enter a bin when fish are moving out of the bin, unless the observer has been given a chance to observe the activities of the crew inside the bin. However, NMFS acknowledges that a crew member may be required to be inside the bin to facilitate the movement of fish from the bin. For that reason, crew members would be allowed inside bins if the flow of fish has been stopped between the tank and the location where the observer collects unsorted catch, all catch has been cleared from all locations between the tank and the location where the observer collects unsorted catch, and the observer has been given notice that the vessel crew must enter the tank. When informed by an observer that all sampling has been completed for a given haul, crew would be able to enter a tank containing fish from that haul without stopping the flow of fish or clearing catch between the tank and the observer sampling station. Vessel operators may be able to use water to facilitate the movement of fish in some fisheries. However, industry members have indicated that water may degrade the quality of fish, which could decrease the value of these fish. Therefore, NMFS has developed the proposed options to allow a person to see inside the bin while fish are exiting the bin, and ensure that presorting activities are not occurring.

Vessel owners or operators who choose the second option would be required to provide a view into the bin. The observer must be able to see all actions of the crew member inside the bin from the same position where they are conducting their normal sampling duties. For example, while the observer is sorting catch at the observer sample station table, crew member activities inside the bin must be viewable by the observer from the sample station table. This option would be acceptable for vessels that may not need a crew member in the bin frequently or have uniformly shaped bins and an observer sampling station in proximity to the bin area.

Vessels owners or operators who choose the third option would be required to develop and install a digital video monitoring system. The system would include a sufficient number of cameras to view all activities of anyone inside the bin. Video cameras would be required to record images in color and in low light conditions. To ensure that an observer can monitor crew member activities in the bin while sampling, a color monitor would be required to be located in the observer sampling station. An observer would be given the opportunity to review any video data at any time during a trip. Each video system would be required to provide enough storage capacity to store all video data for an entire trip. Because NMFS may not be aware of potential presorting violations until after an observer disembarks the vessel and is debriefed, the vessel must retain all data for a minimum of 120 days from the beginning of each trip unless notified by NMFS that the data may be removed. Specific requirements for cameras, resolution, recording formats, and other technical information is detailed in 50 CFR 679.28(i).

If at any time during a trip, the line of sight or video options do not allow an observer to monitor crew activities within the fish bin or do not meet the required specifications, the vessel must revert to the first option and prohibit crew from entering the bin. The use of any of these three options would be approved by NMFS during the vessel's annual observer sampling station inspection as described at § 679.28(d).

Weighing of Catch

Catcher/processor vessels catching fish under the authority of a rockfish CQ permit or in sideboard fishery would be required to weigh all groundfish on a NMFS-approved scale in compliance with the scale requirements at 50 CFR 679.28(b). Each haul would need to be weighed separately, and all catch would need to be made available for sampling by an observer. This requirement would apply to any vessel assigned to a rockfish cooperative and fishing in a rockfish sideboard fishery, but not to opt-out vessels or vessels fishing in the entry level longline fishery. This requirement would ensure that all catch is properly accounted for and debited from either the cooperative's CQ account or sideboard fishery limit, as applicable. Vessels fishing under an LLP license that has opted-out of participating in a rockfish cooperative would not need to weigh catch from the opt-out sideboard fisheries in July given the reduced need for precision in catch accounting necessary for NMFS to manage the opt-out sideboard limits. Shoreside processors receiving catch from vessels fishing under the authority of a rockfish CQ permit would need to weigh all catch as specified in the CMCP described below.

Catch Monitoring and Control Plan (CMCP)

The owner and manager of a shoreside processor receiving groundfish harvested under the authority of a rockfish CQ permit would have to ensure that the facility is operating under an approved CMCP whenever receiving CQ allocated under the Rockfish Program. An acceptable CMCP describes how landings can be monitored effectively by a single individual authorized by NMFS, how

scales will be tested and used, and ensures that adequate facilities are made available for individuals authorized by NMFS (see § 679.28(g) for more details). CMCP requirements apply to the AFA and the Pilot Program. NMFS would not modify these requirements but merely extend their applicability to processing facilities participating in this proposed Rockfish Program.

CMCP Specialist

NMFS would use a portion of the cost recovery fees collected under the Rockfish Program to hire personnel to monitor rockfish landings to provide impartial verification of a processor's adherence to its CMCP. NMFS would distinguish the duties between the rockfish CMCP specialist and a fishery observer so their respective functions or duties do not overlap. The rockfish CMCP specialist would only monitor program deliveries and would not be trained as an observer or requested to complete any observer duties such as verifying non-rockfish fish tickets, assisting vessel observers, or collecting biological or scientific data. The duties of the rockfish CMCP specialist would be to monitor rockfish deliveries to ensure compliance with the CMCP of any processor receiving program landings, to assist processors with rockfish species identification to ensure accurate catch sorting and quota accounting, and to report the findings to NMFS. A shoreside processor would be required to include a description in the CMCP of how the CMCP specialist would be notified of rockfish CQ deliveries. The CMCP specialist would establish a monitoring schedule so most (if not all) deliveries would be monitored. In the event of conflicting deliveries, the CMCP specialist would determine which program deliveries will be monitored. Because cost recovery fees would not be available at the start of the Rockfish Program, NMFS would be required to fund the CMCP specialist position(s) until cost recovery fees are available.

Cost Recovery

The MSA requires that NMFS collect fees for the limited access programs established under section 303A of the MSA. The Rockfish Program would be established under the provisions of section 303A of the MSA. Section 304(d)(2) of the MSA requires that NMFS collect fees for the Rockfish Program equal to the actual costs directly related to the management, enforcement and data collection (management costs). Section 304(d)(2) of the MSA also limits the cost recovery fee so that it may not exceed 3 percent of the ex-vessel value of the fish harvested under the Rockfish Program. NMFS would assess a fee on the ex-vessel value of rockfish primary species and rockfish secondary species CQ harvested by rockfish cooperatives in the Central GOA and waters adjacent to the Central GOA when rockfish primary species caught by that vessel is deducted from the Federal TAC. Halibut PSC CQ would not be subject to a cost recovery fee because that halibut cannot be retained for sale and, therefore, does not have an ex-vessel value. The entry level longline fishery and opt-out vessels are not subject to cost recovery fees.

An effective fee collection program would require collecting data on rockfish primary species and rockfish secondary species CQ ex-vessel value, assessing management costs, assigning the appropriate fee to each rockfish cooperative, and ensuring that rockfish cooperatives comply with the fee collection requirements. The primary components of the fee collection program that would require submissions from Rockfish Program participants are (1) a requirement that shoreside processors receiving rockfish CQ submit an annual Rockfish Ex-vessel Volume and Value Report that details the ex-vessel value of harvests; and (2) a cost recovery fee liability statement from each rockfish CQ holder—effectively each rockfish cooperative.

NMFS would rely on the Rockfish Ex-vessel Volume and Value Report to provide information on the ex-vessel value and the price paid of rockfish primary and secondary species. Each shoreside processor receiving fish harvested under a rockfish CQ permit would be required to submit this report to NMFS for receipt by NMFS no later than December 1 of each year. This would allow NMFS to collect price data from the rockfish cooperative season which extends from May 1 through November 15 of each year. Shoreside processors would need to provide landing and price data for each primary and rockfish secondary species by month. These data would allow NMFS to generate a standard ex-vessel price for each rockfish primary and secondary species on a monthly basis and determine the average price paid per pound for all shoreside processors receiving rockfish primary and secondary species CQ. NMFS would scale the average price in proportion to the amount of landings receiving that price during the month. This method is the same used to calculate a standard price in the BSAI crab rationalization and halibut and sablefish IFQ cost recovery programs. NMFS would publish the standard ex-vessel price per month for each rockfish primary and secondary species in the **Federal Register** in the first quarter of the year following the year the landings were made to provide rockfish cooperatives with information necessary to assess their fee liability. For example, in 2012, each shoreside processor receiving rockfish primary and secondary species CQ would need to submit a Rockfish Ex-vessel Volume and Value Report so it was received by NMFS by December 1, 2012, and then NMFS would publish the standard ex-vessel price per species and per month in early 2013.

This standard ex-vessel price would apply to all rockfish primary and secondary CQ landings made in 2012. NMFS would use a standard ex-vessel price rather than specific actual price data provided by each rockfish CQ holder. Use of a standard ex-vessel price is allowed under sections 303A and 304(d)(2) of the MSA. The use of an actual ex-vessel price would require that the rockfish CQ holder document all landings and prices. Based on experience with the halibut and sablefish IFQ program, where IFQ holders may use either standard ex-vessel prices generated by NMFS or actual ex-vessel prices, very few IFQ holders subject to fee collection have used actual prices. The BSAI crab fee collection program does not provide for the use of actual ex-vessel price and NMFS applies a standard price to crab landings on a monthly basis. NMFS proposes to extend the use of standard ex-vessel price in the Rockfish Program. Standard ex-vessel prices would need to be applied to the catcher/processor rockfish cooperatives because catcher/processor vessels process catch at sea and do not use ex-vessel pricing to establish the value of catch because there is no processor receiving the catch and paying the harvester. NMFS has used the standard ex-vessel prices estimated from shorebased deliveries to assign an ex-vessel value to catcher/processor vessels in its cost recovery programs and would continue to do the same under this proposed action. Each year, NMFS would determine the total value of the rockfish fisheries subject to fee collection by summing the total value for all rockfish primary and rockfish secondary species harvest by all rockfish cooperatives during the previous year using the standard ex-vessel prices.

NMFS would also publish the rockfish fee percentage in the **Federal Register** that would determine the total fee, up to 3 percent of the total ex-vessel value of the fishery, required from all rockfish cooperatives based on landings

of rockfish primary and secondary species CQ made in the previous year. The fee percentage is the total percentage of ex-vessel value due for each pound of rockfish primary and secondary species CQ made by a cooperative during the previous year. With the halibut and sablefish IFQ cost recovery program, NMFS has published the standard ex-vessel prices and the rockfish fee percentage in the same **Federal Register** notice in the first quarter of the year, and NMFS anticipates using the same process for the Rockfish Program. The fee percentage is the amount of the ex-vessel value that is due to NMFS based on the standard ex-vessel value of the rockfish primary and secondary species CQ debited from all rockfish CQ accounts relative to the actual costs directly related to the management, enforcement and data collection of the Rockfish Program.

NMFS would determine the fee percentage that applies to landings made in the previous year by dividing the total value of the rockfish primary species and rockfish secondary species for all rockfish cooperatives made during the previous year by the total actual costs during the previous year. NMFS tracks expenditures and reports the actual costs of managing cost recovery program(s) applicable to the crab rationalization program and the halibut and sablefish IFQ program. NMFS would perform a similar function for the Rockfish Program fee collection as well. NMFS would capture the actual cost of managing the fishery through an established accounting system that allows staff to track labor, travel and procurement. Once the actual costs for the previous year are identified, a portion of that amount is recovered from all rockfish CQ holders in the fishery. NMFS would adjust the total management costs, annually, to account for any adjustments or payments received during the previous year. For example, if payments received by rockfish cooperatives in 2013 were slightly greater than the actual costs accrued during the previous year (2012), then NMFS would adjust the total management costs, which would then slightly lower the fee percentage in 2013. Some slight adjustment in the total management costs to account for rounding, slight overpayment, or corrections to actual costs after the fee liability is due, or for other reasons, is anticipated and NMFS would accommodate these factors on an annual basis. If applying a 3-percent fee would recover revenues in excess of those needed, the percentage will be set at less than 3 percent. The fee percentage could not be set at an amount higher than 3 percent of ex-vessel value even if the actual costs for the previous year exceeded 3 percent of the standard ex-vessel value for the rockfish primary and secondary CQ landings.

NMFS would inform each rockfish cooperative of the fee percentage applied to the previous year's landings and the total amount due (fee liability) through a letter sent to the address of record for each rockfish cooperative. NMFS advises rockfish cooperatives to inform NMFS if their contact information has changed. This fee liability letter would be sent to rockfish cooperative designated representatives during the first quarter of the year after the fee was incurred. The fee liability letter would be provided before fees are due on February 15 of each year. The letter would include a summary explaining the fee liability determination including the current fee percentage, details of rockfish primary species and rockfish secondary species CQ pounds debited from rockfish CQ allocations by permit, species, date, and prices.

Because fees are assessed based on landings made during the previous year, NMFS advises rockfish cooperatives to ensure that adequate funds are retained on an annual basis to ensure that the fee liability can be paid. For example, during 2012, it may be advisable for rockfish cooperatives to retain up to 3 percent of the value of ex-vessel prices paid to the rockfish cooperative members for rockfish primary and secondary species CQ throughout the year. This would ensure that the rockfish cooperative could pay the required fees for fishing during 2012 when the fee for rockfish primary and secondary species CQ is due on February 15, 2013.

NMFS would require that all payments be submitted electronically in U.S. dollars by automated clearing house, credit card, or electronic check drawn on a U.S. bank account. Electronic payment and submission of the fee collection would reduce administrative costs that would have to be borne by industry. All the rockfish cooperatives operating under the Pilot Program are familiar with, and regularly use, electronic submissions of various forms under the Pilot Program, and NMFS would extend this common practice to fee submission for the Rockfish Program. Instructions for electronic payment would be made available on the payment Web site and through a fee liability summary letter NMFS would mail to the rockfish CQ permit holder.

Failure to pay on time would result in the permit holder's QS becoming non-transferable and the person would be ineligible to receive any additional QS by transfer. In addition, cooperative members would not receive any rockfish CQ the following year until full payment of the fee liability is received by NMFS. This is because CQ may not be issued until NMFS receives a complete application, which includes the full payment of an applicant's complete rockfish cost recovery fee liability. Communication with NMFS by using the contact information provided in the fee liability letter would provide ample opportunity for rockfish CQ permit holders to reconcile accounts. However, if the account is not reconciled and the individual does not pay, NMFS would send an IAD to the rockfish CQ permit holder. The IAD would state that the rockfish CQ permit holder's estimated fee liability due from the rockfish CQ permit holder had not been paid. Any such formal determination may be appealed. The appeals process is described under 50 CFR 679.43. An applicant who appeals an IAD would not receive any rockfish CQ derived from their rockfish QS until the appeal was resolved in the applicant's favor.

After 30 days, the agency may pursue collection of the unpaid fees if the formal determination is not appealed and the account remains unpaid or under-paid. The Regional Administrator may continue to prohibit issuance of a rockfish CQ permit for any subsequent calendar years until NMFS receives the unpaid fees. Upon issuance of final agency action, any overpayment of fees would be returned to the rockfish CQ permit holder unless the permit holder requests that the agency put the credit toward future cost recovery fees. NMFS notes that some payment processing fees may be deducted from any fees returned to the rockfish CQ permit holder. Currently for the 2011 fishing season, the processing fee is set at $30, but the fee may change from year to year.

Rockfish Program Duration and Review

The Rockfish Program would be authorized for 10 years, from January 1, 2012, until December 31, 2021. In making its recommendation, the Council considered the various consequences that a sunset date could have on the Rockfish Program. The Council discussed administrative and analytical burdens that would be caused by an in-depth review of the Rockfish Program prior to its expiration. Mandating a Council recommendation to extend the Rockfish Program would substantially increase Council and staff

workloads, as a formal extension of the program would be required if the Council follows the normal process for amending its FMPs. In addition, the Council recognized that uncertainty over the future management of the fishery would affect the rockfish industry and how it operates within the Rockfish Program. The sunset date would likely affect the value of LLP licenses that qualify for the Rockfish Program because the timeframe of the fishing privilege associated with the licenses would be uncertain. This limited duration may also affect planning by both sectors as well as future investments by the sectors that may be beneficial under the Rockfish Program management, but less useful under LLP management. Ultimately, the Council recommended an extension of the duration of the Rockfish Program to 10 years, which is 5 years longer than the duration of the Pilot Program, to allow for the opportunity to reevaluate the program's effectiveness in the future. The Council reviewed and considered the duration of the permits under Section 303A. All permits would expire after 10 years but be renewed unless the Council takes action to discontinue the Rockfish Program. Section 303A(f)(1) of the MSA states that permits are renewable unless revoked, limited, or modified. NMFS notes that the entire Rockfish Program, and not specifically the permits, would be subject to the ten year expiration date.

A formal review of the proposed Rockfish Program by the Council would take place 3 years after the implementation of the program. An early review of the Rockfish Program would help the Council determine if the program is functioning as intended. The review process would allow for a full evaluation of the program's successes or challenges, and provide the Council with details on unanticipated consequences. The Council determined that a formal review process was essential to the Rockfish Program as a key tool to assess whether the Rockfish Program was achieving the goals of the MSA and the problem statement as identified in the Analysis (**ADDRESSES**). This review and evaluation by the Council would include an assessment of the program objectives. Specifically, the Council would review whether the allocation of rockfish and associated incidental harvests were fair and equitable given participation in the fishery, historical investments in and dependence upon the fishery, and employment in the harvesting and processing sectors. The Council would also assess changes in annual cooperative formation, changes in product value, the number and distribution of processing facilities, and stability or use of annual processor associations among catcher vessels. The Council would focus on the impact of this action on the harvesting and processing sectors, as well as on fishery dependent communities. The Council would also assess whether the needs for management and enforcement, as well as data collection and analysis, were adequately met. Because the Council would undertake this review, and not NMFS, regulatory language requiring this review is not required or included in this proposed rule.

If the Council recommends an extension of the Rockfish Program beyond the 10-year duration, permits would be renewed before the expiration date unless they have been revoked, limited, or modified. NMFS would have full discretion in determining which permits would be subject to revocation, limitation, or modification. If the Council would not recommend a continuation of the Rockfish Program, then rockfish management would revert back to management under the LLP. If this should happen, all Rockfish Program permits would expire 10 years after the implementation of the Rockfish Program and not be renewed.

Classification

Pursuant to sections 304(b)(1)(A) 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 after public comment.

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

Regulatory Flexibility Act

A Regulatory Impact Review (RIR) and Initial Regulatory Flexibility Analysis (IRFA) were prepared for this action. The RIR assesses all costs and benefits of available regulatory alternatives. The RIR considers all quantitative and qualitative measures. The Rockfish Program was chosen based on those measures that maximize net benefits to affected participants in the Central GOA rockfish fisheries. The 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 action, why it is being considered, and the legal basis for this action are contained in the preamble. Copies of the RIR and IRFA prepared for this proposed rule are available from NMFS (see **ADDRESSES**). A summary of these analyses follows.

Description of Significant Alternatives Considered

The Council considered an extensive and elaborate series of alternatives, options, and suboptions as it designed and evaluated the potential for the continued rationalization of the Central GOA rockfish fisheries, including the ''no action'' alternative. The RIR presents the complete set of alternatives, in various combinations with the complex suite of options. Status Quo/No Action (Alternative 1); current entry level management under the Pilot Program (Alternative 2); and an entry level fishery for longline gear only (Alternative 3). The third alternative was selected. Three alternatives for catcher/processors also were considered: Status Quo/No Action (Alternative 1); a rockfish cooperative program where allocations are based on harvest history of sector members (Alternative 2); and the existing Pilot Program management (Alternative 3). Alternative 2 was selected. Four alternatives for the catcher vessel sector were considered: Status Quo/No Action (Alternative 1); a rockfish cooperative program where allocations are based on harvest history of sector members (Alternative 2); a rockfish cooperative program where allocations are divided between historical harvesters and processing participants (Alternative 3); and a cooperative program where a harvester must join in association with a processor where associations are severable (Alternative 4). Alternative 4 was selected.

These alternatives constitute the suite of ''significant alternatives,'' under this proposed action, for purposes of the RFA. Based upon the best available scientific data, and consideration of the objectives of this action, it appears that there are no alternatives to the proposed action that have the potential to accomplish the stated objectives of the MSA and any other applicable statutes and that have the potential to minimize any significant adverse economic impact of the proposed rule on small entities. After public process, the Council concluded that the proposed Rockfish Program would best accomplish the stated objectives articulated in the problem statement and applicable statutes, and minimize to the extent practicable adverse economic impacts on the universe of directly regulated small entities.

Reasons Action Is Being Considered and the Objectives of, and Legal Basis for, the Proposed Rule

The IRFA describes in detail the reasons why this action is being proposed, describes the objectives and legal basis for the proposed rule, and discusses both small and large regulated entities to adequately characterize the fishery participants. Section 303A and other authorities from the MSA provide the legal basis for the proposed rule. This rule is meant to retain the conservation, management, safety, and economic gains realized under the Pilot Program.

Number and Description of Small Entities Regulated by the Proposed Action

The IRFA contains a description and estimate of the number of small entities to which the proposed rule would apply. The IRFA estimates that none of the 12 catcher/processors eligible for the Rockfish Program and regulated by this action are small entities, as defined by the RFA. Thirty-two catcher vessels eligible for the Rockfish Program were either members of cooperatives and, as such, are not considered small entities for the purpose of the RFA, or had annual gross revenues of at least $4 million. The remaining 14 eligible catcher vessels are all considered small entities. It is likely that some of the eligible 14 catcher vessels are affiliated through partnerships with other entities, and would be considered large entities for the purpose of this action, but in the absence of complete ownership information, these affiliations cannot be definitively determined.

In addition to the main program, this action also creates an ''entry level'' fishery for the longline sector. Since participation in that fishery is voluntary, the number of small entities participating cannot be predicted. It is likely that a substantial portion of the entry level longline fishery participants will be small entities. These impacts are analyzed in the RIR prepared for this action (see **ADDRESSES**).

Projected Reporting, Recordkeeping and Other Compliance Requirements

Implementation of the Rockfish Program would continue the overall reporting structure and recordkeeping requirements of the Pilot Program for participants in the Central GOA rockfish fisheries. The regulations proposed are not expected to increase the recordkeeping and reporting requirements for any small entities in the fishery.

Federal Rules Which May Duplicate, Overlap or Conflict With the Proposed Rule

No Federal rules that may duplicate, overlap, or conflict with this proposed action have been identified.

Collection-of-Information Requirements

This proposed rule contains collection-of-information requirements subject to review and approval by the Office of management and Budget (OMB) under the Paperwork Reduction Act (PRA). These requirements have been submitted to OMB for approval. The collections are listed below by OMB control number.

OMB Control No. 0206

The Federal Fisheries Permit and Federal Processor Permit are mentioned in this proposed rule; however, the public reporting burden for this collection-of-information is not directly affected by this proposed rule.

OMB Control No. 0213

Public reporting burden per response is estimated to average 30 minutes for Catcher/processor Trawl Gear Daily Cumulative Production Logbook; 35 minutes for Catcher/processor trawl gear ELB.

OMB Control No. 0330

Scale, catch weighing, and monitoring requirements are mentioned in this rule; however, the public reporting burden for this collection-of-information is not directly affected by this proposed rule.

OMB Control No. 0334

LLP requirements are mentioned in this proposed rule; however, the public reporting burden for this collection-of-information is not directly affected by this proposed rule.

OMB Control No. 0445

The VMS requirements are mentioned in this proposed rule; however, the public reporting burden for this collection-of-information is not directly affected by this proposed rule.

OMB Control No. 0515

Elandings is mentioned in this proposed rule; however, the public reporting burden for this collection-of-information is not directly affected by this proposed rule.

OMB Control No. 0545

Public reporting burden per response is estimated to average 2 hours for Application for Rockfish Cooperative Quota; 15 minutes for Cooperative Termination of Fishing Declaration; 2 hours for Application for Rockfish Limited Access Fishery (this application is removed with this action); 30 minutes for Rockfish Cooperative Vessel Check-in and Check-out Report; 2 hours for Rockfish Ex-vessel Volume and Value Report; 4 hours for appeal of a NMFS decision; 2 hours for Application for Rockfish Quota Share; 2 hours for Application to Transfer Rockfish Quota Share; 2 hours for Application to Opt-out of Rockfish Cooperatives; 2 hours for Application for Inter-cooperative Transfer of Rockfish Cooperative Quota; 2 hours for Application for Rockfish Entry Level Longline Fishery; and 4 hours for the annual Rockfish Cooperative 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.

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS at the **ADDRESSES** above, and e-mail to *OIRA_Submission@omb.eop.gov,* or fax to 202–395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to 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 Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: August 8, 2011.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.,* 1801 *et seq.,* 3631 *et seq.;* and Pub. L. 108–447.

2. In § 679.2,

a. Remove the definitions for ''Affiliation for the purpose of defining AFA entities'', ''Eligible rockfish harvester'', ''Eligible rockfish processor'', ''Halibut PSC sideboard limit'', ''Initial rockfish QS pool'', ''Legal rockfish landing for purpose of qualifying for the Rockfish Program'', ''Official Rockfish Program record'', ''Opt-out fishery'', ''Primary rockfish species'', ''Rockfish entry level fishery'', ''Rockfish entry level processor'', ''Rockfish limited access fishery'', ''Secondary species'', ''Sector for purposes of the Rockfish Program'', ''Sideboard limit for purposes of the Rockfish Program'', and ''Ten percent or greater direct or indirect ownership interest for purposes of the Amendment 80 Program and the Rockfish Program'';

b. Revise the definitions of ''Affiliates'', ''Basis species'', ''Cooperative quota (CQ)'', ''Rockfish cooperative'', ''Rockfish entry level harvester'', ''Rockfish Program'', ''Rockfish Program fisheries'', ''Rockfish Program species'', ''Rockfish Quota Share (QS)'', ''Rockfish QS pool'', ''Rockfish QS unit'', and ''Rockfish sideboard fisheries''; and

c. Add definitions for ''Affiliation for the purpose of defining AFA and the Rockfish Program'', ''Rockfish (Catch Monitoring Control Plan) CMCP specialist'', ''Rockfish CQ (See CQ)'', ''Rockfish CQ equivalent pound(s)'', ''Rockfish eligible harvester'', ''Rockfish entry level longline fishery'', ''Rockfish entry level trawl fishery'', ''Rockfish fee liability'', ''Rockfish fee percentage'', ''Rockfish legal landings'', ''Rockfish processor'', ''Rockfish Program official record'', ''Rockfish sector'', ''Rockfish sideboard limit'', ''Rockfish sideboard ratio'', ''Rockfish standard ex-vessel value'', ''Rockfish standard price'', and ''Ten percent or greater direct or indirect ownership interest for purposes of the Amendment 80 Program'' in alphabetical order to read as follows:

§ 679.2. Definitions.

* * * * *

Affiliates, for purposes of subparts E and H to this part, means business concerns, organizations, or individuals are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other, or a third party controls or has the power to control both. Indicators of control include, but are not limited to: Interlocking management or ownership; identity of interests among family members; shared facilities and equipment; common use of employees; or a business entity organized following the decertification, suspension, or proposed decertification of an observer provider that has the same or similar management, ownership, or principal employees as the observer provider that was decertified, suspended, or proposed for decertification.

Affiliation for the purpose of defining AFA and the Rockfish Program means a relationship between two or more individuals, corporations, or other business concerns in which one concern directly or indirectly owns a 10 percent or greater interest in another, exerts control over another, or has the power to exert control over another; or a third individual, corporation, or other business concern directly or indirectly owns a 10 percent or greater interest in both, exerts control over both, or has the power to exert control over both.

(1) *What is 10 percent or greater ownership?* For the purpose of determining affiliation, 10 percent or greater ownership is deemed to exist if an individual, corporation, or other business concern directly or indirectly owns 10 percent or greater interest in a second corporation or other business concern.

(2) *What is an indirect interest?* An indirect interest is one that passes through one or more intermediate entities. An entity's percentage of indirect interest in a second entity is equal to the entity's percentage of direct interest in an intermediate entity multiplied by the intermediate entity's direct or indirect interest in the second entity.

(3) *What is control?* For the purpose of determining affiliation, control is deemed to exist if an individual, corporation, or other business concern has any of the following relationships or forms of control over another individual, corporation, or other business concern:

(i) Controls 10 percent or more of the voting stock of another corporation or business concern;

(ii) Has the authority to direct the business of the entity that owns the fishing vessel or processor. The authority to direct the business of the entity does not include the right to simply participate in the direction of the business activities of an entity that owns a fishing vessel or processor;

(iii) Has the authority in the ordinary course of business to limit the actions of or to replace the chief executive officer, a majority of the board of directors, any general partner or any person serving in a management capacity of an entity that holds 10 percent or greater interest in a fishing vessel or processor. Standard rights of minority shareholders to restrict the actions of the entity are not included in this definition of control provided they are unrelated to day-to-day business activities. These rights include provisions to require the consent of the minority shareholder to sell all or substantially all the assets, to enter into a different business, to contract with the major investors or their affiliates, or to guarantee the obligations of majority investors or their affiliates;

(iv) Has the authority to direct the transfer, operation, or manning of a fishing vessel or processor. The authority to direct the transfer, operation, or manning of a vessel or processor does not include the right to simply participate in such activities;

(v) Has the authority to control the management of or to be a controlling factor in the entity that holds 10 percent or greater interest in a fishing vessel or processor;

(vi) Absorbs all the costs and normal business risks associated with ownership and operation of a fishing vessel or processor;

(vii) Has the responsibility to procure insurance on the fishing vessel or processor, or assumes any liability in excess of insurance coverage;

(viii) Has the authority to control a fishery cooperative through 10 percent or greater ownership or control over a majority of the vessels in the cooperative, has the authority to appoint, remove, or limit the actions of or replace the chief executive officer of the cooperative, or has the authority to appoint, remove, or limit the actions of a majority of the board of directors of the cooperative. In such instance, all members of the cooperative are considered affiliates of the individual, corporation, or other business concern that exerts control over the cooperative; or

(ix) Has the ability through any other means whatsoever to control the entity that holds 10 percent or greater interest in a fishing vessel or processor.

* * * * *

Basis species means any species or species group that is open to directed fishing that the vessel is authorized to harvest (see Tables 10, 11, and 30 to this part).

* * * * *

Cooperative quota (CQ) means:

(1) *For purposes of the Amendment 80 Program* means:

(i) The annual catch limit of an Amendment 80 species that may be caught by an Amendment 80 cooperative while fishing under a CQ permit;

(ii) The amount of annual halibut and crab PSC that may be used by an

Amendment 80 cooperative while fishing under a CQ permit.

(2) *For purposes of the Rockfish Program* means:

(i) The annual catch limit of a rockfish primary species or rockfish secondary species that may be harvested by a rockfish cooperative while fishing under a CQ permit;

(ii) The amount of annual halibut PSC that may be used by a rockfish cooperative in the Central GOA while fishing under a CQ permit (see rockfish halibut PSC in this section).

* * * * *

Rockfish (Catch Monitoring Control Plan) CMCP specialist, for purposes of subpart H to this part, means a designee authorized by the Regional Administrator to monitor compliance with catch monitoring and control plans or for other purposes of conservation and management of marine resources as specified by the Regional Administrator.

Rockfish cooperative means a group of rockfish eligible harvesters who have chosen to form a rockfish cooperative under the requirements in § 679.81 in order to combine and harvest fish collectively under a CQ permit issued by NMFS.

Rockfish CQ (See CQ)

Rockfish CQ equivalent pound(s) means the weight recorded in pounds, for a rockfish CQ landing and calculated as round weight.

Rockfish eligible harvester means a person who is permitted by NMFS to hold rockfish QS.

Rockfish entry level harvester means a person who is harvesting fish in the rockfish entry level longline fishery.

Rockfish entry level longline fishery means the longline gear fisheries in the Central GOA conducted under the Rockfish Program by rockfish entry level harvesters.

Rockfish entry level trawl fishery means the trawl gear fisheries in the Central GOA conducted under the Rockfish Program by rockfish entry level harvesters during 2007 through 2011 only.

Rockfish fee liability means that amount of money for Rockfish Program cost recovery, in U.S. dollars, owed to NMFS by a CQ permit holder as determined by multiplying the appropriate standard ex-vessel value of his or her rockfish landing(s) by the appropriate rockfish fee percentage.

Rockfish fee percentage means that positive number no greater than 3 percent (0.03) determined by the Regional Administrator and established for use in calculating the rockfish fee liability for a CQ permit holder.

* * * * *

Rockfish legal landings means groundfish caught and retained in compliance with state and Federal regulations in effect at that time unless harvested and then processed as meal, and—

(1) *For catcher vessels:* The harvest of groundfish from the Central GOA regulatory area that is offloaded and recorded on a State of Alaska fish ticket during the directed fishing season for that rockfish primary species as established in Tables 28a and 28b to this part.

(2) *For catcher/processors:* The harvest of groundfish from the Central GOA regulatory area that is recorded on a weekly production report based on harvests during the directed fishing season for that rockfish primary species as established in Table 28a to this part.

Rockfish processor means a shoreside processor with a Federal processor permit that receives groundfish harvested under the authority of a CQ permit.

Rockfish Program means the program implemented under subpart G to this part to manage Rockfish Program fisheries.

Rockfish Program fisheries means one of following fisheries under the Rockfish Program:

(1) A rockfish cooperative in the catcher/processor sector;

(2) A rockfish cooperative in the catcher vessel sector; and

(3) The rockfish entry level longline fishery.

Rockfish Program official record means information used by NMFS necessary to determine eligibility to participate in the Rockfish Program and assign specific harvest privileges or limits to Rockfish Program participants.

Rockfish Program species means the following species that are managed under the authority of the Rockfish Program:

(1) *Rockfish primary species* means northern rockfish, Pacific ocean perch, and pelagic shelf rockfish in the Central GOA regulatory area.

(2) *Rockfish secondary species* means the following species in the Central GOA regulatory area:

(i) Sablefish not allocated to the IFQ Program;

(ii) Thornyhead rockfish;

(iii) Pacific cod for the catcher vessel sector;

(iv) Rougheye rockfish for the catcher/processor sector; and

(v) Shortraker rockfish for the catcher/processor sector.

(3) *Rockfish non-allocated species* means all groundfish species other than Rockfish Program species.

Rockfish quota share (QS) means a permit expressed in numerical units, the amount of which is based on rockfish legal landings for purposes of qualifying for the Rockfish Program and that are assigned to an LLP license.

Rockfish QS pool means the sum of rockfish QS units established for the Rockfish Program fishery based on the Rockfish Program official record.

Rockfish QS unit means a measure of QS based on rockfish legal landings.

Rockfish sector means:

(1) *Catcher/processor sector:* Those rockfish eligible harvesters who hold an LLP license with a catcher/processor designation that is assigned at least one rockfish legal landing that could, or does, generate rockfish QS.

(2) *Catcher vessel sector:* Those rockfish eligible harvesters who hold an LLP license without a catcher/processor designation with at least one rockfish legal landing that could, or does, generate rockfish QS.

Rockfish sideboard fisheries means fisheries that are assigned a rockfish sideboard limit that may be harvested by participants in the Rockfish Program.

Rockfish sideboard limit means:

(1) The maximum amount of northern rockfish, Pacific ocean perch, and pelagic shelf rockfish that may be harvested in the Rockfish Program as specified in the sideboard provisions under § 679.82(e), as applicable; and

(2) The maximum amount of halibut PSC that may be used in the Rockfish Program as specified in the sideboard provisions under § 679.82(e), as applicable.

Rockfish sideboard ratio means a portion of a rockfish sideboard limit for a groundfish fishery that is assigned as specified under § 679.82(e).

Rockfish standard ex-vessel value means the total U.S. dollar amount of rockfish CQ groundfish landings as calculated by multiplying the number of landed rockfish CQ equivalent pounds by the appropriate rockfish standard price determined by the Regional Administrator.

Rockfish standard price means a price, expressed in U.S. dollars per rockfish CQ equivalent pound, for landed rockfish CQ groundfish determined annually by the Regional Administrator.

* * * * *

Ten percent or greater direct or indirect ownership interest for purposes of the Amendment 80 Program means a relationship between two or more persons in which one directly or indirectly owns or controls a 10 percent or greater interest in, or otherwise controls, another person; or a third person which directly or indirectly owns or controls, or otherwise controls

a 10 percent or greater interest in both. For the purpose of this definition, the following terms are further defined:

(1) *Person.* A person is a person as defined in this section.

(2) *Indirect interest.* An indirect interest is one that passes through one or more intermediate persons. A person's percentage of indirect interest in a second person is equal to the person's percentage of direct interest in an intermediate person multiplied by the intermediate person's direct or indirect interest in the second person.

(3) *Controls a 10 percent or greater interest.* A person controls a 10 percent or greater interest in a second person if the first person:

(i) Controls a 10 percent ownership share of the second person; or

(ii) Controls 10 percent or more of the voting or controlling stock of the second person.

(4) *Otherwise controls.* A person otherwise controls another person, if the first person has:

(i) The right to direct, or does direct, the business of the other person;

(ii) The right in the ordinary course of business to limit the actions of, or replace, or does limit or replace, the chief executive officer, a majority of the board of directors, any general partner, or any person serving in a management capacity of the other person;

(iii) The right to direct, or does direct, the Rockfish Program fishery processing activities of the other person;

(iv) The right to restrict, or does restrict, the day-to-day business activities and management policies of the other person through loan covenants;

(v) The right to derive, or does derive, either directly, or through a minority shareholder or partner, and in favor of the other person, a significantly disproportionate amount of the economic benefit from the processing of fish by that other person;

(vi) The right to control, or does control, the management of, or to be a controlling factor in, the other person;

(vii) The right to cause, or does cause, the purchase or sale of fish processed by the other person;

(viii) Absorbs all of the costs and normal business risks associated with ownership and operation of the other person; or

(ix) Has the ability through any other means whatsoever to control the other person.

* * * * *

3. In § 679.4,

a. Remove paragraphs (a)(1)(xii)(C) and (D), and (n)(2)(v), (n)(3);

b. Revise paragraphs (a)(1)(xii)(A) and (B), (b)(6)(iii), (k)(12)(i), (n)(1)(i), (n)(1)(ii), and (n)(2)(i) through (iii); and

c. Add paragraph (n)(1)(iv) to read as follows:

§ 679.4 Permits.

* * * * *

(a) * * *

(1) * * *

If program permit or card type is:	Permit is in effect from issue date through the end of:	For more information, see . . .
* * *	* * *	*
(xii) * * *		
(A) Rockfish QS	Indefinite	§ 679.80(a)
(B) CQ	Until expiration date shown on permit	§ 679.81(e)(4)
* * *	* * *	*

* * * * *

(b) * * *

(6) * * *

(iii) NMFS will reissue a Federal fisheries permit to any person who holds a Federal fisheries permit issued for a vessel if that vessel was used to make any rockfish legal landings and is subject to sideboard provisions as described under § 679.82(d) through (f).

* * * * *

(k) * * *

(12) * * *

(i) *General.* In addition to other requirements of this part, a license holder must have rockfish QS assigned to his or her groundfish LLP license to conduct directed fishing for rockfish primary species and rockfish secondary species with trawl gear.

* * * * *

(n) * * *

(1) * * *

(i) A CQ permit is issued annually to a rockfish cooperative if the members of that rockfish cooperative have submitted a complete and timely application for CQ as described in § 679.81(f) that is approved by the Regional Administrator. A CQ permit authorizes a rockfish cooperative to participate in the Rockfish Program. The CQ permit will indicate the amount of rockfish primary species and rockfish secondary species that may be harvested by the rockfish cooperative, and the amount of rockfish halibut PSC that may be used by the rockfish cooperative. The CQ permit will list the members of the rockfish cooperative, the vessels that are authorized to fish under the CQ permit for that rockfish cooperative, and the rockfish processor with whom that rockfish cooperative is associated, if applicable.

(ii) A CQ permit is valid only until the end of the calendar year for which the CQ permit is issued;

* * * * *

(iv) After November 15 of the year for which the CQ permit is issued, or upon approval of a rockfish cooperative termination of fishing declaration described in paragraph (n)(2) of this section:

(A) A cooperative may only use rockfish primary species and rockfish secondary species CQ for transfer;

(B) A cooperative may not transfer halibut PSC CQ;

(C) An amount of halibut PSC equal to 55 percent of the unused rockfish halibut PSC CQ assigned to all rockfish cooperatives will be reapportioned under the provisions described in § 679.21(d)(5)(iii)(B); and

(D) The amount of unused halibut PSC not reapportioned under the provisions described in § 679.21(d)(5)(iii)(B) will not be available for use as halibut PSC by any person for the remainder of that calendar year.

(2) * * *

(i) A rockfish cooperative may choose to terminate its CQ permit through a declaration submitted to NMFS.

(ii) This declaration may only be submitted to NMFS electronically. The rockfish cooperative's designated representative must log into the online system and create a request for termination of fishing declaration as indicated on the computer screen. By using the rockfish cooperative's NMFS ID and password, and submitting the termination of fishing declaration request, the designated representative certifies that all information is true, correct, and complete.

(iii) A rockfish cooperative termination of fishing declaration must include the following information:

* * * * *

4. In § 679.5,

a. Remove paragraphs (r)(4), (r)(7), and (r)(8)(iv);

b. Redesignate paragraphs (r)(5), (r)(6) and (r)(8) through (r)(10) as (r)(4), (r)(5) and (r)(6) through (r)(8), respectively;

c. Revise newly redesignated paragraphs (r)(4), (r)(5), (r)(6)(i), (r)(8)(i)(A) and (B), and (r)(8)(ii);

d. Revise paragraphs (r)(1) through (3); and

e. Add paragraphs (a)(1)(iii)(F), (r)(9), and (r)(10) to read as follows:

§ 679.5 Recordkeeping and reporting (R&R).

(a) * * *

(1) * * *

(iii) * * *

If harvest made under . . . program	Record the . . .	For more information, see . . .
*	*	*
(F) Rockfish Program.	Cooperative number.	subpart H to this part.

* * * * *

(r) * * *

(1) *General.* The owners and operators of catcher vessels, catcher/processors, and shoreside processors authorized as participants in the Rockfish Program must comply with the applicable recordkeeping and reporting requirements of this section and must assign all catch to a rockfish cooperative or rockfish sideboard fishery, as applicable at the time of catch or receipt of groundfish. All owners of catcher vessels, catcher/processors, and shoreside processors authorized as participants in the Rockfish Program must ensure that their designated representatives or employees comply with all applicable recordkeeping and reporting requirements.

(2) *Logbook*—(i) *DFL.* Operators of catcher vessels equal to or greater than 60 ft (18.3 m) LOA participating in a Rockfish Program fishery and using trawl gear must maintain a daily fishing logbook for trawl gear as described in paragraphs (a) and (c) of this section.

(ii) *ELB.* Operators of catcher/processors permitted in the Rockfish Program must use a combination of NMFS-approved catcher/processor trawl gear ELB and eLandings to record and report groundfish and PSC information as described in paragraph (f) of this section to record Rockfish Program landings and production.

(3) *eLandings.* Managers of shoreside processors that receive rockfish primary species or rockfish secondary species in the Rockfish Program must use eLandings or NMFS-approved software as described in paragraphs (e) and (f) of this section, instead of a logbook and WPR, to record Rockfish Program landings and production.

(4) *Production reports.* Operators of catcher/processors that are authorized as processors in the Rockfish Program must submit a production report as described in paragraphs (e)(9) and (10) of this section.

(5) *Product transfer report (PTR), processors.* Operators of catcher/processors and managers of shoreside processors that are authorized as processors in the Rockfish Program must submit a PTR as described in paragraph (g) of this section.

(6) *Annual rockfish cooperative report*—(i) *Applicability.* A rockfish cooperative permitted in the Rockfish Program (see § 679.4(n)(1)) annually must submit to the Regional Administrator an annual rockfish cooperative report detailing the use of the cooperative's CQ.

* * * * *

(8) * * *

(i) * * *

(A) *Vessel check-in.* The designated representative of a rockfish cooperative must designate any vessel that is authorized to fish under the rockfish cooperative's CQ permit before that vessel may fish under that CQ permit through a check-in procedure. The designated representative for a rockfish cooperative must submit to NMFS, in accordance with (8)(ii), a check-in designation for a vessel:

(*1*) At least 48 hours prior to the time the vessel begins a fishing trip to fish under a CQ permit; and

(*2*) A check-in designation is effective at the beginning of the first fishing trip after the designation has been submitted.

(B) *Vessel check-out.* The designated representative of a rockfish cooperative must designate any vessel that is no longer fishing under a CQ permit for that rockfish cooperative through a check-out procedure. A check-out report must be submitted to NMFS, in accordance with (8)(ii), within 6 hours after the effective date and time the rockfish cooperative ends the vessel's authority to fish under the CQ permit.

(*1*) If the vessel is fishing under a CQ permit for a catcher vessel cooperative, a check-out designation is effective at the end of a complete offload;

(*2*) If the vessel is fishing under a CQ permit for a catcher/processor cooperative, a check-out designation is effective at the end of the week-ending date as reported in a production report, or the end of a complete offload, whichever occurs first.

(ii) *Submittal.* The designated representative of the rockfish cooperative must submit a vessel check-in or check-out report electronically. The rockfish cooperative's designated representative must log into the online system and create a vessel check-in or vessel check-out request as indicated on the computer screen. By using the NMFS ID password and submitting the transfer request, the designated representative certifies that all information is true, correct, and complete.

* * * * *

(9) *Rockfish CQ cost recovery fee submission* (See § 679.85).

(10) *Rockfish Ex-vessel Volume and Value Report*—(i) *Applicability.* A rockfish processor that receives and purchases landings of rockfish CQ groundfish must submit annually to NMFS a complete Rockfish Ex-vessel Volume and Value Report, as described in this paragraph (r)(10), for each reporting period for which the rockfish processor receives rockfish CQ groundfish.

(ii) *Reporting period.* The reporting period of the Rockfish Ex-vessel Volume and Value Report shall extend from May 1 through November 15 of each year.

(iii) *Due date.* A complete Rockfish Ex-vessel Volume and Value Report must be received by the Regional Administrator not later than December 1 of the year in which the rockfish processor received the rockfish CQ groundfish.

(iv) *Information required.* (A) The rockfish processor must log in using the rockfish processor's password and NMFS person ID to submit a Rockfish Ex-vessel Volume and Value Report. The NMFS software autofills the rockfish processor's name. The User must review the autofilled cells to ensure that they are accurate. A completed application must contain the information specified on the Rockfish Ex-vessel Volume and Value Report with all applicable fields accurately filled-in.

(B) *Certification.* By using the rockfish processor NMFS ID and password and submitting the report, the rockfish processor certifies that all information is true, correct, and complete to the best of his or her knowledge and belief.

(v) *Submittal.* The rockfish processor must complete and submit online by electronic submission to NMFS the Rockfish Ex-vessel Volume and Value Report available at *https://alaskafisheries.noaa.gov.*

5. In § 679.7,

a. Remove paragraphs (n)(1)(iv) through (viii), (n)(2)(iv), (n)(3)(ii) and (iv), and (n)(7);

b. Redesignate paragraphs (n)(3)(iii) and (n)(8) as (n)(3)(ii) and (n)(7) respectively

c. Revise newly redesignated paragraph (n)(3)(ii);

d. Revise paragraphs (n)(1)(i) through (iii), (n)(2)(i) through (iii), (n)(4) through (n)(6); and

e. Add paragraph (n)(8) to read as follows:

§ 679.7 Prohibitions.

* * * * *

(n) * * *

(1) * * *

(i) Use an LLP license assigned to a rockfish cooperative in any other rockfish cooperative other than the rockfish cooperative to which that LLP license was initially assigned for that fishing year.

(ii) Use an LLP license that was excluded from the Rockfish Program or that opted out of the Rockfish Program in any rockfish cooperative for that calendar year.

(iii) Operate a vessel assigned to a rockfish cooperative in any other rockfish cooperative other than the rockfish cooperative to which that vessel was initially assigned for that fishing year.

(2) *Vessel operators participating in the Rockfish Program*—(i) Operate a vessel that is assigned to a rockfish cooperative and fishing under a CQ permit and fail to follow the catch monitoring requirements detailed in § 679.84(c) through (e).

(ii) Operate a vessel that is subject to a sideboard limit detailed in § 679.82(e), as applicable, and fail to follow the catch monitoring requirements detailed in § 679.84(c) from July 1 until July 31, if that vessel is harvesting fish in the West Yakutat District, Central GOA, or Western GOA management areas.

(iii) Operate a catcher/processor opt-out vessel, under § 679.81(f)(5), that is subject to sideboard provisions detailed in § 679.82(e) and (f), as applicable, and fail to follow the catch monitoring requirements detailed in § 679.84(d) from July 1 until July 31, if that vessel is harvesting fish in the West Yakutat District, Central GOA, or Western GOA management areas.

(3) * * *

(i) * * *

(ii) Operate a vessel that is subject to a sideboard limit detailed in § 679.82(e) and fail to use functioning VMS equipment as described in § 679.28(f) at all times when operating in a reporting area off Alaska from July 1 until July 31.

(4) Catcher/processor *vessels that opt-out.* Operate a vessel that has opted-out of participating in a rockfish cooperative to directed fish for northern rockfish, Pacific ocean perch, or pelagic shelf rockfish in the Central GOA.

(5) *Rockfish processors.* (i) Take deliveries of, or process, groundfish harvested by a catcher vessel fishing under the authority of a rockfish CQ permit unless operating as a shoreside processor.

(ii) Process any groundfish delivered by a catcher vessel fishing under the authority of a CQ permit not weighed on a scale approved by the State of Alaska. The scale must meet the requirements specified in § 679.28(c).

(iii) Take deliveries of, or process, groundfish caught by a vessel fishing under the authority of a rockfish CQ permit without following an approved CMCP as described in § 679.28(g). A copy of the CMCP must be maintained at the facility and made available to authorized officers or NMFS-authorized personnel upon request.

(iv) Take deliveries of, or process, groundfish harvested by a catcher vessel fishing under the authority of a rockfish CQ permit outside of the geographic boundaries of the City of Kodiak as those boundaries are established by the State of Alaska on [INSERT THE EFFECTIVE DATE OF THIS FINAL RULE].

(v) Fail to submit a timely and complete Rockfish Ex-vessel Volume and Value Report as required under § 679.5(r)(10)

(6) *Rockfish cooperatives*—(i) Fail to retain any rockfish primary species or rockfish secondary species caught by a vessel when that vessel is fishing under the authority of a CQ permit.

(ii) Harvest rockfish primary species, rockfish secondary species, or use halibut PSC assigned to a rockfish cooperative in the Central GOA without a valid CQ permit.

(iii) Begin a fishing trip for any Rockfish Program species with any vessel assigned to a rockfish cooperative if the total amount of unharvested CQ that is currently held by that rockfish cooperative is zero or less for any species for which CQ is assigned.

(iv) Exceed any sideboard limit assigned to a rockfish cooperative in the catcher/processor sector.

(v) Operate a vessel assigned to a rockfish cooperative to fish under a CQ permit unless the rockfish cooperative has notified NMFS that the vessel is fishing under a CQ permit as described under § 679.5(r)(8).

(vi) Operate a vessel fishing under the authority of a CQ permit in the catcher vessel sector and to have any Pacific ocean perch, pelagic shelf rockfish, northern rockfish, sablefish, Pacific cod, or thornyhead rockfish aboard the vessel unless those fish were harvested under the authority of a CQ permit.

(vii) Catch and process onboard a vessel any rockfish primary species or rockfish secondary species harvested under the authority of a CQ permit issued to the catcher vessel sector.

(viii) Have a negative balance in a CQ account for any species for which CQ is assigned after the end of the calendar year for which a CQ permit was issued.

(ix) Deliver rockfish primary species and rockfish secondary species harvested under the authority of a CQ permit to any processor other than a shoreside processor located within the geographic boundaries of the City of Kodiak as those boundaries are established by the State of Alaska on [INSERT THE EFFECTIVE DATE OF THIS FINAL RULE].

(x) Fail to submit a timely and complete rockfish CQ cost recovery fee submission form as required under § 679.5(r)(9).

(7) *Use caps.* Exceed the use caps that apply under § 679.82(a).

(8) *Rockfish entry level longline fishery*—(i) Take deliveries of, or process, groundfish caught by a catcher vessel directed fishing in the rockfish entry level longline fishery unless operating as a shoreside processor.

(ii) Deliver groundfish caught by a catcher vessel directed fishing in the rockfish entry level longline fishery to any processor other than a shoreside processor.

(iii) Use any gear other than longline gear to directed fish for a rockfish primary species in the rockfish entry level longline fishery.

(iv) Catch and process onboard a vessel any rockfish primary species harvested while directed fishing in the rockfish entry level longline fishery.

(v) Deliver groundfish caught by a catcher vessel directed fishing in the rockfish entry level longline fishery fishing after NMFS has closed directed fishing to the he rockfish entry level longline fishery or November 15 of each calendar year, whichever occurs first.

* * * * *

6. In § 679.20,

a. Add paragraph (e)(3)(iv) to read as follows:

§ 679.20 General limitations.

* * * * *

(e) * * *

(3) * * *

(iv) The maximum retainable amount for groundfish harvested in the Central GOA by a catcher/processor vessel fishing under a rockfish 4CQ permit is

calculated at the end of each weekly reporting period, and is based on the basis species defined in Table 30 harvested since the previous weekly reporting period, or for any portion of a weekly reporting period that vessel was designated under a vessel check-in as specified in § 679.5(r)(8).

* * * * *

7. In § 679.21,

a. Revise paragraphs (d)(5)(iii)(B) and (d)(5)(iii)(B)(*2*) to read as follows:

§ 679.21 Prohibited species bycatch management.

* * * * *

(d) * * *

(5) * * *

(iii) * * *

(B) An amount not greater than 55 percent of the halibut PSC that had been allocated as CQ and that has not been used by a rockfish cooperative will be added to the last seasonal apportionment for trawl gear during the current fishing year:

(*1*) * * *

(*2*) After the effective date of a termination of fishing declaration according to the provisions set out in § 679.4(n)(2), whichever occurs first.

* * * * *

8. In § 679.28,

a. Revise paragraph (g)(2)(iii) and

b. Add paragraph (g)(7)(xi) to read as follows:

§ 679.28 Equipment and operational requirements.

* * * * *

(g) * * *

(2) * * *

(iii) Rockfish Program, unless those fish are harvested under the rockfish entry level longline fishery as described under § 679.83.

* * * * *

(7) * * *

(xi) *CMCP specialist notification.* For shoreside processors receiving deliveries of groundfish harvested under the authority of a Rockfish CQ permit, describe how the CMCP specialist will be notified of deliveries of groundfish harvested under the authority of a Rockfish CQ permit.

* * * * *

9. In § 679.50,

a. Remove paragraphs (c)(7)(i)(B) and (d)(7);

b. Redesignate paragraphs (c)(7)(i)(C) through (F) as (c)(7)(i)(B) through (E), respectively;

c. Revise paragraphs (a)(4), (c)(7)(i) heading, (c)(7)(i)(A) introductory text, and (c)(7)(ii);

d. Revise newly redesignated paragraphs (c)(7)(i)(B) and (c)(7)(i)(E); and

e. Add paragraph (c)(7)(iii) to read as follows:

§ 679.50 Groundfish Observer Program.

(a) * * *

Program	Catcher/processor	Catcher vessels	Motherships	Shoreside and stationary floating processors
* *	*	*	*	* *
(4) Rockfish Program	(c)(7)(i)	(c)(7)(ii)	N/A	(d)(1) through (4).
* *	*	*	*	* *

* * * * *

(c) * * *

(7) * * *

(i) *Catcher/processor*—(A) *Rockfish cooperative.* A catcher/processor that is named on an LLP license that is assigned to a rockfish cooperative and is fishing under the authority of a CQ permit must have at least two NMFS-certified observers onboard for each day that the vessel is used to harvest or process in the Central GOA from May 1 through the earlier of:

* * * * *

(B) *Rockfish sideboard fishery for catcher/processors in a rockfish cooperative.* A catcher/processor that is subject to a sideboard limit as described under § 679.82(e) must have at least two NMFS-certified observers onboard for each day that the vessel is used to harvest or process fish in the West Yakutat District, Central GOA, or Western GOA management areas from July 1 through July 31.

* * * * *

(E) *Sideboard fishery for catcher/processors not in a rockfish cooperative.* A catcher/processor vessel that is subject to a sideboard limit as described under § 679.82(e) and (f), must have at least one NMFS-certified observer onboard for each day that the vessel is used to harvest or process in the West Yakutat District, Central GOA, or Western GOA management areas from July 1 through July 31.

(ii) *Catcher vessels—rockfish cooperative.* A catcher vessel that is named on an LLP license that is assigned to a rockfish cooperative and fishing under the authority of a CQ permit must have a NMFS-certified observer onboard at all times the vessel is used to harvest fish in the Central GOA from May 1 through the earlier of:

(A) November 15; or

(B) The effective date and time of an approved rockfish cooperative termination of fishing declaration.

(iii) *Observer coverage limitations.* Observer coverage requirements under paragraph (c)(7) of this section are in addition to observer coverage requirements in other fisheries. Observer coverage of groundfish harvested by vessels described under paragraph (c)(7) of this section are not counted for purposes of meeting minimum observer coverage requirements applicable to any groundfish fishery described under paragraphs (c)(2)(i) through (c)(2)(vi) of this section.

* * * * *

10. Subpart G is revised, to read as follows:

Subpart G—Rockfish Program

Sec.
679.80 Initial allocation of rockfish QS.
679.81 Rockfish Program annual harvester and processor privileges.
679.82 Rockfish Program use caps and sideboard limits.
679.83 Rockfish Program entry level fishery.
679.84 Rockfish Program recordkeeping, permits, monitoring, and catch accounting.
679.85 Cost recovery.

Subpart G—Rockfish Program

§ 679.80 Allocation and transfer of rockfish QS.

Additional regulations that implement specific portions of the

Rockfish Program are set out under: § 679.2 Definitions, § 679.4 Permits, § 679.5 Recordkeeping and reporting, § 679.7 Prohibitions, § 679.20 General limitations, § 679.21 Prohibited species bycatch management, § 679.28 Equipment and operational requirements, and § 679.50 Groundfish Observer Program.

(a) *Applicable areas and duration*—(1) *Applicable areas.* The Rockfish Program applies to Rockfish Program fisheries in the Central GOA Regulatory Area.

(2) *Duration.* The Rockfish Program authorized under this part 679 expires on December 31, 2021.

(3) *Seasons.* The following fishing seasons apply to fishing under this subpart subject to other provisions of this part:

(i) *Rockfish entry level longline fishery.* Fishing by vessels participating in the rockfish entry level longline fishery is authorized from 0001 hours, A.l.t., January 1 through 1200 hours, A.l.t., November 15.

(ii) *Rockfish cooperative.* Fishing by vessels participating in a rockfish cooperative is authorized from 1200 hours, A.l.t., May 1 through 1200 hours, A.l.t., November 15.

(b) *Rockfish legal landings*—(1) *Eligible LLP licenses.* NMFS will assign rockfish legal landings to an LLP license only if a vessel made those landings:

(i) Under the authority of a permanent fully transferable LLP license endorsed for Central GOA groundfish with a trawl gear designation during the season dates for a rockfish primary species as established in Table 28a to this part;

(ii) Under the authority of an interim LLP license endorsed for Central GOA groundfish with a trawl gear designation during the season dates for that rockfish primary species as established in Table 28a to this part; provided that:

(A) NMFS has determined that interim LLP license is ineligible to receive a designation as a permanent LLP license endorsed for Central GOA groundfish with a trawl gear designation; and

(B) A permanent fully transferable LLP license endorsed for Central GOA groundfish with a trawl gear designation was assigned to the vessel that made legal rockfish landings under the authority of an interim LLP license endorsed for Central GOA groundfish prior to December 31, 2003, and was continuously assigned to that vessel through June 14, 2010; or

(iii) Under the authority of a permanent fully transferable LLP license endorsed for Central GOA groundfish with a trawl gear designation during the season dates for the entry level trawl fishery in 2007, 2008, or 2009 for a rockfish primary species as established in Table 28b to this part.

(2) *Assigning rockfish legal landings to an LLP license*—(i) NMFS will assign rockfish legal landings to an LLP license only if the holder of the LLP license with those landings submits a timely application for Rockfish QS, in paragraph (d) of this section, that is approved by NMFS.

(ii) NMFS will assign rockfish legal landings made under the authority of an interim LLP license that meets the requirements in paragraph (b)(1)(ii) of this section, to the permanent fully transferable LLP license specified in paragraph (b)(1)(ii)(B) of this section. NMFS will not assign any legal rockfish landings made under the authority of the permanent fully transferable LLP license specified in paragraph (b)(1)(ii)(B) of this section prior to the date that permanent fully transferable LLP license was assigned to the vessel that made legal rockfish landings under the authority of an interim LLP license specified in paragraph (b)(1)(i) of this section.

(3) *Rockfish landings assigned to the catcher/processor sector.* A rockfish legal landing for a rockfish primary species is assigned to the catcher/processor sector if:

(i) The rockfish legal landings of that rockfish primary species was harvested and processed onboard a vessel during the season dates for that rockfish primary species as established in Table 28a to this part; and

(ii) The rockfish legal landings were made under the authority of an eligible LLP license that is endorsed for Central GOA groundfish fisheries with trawl gear with a catcher/processor designation.

(4) *Rockfish legal landings assigned to the catcher vessel sector.* A rockfish legal landing for a rockfish primary species is assigned to the catcher vessel sector if:

(i) The rockfish legal landings of that rockfish primary species were harvested and not processed onboard a vessel during the season dates for that rockfish primary species as established under Table 28a or 28b to this part; and

(ii) The rockfish legal landings were made under the authority of an eligible LLP license that is endorsed for Central GOA groundfish fisheries with trawl gear.

(c) *Rockfish Program official record*—(1) *Use of the Rockfish Program official record.* The Rockfish Program official record will contain information used by the Regional Administrator to determine:

(i) The amount of rockfish legal landings assigned to an LLP license;

(ii) The amount of rockfish QS resulting from rockfish legal landings assigned to an LLP license held by a rockfish eligible harvester;

(iii) Rockfish sideboard ratios assigned to an LLP license;

(iv) Eligibility to participate in the Rockfish Program and assign specific harvest privileges to Rockfish Program participants.

(2) *Presumption of correctness.* The Rockfish Program official record is presumed to be correct. An applicant to participate in the Rockfish Program has the burden to prove otherwise. For the purposes of creating the Rockfish Program official record, the Regional Administrator will presume the following:

(i) An LLP license has been used onboard the same vessel from which that LLP license was derived during the calendar years 2000 and 2001, unless clear and unambiguous written documentation is provided that establishes otherwise.

(ii) If more than one person is claiming the same rockfish legal landing, then each LLP license for which the rockfish legal landing is being claimed will receive an equal division of credit for the landing unless the applicants can provide written documentation that establishes an alternative means for distributing the catch history to the LLP licenses.

(3) *Documentation.* Only rockfish legal landings, as defined in § 679.2, shall be used to establish an allocation of rockfish QS.

(4) *Non-severability of rockfish legal landings.* Rockfish legal landings are non-severable from the LLP license to which those rockfish legal landings are assigned according to the Rockfish Program official record.

(d) *Application for rockfish QS*—(1) *Submission of application for rockfish QS.* A person who wishes to receive rockfish QS to participate in the Rockfish Program as a rockfish eligible harvester must submit a timely and complete Application for Rockfish Quota Share. This application may only be submitted to NMFS using the methods described on the application.

(2) *Forms.* Forms are available through the internet on the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov,* or by contacting NMFS at 800–304–4846, Option 2.

(3) *Deadline*—(i) A completed Application for Rockfish Quota Share must be received by NMFS no later than 1700 hours, A.l.t., on January 3, 2012, or if sent by U.S. mail, postmarked by that

time. For applications delivered by hand delivery or carrier only, the receiving date of signature by NMFS staff is the date the application was received. If the application is submitted by facsimile, the receiving date of the application is the date stamped received by NMFS.

(ii) Objective written evidence of timely application will be considered proof of a timely application.

(4) *Contents of application.* A completed application must contain the information specified on the Application for Rockfish Quota Share identifying the applicant and LLP license numbers, with all applicable fields accurately filled-in and all required documentation attached.

(i) *Additional documentation*—(A) Vessel names, ADF&G vessel registration numbers, and USCG documentation numbers of all vessels that fished under the authority of each LLP license, including dates when landings were made under the authority of an LLP license for 2000 and 2001;

(B) Indicate (YES or NO) if the applicant is applying to participate in the Rockfish Program based on rockfish legal landings made during the rockfish entry level trawl fishery in 2007, 2008, or 2009; and,

(C) For an applicant who holds an LLP license that made rockfish legal landings during the fishery seasons established in Table 28a to this part and during the entry level trawl fishery during 2007, 2008, or 2009 established in Table 28b to this part, indicate whether you wish to receive rockfish QS based on rockfish legal landings during the fishery seasons established in Table 28a or Table 28b to this part.

(ii) *Exclusion from Rockfish Program for LLP licenses with rockfish legal landings.* A person who holds an LLP license that made rockfish legal landings during the fishery seasons established in Table 28a to this part and during the entry level trawl fishery during 2007, 2008, or 2009 established in Table 28b to this part may choose to be excluded from the Rockfish Program and not receive rockfish QS. A person must submit an application for rockfish QS affirming exclusion from the Rockfish Program and forgo all rockfish QS.

(iii) *Applicant signature and certification.* The applicant must sign and date the application certifying that all information is true, correct, and complete to the best of his or her knowledge and belief. If the application is completed by a designated representative, then explicit authorization signed by the applicant must accompany the application.

(5) *Application evaluation.* The Regional Administrator will evaluate applications received as specified in paragraph (d)(4) of this section and compare all claims in an application with the information in the Rockfish Program official record. Application claims that are consistent with information in the Rockfish Program official record will be approved by the Regional Administrator. Application claims that are inconsistent with Rockfish Program official record, unless verified by sufficient documentation, will not be approved. An applicant who submits inconsistent claims, or an applicant who fails to submit the information specified in paragraph (d)(4) of this section, will be provided a single 30-day evidentiary period to submit the specified information, submit evidence to verify his or her inconsistent claims, or submit a revised application with claims consistent with information in the Rockfish Program official record. An applicant who submits claims that are inconsistent with information in the Rockfish Program official record has the burden of proving that the submitted claims are correct. Any claims that remain inconsistent or that are not accepted after the 30-day evidentiary period will be denied, and the applicant will be notified by an initial administrative determination (IAD) of his or her appeal rights under § 679.43.

(6) *Appeals.* If an applicant is notified by an IAD that claims made by the applicant have been denied, that applicant may appeal that IAD under the provisions in § 679.43.

(e) *Assigning rockfish QS*—(1) *General.* The Regional Administrator will assign rockfish QS only to a person who submits a timely application for rockfish QS that is approved by NMFS based on:

(i) The amount of rockfish legal landings assigned to an LLP license as established in paragraph (e)(2) of this section; or

(ii) The number of years during which a person made a rockfish legal landing under the authority of an LLP license in the entry level trawl fishery during 2007, 2008, or 2009 as established in paragraph (e)(3) of this section.

(2) *Calculation of rockfish QS allocation for LLP licenses.* Based on the Rockfish Program official record, the Regional Administrator shall determine the initial allocation of rockfish QS for each rockfish primary species assigned to each LLP license indicated on a timely and complete Application for Rockfish QS that is approved by NMFS, and that qualifies for an allocation of QS based on rockfish legal landings from 2000 to 2006 (and that is not assigned rockfish QS under the entry level trawl fishery transition allocation under the provisions in paragraph (e)(3) of this section), according to the following procedure:

(i) Sum the rockfish legal landings for each rockfish primary species ''s'' for each eligible LLP license ''l'' for each year during the fishery seasons established in Table 28a to this part. For purposes of this calculation, the Regional Administrator will not assign any amount of rockfish legal landings to an LLP license that is assigned rockfish QS under the provisions in paragraph (e)(3) of this section. This yields the Rockfish Total Catch for each rockfish primary species for each year.

(ii) For each rockfish primary species, sum the highest 5 years of Rockfish Total Catch for each eligible LLP license described under paragraph (e)(2)(i) of this section. This yields the Highest 5 Years_{ls}. This amount is equal to the number of rockfish QS units for that LLP license for that rockfish primary species.

(iii) Sum the Highest 5 Years_{ls} in paragraph (e)(2)(ii) of this section of all eligible LLP licenses for each rockfish primary species. The result is the **Σ** Highest 5 Years_{ls}. (or All Highest 5 $\text{Years}_{s)}$.

(3) *Calculation of rockfish QS allocation for LLP licenses that receive rockfish QS under the entry level trawl fishery transition allocation.* Based on the Rockfish Program official record, the Regional Administrator shall determine the initial allocation of rockfish QS for each rockfish primary species assigned to each LLP license indicated on a timely and complete application for rockfish QS that is approved by NMFS, that qualifies for an allocation of QS based on rockfish legal landings from 2007, 2008, or 2009 under the entry level trawl fishery transition allocation (and that is not assigned rockfish QS under the provisions in paragraph (e)(2) of this section), according to the following procedure:

(i) Assign one Rockfish Landing Unit to an LLP license for each year a rockfish legal landing of any rockfish primary species was made under the authority of an LLP license during the season dates for the entry level trawl fishery in 2007, 2008, or 2009 as established in Table 28b to this part. This yields the Rockfish Landing $\text{Units}_{l.}$ For purposes of this calculation, the Regional Administrator will not assign any Rockfish Landing Units to an LLP license that is assigned rockfish QS under the provisions in paragraph (e)(2) of this section.

(ii) Sum the Rockfish Landing Units of all eligible LLP licenses.

(iii) Divide the Rockfish Landing $Units_l$ in paragraph (e)(3)(i) of this section for an LLP license by the sum of all Rockfish Landing $Units_l$ of all eligible LLP licenses in paragraph (e)(3)(ii) of this section. The result is the Percentage of the Total Entry Level Trawl Fishery Transition Rockfish QS $Pool_l$ as presented in the following equation:

Rockfish Landing $Units_l$/**Σ** Rockfish Landing $Units_l$ = Percentage of the Total Entry Level Trawl Fishery Transition Rockfish QS $pool_l$.

(iv) Determine the Total Entry Level Trawl Fishery Transition Rockfish QS pool for each rockfish primary species ''s'' as presented in the following equation:

(**Σ** All Highest 5 $Years_s$/0.975) − **Σ** All Highest 5 $Years_s$ (as calculated in paragraph (e)(2)(iii) of this section) = Total Entry Level Trawl Fishery Transition Rockfish QS $pool_s$

(v) Multiply the Percentage of the Total Entry Level Trawl Fishery Transition Rockfish QS pool for each LLP license, as calculated in paragraph (e)(3)(iii) of this section, by the Total Entry Level Trawl Fishery Transition Rockfish QS pool for each rockfish primary species, as calculated in paragraph (e)(3)(iv) of this section. This yields the number of rockfish QS units for that LLP license for that rockfish primary species.

(vi) All rockfish QS units calculated in paragraph (e)(3)(v) of this section are assigned to the catcher vessel sector.

(4) *Rockfish initial QS pool.* The rockfish initial QS pool for each rockfish primary species, and for each sector, is equal to the sum of all QS units assigned to LLP licenses, and in each sector, as calculated under paragraphs (e)(2) and (e)(3) of this section as of January 31, 2012.

(5) *Non-severability of rockfish QS from an LLP license.* Rockfish QS assigned to an LLP license is non-severable from that LLP license, except as provided for under § 679.80(f)(2).

(f) *Transfer of rockfish QS*—(1) *Transfer of rockfish QS.* A person may transfer an LLP license, and any rockfish QS assigned to that LLP license under the provisions in § 679.4(k)(7), provided that the LLP license is not assigned rockfish QS in excess of the use cap specified in § 679.82(a)(2) at the time of transfer.

(2) *Transfer of rockfish QS assigned to LLP licenses that exceeds rockfish QS use caps.*

(i) If an LLP license is assigned an initial allocation of aggregate rockfish QS that exceeds a use cap specified in § 679.82(a)(2), the LLP license holder may transfer rockfish QS in excess of the use cap specified in § 679.82(a)(2) separate from that LLP license and assign it to one or more LLP licenses. On completion of the transfer, any LLP license assigned rockfish QS from the LLP license that was initially allocated an amount of aggregate rockfish QS in excess of the use cap may not exceed the use cap specified in § 679.82(a)(2).

(ii) Prior to the transfer of an LLP license that is assigned an initial allocation of aggregate rockfish QS that exceeds a use cap specified in § 679.82(a)(2), the LLP license holder must transfer the rockfish QS that is in excess of the use cap specified in § 679.82(a)(2), separate from that LLP license, and assign it to one or more LLP licenses under paragraph (f)(1)(i) of this section. On completion of the transfer of QS, the LLP license that was initially allocated an amount of aggregate rockfish QS in excess of the use cap may not exceed the use cap specified in § 679.82(a)(2).

(iii) Any rockfish QS associated with the LLP license that is in excess of the use cap may be transferred only if Block C of the Application for Transfer License Limitation Program Groundfish/Crab License is filled out entirely.

(iv) Rockfish QS may only be transferred to an LLP license that has been assigned rockfish QS with the same sector designation as the rockfish QS to be transferred.

(v) Rockfish QS that is transferred from an LLP license that was initially allocated an amount of aggregate rockfish QS in excess of the use cap specified in § 679.82(a)(2) and assigned to another LLP license may not be severed from the receiving LLP license.

§ 679.81 Rockfish Program annual harvester privileges.

(a) *Sector and LLP license allocations of rockfish primary species*—(1) *General.* Each calendar year, the Regional Administrator will determine the tonnage of rockfish primary species that will be assigned to participants in a rockfish cooperative. This amount will be assigned to rockfish cooperatives in the catcher/processor sector or the catcher vessel sector.

(2) *Calculation*—(i) The amount of rockfish primary species ''s'' allocated to the Rockfish Program is calculated by deducting the incidental catch allowance the Regional Administrator determines is required on an annual basis in other non-target fisheries from the TAC. The remaining TAC for that rockfish primary species (TAC_s) is assigned for use by the rockfish entry level longline fishery and rockfish cooperatives.

(ii) The allocation of TAC_s for each rockfish primary species to the rockfish entry level longline fishery is established in Table 28e to this part.

(iii) The allocation of TAC_s to rockfish cooperatives is equal to the amount remaining after allocation to the rockfish entry level longline fishery (cooperative TACs).

(b) *Allocations of rockfish primary species CQ to rockfish cooperatives*—(1) *Rockfish primary species TAC_s* assigned to the catcher/processor and catcher vessel sector. Cooperative TAC_s assigned for a rockfish primary species will be divided between the catcher/processor sector and the catcher vessel sector. Each sector will receive a percentage of cooperative TAC_s for each rockfish primary species equal to the sum of the rockfish QS units assigned to all LLP licenses that receive rockfish QS in that sector divided by the rockfish QS pool for that rockfish primary species. Expressed algebraically for each rockfish primary species ''s'' in paragraphs (b)(1)(i) and (ii) of this section:

(i) Catcher/Processor Sector TAC_s = [(Cooperative TAC_s) × (Rockfish QS Units in the Catcher/Processor $Sector_s$/Rockfish QS $Pool_s$)].

(ii) Catcher Vessel Sector TAC_s = [(Cooperative TAC_s) × (Rockfish QS Units in the Catcher Vessel $Sector_s$/Rockfish QS $Pool_s$)].

(2) *Allocations of rockfish primary species to rockfish cooperatives.* TAC is assigned to each rockfish cooperative based on the rockfish QS assigned to that fishery in each sector according to the following procedures:

(i) *Catcher vessel sector rockfish cooperatives.* The amount of TAC_s for each rockfish primary species assigned to a catcher vessel rockfish cooperative is equal to the amount of rockfish QS units assigned to that rockfish cooperative divided by the total rockfish QS assigned to rockfish cooperatives in the catcher vessel sector multiplied by the catcher vessel TAC_s. Once TAC_s for a rockfish primary species is assigned to a catcher vessel rockfish cooperative, it is issued as CQ specific to that rockfish cooperative. The amount of CQ for each rockfish primary species that is assigned to a rockfish cooperative is expressed algebraically as follows:

CQ_s = [(Catcher Vessel Sector TAC_s) × (Rockfish QS assigned to that rockfish $cooperative_s$/Rockfish QS Units assigned to all rockfish cooperatives in the Catcher Vessel $Sector_s$)].

(ii) *Catcher/processor sector rockfish cooperatives.* The amount of TAC_s for

each rockfish primary species assigned to a catcher/processor rockfish cooperative is equal to the amount of rockfish QS units assigned to that rockfish cooperative divided by the sum of the rockfish QS units assigned to rockfish cooperatives in the catcher/processor sector multiplied by the catcher/processor TAC_s. Once TAC for a rockfish primary species is assigned to a catcher/processor rockfish cooperative, it is issued as CQ specific to that rockfish cooperative. The amount of CQ for each rockfish primary species that is assigned to a rockfish cooperative is expressed algebraically as follows:

CQ = [(Catcher/Processor Sector TAC_s) × (Rockfish QS Units assigned to that rockfish cooperative/Rockfish QS Units assigned to all rockfish cooperatives in the Catcher/Processor Sector)].

(c) *Allocations of rockfish secondary species CQ to rockfish cooperatives*—(1) *General.* Each calendar year, the Regional Administrator will determine the tonnage of rockfish secondary species that may be assigned to the rockfish cooperatives as rockfish CQ. This amount will be assigned to the rockfish cooperatives in the catcher/processor sector and the catcher vessel sector.

(2) *Amount of rockfish secondary species tonnage assigned.* The amount of rockfish secondary species tonnage that may be assigned to the catcher/processor sector and the catcher vessel sector is specified in Table 28c to this part.

(3) *Assignment of rockfish secondary species.* Rockfish secondary species will be assigned only to rockfish cooperatives.

(4) *Determining the amount of rockfish secondary species CQ assigned to a rockfish cooperative.* The amount of CQ for each rockfish secondary species that is assigned to each rockfish cooperative is determined according to the following procedures:

(i) *CQ assigned to rockfish cooperatives in the catcher/processor sector.* The CQ for a rockfish secondary species that is assigned to a catcher/processor rockfish cooperative is equal to the amount of that rockfish secondary species allocated to the catcher/processor sector in the Rockfish Program as specified in Table 28c to this part, multiplied by the sum of the rockfish QS units for all rockfish primary species assigned to that catcher/processor rockfish cooperative divided by the sum of the rockfish QS units assigned to rockfish cooperatives for all rockfish primary species in the catcher/processor sector. Expressed algebraically in the following equation:

CQ for that Secondary Species = Amount of that rockfish secondary species allocated to the catcher/processor sector in the Rockfish Program × (**Σ** Rockfish QS units for all rockfish primary species assigned to that rockfish cooperative/**Σ** Rockfish QS units for all rockfish primary species assigned to all rockfish cooperatives in the catcher/processor sector).

(ii) *CQ assigned to rockfish cooperatives in the catcher vessel sector.* The CQ for a rockfish secondary species that is assigned to a catcher vessel rockfish cooperative is equal to the amount of that rockfish secondary species allocated to the catcher vessel sector in the Rockfish Program as specified in Table 28c to this part, multiplied by the sum of the rockfish QS units for all rockfish primary species assigned to that catcher vessel rockfish cooperative divided by the sum of the rockfish QS units assigned to rockfish cooperatives for all rockfish primary species in the catcher vessel sector. Expressed algebraically in the following equation:

CQ for that Secondary Species = Amount of that rockfish secondary species allocated to the catcher vessel sector in the Rockfish Program × (**Σ** Rockfish QS units for all rockfish primary species assigned to that rockfish cooperative/**Σ** Rockfish QS units assigned to all rockfish cooperatives for all rockfish primary species in the catcher vessel sector).

(d) *Allocations of rockfish halibut PSC CQ to rockfish cooperatives*—(1) *General.* Each calendar year, the Regional Administrator will determine the tonnage of rockfish halibut PSC that will be assigned to the Rockfish Program. This amount will be allocated appropriately to the catcher/processor sector and the catcher vessel sector. The tonnage of rockfish halibut PSC assigned to a sector will be further assigned as CQ only to rockfish cooperative(s) within that sector.

(2) *Amount of halibut PSC that may be assigned*—(i) The amount of halibut PSC that may be assigned to the catcher vessel and catcher/processor sectors is specified in Table 28d to this part.

(ii) The amount of halibut PSC that is not assigned to the catcher vessel and catcher/processor sectors as specified in Table 28d to this part will not be assigned for use as halibut PSC or as halibut IFQ.

(3) *Use of rockfish halibut PSC by a rockfish eligible harvester*—(i) Rockfish halibut PSC assigned to a sector will be assigned only to rockfish cooperatives within that sector.

(ii) Rockfish halibut PSC specified in Table 28d is not assigned to rockfish opt-out vessels.

(iii) Rockfish halibut PSC specified in Table 28d is not assigned to the rockfish entry level longline fishery.

(4) *Determining the amount of rockfish halibut PSC CQ assigned to a rockfish cooperative.* The amount of rockfish halibut PSC CQ that is assigned to each rockfish cooperative is determined according to the following procedures:

(i) *CQ assigned to rockfish cooperatives in the catcher/processor sector.* The CQ for halibut PSC that is assigned to a catcher/processor rockfish cooperative is equal to the amount of halibut PSC allocated to the catcher/processor sector in the Rockfish Program as specified in Table 28d to this part, multiplied by the sum of the rockfish QS units for all rockfish primary species assigned to that catcher/processor rockfish cooperative divided by the sum of the rockfish QS units assigned to rockfish cooperatives for all rockfish primary species in the catcher/processor sector. This is expressed algebraically in the following equation:

CQ for rockfish halibut PSC = Amount halibut PSC allocated to the catcher/processor sector in the Rockfish Program × (**Σ** Rockfish QS units assigned to that rockfish cooperative/**Σ** Rockfish QS units assigned to all rockfish cooperatives in the catcher/processor sector).

(ii) *CQ assigned to rockfish cooperatives in the catcher vessel sector.* The CQ for halibut PSC that is assigned to a catcher vessel rockfish cooperative is equal to the amount of halibut PSC allocated to the catcher vessel sector in the Rockfish Program as specified in Table 28d to this part, multiplied by the sum of the rockfish QS units for all rockfish primary species assigned to that catcher vessel rockfish cooperative divided by the sum of the rockfish QS units assigned to rockfish cooperatives for all rockfish primary species in the catcher vessel sector. This is expressed algebraically in the following equation:

CQ for rockfish halibut PSC = Amount halibut PSC allocated to the catcher vessel sector in the Rockfish Program × (**Σ** Rockfish QS units assigned to that rockfish cooperative/**Σ** Rockfish QS units assigned to all rockfish cooperatives in the catcher vessel sector).

(e) *Assigning rockfish QS to a rockfish cooperative*—(1) *General.* Each calendar year, a person that is participating in the

Rockfish Program may assign an LLP license and the rockfish QS assigned to that LLP license to a Rockfish cooperative. A rockfish eligible harvester assigns rockfish QS to a rockfish cooperative on a complete application for CQ that is approved by NMFS and that meets the requirements of paragraph (f) of this section.

(i) An LLP license and rockfish QS may be assigned to a catcher vessel cooperative if that rockfish QS is derived from legal rockfish landings assigned to the catcher vessel sector.

(ii) An LLP license and rockfish QS may be assigned to a catcher/processor cooperative if that rockfish QS is derived from rockfish legal landings assigned to the catcher/processor sector.

(2) *Catcher/Processor opt-out.* Each calendar year, a person holding an LLP license assigned rockfish QS in the catcher/processor sector may opt-out of participating in a rockfish cooperative by completing a timely Application to Opt-out of Rockfish Cooperative that is approved by NMFS. A person may not assign an LLP license assigned rockfish QS in the catcher/processor sector to both a rockfish cooperative and opt-out of participating in a rockfish cooperative.

(f) *Annual Applications for the Rockfish Program*—(1) *General.* Applications to participate in the Rockfish Program are required to be submitted each calendar year. To receive rockfish CQ, a designated rockfish cooperative representative must submit a complete application for rockfish CQ. A person who wishes to opt-out of participating in a rockfish cooperative for a calendar year with an LLP license assigned rockfish QS must submit an Application to Opt-out of Rockfish Cooperative. These applications may only be submitted to NMFS using the methods described on the application.

(2) *Application forms.* Application forms are available on the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov,* or by contacting NMFS at 800–304–4846, Option 2.

(3) *Deadline*—(i) A completed application must be received by NMFS no later than 1700 hours, A.l.t., on March 1 of each year, or if sent by U.S. mail, the application must be postmarked by that time. For applications delivered by hand delivery or carrier only, the receiving date of signature by NMFS staff is the date the application was received. If the application is submitted by facsimile, the receiving date of the application is the date stamped received by NMFS.

(ii) Objective written evidence of timely application will be considered as proof of a timely application.

(4) *Application for Rockfish Cooperative Fishing Quota (CQ).* If a designated rockfish cooperative representative submits a complete application that is approved by NMFS, the cooperative will receive a CQ permit. The CQ permit will list the amount of CQ, by rockfish primary species, rockfish secondary species, and halibut PSC held by the rockfish cooperative, the members of the rockfish cooperative, LLP licenses assigned to that rockfish cooperative, and the vessels that are authorized to harvest fish under that CQ permit.

(i) *Contents of the Application*—(A) *General information.* A completed application must contain the information specified on the Application for Rockfish Cooperative Fishing Quota identifying the rockfish cooperative, members of the cooperative, and processor associate of a catcher vessel rockfish cooperative, with all applicable fields accurately filled-in and all required documentation attached.

(B) *Additional documentation.* For the cooperative application to be considered complete, the following documents must be attached to the application:

(*1*) A copy of the business license issued by the state in which the rockfish cooperative is registered as a business entity;

(*2*) A copy of the articles of incorporation or partnership agreement of the rockfish cooperative;

(*3*) Provide the names of all persons, to the individual level, holding an ownership interest in the LLP license and the percentage ownership each person and individual holds in the LLP license;

(*4*) A copy of the rockfish cooperative agreement signed by the members of the rockfish cooperative (if different from the articles of incorporation or partnership agreement of the rockfish cooperative) that includes terms that specify that:

(*i*) Rockfish QS holders affiliated with rockfish processors cannot participate in price setting negotiations except as permitted by general antitrust law;

(*ii*) The rockfish cooperative must establish a monitoring program sufficient to ensure compliance with the Rockfish Program;

(*iii*) The proposed fishing plan to be used by members of the cooperative, including any proposed cooperative specific monitoring procedures and any voluntary codes of conduct that apply to the members of the cooperative, if applicable; and

(*iv*) Terms and conditions to specify the obligations of rockfish QS holders who are members of the rockfish cooperative to ensure the full payment of rockfish cost recovery fees that may be due.

(C) *Applicant signature and certification.* The applicant, including the processor associate of the rockfish cooperative, must sign and date the application certifying that all information is true, correct, and complete to the best of his or her knowledge and belief. If the application is completed by a designated representative, then explicit authorization signed by the applicant must accompany the application.

(ii) *Issuance of CQ.* NMFS will not issue a CQ permit if an application is not complete and approved by NMFS. Issuance by NMFS of a CQ permit is not a determination that the rockfish cooperative is formed or is operating in compliance with antitrust law.

(5) *Application to Opt-out of Rockfish Cooperative.* An LLP license holder with a catcher/processor operation type and rockfish QS assigned to that LLP license who wishes to opt-out of participating in a rockfish cooperative for a calendar year must submit an application.

(i) *General information.* A completed application must contain the information specified on the application identifying the applicant, vessel, and LLP licenses, with all applicable fields accurately filled-in and all required additional documentation attached. A completed application must contain the following additional documentation:

(ii) *Additional documentation*—(A) *LLP holdership documentation.* Provide the names of all persons, to the individual level, holding an ownership interest in the LLP license and the percentage ownership each person and individual holds in the LLP license; and

(B) *Signature and certification.* The applicant must sign and date the application certifying that all information is true, correct, and complete to the best of his or her knowledge and belief. If the application is completed by a designated representative, then explicit authorization signed by the applicant must accompany the application.

(6) *LLP licenses and rockfish QS not designated on a timely and complete application for rockfish CQ.* NMFS will prohibit any LLP licenses with rockfish QS assigned to that LLP license from fishing in the directed rockfish primary fisheries in the Central GOA for a calendar year if that LLP license is not designated on a timely and complete application for CQ for that calendar year

that is approved by NMFS. Rockfish sideboard provisions described in § 679.82 shall apply to that LLP license, as applicable.

(g) *Application for inter-cooperative transfer of cooperative quota (CQ)*—(1) *Completed application.* NMFS will process an application for inter-cooperative transfer of CQ provided that an electronic online transfer application is completed by the transferor and transferee, with all applicable fields accurately filled-in.

(2) *Certification of transferor*—(i) The transferor's designated representative must log into the online system and create a transfer request as indicated on the computer screen. By using the transferor's NMFS ID, password, and Transfer Key and submitting the transfer request, the designated representative certifies that all information is true, correct, and complete.

(ii) The transferee's designated representative must log into the online system and accept the transfer request. By using the transferee's NMFS ID, password, and Transfer Key, the designated representative certifies that all information is true, correct, and complete.

(h) *Maximum retainable amount (MRA) limits*—(1) *Rockfish cooperative.* A vessel assigned to a rockfish cooperative and fishing under a CQ permit may harvest groundfish species not allocated as CQ up to the amounts of the MRAs for those species as established in Table 30 to this part.

(2) *Opt-out vessels.* A rockfish eligible harvester who opted-out of participating in a rockfish cooperative is subject to MRAs for rockfish primary species and rockfish secondary species as established in Table 10 to this part.

(3) *Rockfish entry level longline fishery.* A person directed fishing in the rockfish entry level longline fishery may harvest groundfish species other than rockfish primary species up to amounts of the MRAs for those species as established in Table 10 to this part.

(4) *Maximum retainable amount (MRA) calculation and limits—catcher vessels*—(i) The MRA for an incidental catch species for vessels fishing under the authority of a CQ permit is calculated as a proportion of the total allocated rockfish primary species and rockfish secondary species on board the vessel in round weight equivalents using the retainable percentage in Table 30 to this part; except that—

(ii) Once the amount of shortraker rockfish harvested in the catcher vessel sector is equal to 9.72 percent of the shortraker rockfish TAC in the Central GOA regulatory area, then shortraker rockfish may not be retained by any participant in the catcher vessel sector while fishing under the authority of a CQ permit.

(5) *Maximum retainable amount (MRA) calculation and limits—catcher/processor vessels.* The MRA for an incidental catch species for vessels fishing under the authority of a CQ permit is calculated as a proportion of the total allocated rockfish primary species and rockfish secondary species on board the vessel in round weight equivalents using the retainable percentage in Table 30 to this part as determined under § 679.20(e)(3)(iv).

(i) *Rockfish cooperative* —(1) *General.* This section governs the formation and operation of rockfish cooperatives. The regulations in this section apply only to rockfish cooperatives that have formed for the purpose of fishing with CQ issued annually by NMFS.

(i) Members of rockfish cooperatives should consult legal counsel before commencing any activity if the members are uncertain about the legality under the antitrust laws of the rockfish cooperative's proposed conduct.

(ii) Membership in a rockfish cooperative is voluntary. No person may be required to join a rockfish cooperative.

(iii) Members may leave a rockfish cooperative, but any CQ contributed by the rockfish QS held by that member remains assigned to that rockfish cooperative for the remainder of the calendar year.

(iv) An LLP license, or vessel that has been assigned to a rockfish cooperative that leaves a rockfish cooperative continues to be subject to the sideboard provisions established for that rockfish cooperative under § 679.82(d) and (e), as applicable, for that calendar year.

(v) If a person becomes the holder of an LLP license that had been previously assigned to a rockfish cooperative, then that person may join that rockfish cooperative upon receipt of that LLP license, but may not assign that LLP license to another rockfish cooperative during that calendar year.

(2) *Legal and organizational requirements.* A rockfish cooperative must meet the following legal and organizational requirements before it is eligible to receive CQ:

(i) Each rockfish cooperative must be formed as a partnership, corporation, or other legal business entity that is registered under the laws of one of the 50 states or the District of Columbia;

(ii) Each rockfish cooperative must appoint an individual as designated representative to act on the rockfish cooperative's behalf and serve as contact point for NMFS for questions regarding the operation of the rockfish cooperative. The designated representative must be an individual, and may be a member of the rockfish cooperative, or some other individual designated by the rockfish cooperative;

(iii) Each rockfish cooperative must submit a complete and timely application for CQ.

(3) *General requirements.* The following table describes the requirements to form a rockfish cooperative in the catcher vessel or catcher/processor sector.

Requirement	Catcher vessel sector	Catcher/Processor sector
(i) Who may join a rockfish cooperative?	Only persons who hold rockfish QS may join a rockfish cooperative.	
(ii) What is the minimum number of LLP licenses that must be assigned to form a rockfish cooperative?	No minimum requirement.	
(iii) Is an association with a rockfish processor required?	Yes, a rockfish QS holder may only be a member of a rockfish cooperative formed in association with a rockfish processor. The rockfish cooperative may not receive rockfish CQ unless a shoreside processor eligible to receive rockfish CQ has indicated that it may be willing to receive rockfish CQ from that cooperative in the application for CQ, as described under § 679.81, that is submitted by that cooperative.	No.

Requirement	Catcher vessel sector	Catcher/Processor sector
(iv) Is a rockfish cooperative member required to deliver catch to the rockfish processor with whom the rockfish cooperative is associated?	No.	N/A.
(v) Is there a minimum amount of rockfish QS that must be assigned to a rockfish cooperative for it to be allowed to form?	No.	No.
(vi) What is allocated to the rockfish cooperative?	CQ for rockfish primary species, rockfish secondary species, and rockfish halibut PSC, based on the rockfish QS assigned to all of the LLP licenses that are assigned to the cooperative.	
(vii) Is this CQ an exclusive harvest privilege?	Yes, the members of the rockfish cooperative have an exclusive harvest privilege to collectively catch this CQ, or a cooperative may transfer all or a portion of this CQ to another rockfish cooperative.	
(viii) Is there a season during which designated vessels may catch CQ?	Yes, any vessel designated to catch CQ for a rockfish cooperative is limited to catching CQ during the season beginning on 1200 hours, A.l.t., on May 1 through 1200 hours, A.l.t., on November 15.	
(ix) Can any vessel catch a rockfish cooperative's CQ?	No, only vessels that are named on the application for CQ for that rockfish cooperative may catch the CQ assigned to that rockfish cooperative. A vessel may be assigned to only one rockfish cooperative in a calendar year.	
(x) Can a member of a rockfish cooperative transfer CQ individually to another rockfish cooperative without the approval of the other members of the rockfish cooperative?	No, only the rockfish cooperative's designated representative, and not individual members, may transfer its CQ to another rockfish cooperative. Any such transfer must be approved by NMFS as established under paragraph (i)(4)(ii) of this section.	
(xi) Can a rockfish cooperative in the catcher/processor sector transfer its sideboard limit?	N/A.	No, a sideboard limit assigned to a rockfish cooperative in the catcher/processor sector is a limit applicable to a specific rockfish cooperative, and may not be transferred between rockfish cooperatives.
(xii) Is there a hired master requirement?	No, there is no hired master requirement.	
(xiii) Can an LLP license be assigned to more than one rockfish cooperative in a calendar year?	No, an LLP license may only be assigned to one rockfish cooperative in a calendar year. A person holding multiple LLP licenses with associated rockfish QS may assign different LLP licenses to different rockfish cooperatives subject to any other restrictions that may apply.	
(xiv) Can a rockfish processor be associated with more than one rockfish cooperative?	Yes.	N/A.
(xv) Can an LLP license be assigned to a rockfish cooperative and opt-out of participating in a rockfish cooperative?	N/A.	No, each calendar year an LLP license must either be assigned to a rockfish cooperative or opt-out.
(xvi) Which members may harvest the rockfish cooperative's CQ?	That is determined by the rockfish cooperative contract signed by its members. Any violations of this contract by one cooperative member may be subject to civil claims by other members of the rockfish cooperative.	
(xvii) Does a rockfish cooperative need a contract?	Yes, a rockfish cooperative must have a membership agreement or contract that specifies how the rockfish cooperative intends to harvest its CQ. A copy of this agreement or contract must be submitted to NMFS with the cooperative's application for CQ.	
(xviii) What happens if the rockfish cooperative exceeds its CQ amount?	A rockfish cooperative is not authorized to catch fish in excess of its CQ and must not exceed its CQ amount at the end of the calendar year. Exceeding a CQ is a violation of the Rockfish Program regulations. Each member of the rockfish cooperative is jointly and severally liable for any violations of the Rockfish Program regulations while fishing under authority of a CQ permit. This liability extends to any persons who are hired to catch or receive CQ assigned to a rockfish cooperative. Each member of a rockfish cooperative is responsible for ensuring that all members of the rockfish cooperative comply with all regulations applicable to fishing under the Rockfish Program.	
(xix) Is there a limit on how much CQ a rockfish cooperative may hold or use?	Yes, see § 679.82(a) for the provisions that apply.	
(xx) Is there a limit on how much CQ a vessel may harvest?	Yes, see § 679.82(a) for the provisions that apply.	
(xxi) Is there a requirement that a rockfish cooperative pay rockfish cost recovery fees?	Yes, see § 679.85 for the provisions that apply.	

Requirement	Catcher vessel sector	Catcher/Processor sector
(xxii) When does catch count against my CQ permit?	Any vessel fishing checked-in (and therefore fishing under the authority of a CQ permit must count any catch of rockfish primary species, rockfish secondary species, or rockfish halibut PSC against that rockfish cooperative's CQ from May 1 until November 15, or until the effective date of a rockfish cooperative termination of fishing declaration that has been approved by NMFS.)	
(xxiii) If my vessel is checked-out and fishing in a directed flatfish fishery in the Central GOA and I catch groundfish and halibut PSC, does that count against the rockfish cooperative's CQ?	No. If you are fishing in a directed flatfish fishery and checked-out of the Rockfish Program fisheries, you are not fishing under the authority of a CQ permit. Groundfish harvests would not be debited against the rockfish cooperative's CQ permit. In this case, any catch of halibut would be attributed to the halibut PSC limit for that directed target fishery and gear type and any applicable sideboard limit.	
(xxiv) Can my rockfish cooperative negotiate prices for me?	The rockfish cooperatives formed under the Rockfish Program are intended to conduct and coordinate harvest activities for their members. Rockfish cooperatives formed under the Rockfish Program are subject to existing antitrust laws. Collective price negotiation by a rockfish cooperative must be conducted in accordance with existing antitrust laws.	
(xxv) Are there any special reporting requirements?	Yes, each year a rockfish cooperative must submit an annual rockfish cooperative report to NMFS by December 15 of that year. See § 679.5(r)(6) for the reporting requirements.	
(xxvi) What is required in the annual rockfish cooperative report?	The annual rockfish cooperative report must include at a minimum: (A) The rockfish cooperative's CQ, sideboard limit (if applicable), and any rockfish sideboard fishery harvests made by the vessels in the rockfish cooperative on a vessel-by-vessel basis; (B) The rockfish cooperative's actual retained and discarded catch of CQ, and sideboard limit on an area-by-area and vessel-by-vessel basis; (C) A description of the method used by the rockfish cooperative to monitor fisheries in which rockfish cooperative vessels participated; and (D) A description of any civil actions taken by the rockfish cooperative in response to any members that exceeded their allowed catch.	

(4) *Additional requirements*—(i) *Restrictions on fishing CQ assigned to a rockfish cooperative.* A person fishing CQ assigned to a rockfish cooperative must maintain a copy of the CQ permit onboard any vessel that is being used to harvest any rockfish primary species, or rockfish secondary species, or that uses any rockfish halibut PSC CQ.

(ii) *Transfer of CQ between rockfish cooperatives.* Rockfish cooperatives may transfer CQ during a calendar year with the following restrictions:

(A) A rockfish cooperative may only transfer CQ to another rockfish cooperative;

(B) A rockfish cooperative may only receive CQ from another rockfish cooperative;

(C) A rockfish cooperative may transfer or receive rockfish CQ only if that cooperative has been assigned at least two LLP licenses with rockfish QS assigned to those LLP licenses;

(D) A rockfish cooperative in the catcher vessel sector may not transfer any CQ to a rockfish cooperative in the catcher/processor sector;

(E) A rockfish cooperative in the catcher/processor sector may not transfer any rougheye rockfish CQ or shortraker rockfish CQ to a rockfish cooperative in the catcher vessel sector.

(F) A rockfish cooperative receiving rockfish primary species CQ by transfer must assign that rockfish primary species CQ to a member(s) of the rockfish cooperative for the purposes of applying the use caps established under § 679.82(a). NMFS will not approve a transfer if that member would exceed the use cap as a result of the transfer. Rockfish secondary species or halibut PSC CQ is not assigned to a specific member of a rockfish cooperative;

(G) A rockfish cooperative in the catcher/processor sector may not transfer any sideboard limit assigned to it; and

(H) A rockfish cooperative may not receive any CQ by transfer after NMFS has approved a rockfish cooperative termination of fishing declaration that was submitted by that rockfish cooperative.

(5) *Use of CQ*—(i) A rockfish cooperative in the catcher vessel sector may not use a rockfish primary species CQ in excess of the amounts specified in § 679.82(a).

(ii) For purposes of CQ use cap calculation, the total amount of CQ held or used by a person is equal to all tons of CQ derived from the rockfish QS held by that person and assigned to the rockfish cooperative and all tons of CQ assigned to that person by the rockfish cooperative from approved transfers.

(iii) The amount of rockfish QS held by a person, and CQ derived from that rockfish QS is calculated using the individual and collective use cap rule established in § 679.82(a).

(6) *Successors-in-interest.* If a member of a rockfish cooperative dies (in the case of an individual) or dissolves (in the case of a business entity), the LLP license(s) and associated rockfish QS held by that person will be transferred to the legal successor-in-interest under the procedures described in § 679.4(k)(6)(iv)(A). However, the CQ derived from that rockfish QS and assigned to the rockfish cooperative for that year from that person remains under the control of the rockfish cooperative for the duration of that calendar year. Each rockfish cooperative is free to establish its own internal procedures for admitting a successor-in-interest during the fishing season to reflect the transfer of an LLP license and associated rockfish QS.

§ 679.82 Rockfish Program use caps and sideboard limits.

(a) Use caps—(1) *General.* (i) Use caps limit the amount of rockfish QS that may be held or used by a rockfish eligible harvester and the amount of CQ that may be held or used by a rockfish cooperative, harvested by a vessel, or received or processed by a rockfish processor.

(ii) Use caps do not apply to halibut PSC CQ.

(iii) Use caps may not be exceeded unless the entity subject to the use cap is specifically allowed to exceed a cap according to the criteria established

under this paragraph (a), or by an operation of law.

(iv) All rockfish QS use caps are based on the aggregate rockfish primary species initial rockfish QS pool established by NMFS in Table 29 to this part.

(v) Sablefish and Pacific cod CQ processing use caps are based on the amount of CQ assigned to the catcher vessel sector during a calendar year.

(2) *Rockfish QS use cap.* A person may not individually or collectively hold or use more than:

(i) Four (4.0) percent of the aggregate rockfish primary species QS initially assigned to the catcher vessel sector and resulting CQ unless that rockfish eligible harvester qualifies for an exemption to this use cap under paragraph (a)(6) of this section;

(ii) Forty (40.0) percent of the aggregate rockfish primary species QS initially assigned to the catcher/processor sector and resulting CQ unless that rockfish eligible harvester qualifies for an exemption to this use cap under paragraph (a)(6) of this section.

(3) *Catcher vessel cooperative rockfish CQ use cap.* A catcher vessel rockfish cooperative may not hold or use an amount of rockfish primary species CQ during a calendar year that is greater than an amount resulting from 30.0 percent of the aggregate rockfish primary species QS initially assigned to the catcher vessel sector.

(4) *Vessel use cap*—(i) A catcher vessel may not harvest an amount of rockfish primary species CQ greater than 8.0 percent of the aggregate rockfish primary species CQ issued to the catcher vessel sector during a calendar year.

(ii) A catcher/processor vessel may not harvest an amount of rockfish primary species CQ greater than 60.0 percent of the aggregate rockfish primary species CQ issued to the catcher/processor sector during a calendar year.

(5) *Use cap for rockfish processors*—(i) A rockfish processor may not receive or process an amount of rockfish primary species harvested with CQ assigned to the catcher vessel sector greater than 30.0 percent of the aggregate rockfish primary species CQ assigned to the catcher vessel sector during a calendar year.

(ii) A rockfish processor may not receive or process an amount of Pacific cod harvested with CQ assigned to the catcher vessel sector greater than 30.0 percent of Pacific cod CQ issued to the catcher vessel sector during a calendar year.

(iii) A rockfish processor may not receive or process an amount of sablefish harvested with CQ assigned to the catcher vessel sector greater than 30.0 percent of sablefish CQ issued to the catcher vessel sector during a calendar year.

(iv) The amount of aggregate rockfish primary species, Pacific cod, or sablefish CQ assigned to the catcher vessel sector that is received by a rockfish processor is calculated based on the sum of all landings made with CQ received or processed by that rockfish processor and the CQ received or processed by any person affiliated with that rockfish processor as that term is defined in § 679.2.

(6) *Use cap exemptions*—(i) *Rockfish QS.* A rockfish QS holder may receive an initial allocation of aggregate rockfish QS in excess of the use cap in that sector only if that rockfish QS is assigned to LLP license(s) held by that rockfish eligible harvester prior to June 14, 2010, and continuously through the time of application for Rockfish QS.

(ii) *Transfer limitations.* A rockfish eligible harvester that receives an initial allocation of aggregate rockfish QS that exceeds the use cap listed in paragraph (a)(2) of this section shall not receive any rockfish QS by transfer (except by operation of law) unless and until that harvester's holdings of aggregate rockfish QS in that sector are reduced to an amount below the use cap specified in paragraph (a)(2) of this section.

(b) *Opt-out.* An LLP license holder who submits an Application to Opt-out of Rockfish Cooperative that is subsequently approved by NMFS, may not fish with any vessel named on the opted-out LLP license during that fishing year in any directed fishery for any rockfish primary species in the Central GOA and waters adjacent to the Central GOA when the rockfish primary species caught by that vessel is deducted from the Federal TAC specified under § 679.20.

(c) *Sideboard limitations—General.* The regulations in this section restrict the vessels and holders of LLP licenses with rockfish legal landings that could generate rockfish QS from using the increased flexibility provided by the Rockfish Program to expand their level of participation in other GOA groundfish fisheries. These limitations are commonly known as ''sideboards.''

(1) *Classes of sideboard restrictions.* Three types of sideboard restrictions apply under the Rockfish Program:

(i) Catcher vessel sideboard restrictions as described under paragraph (d) of this section;

(ii) Catcher/processor rockfish sideboard restrictions as described under paragraph (e) of this section; and,

(iii) Opt-out sideboard restrictions as described under paragraphs (e) and (f) of this section.

(2) *Notification of affected vessel owners and LLP license holders.* After NMFS determines which vessels and LLP licenses may be subject to sideboard limitations as described in paragraphs (d) through (f) of this section, NMFS will inform each vessel owner and LLP license holder in writing of the type of rockfish sideboard limitation and issue a revised Federal Fisheries Permit and/or LLP license that displays the sideboard limitation(s) that may apply to that FFP or LLP on its face.

(3) *Appeals.* A vessel owner or LLP license holder who believes that NMFS has incorrectly identified his or her vessel or LLP license as meeting the criteria for a sideboard limitation, or who disagrees with the specific sideboard ratio assigned to that LLP license, may make a contrary claim and provide evidence to NMFS. All claims must be submitted in writing with any documentation or evidence supporting the request within 30 days of being notified by NMFS of the sideboard limitation. NMFS will provide instructions for submitting such claims with the sideboard notification. An applicant must submit any documentation or evidence supporting a claim within 30 days of being notified by NMFS of the sideboard limitation. If NMFS finds the claim is unsupported, the claim will be denied in an Initial Administrative Determination (IAD). The affected persons may appeal this IAD using the procedures described in § 679.43.

(4) *Duration of sideboard limits.* Unless otherwise specified, all sideboard limitations established under paragraphs (e) of this section only apply from July 1 through July 31 of each year.

(d) *Sideboard provisions for catcher vessels*—(1) *Vessels subject to catcher vessel sideboard limits.* Any vessel not specified in paragraph (d)(2) of this section that NMFS has determined meets any of the following criteria is subject to the provisions under this paragraph (d):

(i) Any vessel whose rockfish legal landings could be used to generate rockfish QS for the catcher vessel sector; and,

(ii) Any vessel named on an LLP license under whose authority rockfish legal landings were made that could be used to generate rockfish QS for the catcher vessel sector.

(2) *Applicability of sideboard provisions for specific catcher vessels.* The following vessels are exempt from

the sideboard limits in paragraph (d) of this section:

(i) Any AFA catcher vessel that is not exempt from GOA groundfish sideboards under the AFA as specified under § 679.64(b)(2)(ii);

(ii) Any vessel that made rockfish legal landings during the fishery seasons established in Table 28a to this part and during the entry level trawl fishery during 2007, 2008, or 2009 established in Table 28b to this part and that is designated on an approved application for rockfish QS as being excluded from the Rockfish Program as specified under § 679.80(d)(4)(ii); and

(iii) Any vessel named on an LLP license under whose authority rockfish legal landings were made during the fishery seasons established in Table 28a to this part and during the entry level trawl fishery during 2007, 2008, or 2009 established in Table 28b to this part if that LLP license is designated on an approved application for rockfish QS as being excluded from the Rockfish Program as specified under § 679.80(d)(4)(ii).

(3) *Prohibition for directed fishing in the Western GOA and West Yakutat District rockfish fishery during July.* Vessels subject to the provisions in this paragraph (d) may not participate in directed fishing in the Western GOA and West Yakutat District for northern rockfish, Pacific ocean perch, and pelagic shelf rockfish (or in waters adjacent to the Western GOA and West Yakutat District when northern rockfish, Pacific ocean perch, and pelagic shelf rockfish by that vessel is deducted from the Federal TAC as specified under § 679.20) from July 1 through July 31.

(4) *Prohibition for directed fishing in the specific GOA flatfish fisheries during July.* Vessels subject to the provisions in this paragraph (d) may not participate in directed fishing for arrowtooth flounder, deep-water flatfish, and rex sole in the GOA (or in waters adjacent to the GOA when arrowtooth flounder, deep-water flatfish, and rex sole caught by that vessel is deducted from the Federal TAC as specified under § 679.20) from July 1 through July 31.

(e) *Rockfish and halibut PSC sideboard provisions for catcher/processor vessels*—(1) *Vessels subject to catcher/processor sideboard limits.* Any vessel that NMFS has determined meets any of the following criteria is subject to the provisions under this paragraph (e):

(i) Any vessel whose rockfish legal landings could be used to generate rockfish QS for the catcher/processor sector in the Rockfish Program; or

(ii) Any vessel named on an LLP license under whose authority rockfish legal landings were made that could be used to generate rockfish QS for the catcher/processor sector in the Rockfish Program.

(2) *Prohibition for directed rockfish fishing in the Western GOA and West Yakutat District by non-Amendment 80 vessels assigned to the catcher/processor sector.* Any vessel that meets the criteria established in paragraph (e)(1) of this section and that is not an Amendment 80 vessel is prohibited from directed fishing for northern rockfish, Pacific ocean perch, and pelagic shelf rockfish in the Western GOA and West Yakutat District (or in waters adjacent to the Western GOA and West Yakutat District when northern rockfish, Pacific ocean perch, and pelagic shelf rockfish by that vessel is deducted from the Federal TAC as specified under § 679.20) from July 1 through July 31.

(3) *Calculation of rockfish and halibut PSC sideboard limits assigned to each LLP license in the catcher/processor sector.* NMFS will determine specific rockfish sideboard ratios for each LLP license assigned to the catcher/processor sector that could generate rockfish QS. These rockfish sideboard ratios will be noted on the face of an LLP license and will be calculated as follows:

(i) For each rockfish sideboard fishery, divide the retained catch of that rockfish sideboard fishery from July 1 through July 31 in each year from 2000 through 2006 made under the authority of that LLP license, by the total retained catch of that rockfish sideboard fishery from July 1 through July 31 in each year from 2000 through 2006 by vessels operating under the authority of all eligible LLP licenses in the catcher/processor sector.

(ii) For the deep-water halibut PSC sideboard limit, divide the halibut PSC used in the deep-water complex, except in the Central GOA rockfish fisheries, from July 1 through July 31 in each year from 2000 through 2006 under the authority of that LLP license, by the total deep-water halibut PSC used from July 1 through July 31 in each year from 2000 through 2006 by vessels operating under the authority of all LLP licenses in the catcher/processor sector.

(iii) For the shallow-water halibut PSC sideboard limit, divide the halibut PSC used in the shallow-water complex from July 1 through July 31 in each year from 2000 through 2006 under the authority of that LLP license, by the total shallow-water halibut PSC used from July 1 through July 31 in each year from 2000 through 2006 by vessels operating under the authority of all LLP licenses in the catcher/processor sector.

(4) *Western GOA and West Yakutat District rockfish sideboard ratios.*

The rockfish sideboard ratio for each rockfish fishery in the Western GOA and West Yakutat District is established in the following table:

For the management area of the. . .	In the directed fishery for . . .	The sideboard limit for the catcher/processor sector is . . .
West Yakutat District	Pelagic shelf rockfish	** percent of the TAC.
	Pacific ocean perch	** percent of the TAC.
Western GOA	Pelagic shelf rockfish	72.3 percent of the TAC.
	Pacific ocean perch	50.6 percent of the TAC.
	Northern rockfish	74.3 percent of the TAC.

(5) *GOA halibut PSC sideboard ratios*—(i) The annual deep-water complex halibut PSC sideboard limit in the GOA is 2.5 percent of the annual halibut mortality limit.

(ii) The annual shallow-water complex halibut PSC sideboard limit in the GOA is 0.1 percent of the annual halibut mortality limit.

(6) *Assigning a rockfish sideboard limit to a rockfish cooperative.* Each rockfish cooperative in the catcher/processor sector will be assigned a portion of the rockfish sideboard limit for each rockfish species established in paragraph (e)(5) of this section according to the following formula.

(i) For each rockfish sideboard fishery specified in paragraph (e)(4) of this section, sum the rockfish sideboard ratios of all LLP licenses as calculated under paragraph (e)(5) of this section assigned to that rockfish cooperative and multiply this result by the amount of TAC (in metric tons) assigned to that rockfish sideboard fishery.

(ii) Once assigned, a catcher/processor rockfish cooperative may not exceed any rockfish sideboard limit assigned to

that cooperative from July 1 through July 31.

(7) *Assigning a rockfish sideboard limit to catcher/processors that opt-out of participating in rockfish cooperatives.* Holders of catcher/processor designated LLPs that opt-out of participating in a rockfish cooperative will receive the portion of each rockfish sideboard limit established in paragraph (e)(3) of this section not assigned to rockfish cooperatives.

(8) *Management of a rockfish opt-out sideboard limit*—(i) If the Regional Administrator determines that an annual rockfish sideboard limit for opt-out vessels is sufficient to support directed fishing for that rockfish sideboard fishery, the Regional Administrator may establish a directed fishing allowance applicable to holders of catcher/processor designated LLPs that have opted-out of participating in a rockfish cooperative.

(ii) If the Regional Administrator determines that a sideboard limit is insufficient to support a directed fishing allowance for that rockfish sideboard fishery, then the Regional Administrator may not allow directed fishing and set the allowance to zero for catcher/processor opt-out vessels from July 1 through July 31.

(iii) Upon determining that a halibut PSC sideboard limit is or will be reached, the Regional Administrator will publish notification in the **Federal Register** prohibiting directed fishing for the rockfish sideboard fishery in the regulatory area or district for catcher/processor opt-out vessels that will be effective from July 1 through July 31.

(9) *Assigning deep-water and shallow-water halibut PSC sideboard limits to a rockfish cooperative.* Each rockfish cooperative in the catcher/processor sector will be assigned a percentage of the deep-water and shallow-water halibut PSC sideboard limits based on the following calculation:

(i) Sum the deep-water ratios of all LLP licenses assigned to that rockfish cooperative and multiply this result by the amount set out in paragraph (e)(5)(i) of this section; and

(ii) Sum the shallow-water ratios of all LLP licenses assigned to that rockfish cooperative and multiply this result by the amount set out in paragraph (e)(5)(ii) of this section; and

(iii) A rockfish cooperative may not exceed any deep-water or shallow-water halibut PSC sideboard limit assigned to that cooperative.

(10) *Assigning a halibut PSC limit to catcher/processor opt-out vessels.* Catcher/processor opt-out vessels will receive the portion of the deep-water and shallow-water halibut PSC sideboard limit not assigned to catcher/processor rockfish cooperatives.

(11) *Management of halibut PSC limits assigned to catcher/processor opt-out vessels*—(i) If the Regional Administrator determines that a halibut PSC sideboard limit for opt-out vessels is sufficient to support a directed fishing allowance for groundfish in the deep-water or shallow-water halibut PSC complex, then the Regional Administrator may establish a directed fishing allowance for that species or species group applicable to catcher/processor opt-out vessels.

(ii) If the Regional Administrator determines that a sideboard limit is insufficient to support a directed fishing allowance for groundfish in the deep-water or shallow-water halibut PSC complex, then the Regional Administrator may not allow directed fishing and set the allowance to zero for the deep-water or shallow-water halibut PSC complex for catcher/processor opt-out vessels from July 1 through July 31.

(iii) Upon determining that a halibut PSC sideboard limit is or will be reached, the Regional Administrator will publish notification in the **Federal Register** prohibiting directed fishing for the species or species in that complex for catcher/processors opt-out vessels that will be effective from July 1 through July 31. The following specific directed fishing closures will be implemented if a halibut PSC sideboard limit is reached:

(A) If the shallow-water halibut PSC sideboard limit for catcher/processor opt-out vessels is or will be reached, then NMFS will close directed fishing in the GOA for:

(*1*) Flathead sole; and

(*2*) Shallow-water flatfish.

(B) If the deep-water halibut PSC sideboard limit is or will be reached for catcher/processor opt-out vessels, then NMFS will close directed fishing in the GOA for:

(*1*) Rex sole;

(*2*) Deep-water flatfish; and

(*3*) Arrowtooth flounder.

(iv) *Halibut PSC accounting.* Any halibut mortality occurring under a CQ permit from July 1 through July 31 will not apply against the halibut PSC sideboard limits established paragraph (e)(5) of this section.

(f) *Sideboard provisions—catcher/processor opt-out provisions*—(1) *Vessels subject to opt-out sideboard provisions.* In addition to the sideboards for opt-out vessels in paragraph (e)(7) and (e)(10) of this section, any catcher/processor opt-out vessel that NMFS has determined meets any of the following criteria is subject to the provisions under this paragraph (f):

(i) Any vessel whose legal rockfish landings could be used to generate rockfish QS for the catcher/processor sector that is not assigned to a rockfish cooperative; or,

(ii) Any vessel named on an LLP license under whose authority legal rockfish landings were made that could be used to generate rockfish QS for the catcher/processor sector and that is not assigned to a rockfish cooperative.

(2) *Prohibitions on directed fishing in GOA groundfish fisheries without previous participation*—(i) Any vessel that is subject to the opt-out sideboard restriction under paragraph (f) of this section is prohibited from directed fishing in any groundfish fishery in the GOA and waters adjacent to the GOA when groundfish caught by that vessel is deducted from the Federal TAC specified under § 679.20 (except sablefish harvested under the IFQ Program) from July 1 through July 14 of each year if that vessel has not participated in that directed groundfish fishery in any 2 years from 2000 through 2006 during the following time periods:

(A) July 9, 2000, through July 15, 2000;

(B) July 1, 2001, through July 7, 2001;

(C) June 30, 2002, through July 6, 2002;

(D) June 29, 2003, through July 5, 2003;

(E) July 4, 2004, through July 10, 2004;

(F) July 3, 2005, through July 9, 2005; and

(G) July 2, 2006, through July 8, 2006.

(ii) For purposes of determining participation in a directed groundfish fishery for paragraph (f)(3)(i) of this section, a vessel may participate:

(A) In the flathead sole and shallow-water flatfish fisheries if that vessel participated in a directed groundfish fishery for either of these two fisheries during any 2 years during the 2000 through 2006 qualifying period defined in paragraph (f)(3)(i) of this section; and

(B) In the arrowtooth flounder, deep-water flatfish, and rex sole fisheries if that vessel participated in a directed groundfish fishery for any of these three fisheries during any 2 years during the 2000 through 2006 qualifying period defined in paragraph (f)(3)(i) of this section.

§ 679.83 Rockfish Program entry level longline fishery.

(a) *Rockfish entry level longline fishery*—(1) *Rockfish primary species allocations.* Vessels participating in the rockfish entry level longline fishery may collectively harvest an amount not greater than the total allocation to the rockfish entry level longline fishery as described in Table 28e to this part.

(2) *Participation.* Catcher vessels fishing under a CQ permit must first be checked-out of the Rockfish Program by the catcher vessel cooperative's designated representative to participate in the entry level longline fishery (see § 679.5(r)(8)(i)(B) for check-out procedures).

(3) *Rockfish secondary species allocations.* Rockfish secondary species shall not be allocated to the rockfish entry level longline fishery. Rockfish secondary species shall be managed based on an MRA for the target species as described in Table 10 to this part.

(4) *Opening of the rockfish entry level longline fishery.* The Regional Administrator maintains the authority to not open the rockfish entry level longline fishery if he or she deems it appropriate for conservation or other management measures. Factors such as the total allocation, anticipated harvest rates, and number of participants will be considered in making any such decision.

(b) [Reserved].

§ 679.84 Rockfish Program recordkeeping, permits, monitoring, and catch accounting.

(a) *Recordkeeping and reporting. See § 679.5(r).*

(b) *Permits. See § 679.4(n).*

(c) *Catch monitoring requirements for catcher/processors assigned to a rockfish cooperative.* The requirements under paragraphs (c)(1) through (10) of this section apply to any catcher/processor vessel assigned to a rockfish cooperative at all times when that vessel has groundfish onboard that were harvested under a CQ permit, or that were harvested by a vessel subject to a rockfish sideboard limit as described under § 679.82(c) through (f), as applicable. The vessel owner or operator must ensure that:

(1) *Catch weighing.* All catch is weighed on a NMFS-approved scale in compliance with the scale requirements at § 679.28(b). Each haul must be weighed separately and all catch must be made available for sampling by a NMFS-certified observer.

(2) *Observer sampling station.* An observer sampling station meeting the requirements at § 679.28(d) is available at all times.

(3) *Observer coverage requirements.* The vessel is in compliance with the observer coverage requirements described at § 679.50(c)(7)(i).

(4) *Operational line.* The vessel has no more than one operational line or other conveyance for the mechanized movement of catch between the scale used to weigh total catch and the location where the observer collects species composition samples.

(5) *Fish on deck.* No fish are allowed to remain on deck unless an observer is present, except for fish inside the codend and fish spilled from the codend during hauling and dumping. Fish spilled from the codend must be moved to the fish bin.

(6) *Sample storage.* The vessel owner or operator provides sufficient space to accommodate a minimum of 10 observer sampling baskets. This space must be within or adjacent to the observer sample station.

(7) *Pre-cruise meeting.* The Observer Program Office is notified by phone at 1–907–271–1702 at least 24 hours prior to departure when the vessel will be carrying an observer who had not previously been deployed on that vessel within the last 12 months. Subsequent to the vessel's departure notification, but prior to departure, NMFS may contact the vessel to arrange for a pre-cruise meeting. The pre-cruise meeting must minimally include the vessel operator or manager and any observers assigned to the vessel.

(8) *Belt and flow operations.* The vessel operator stops the flow of fish and clears all belts between the bin doors and the area where the observer collects samples of unsorted catch when requested to do so by the observer.

(9) *Vessel crew in tanks or bins.* The vessel owner or operator must comply with the bin monitoring standards specified in § 679.28(i).

(10) *Mixing of hauls.* Catch from an individual haul is not mixed with catch from another haul prior to sampling by a NMFS-certified observer.

(d) *Catch monitoring requirements for catcher/processors opt-out vessels.* The requirements under paragraphs (c)(1) through (9) of this section apply to any catcher/processor opt-out vessels at all times when that vessel has groundfish onboard that were harvested by a vessel subject to a sideboard limit as described under § 679.82(f), as applicable. The vessel owner or operator must ensure that:

(1) Catch from an individual haul is not mixed with catch from another haul prior to sampling by a NMFS-certified observer;

(2) All catch be made available for sampling by a NMFS-certified observer; and

(3) The requirements in paragraphs (c)(3), (c)(4), (c)(5), (c)(8), and (c)(9) of this section are met.

(e) *Catch monitoring requirements for catcher vessels.* The owner or operator of a catcher vessel must ensure the vessel complies with the observer coverage requirements described in § 679.50(c)(7)(ii) at all times the vessel is participating in a rockfish cooperative.

(f) *Catch monitoring requirements for shoreside processors*—(1) *Catch monitoring and control plan (CMCP).* The owner or operator of a shoreside processor receiving deliveries from a catcher vessel described in § 679.50(c)(7)(ii) must ensure the shoreside processor complies with the CMCP requirements described in § 679.28(g).

(2) *Catch weighing.* All groundfish landed by catcher vessels described in § 679.50(c)(7)(ii) must be sorted, weighed on a scale approved by the State of Alaska as described in § 679.28(c), and be made available for sampling by an observer, NMFS staff, or any individual authorized by NMFS. Any of these persons must be allowed to test any scale used to weigh groundfish to determine its accuracy.

(g) *Catch accounting*—(1) *Rockfish primary species and rockfish secondary species.* All rockfish primary species and rockfish secondary species harvests (including harvests of those species in waters adjacent to the Central GOA that are deducted from the Federal TAC as specified under § 679.20) of a vessel, that is named on an LLP license that is assigned to a rockfish cooperative and fishing under a CQ permit, will be debited against the CQ for that rockfish cooperative from May 1:

(i) Until November 15; or

(ii) Until that rockfish cooperative has submitted a rockfish cooperative termination of fishing declaration that has been approved by NMFS.

(2) *Rockfish halibut PSC.* All halibut PSC in the Central GOA (including halibut PSC in the waters adjacent to the Central GOA when rockfish primary species and rockfish secondary species caught by that vessel is deducted from the Federal TAC specified under § 679.20) used by a vessel, that is named on an LLP license that is assigned to a rockfish cooperative and fishing under a CQ permit, will be debited against the CQ for that rockfish cooperative from May 1,

(i) Until November 15; or

(ii) Until the designated representative of that rockfish cooperative has submitted a rockfish cooperative termination of fishing declaration that has been approved by NMFS.

(3) *Groundfish sideboard limits.* All groundfish harvests (including harvests of those species in waters adjacent to the Central GOA that are deducted from the Federal TAC a specified under § 679.20) of a catcher/processor vessel that is subject to a sideboard limit for that groundfish species as described

under § 679.82(e), except groundfish harvested by a vessel fishing under a CQ permit in the Central GOA, will be debited against the sideboard limit established for that sector or rockfish cooperative, as applicable.

(4) *Halibut sideboard limits.* All halibut PSC in the GOA (including halibut PSC in the waters adjacent to the GOA when rockfish primary species and rockfish secondary species caught by that vessel is deducted from the Federal TAC specified under § 679.20) used by a catcher/processor vessel, except halibut PSC used by a vessel fishing under a CQ permit will be debited against the sideboard limit established for the rockfish cooperative or catcher/processor opt-out vessel, as applicable from July 1 until July 31.

§ 679.85 Cost recovery.

(a) *Cost recovery fees*—(1) *Responsibility.* The person documented on the rockfish CQ permit as the permit holder at the time of a rockfish CQ landing must comply with the requirements of this section.

(i) Subsequent transfer of rockfish CQ or rockfish QS held by rockfish cooperative members does not affect the rockfish CQ permit holder's liability for noncompliance with this section.

(ii) Non-renewal of a rockfish CQ permit does not affect the CQ permit holder's liability for noncompliance with this section.

(iii) Changes in the membership in a rockfish cooperative, such as members joining or departing during the relevant year, or changes in the amount of rockfish QS holdings of those members does not affect the rockfish CQ permit holder's liability for noncompliance with this section.

(2) *Fee collection.* All rockfish CQ holders who receive rockfish CQ are responsible for submitting the cost recovery payment for all rockfish CQ landings made under the authority of their rockfish CQ permit.

(3) *Payment*—(i) *Payment due date.* A rockfish CQ permit holder must submit any rockfish cost recovery fee liability payment(s) to NMFS at the address provided in paragraph (a)(3)(iii) of this section no later than February 15 of the year following the calendar year in which the rockfish CQ landings were made.

(ii) *Payment recipient.* Make electronic payment payable to NMFS.

(iii) *Payment address.* Submit payment and related documents as instructed on the fee submission form. Payments must be made electronically through the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov.* Instructions for electronic payment will be made available on both the payment Web site and a fee liability summary letter mailed to the CQ permit holder.

(iv) *Payment method.* Payment must be made electronically in U.S. dollars by automated clearing house, credit card, or electronic check drawn on a U.S. bank account.

(b) *Rockfish standard ex-vessel value determination and use*—(1) *General.* A CQ permit holder must use the rockfish standard ex-vessel value determined by NMFS under paragraph (b)(2) of this section.

(2) *Rockfish standard ex-vessel value*—(i) *General.* Each year the Regional Administrator will publish rockfish standard ex-vessel values in the **Federal Register** during the first quarter of each calendar year. The standard prices will be described in U.S. dollars per equivalent pound, for rockfish primary species and rockfish secondary species landings made by rockfish CQ holders during the previous calendar year.

(ii) *Effective duration.* The rockfish standard ex-vessel value published by NMFS shall apply to all rockfish primary species and rockfish secondary species landings made by a rockfish CQ holder during the previous calendar year.

(iii) *Determination.* NMFS will calculate the rockfish standard ex-vessel value to reflect, as closely as possible by month, the variations in the actual ex-vessel values of landings based on information provided in the Rockfish Ex-vessel Volume and Value Report as described in § 679.5(r)(10). The Regional Administrator will base rockfish standard ex-vessel values on the following types of information:

(A) Landed pounds by rockfish primary species and rockfish secondary species landings and month;

(B) Total ex-vessel value by rockfish primary species and rockfish secondary species landings and month; and

(C) Price adjustments, including retroactive payments.

(c) *Rockfish fee percentage*—(1) *Established percentage.* The rockfish fee percentage is the amount as determined by the factors and methodology described in paragraph (c)(2) of this section. This amount will be announced by publication in the **Federal Register** in accordance with paragraph (c)(3) of this section. This amount must not exceed 3.0 percent pursuant to 16 U.S.C. 1854(d)(2)(B).

(2) *Calculating fee percentage value.* Each year NMFS shall calculate and publish the fee percentage according to the following factors and methodology:

(i) *Factors.* NMFS must use the following factors to determine the fee percentage:

(A) The catch to which the rockfish cost recovery fee will apply;

(B) The ex-vessel value of that catch; and

(C) The costs directly related to the management, data collection, and enforcement of the Rockfish Program.

(ii) *Methodology.* NMFS must use the following equations to determine the fee percentage:

$$100 \times DPC/V$$

where:

DPC = the direct program costs for the Rockfish Program for the previous calendar year with any adjustments to the account from payments received in the previous year.

V = total of the standard ex-vessel value of the catch subject to the rockfish cost recovery fee liability for the current year.

(3) *Publication*—(i) *General.* During the first quarter of the year following the calendar year in which the rockfish CQ landings were made, NMFS shall calculate the rockfish fee percentage based on the calculations described in paragraph (c)(2) of this section.

(ii) *Effective period.* The calculated rockfish fee percentage is applied to rockfish CQ landings made in the previous calendar year.

(4) *Applicable percentage.* The CQ permit holder must use the rockfish fee percentage applicable at the time a rockfish primary species and rockfish secondary species landing is debited from a rockfish CQ allocation to calculate the rockfish cost recovery fee liability for any retroactive payments for that rockfish primary species and rockfish secondary species.

(5) *Fee liability determination for a rockfish CQ holder.* (i) All rockfish CQ holders will be subject to a fee liability for any rockfish primary species and rockfish secondary species CQ debited from a rockfish CQ allocation during a calendar year.

(ii) The rockfish fee liability assessed to a rockfish CQ holder will be based on the proportion of the standard ex-vessel value of rockfish primary species and rockfish secondary species debited from a rockfish CQ holder relative to all rockfish CQ holders during a calendar year as determined by NMFS.

(iii) NMFS will provide a fee liability summary letter to all CQ permit holders during the first quarter of the year following the calendar year in which the rockfish CQ landings were made. The summary will explain the fee liability determination including the current fee percentage, details of rockfish primary species and rockfish secondary species

CQ pounds debited from rockfish CQ allocations by permit, species, date, and prices.

(d) *Underpayment of fee liability*—(1) Pursuant to § 679.81(f), no rockfish CQ holder will receive any rockfish CQ until the rockfish CQ holder submits a complete application. A complete application shall include full payment of an applicant's complete rockfish cost recovery fee liability.

(2) If a rockfish CQ holder fails to submit full payment for rockfish cost recovery fee liability by the date described in paragraph (a)(3) of this section, the Regional Administrator may:

(i) At any time thereafter send an IAD to the CQ permit holder stating that the CQ permit holder's estimated fee liability, as indicated by his or her own submitted information, is the rockfish cost recovery fee liability due from the CQ permit holder.

(ii) Disapprove any application to transfer rockfish CQ to or from the CQ permit holder in accordance with § 679.81(g).

(3) If a rockfish CQ holder fails to submit full payment by the rockfish cost recovery fee liability payment deadline described at paragraph (a)(3) of this section:

(i) No CQ permit will be issued to that rockfish CQ holder for that calendar year; and

(ii) No rockfish CQ will be issued based on the rockfish QS held by the members of that rockfish cooperative to any other CQ permit for that calendar year.

(4) Upon final agency action determining that a CQ permit holder has not paid his or her rockfish cost recovery fee liability, the Regional Administrator may continue to prohibit issuance of a CQ permit for any subsequent calendar years until NMFS receives the unpaid fees. If payment is not received by the 30th day after the final agency action, the agency may pursue collection of the unpaid fees.

(e) *Over payment*. Upon issuance of final agency action, payment submitted to NMFS in excess of the rockfish cost recovery fee liability determined to be due by the final agency action will be returned to the CQ permit holder unless the permit holder requests the agency to credit the excess amount against the permit holder's future rockfish cost recovery fee liability. Payment processing fees may be deducted from any fees returned to the CQ permit holder.

(f) *Appeals*. A CQ permit holder who receives an IAD for incomplete payment of a rockfish fee liability may appeal the IAD pursuant to 50 CFR 679.43.

11. Remove Table 28 to part 679 and add Tables 28a through 28e to part 679 to read as follows:

TABLE 28a TO PART 679—QUALIFYING SEASON DATES FOR CENTRAL GOA ROCKFISH PRIMARY SPECIES

A Legal Rockfish Landing includes	Year						
	2000	2001	2002	2003	2004	2005	2006
Northern rockfish that were harvested in the Central GOA between. . .	July 4–July 26.	July 1–July 23 and Oct. 1–Oct. 21.	June 30–July 21.	June 29–July 29.	July 4–July 25.	July 5–July 24.	July 1–July 21.
and landed by	Aug. 2	July 30 and Oct. 28, respectively.	July 28	Aug. 5	Aug. 1	July 31	July 28.
Pelagic shelf rockfish that were harvested in the Central GOA between. . .	July 4–July 26.	July 1–July 23 and Oct. 1–Oct. 21.	June 30–July 21.	June 29–July 31.	July 4–July 25.	July 5–July 24, Sept. 1–Sept. 4, and Sept. 8–Sept. 10.	July 1–July 21 and Oct. 2–Oct. 8.
and landed by	Aug. 2	July 30 and Oct. 28, respectively.	July 28	Aug. 7	Aug. 1	July 31, Sept. 11, and Sept. 17, respectively.	July 28 and Oct. 15, respectively.
Pacific ocean perch that were harvested in the Central GOA between. . .	July 4–July 15.	July 1–July 12.	June 30–July 8.	June 29–July 8.	July 4–July 12.	July 5–July 14.	July 1–July 6.
and landed by	July 22	July 19	July 15	July 15	July 19	July 21	July 13.

TABLE 28b TO PART 679—QUALIFYING SEASON DATES FOR CENTRAL GOA ROCKFISH PRIMARY SPECIES

A Rockfish Legal Landing includes . . .	2007	2008	2009
Northern rockfish that were harvested by vessels authorized to fish in the rockfish entry level trawl fishery between. . .	Sept.1–Nov. 8	Sept.1–Nov. 15	Sept.1–Nov. 15.
and landed by	Nov. 15	Nov. 22	Nov. 22.
Pelagic shelf rockfish that were harvested by vessels authorized to fish in the rockfish entry level trawl fishery between. . .	July 4–July 25	July 5–July 24	July 1–July 21.
and landed by	Aug 1	July 31	July 28.
Pacific ocean perch that were harvested by vessels authorized to fish in the rockfish entry level trawl fishery between. . .	July 4–July 12	July 5–July 14	July 1–July 6.
and landed by	July 19	July 21	July 13.

TABLE 28c TO PART 679—ALLOCATION OF ROCKFISH SECONDARY SPECIES

For the following rockfish secondary species . . .	The following percentage of the Central GOA TAC is allocated to rockfish cooperatives as CQ . . .	
	For the catcher vessel sector . . .	For the catcher/processor sector . . .
Pacific cod	3.81%	N/A
Sablefish	6.78%	3.51%
Rougheye rockfish	N/A	58.87%
Shortraker rockfish	N/A	40.00%
Thornyhead rockfish	7.84%	26.50%

TABLE 28d TO PART 679—ALLOCATION OF HALIBUT PSC UNDER THE CENTRAL GOA ROCKFISH PROGRAM

For the following rockfish sectors . . .	The following amount of halibut . . .	Is multiplied by . . .	To yield the following amount of halibut PSC assigned as rockfish CQ . . .	The following amount of halibut is not assigned as rockfish CQ, halibut PSC, or halibut IFQ for use by any person . . .
Catcher vessel sector	134.1 mt	0.875	117.3 mt	27.4 mt (16.8 mt from the catcher vessel sector and 10.6 mt from the catcher/processor sector).
Catcher/processor sector	84.7 mt		74.1 mt.	

TABLE 28e TO PART 679—ROCKFISH ENTRY LEVEL LONGLINE FISHERY ALLOCATIONS

The allocation to the rockfish entry level longline fishery for the following rockfish primary species . . .	For 2012 will be . . .	If the catch of a rockfish primary species during a calendar year exceeds 90 percent of the allocation for that rockfish primary species then the allocation of that rockfish primary species in the following calendar year will increase by . . .	Except that the maximum amount of the TAC assigned to the Rockfish Program (after deducting the incidental catch allowance) that may be allocated to the rockfish entry level non-trawl fishery for each rockfish primary species is . . .
Northern rockfish	5 mt	5 mt	2 percent.
Pacific ocean perch	5 mt	5 mt	1 percent.
Pelagic shelf rockfish	30 mt	20 mt	5 percent.

17. Revise Tables 29 and 30 to part 679 to read as follows:

TABLE 29 TO PART 679—INITIAL ROCKFISH QS POOLS

Initial Rockfish QS Pool.	Northern Rockfish	Pelagic Shelf Rockfish	Pacific Ocean Perch	Aggregate Primary Species Initial Rockfish QS Pool
Initial Rockfish QS Pool Initial Rockfish QS Pool for the Catcher/Processor Sector Initial Rockfish QS Pool for the Catcher Vessel Sector	Based on the Rockfish Program official record on January 31, 2012.			

TABLE 30 TO PART 679—ROCKFISH PROGRAM RETAINABLE PERCENTAGES (IN ROUND WT. EQUIVALENT)

Fishery	Incidental Catch Species	Sector	MRA as a percentage of total retained rockfish primary species and rockfish secondary species
Rockfish Cooperative Vessels fishing under a Rockfish CQ permit.	Pacific cod	Catcher/Processor	4.0
	Shortraker/Rougheye aggregate catch	Catcher Vessel	2.0
	See rockfish non-allocated species for "other species"		

TABLE 30 TO PART 679—ROCKFISH PROGRAM RETAINABLE PERCENTAGES (IN ROUND WT. EQUIVALENT)—Continued

Fishery	Incidental Catch Species	Sector	MRA as a percentage of total retained rockfish primary species and rockfish secondary species
Rockfish non-allocated species for Rockfish Cooperative vessels fishing under a Rockfish CQ permit.	Pollock	Catcher/Processor and Catcher Vessel	20.0
	Deep-water flatfish	Catcher/Processor and Catcher Vessel	20.0
	Rex sole	Catcher/Processor and Catcher Vessel	20.0
	Flathead sole	Catcher/Processor and Catcher Vessel	20.0
	Shallow-water flatfish	Catcher/Processor and Catcher Vessel	20.0
	Arrowtooth Flounder	Catcher/Processor and Catcher Vessel	35.0
	Other rockfish	Catcher/Processor and Catcher Vessel	15.0
	Atka mackerel	Catcher/Processor and Catcher Vessel	20.0
	Aggregated forage fish	Catcher/Processor and Catcher Vessel	2.0
	Skates	Catcher/Processor and Catcher Vessel	20.0
	Other species	Catcher/Processor and Catcher Vessel	20.0
Longline gear Rockfish Entry Level Fishery.	See Table 10 to this part.		
Opt-outvessels	See Table 10 to this part.		
Rockfish Cooperative Vessels not fishing under a CQ permit.	See Table 10 to this part.		

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H.R. 2553/P.L. 112–27
Airport and Airway Extension Act of 2011, Part IV (Aug. 5, 2011; 125 Stat. 270)

H.R. 2715/P.L. 112–28
To provide the Consumer Product Safety Commission with greater authority and discretion in enforcing the consumer product safety laws, and for other purposes. (Aug. 12, 2011; 125 Stat. 273)

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