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

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

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1735

RIN 0572–AC24

Expansion of 911 Access; Telecommunications Loan Program

AGENCY: Rural Utilities Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: The Rural Utilities Service (RUS) is amending its regulations to implement the Expansion of 911 as authorized by section 6107 of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill). This amendment will codify the Secretary's authority to make loans in five areas of eligibility to expand or improve 911 access and integrated emergency communications systems in rural areas for the Telecommunications Loan Program.

DATES: This rule is effective on September 12, 2011. Comments must be submitted on or before November 14, 2011.

ADDRESSES: Submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow instructions for submitting comments.
- *Postal Mail/Commercial Delivery:* Please send your comment addressed to Michele Brooks, Director, Program Development and Regulatory Analysis, USDA—Rural Utilities Service, 1400 Independence Avenue, STOP 1522, Room 5159, Washington, DC 20250–1522.

Other Information: Additional information about the Agency and its programs is available on the Internet at *http://www.rurdev.usda.gov/index.html.*

FOR FURTHER INFORMATION CONTACT: David Villano, Assistant Administrator, Telecommunications Program, USDA—Rural Utilities Service, 1400 Independence Avenue, SW., STOP 1590, Room 5151–S, Washington, DC 20250–1590. Telephone number: (202) 720–9554, Facsimile: (202) 720–0810.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance (CFDA) number assigned to this program is 10.851, Rural Telephone Loans and Loan Guarantees. The Catalog is available on the Internet at *http://www.cfda.gov.*

Executive Order 12372

This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require a consultation with State and local officials. See the final rule related notice entitled, ''Department Programs and Activities Excluded from Executive Order 12372'' (50 FR 47034).

Information Collection and Recordkeeping Requirements

The information collection and recordkeeping requirements contained in this rule are approved under OMB control number 0572–0079. This rule contains no additional information collection or recordkeeping requirements under OMB control number 0572–0079 that would require approval under the Paperwork Reduction Act of 1955 (44 U.S.C. chapter 35).

National Environmental Policy Act Certification

The Agency has determined that this rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (5 U.S.C. 601–612) (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the Agency certifies that the rule will not have an economically significant impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

In compliance with the RFA, the Agency has determined that this action, while mostly affecting small entities, will not have a significant economic impact on a substantial number of these small entities. The Agency made this determination based on the fact that this regulation only impacts those who choose to participate in the program. Small entity applicants will not be affected to a greater extent than large entity applicants.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. The Agency has determined that this rule meets the applicable standards provided in § 3 of the Executive Order. In addition, all state and local laws and regulations that are in conflict with this rule will be preempted, no retroactive effort will be given to this rule, and, in accordance with § 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(e)), administrative appeal procedures, if any, must be exhausted before an action against the Department or its agencies may be initiated.

Unfunded Mandates

This rule contains no Federal mandates (under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995) for State, local, and Tribal governments for the private sector. Thus, this rule is not subject to the requirements of §§ 202 and 205 of the Unfunded Mandates Reform Act of 1995.

Executive Order 13132, Federalism

The policies contained in this rule do not have any substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the states is not required.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Over the last year, the Agency has conducted extensive Tribal consultations related to the implementation of the Substantially Underserved Trust Area (SUTA) provisions of the 2008 Farm Bill. During those consultations all RUS programs were discussed. Expanded emergency communications capabilities were among the issues brought up in the consultations. A specific regulation on SUTA is being prepared. Tribal entities are fully eligible to apply for financing under this provision and nothing under this regulation would affect SUTA eligibility.

The policies contained in this rule do not impose substantial unreimbursed compliance costs on Indian Tribal governments or have Tribal implications that preempt Tribal law.

E-Government Act Compliance

The Agency is committed to the E-Government Act, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

Discussion of Interim Rule

This interim rule codifies section 6107 of the 2008 Farm Bill. Section 6107 amended the Rural Electrification Act of 1936 (7 U.S.C. 940e) to allow for the financing of facilities to expand emergency 911 access in rural areas. The statutory language is very prescriptive, defining eligible entities, financing purposes, and loan terms and security requirements. As such, the amendments to 7 CFR part 1735 simply incorporate those statutory requirements within the regulatory framework prescribing requirements for the telecommunications loan programs. Therefore, it is not necessary to issue a proposed rule since the codification represents a strict implementation of the statutory requirements.

Background

A. Introduction

The Agency improves the quality of life in rural America by providing investment capital for deployment of rural telecommunications infrastructure. Financial assistance is provided to rural utilities; municipalities; commercial corporations; limited liability companies; public utility districts; Indian Tribes; and cooperative, nonprofit, limited-dividend, or mutual associations. In order to achieve the goal of increasing economic opportunity in rural America, the Agency finances infrastructure that enables access to a seamless, nationwide telecommunications network. With access to the same advanced telecommunications networks as its urban counterparts, especially broadband networks designed to accommodate distance learning, telework, and telemedicine, rural America will eventually see improving educational opportunities, health care, economies, safety and security, and ultimately higher employment. The Agency shares the assessment of Congress, State and local officials, industry representatives, and rural residents that broadband service is a critical component to the future of rural America and modern emergency communications capabilities are critical to the safety and security of all Americans. The Agency is committed to ensuring that rural America will have access to affordable, reliable, telecommunications and broadband services and to provide a healthy, safe, and prosperous place to live and work.

B. Regulatory History

Following the September 11, 2001, attacks on the United States, significant Congressional attention was placed on weaknesses in the nation's emergency communications capabilities. The ability of rural communities, carriers and emergency responders to keep up with changing communications technologies was and continues to be a concern of emergency response professionals. Interoperability, which is the ability of emergency responders from various agencies and jurisdictions to communicate with each other, is also a pressing national need.

In 2002, the Congress gave the RUS statutory authority to ''to expand or improve 911 access and integrated emergency communications systems in rural areas'' in section 315 of the RE Act (6102 of the 2002 Farm Security and Rural Investment Act of 2002). No regulations were ever proposed to implement that section.

In 2008, the Congress re-authorized section 315 of the RE Act and added language to further define eligible loan purposes. It also clarified that projects could be funded from appropriations made to the RUS telecommunications program.

In 2011, the President launched a major initiative to use wireless 4G technology to create a nation-wide interoperable emergency communications network. The plan contemplates using dual-use 4G wireless technologies in rural areas to address public safety and private sector communications needs.

Rural areas face significant challenges in deploying emergency communications systems. The 911 Program Office housed within the National Transportation Safety Administration specifically noted that ''(r)ural and Tribal 911 centers face special challenges. They typically serve areas that are large geographically but less-densely populated than urban areas. Because it may take first responders longer to reach the scene of an emergency, call-takers in public safety answering points (PSAPs) serving rural areas may be required to stay on the phone longer with callers or provide more extensive emergency instruction to callers until help arrives. And in medical emergencies, hospitals are often farther away which results in extended transport times, making the ambulance unavailable for other calls in its response area in areas that may have very limited coverage. The responder resources are typically limited in rural areas which can be quickly overwhelmed in disasters or large-scale incidents. The program office went on to observe that ''supporting rural PSAPs is vitally important, particularly because it may take longer for help to arrive in rural areas, and the call-taker may make an even bigger difference in the outcome of an emergency situation.'' (see *http://www.911.gov/911-issues/challenges.html*)

The sixty-minute period immediately following a traumatic injury, like an injury resulting from a car crash is known as the ''golden hour.'' The risks of death or permanent injury increase dramatically if medical attention is not given within that first hour. In rural America, distance and sparse population work against the quick discovery and treatment of injuries resulting from an individual or mass emergency. In rural areas the ability to reach a person in distress can be the difference between life and death or recovery and disability.

Congress twice enacted section 315 to give the RUS flexible financial tools to help rural communities, service providers and governmental entities address their emergency communications needs. By giving clear loan authority to the agency, RUS would have the tools to: (a) Leverage public and private resources to speed the rural deployment of a dual-use public safety/commercial wireless network; (b) address homeland security communications needs along America's rural international borders; (c) finance enhanced 911 capabilities for carriers and communities to precisely locate a

rural wireless call to 911; and (d) to finance next-generation 911 upgrades, which would allow citizens to contact 911 via text message or send to emergency responders cell phone photos or short videos of a crime scene or accident location. The E911 location accuracy requirements pose unique challenges for rural wireless carriers. The new authority would give the Agency clear authority to finance wireless upgrades which relate to public safety and security, even if it does not finance the entire wireless communications systems.

Without this authority, RUS would be very limited in its ability to make financing available to address specific rural emergency communications needs. Without this authority, the RUS telecommunications statute would generally prohibit the Agency from financing municipal investments.

As a loan program which must meet the rigorous financial and engineering feasibility requirements, the Agency expects no impact on its subsidy rate.

RUS has conducted extensive Tribal consultations in 2010 and 2011 related to implementation of new authorities for substantially underserved trust areas. Through those consultations, the Agency had discussions with Tribal leaders on the entire portfolio of RUS programs. This authority could be useful in addressing some of the emergency communications needs raised by Tribal leaders in some of those discussions. Tribal areas are among the regions of the United States with the least connectivity to 911 and other emergency communications systems.

The regulation would simply codify the authority contained in section 315 of the RE Act.

C. Rule Changes

The amendment to 7 CFR Part 1735 implements section 315 of the Rural Electrification Act of 1936 (RE Act) as provided in section 6107 of the Food, Conservation, and Energy Act of 2008 by clarifying that the expansion of 911 access & integrated interoperable emergency communications systems are eligible purposes of the RE Act.

Section 6107 of the Food, Conservation, and Energy Act of 2008 added section 315 of RE Act to clearly authorize the RUS to make loans for the following purposes:

(1) 911 access;

(2) Integrated interoperable emergency communications, including multiuse networks that provide commercial or transportation information services in addition to emergency communications services;

(3) Homeland security communications;

(4) Transportation safety communications; or

(5) Location technologies used outside an urbanized area.

The provision also clarified that the Agency could consider State or local 911 fees to be security for a loan under this section and that loans may be made in certain circumstances to an emergency communication equipment provider to accomplish the purposes of this section where a State or municipality may be prohibited from incurring debt.

List of Subjects in 7 CFR Part 1735

Loan programs—communications, Reporting and recordkeeping requirements, Rural areas, Telephone.

For reasons set out in the preamble, Chapter XVII, Title 7 of the Code of Federal Regulation is amended as follows:

PART 1735—GENERAL POLICIES, TYPES OF LOANS, LOAN REQUIREMENTS—TELECOMMUNICATIONS PROGRAM

■ 1. The authority citation for part 1735 continues to read as follow:

Authority: 7 U.S.C. 901 *et seq.,* 1921 *et seq.,* 6941 *et seq.*

Subpart B—Loan Purposes and Basic Policies

■ 2. Amend § 1735.10 by revising paragraph (a) and adding paragraph (g) to read as follows:

§ 1735.10 General.

(a) Loans made or guaranteed by the Administrator of RUS will be made in conformance with the Rural Electrification Act of 1936 (RE Act), as amended (7 U.S.C. 901 *et seq.*), and 7 CFR chapter XVII. RUS provides borrowers with specialized and technical accounting, engineering, and other managerial assistance in the construction and operation of their facilities when necessary to aid in the development of rural telephone service and to protect loan security. The Rural Utilities Service (RUS) makes loans to:

(1) Furnish and improve telephone service in rural areas; and

(2) To finance facilities and equipment which expand, improve or provide:

(i) 911 access;

(ii) Integrated interoperable emergency communications, including multiuse networks that provide commercial or transportation information services in addition to emergency communications services;

(iii) Homeland security communications;

(iv) Transportation safety communications; or

(v) Location technologies used outside an urbanized area.

* * * * *

(g) For the purpose of paragraph (a)(2) of this section, rural areas means any area, as confirmed by the latest decennial census of the Bureau of the Census, which is not located within:

(1) A city, town, or incorporated area that has a population of greater than 20,000 inhabitants; or

(2) An urbanized area contiguous and adjacent to a city or town that has a population of greater than 50,000 inhabitants, for the purpose of the definition of rural areas in this section, an urbanized area means a densely populated territory as defined in the latest decennial census of the U.S. Census Bureau.

■ 3. Amend § 1735.12 by adding paragraph (g) to read as follows:

§ 1735.12 Nonduplication.

* * * * *

(g) RUS shall consider the following criteria for loans made for the purposes described in § 1735.10(a)(2):

(1) In making a preliminary assessment and a credit decision, the RUS will take into consideration the extent to which the emergency communications capability or emergency communications benefits already exist in the affected area and the need expressed by the proposed user of the emergency communications technology.

(2) The RUS will not consider an application to finance an upgrade of 911 capabilities or other emergency communications capability by different providers serving the same geographic area to be automatically duplicative. For example, RUS will generally not consider an application from two competing wireless carriers to upgrade their E911 capabilities in overlapping geographic territories to be duplicative, however the carrier's competitive situation will be a relevant consideration in evaluating the ability of a service provider to repay their loan.

(3) Duplication considerations will be reviewed on the basis of the emergency communications benefit; the Agency encourages applicants to fully embrace interoperability to maximize the impact of RUS financed investments. In the case of dual or multi-use technologies, the extent to which the proposed non-emergency communications benefits are available from other providers within the proposed service area will be

considered in determining loan feasibility.

■ 4. Amend § 1735.14 by adding paragraph (a)(4) to read as follows:

§ 1735.14 Borrower eligibility.

(a) * * *

(4) For purposes of § 1735.10(a)(2):

(i) Any entity eligible to borrow from the RUS;

(ii) State or local governments;

(iii) Indian Tribes (as defined in § 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b); or

(iv) An emergency communications equipment provider that in the sole discretion of RUS offers adequate security for a loan where the State or local government that has jurisdiction over the proposed project is prohibited by law from acquiring debt.

* * * * *

■ 5. Amend § 1735.22 by redesignating paragraphs (c) through (i) as paragraphs (d) through (j), and adding new paragraph (c) to read as follows:

§ 1735.22 Loan security.

* * * * *

(c) The RUS will consider Government-imposed fees related to emergency communications (including State or local 911 fees) which are pledged to the repayment of a loan as security.

* * * * *

Dated: August 26, 2011.

Jessica Zufolo,

Acting Administrator, Rural Utilities Service.

[FR Doc. 2011–23152 Filed 9–9–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 48

[Docket ID OCC–2011–0021]

RIN 1557–AD42

Retail Foreign Exchange Transactions

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

ACTION: Interim final rule with request for comment.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is adopting an interim final rule authorizing Federal savings associations and their operating subsidiaries to engage in off-exchange transactions in foreign currency with retail customers, subject to the requirements enumerated in the OCC's retail forex rule. The rule implements the provision of the Dodd–Frank Wall Street Reform and Consumer Protection Act requiring that these transactions be conducted by national banks and Federal savings associations (and their respective operating subsidiaries) only pursuant to an authorizing regulation issued by the OCC. It is substantively the same as the rule the OCC has adopted with respect to national banks and their operating subsidiaries.

DATES: *Effective Date:* September 12, 2011.

Comment Date: Comments must be received by November 14, 2011.

FOR FURTHER INFORMATION CONTACT: Tena Alexander, Senior Counsel, or Roman Goldstein, Attorney, Securities and Corporate Practices Division, (202) 874–5120.

SUPPLEMENTARY INFORMATION:

I. Background

On July 21, 2010, President Obama signed into law the Dodd–Frank Wall Street Reform and Consumer Protection Act (Dodd–Frank Act).[1] As amended by section 742(c) of the Dodd–Frank Act, the Commodity Exchange Act (CEA) provides that a United States financial institution[2] for which there is a Federal regulatory agency[3] shall not enter into, or offer to enter into, a transaction described in section 2(c)(2)(B)(i)(I) of the CEA with a retail customer[4] except pursuant to a rule or regulation of a Federal regulatory agency allowing the transaction under such terms and conditions as the Federal regulatory agency shall prescribe[5] (a retail forex rule). A transaction described in section 2(c)(2)(B)(i)(I) includes ''an agreement, contract, or transaction in foreign currency that * * * is a contract of sale of a commodity for future delivery (or an option on such a contract) or an option (other than an option executed or traded on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a)).''[6]

A Federal regulatory agency's retail forex rule must treat similarly all such futures and options and all agreements, contracts, or transactions that are functionally or economically similar to such futures and options.[7] Retail forex rules must prescribe appropriate requirements with respect to disclosure, recordkeeping, capital and margin, reporting, business conduct, and documentation requirements and may include such other standards or requirements as the Federal regulatory agency determines to be necessary.[8]

The Dodd–Frank Act amendment to the CEA took effect on July 16, 2011.[9] Prior to July 21, 2011, the Office of Thrift Supervision (OTS) was the appropriate Federal regulatory agency for Federal savings associations. The OTS did not issue a retail forex rule for Federal savings associations, and, accordingly, Federal savings associations were prohibited from offering or entering into retail forex futures and options as of July 16, 2011.[10]

On July 21, 2011, the OCC became the appropriate Federal banking agency for Federal savings associations.[11] On that date, the OCC also obtained authority to issue regulations, including regulations authorizing retail forex transactions, with respect to Federal savings associations. The OCC is issuing this interim final rule with request for public comment to expand the scope of its retail forex rule to cover Federal savings associations. Federal savings associations would thus be allowed to engage in retail forex transactions on the same terms as national banks.

II. Overview of the Interim Final Rule and Related Actions

On September 10, 2010, the Commodity Futures Trading Commission (CFTC) issued a retail forex rule for persons subject to its jurisdiction.[12] On April 22, 2011, the

[1] Public Law 111–203, 124 Stat. 1376.

[2] The Commodity Exchange Act (CEA) defines ''financial institution'' as including ''a depository institution (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)).'' 7 U.S.C. 1a(21)(E). Federal savings associations are depository institutions. *See* 12 U.S.C. 1813(c)(1).

[3] For purposes of the retail forex rules, ''Federal regulatory agency'' includes ''an appropriate Federal banking agency.'' 7 U.S.C. 2(c)(2)(E)(i)(III).

[4] A retail customer is a person that is not an eligible contract participant under the CEA. Eligible contract participants are generally sophisticated investors; they include individuals with discretionary investments exceeding $10 million and businesses with assets exceeding $10 million.

[5] 7 U.S.C. 2(c)(2)(E)(ii)(I).

[6] 7 U.S.C. 2(c)(2)(B)(i)(II).

[7] 7 U.S.C. 2(c)(2)(E)(iii)(II).

[8] 7 U.S.C. 2(c)(2)(E)(iii)(I).

[9] *See* 12 U.S.C. 5411–12.

[10] The CEA's prohibition on engaging in certain transactions does not, by its terms, extend to other transactions, nor does it prohibit a Federal savings association from keeping on its books a retail forex transaction entered into prior to July 16, 2011. *See* 7 U.S.C. 2(c)(e)(E)(ii)(I). For example, the CEA did not prohibit transactions described in 7 U.S.C. 2(c)(2)(C)(i) (leveraged, margined, or bank-financed forex transactions with retail customers).

[11] 12 U.S.C. 5412.

[12] *Regulation of Off-Exchange Retail Foreign Exchange Transactions and Intermediaries,* 75 FR 55409 (Sept. 10, 2010). The CFTC proposed these rules prior to the enactment of the Dodd–Frank Act. *Regulation of Off-Exchange Retail Foreign*

OCC proposed a retail forex rule for national banks modeled on the CFTC's retail forex rule.[13] The OCC decided to model its retail forex rule on the CFTC's rule to promote regulatory comparability and because the CFTC developed its retail forex rule with the benefit of over 9,100 comments from a range of commenters, including individuals who trade forex, intermediaries, CFTC registrants currently serving as counterparties in retail forex transactions, trade associations or coalitions of industry participants, one committee of a county lawyers' association, a registered futures association, and numerous law firms representing institutional clients. The OCC proposed to authorize national banks to engage in retail forex transactions and subject those transactions to requirements relating to disclosure, record keeping, capital and margin, reporting, business conduct, and documentation.[14] After reviewing all comments received within the 30-day comment period, the OCC issued a final retail forex rule. The final rule regulating national bank retail forex transactions was published on July 14, 2011 and became effective on July 15, 2011.[15]

This interim final rule will extend the application of the OCC's existing retail forex rule to Federal savings associations. Specifically, the interim final rule revises part 48 to apply it to Federal savings associations and their operating subsidiaries on the same terms as national banks. This interim final rule makes technical changes to accommodate the application of the retail forex rule to Federal savings associations.

First, this interim final rule revises the disclosure statement required by §§ 48.6 and 48.16. The revisions are necessary because the disclosure statements were written only with national banks in mind; references to ''your national bank'' in the disclosure statement could be confusing to a customer of a Federal savings association. The revised disclosure statement requires the entity offering the retail forex transaction to insert its name at various places in the disclosure statement. A national bank, Federal savings association, or Federal branch or agency of a foreign bank may insert a shortened or trade name if doing so would not confuse retail forex customers or make the disclosure statement inaccurate. For example, a national bank offering a retail forex transaction may use its full legal name for the first insert, create a short name in parentheses following its full legal name, and use that short name in the remainder of the disclosure statement.

Second, this interim final rule amends § 48.4(c) and (d). As currently written, § 48.4(c) provides that a national bank engaged in a retail forex business on July 15, 2011 may continue to do so for a certain period if it requests a supervisory non-objection by August 14, 2011. Additionally, § 48.4(d) provides that a national bank that is engaged in a retail forex business on July 15, 2011 that complies with § 48.4(c) will be deemed, during the period described in § 48.4(c), to be acting pursuant to a rule or regulation described in section 2(c)(2)(E)(ii)(I) of the CEA. To afford Federal savings associations the same opportunity to request supervisory non-objection, the interim final rule replaces references to July 15, 2011 with references to the date on which the retail forex rule becomes applicable to a national bank or Federal savings association.

As described in the Regulatory Analysis section of this preamble, this interim final rule takes effect upon publication in the **Federal Register**. A Federal savings association that was offering or entering into retail forex transactions prior to the effective date should seek a supervisory non-objection from the OCC to continue its retail forex business. Federal savings associations that seek that supervisory non-objection within 30 days of the effective date of this interim final rule will be deemed to be operating under a rule or regulation described in section 2(c)(2)(E)(ii)(I) of the CEA for the six-month period beginning on that date.

III. Request for Comment on the Interim Final Rule

The OCC's notice of proposed rulemaking[16] and final rule[17] pertaining to national banks' retail forex transactions contained detailed descriptions of the substantive provisions of the retail forex rule and the bases for any changes between the proposed and final rules.

This interim final rule will only modify the scope of the retail forex final rule for national banks to extend coverage to Federal savings associations. The OCC seeks comment on all aspects of the interim final rule. Commenters are encouraged to review the OCC's previous notice of proposed rulemaking and final rule publications cited above, particularly the discussion of issues and changes made in the final rule, to inform their comments on this interim final rule and its impact on Federal savings associations. The OCC will review the comments received and may revise this rule before adopting it in final form.

IV. Regulatory Analysis

A. Administrative Procedure Act and Effective Date

Under 5 U.S.C. 553(b)(1)(B) of the Administrative Procedure Act (APA), an agency may, for good cause, find (and incorporate the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest. As discussed in the preamble, the Dodd-Frank Act established a prohibition on retail forex transactions by Federal savings associations until such time as the OCC issues a regulation concerning the conduct of those transactions. This interim final rule regulates the conduct of retail forex transactions and thus removes a restriction on conducting those transactions. For this reason, the OCC finds good cause to conclude that the notice procedures prescribed by the APA are unnecessary.

This interim final rule takes effect upon publication in the **Federal Register**. The APA, 5 U.S.C. 553(d)(1), requires publication of a substantive rule not less than 30 days before its effective date, except in cases in which the rule grants or recognizes an exemption or relieves a restriction. Section 2(c)(2)(E)(ii) of the CEA prohibits Federal savings associations from engaging in retail forex transactions absent an authorizing rule issued by the OCC. This interim final rule would relieve that restriction and allow Federal savings associations to engage in retail forex transactions without undue delay. Furthermore, under 5 U.S.C. 553(d)(3), an agency may find good cause to publish a rule less than 30 days before its effective date. The OCC finds such good cause, as the 30-day delayed effective date is unnecessary under the provisions of the final rule. In 12 CFR 48.4(c), the OCC allows Federal savings associations a 30-day grace period to inform the OCC of its retail forex activity, along with up to a six-month window to comply with the provisions of the retail forex rule.

Exchange Transactions and Intermediaries, 75 FR 3281 (Jan. 20, 2010).

[13] *Retail Foreign Exchange Transactions,* 76 FR 22633 (Apr. 22, 2011).

[14] *Id.*

[15] *Retail Foreign Exchange Transactions,* 76 FR 41375 (July 14, 2011).

[16] *Retail Foreign Exchange Transactions,* 76 FR 22633 (Apr. 22, 2011).

[17] *Retail Foreign Exchange Transactions,* 76 FR 41375 (July 14, 2011).

B. Effective Date Under the CDRI Act

The Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI Act), 12 U.S.C. 4801 *et seq.,* provides that new regulations that impose additional reporting or disclosure requirements on insured depository institutions do not take effect until the first day of a calendar quarter after the regulation is published, unless the agency determines there is good cause for the regulation to become effective at an earlier date. The OCC finds good cause that this interim final rule should become effective upon publication in the **Federal Register**, as it would be in the public interest to require the disclosure and consumer protection provisions in this rule to take effect at this earlier date. If the rule did not become effective until October 1, 2011, then Federal savings associations would not be able to provide retail forex transactions to customers to meet their financial needs.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* generally requires an agency that is issuing a proposed rule to prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of the proposed rule on small entities. The RFA does not apply to a rulemaking where a general notice of proposed rulemaking is not required. *See* 5 U.S.C. 603 and 604. The OCC has determined, for good cause, that it is unnecessary to publish a notice of proposed rulemaking for this interim final rule. Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply.

D. Paperwork Reduction Act

The information collection requirements in 12 CFR part 48 are currently approved under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501–3520, and have been assigned OMB Control No. 1557–0250. The amendments adopted today do not introduce any new collections of information into the rules, nor do they amend the rules in a way that substantively modifies the collections of information that OMB has approved. Therefore, no PRA submission to OMB is required, with the exception of a non-substantive submission to OMB to adjust the number of respondents to reflect the number of affected savings associations.

E. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, requires that an agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. The Unfunded Mandates Reform Act only applies when an agency issues a general notice of proposed rulemaking. Since this rule is published as an interim final rule, it is not subject to section 202 of the Unfunded Mandates Reform Act.

List of Subjects in 12 CFR Part 48

Banks, Consumer protection, Definitions, Federal branches and agencies, Foreign currencies, Federal savings associations, Foreign exchange, National banks, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the OCC amends 12 CFR part 48 as follows:

PART 48—RETAIL FOREIGN EXCHANGE TRANSACTIONS

■ 1. The authority citation for part 48 is revised to read as follows:

Authority: 7 U.S.C. 27 *et seq.;* 12 U.S.C. 1 *et seq.,* 24, 93a, 161, 1461 *et seq.,* 1462a, 1463, 1464, 1813(q), 1818, 1831o, 3101 *et seq.,* 3102, 3106a, 3108, and 5412.

■ 2. Revise § 48.1(a) to read as follows:

§ 48.1 Authority, purpose, and scope.

(a) *Authority.* (1) *National banks.* A national bank may offer or enter into retail foreign exchange transactions. A national bank offering or entering into retail foreign exchange transactions must comply with the requirements of this part.

(2) *Federal savings associations.* A Federal savings association may offer or enter into retail foreign exchange transactions. A Federal savings association offering or entering into retail foreign exchange transacions must comply with the requirements of this part as if each reference to a national bank were a reference to a Federal savings association.

* * * * *

■ 3. In § 48.2, add the following definition in alphabetical order to read as follows:

§ 48.2 Definitions.

* * * * *

Federal savings association means a Federal savings association or Federal savings bank chartered under section 5 of the Home Owners' Loan Act (12 U.S.C. 1464) or an operating subsidiary thereof.

* * * * *

§ 48.4 [Amended]

■ 4. Amend § 48.4 as follows:

■ a. In paragraph (c), after each reference to ''July 15, 2011,'' add ''or September 12, 2011 for Federal savings associations,''.

■ b. In paragraph (d), after ''July 15, 2011,'' add ''or September 12, 2011 for Federal savings associations,''.

■ 5. In § 48.6, revise paragraph (d) to read as follows:

§ 48.6 Disclosure.

* * * * *

(d) *Content of risk disclosure statement.* The language set forth in the written disclosure statement required by paragraph (a) of this section is as follows:

Risk Disclosure Statement

Retail forex transactions involve the leveraged trading of contracts denominated in foreign currency with [name of entity] as your counterparty. Because of the leverage and the other risks disclosed here, you can rapidly lose all of the funds or property you pledge to [name of entity] as margin for retail forex trading. You may lose more than you pledge as margin.

If your margin falls below the required amount, and you fail to provide the required additional margin, [name of entity] is required to liquidate your retail forex transactions. [Name of entity] cannot apply your retail forex losses to any of your assets or liabilities at [name of entity] other than funds or property that you have pledged as margin for retail forex transactions. However, if you lose more money than you have pledged as margin, [name of entity] may seek to recover that deficiency in an appropriate forum, such as a court of law.

You should be aware of and carefully consider the following points before determining whether retail forex trading is appropriate for you.

(1) Trading is not on a regulated market or exchange—[name of entity] is your trading counterparty and has conflicting interests. The retail forex transaction you are entering into is not conducted on an interbank market nor is it conducted on a futures exchange subject to regulation as a designated contract market by the Commodity Futures Trading Commission. The foreign currency trades you transact are trades with [name of entity] as the counterparty. When you sell, [name of entity] is the buyer. When you buy, [name of entity] is the seller. As a result, when you lose money trading, [name of entity] is making money on such trades, in addition to any fees, commissions, or spreads [name of entity] may charge.

(2) An electronic trading platform for retail foreign currency transactions is not an exchange. It is an electronic connection for accessing [name of entity]. The terms of availability of such a platform are governed only by your contract with [name of entity]. Any trading platform that you may use to enter into off-exchange foreign currency transactions is only connected to [name of entity]. You are accessing that trading

platform only to transact with [name of entity]. You are not trading with any other entities or customers of [name of entity] by accessing such platform. The availability and operation of any such platform, including the consequences of the unavailability of the trading platform for any reason, is governed only by the terms of your account agreement with [name of entity].

(3) You may be able to offset or liquidate any trading positions only through [name of national bank] because the transactions are not made on an exchange or regulated contract market, and [name of entity] may set its own prices. Your ability to close your transactions or offset positions is limited to what [name of entity] will offer to you, as there is no other market for these transactions. [Name of entity] may offer any prices it wishes, including prices derived from outside sources or not in its discretion. [Name of entity] may establish its prices by offering spreads from third-party prices, but it is under no obligation to do so or to continue to do so. [Name of entity] may offer different prices to different customers at any point in time on its own terms. The terms of your account agreement alone govern the obligations [name of entity] has to you to offer prices and offer offset or liquidating transactions in your account and make any payments to you. The prices offered by [name of entity] may or may not reflect prices available elsewhere at any exchange, interbank, or other market for foreign currency.

(4) Paid solicitors may have undisclosed conflicts. [Name of entity] may compensate introducing brokers for introducing your account in ways that are not disclosed to you. Such paid solicitors are not required to have, and may not have, any special expertise in trading and may have conflicts of interest based on the method by which they are compensated. You should thoroughly investigate the manner in which all such solicitors are compensated and be very cautious in granting any person or entity authority to trade on your behalf. You should always consider obtaining dated written confirmation of any information you are relying on from [name of entity] in making any trading or account decisions.

(5) Retail forex transactions are not insured by the Federal Deposit Insurance Corporation.

(6) Retail forex transactions are not a deposit in, or guaranteed by, [name of entity].

(7) Retail forex transactions are subject to investment risks, including possible loss of all amounts invested.

Finally, you should thoroughly investigate any statements by [name of entity] that minimize the importance of, or contradict, any of the terms of this risk disclosure. These statements may indicate sales fraud.

This brief statement cannot, of course, disclose all the risks and other aspects of trading off-exchange foreign currency with [name of entity].

I hereby acknowledge that I have received and understood this risk disclosure statement.

_____

Date

_____

Signature of Customer

* * * * *

■ 6. In § 48.16, revise paragraph (a)(5) to read as follows:

§ 48.16 Customer dispute resolution.

(a) * * *

(5) The agreement must include the following language printed in large boldface type:

Two forums exist for the resolution of disputes related to retail forex transactions: civil court litigation and arbitration conducted by a private organization. The opportunity to settle disputes by arbitration may in some cases provide benefits to customers, including the ability to obtain an expeditious and final resolution of disputes without incurring substantial cost. Each customer must individually examine the relative merits of arbitration and consent to this arbitration agreement must be voluntary.

By signing this agreement, you: (1) May be waving your right to sue in a court of law; and (2) are agreeing to be bound by arbitration of any claims or counterclaims that you or [name of entity] may submit to arbitration under this agreement. In the event a dispute arises, you will be notified if [name of entity] intends to submit the dispute to arbitration.

You need not sign this agreement to open or maintain a retail forex account with [name of entity].

* * * * *

Dated: September 1, 2011.

John Walsh,

Acting Comptroller of the Currency.

[FR Doc. 2011–23033 Filed 9–9–11; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 33

[Docket No. NE133; Special Condition No. 33–010–SC]

Special Conditions: Pratt and Whitney Canada Model PT6C–67E Turboshaft Engine

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for Pratt and Whitney Canada (PWC) model PT6C–67E engines. The engine model will have a novel or unusual design feature which is a 30-Minute All Engines Operating (AEO) power rating. This rating is primarily intended for high power hovering operations during search and rescue missions. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the added safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is October 12, 2011.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this rule, contact Marc Bouthillier, ANE–111, Engine and Propeller Directorate, Aircraft Certification Service, 12 New England Executive Park, Burlington, Massachusetts 01803–5299; telephone (781) 238–7120; facsimile (781) 238–7199; e-mail *marc.bouthillier@faa.gov.* For legal questions concerning this rule, contact Vincent Bennett, ANE–7 Engine and Propeller Directorate, Aircraft Certification Service, 12 New England Executive Park, Burlington, Massachusetts 01803–5299; telephone (781) 238–7044; facsimile (781) 238–7055; e-mail *vincent.bennett@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On July 10, 2008, PWC applied for type certification for the model PT6C–67E turboshaft engine. The PT6C–67E engine is a derivative of the PT6C–67C engine which has been type certificated by the FAA. This engine incorporates a four-stage axial compressor and a centrifugal compressor driven by a single stage high pressure turbine (HPT) and a two-stage power turbine (PT) driving a helicopter rotor system via a direct drive to the engine output shaft. The control system includes a dual channel full authority digital electronic control.

The engine will incorporate a novel or unusual design feature which is a 30-minute AEO power rating. This rating was requested by the applicant to support rotorcraft search and rescue missions that require extensive hover operations at high power. The use of 30-minute AEO power is limited to a cumulative total of 50 minutes for any given flight. However, the number of times the rating can be accessed on any given flight is not limited, as long as 50 minutes total time per flight is not exceeded.

The applicable airworthiness standards do not contain adequate or appropriate airworthiness standards to address this design feature. Therefore a special condition is necessary to apply additional requirements for rating definition, instructions for continued airworthiness (ICA), and endurance

testing. The ICA requirement is intended to address the unknown nature of actual rating usage and associated engine deterioration. The applicant is expected to make an assessment of the expected usage and publish ICA's and Airworthiness Limitations section limits in accordance with those assumptions, such that engine deterioration is not excessive.

The endurance test requirement of 25 hours operation at 30 minutes AEO is similar to several special conditions issued over the past 20 years. Because the PT6C–67E model has a Continuous One-Engine-Inoperative (0EI) rating and limits equal or higher than the 30-minute AEO rating, the test time performed at the Continuous OEI rating may be credited toward the 25-hour requirement. However, test time spent at other rating elements of the test, such as takeoff or other OEI ratings (that may be equal to or higher values), may not be counted toward the 25 hours of required running.

These special conditions contain the additional airworthiness standards necessary to establish a level of safety equivalent to the level that would result from compliance with the applicable standards of airworthiness in effect on the date of application.

Type Certification Basis

Under the provisions of 14 CFR 21.17 and 21.101(a), PWC must show that the model PT6C–67E turboshaft engine meets the provisions of the applicable regulations in effect on the date of application, unless otherwise specified by the FAA. The current certification basis for this model series is 14 CFR part 33 Amendment 20, however PWC proposes to demonstrate compliance to later amendments of part 33 for this model. In accordance with 14 CFR 21.101(b), the FAA concurs with the PWC proposal. Therefore, the certification basis for the PT6C–67E model turboshaft engine will be part 33, effective February 1, 1965, as amended by Amendments 33–1 through 33–30.

If the Administrator finds that the applicable airworthiness regulations in part 33, as amended, do not contain adequate or appropriate safety standards for the PWC model PT6C–67E turboshaft engine, because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

The FAA issues special conditions, as defined by 14 CFR 11.19, in accordance with 14 CFR 11.38, which become part of the type certification basis in accordance with § 21.17(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include another related model that incorporates the same or similar novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same or similar novel or unusual design feature, the special conditions would also apply to the other model.

Novel or Unusual Design Features

The PWC model PT6C–67E turbo shaft engine will incorporate a novel or unusual design feature which is a 30-Minute All Engine Operating (AEO) power rating, for use up to 30 minutes at any time between take-off and landing. This design feature is considered to be novel and unusual relative to the part 33 airworthiness standards.

Discussion of Comments

Notice of proposed special conditions, Notice 33–11–02–SC for the PT6C–67E engine model was published on July 7, 2011 (76 FR 39795). No comments were received.

We added a statement to paragraph 2(c)(1) of the special conditions that clarifies the elements of the referenced test that cannot be taken credit for. The text change is for clarification only and does not change the requirement as proposed.

Paragraph 2(c)(1) previously read:

(1) Each § 33.87(d) continuous OEI rating test period of 30 minutes or longer, run at power and limits equal to or higher then the 30 minute AEO rating, may be credited toward this requirement.

Paragraph 2(c)(1) now reads:

(1) Each § 33.87(d) continuous OEI rating test period of 30 minutes or longer, run at power and limits equal to or higher then the 30 minute AEO rating, may be credited toward this requirement. Note that the test time required for the takeoff or other OEI ratings may not be counted toward the 25 hours of operation required at the 30-minute AEO rating.

Applicability

These special conditions are applicable to PWC model PT6C–67E turbo shaft engines. If Pratt and Whitney Canada applies later for a change to the type certificate to include another closely related model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well, and would be made part of the certification basis for that model.

Conclusion

We reviewed the available data and have determined that air safety and the public interest require adopting these special conditions as proposed. This action affects only certain novel or unusual design features on the Pratt and Whitney Canada Model PT6C–67E Turboshaft Engine. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of this feature on the engine product.

List of Subjects in 14 CFR Part 33

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for these special conditions continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

The Special Conditions

Accordingly, the FAA issues the following special conditions as part of the type certification basis for PWC model PT6C–67E turbo shaft engines.

1. Part 1 Definitions

Unless otherwise approved by the Administrator and documented in the appropriate manuals and certification documents, the following definition applies to these special conditions: ''Rated 30 Minute AEO Power,'' means the approved shaft horsepower developed under static conditions at the specified altitude and temperature, and within the operating limitations established under part 33, and limited in use to periods not exceeding 30 minutes, and limited to a cumulative total of 50 minutes use for any given flight.

2. Part 33 Requirements

(a) Sections 33.1 Applicability and 33.3 General: As applicable, all documentation, testing and analysis required to comply with the part 33 certification basis must account for the 30 minute AEO rating, limits and usage.

(b) Section 33.4, Instructions for Continued Airworthiness (ICA). In addition to the requirements of § 33.4, the ICA must:

(1) Include instructions to ensure that in-service engine deterioration due to rated 30 minute AEO power usage will not be excessive, meaning that all other approved ratings, including One Engine Inoperative (OEI), are available (within associated limits and assumed usage) for each flight; and that deterioration will not exceed that assumed for declaring a Time Between Overhaul period.

(i) The applicant must validate the adequacy of the maintenance actions required under paragraph (b)(1) above.

(2) Include in the Airworthiness Limitations section, any mandatory inspections and serviceability limits related to the use of the 30-minute AEO rating.

(c) Section 33.87, Endurance Test. In addition to the requirements of §§ 33.87(a) and 33.87(d), the overall test run must include a minimum of 25 hours of operation at 30 minute AEO power and limits, divided into periods of 30 minutes AEO power with alternate periods at maximum continuous power or less.

(1) Each § 33.87(d) continuous OEI rating test period of 30 minutes or longer, run at power and limits equal to or higher then the 30 minute AEO rating, may be credited toward this requirement. Note that the test time required for the takeoff or other OEI ratings may not be counted toward the 25 hours of operation required at the 30-minute AEO rating.

Issued in Burlington, Massachusetts, on August 31, 2011.

Peter A. White,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2011–23189 Filed 9–9–11; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–1325; Airspace Docket No. 10–ASO–40]

Amendment of Class E Airspace; Orangeburg, SC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects the geographic coordinates and state abbreviation of a final rule published in the **Federal Register** of July 25, 2011, that amends Class E airspace at Orangeburg Municipal Airport, Orangeburg, SC.

DATES: Effective Date 0901 UTC, October 20, 2011.

FOR FURTHER INFORMATION CONTACT: Richard Horrocks, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5588.

SUPPLEMENTARY INFORMATION:

History

Federal Register Docket No. FAA–2010–1325, Airspace Docket No. 10–ASO–40, published in the **Federal Register** of July 25, 2011 (76 FR 44257), amends Class E airspace at Orangeburg Municipal Airport, Orangeburg, SC. A typographical error was made in the state abbreviation and geographic coordinates of the airport listed in the airspace description. This action corrects that error.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9U, dated August 18, 2010 and effective September 15, 2010, which is incorporated by reference in 14 CFR part 71.1.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, in FR Doc. 2011–18173 published on July 25, 2011 (76 FR 44257) on page 44257, column 3, line 26, correct the airspace descriptor from ''ASO GA E5 Orangeburg, SC [Amended]'' to ''ASO SC E5 Orangeburg, SC [Amended]'', and on page 44257, column 3, line 28, in the airspace description under Orangeburg Municipal Airport, SC, remove ''lat. 33°27′39″ N., long. 80°51′32″ W.'' and insert ''lat. 33°27′25″ N., long. 80°51′34″ W.''

Issued in College Park, Georgia, on August 19, 2011.

Mark D. Ward,

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

[FR Doc. 2011–23188 Filed 9–9–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 740, 742 and 774

[Docket No. 110222155–1110–01]

RIN 0694–AF14

Implementation of a Decision Adopted Under the Australia Group (AG) Intersessional Silent Approval Procedures in 2010 and Related Editorial Amendments

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Industry and Security (BIS) publishes this final rule to amend the Export Administration Regulations (EAR) to implement a decision based on a proposal that was discussed at the 2010 Australia Group (AG) Plenary and adopted under the AG intersessional silent approval procedures in November 2010. Specifically, this rule amends the Commerce Control List (CCL) entry in the EAR that controls human and zoonotic pathogens and ''toxins,'' consistent with the intersessional changes to the AG's ''List of Biological Agents for Export Control.'' First, this rule clarifies the scope of the AG-related controls in the EAR that apply to ''South American haemorrhagic fever (Sabia, Flexal, Guanarito)'' and ''Pulmonary and renal syndrome-haemorrhagic fever viruses (Seoul, Dobrava, Puumala, Sin Nombre)'' by revising the list of viruses in this CCL entry to remove these two fevers and replace them with ten viral causative agents for the fevers. These changes are intended to more clearly identify the causative agents that are of concern for purposes of the controls maintained by the AG. Second, this rule alphabetizes and renumbers the list of viruses in this CCL entry, consistent with the 2010 intersessional changes to the AG control list. Finally, this rule makes an editorial change to the CCL entry that controls human and zoonotic pathogens and ''toxins.'' To assist exporters to more easily identify the bacteria and ''toxins'' that are controlled under this CCL entry, this rule alphabetizes and renumbers the lists of bacteria and ''toxins'' in the entry.

DATES: This rule is effective September 12, 2011.

ADDRESSES: Send comments regarding this collection of information, including suggestions for reducing the burden, to Jasmeet Seehra, Office of Management and Budget (OMB), by e-mail to *Jasmeet_K._Seehra@omb.eop.gov,* or by fax to (202) 395–7285; and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, 14th Street & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Elizabeth Sangine, Director, Chemical and Biological Controls Division, Office of Nonproliferation and Treaty Compliance, Bureau of Industry and Security, Telephone: (202) 482–3343.

SUPPLEMENTARY INFORMATION:

Background

The Bureau of Industry and Security (BIS) is amending the Export Administration Regulations (EAR) to implement a decision that was adopted under the Australia Group (AG) intersessional silent approval procedures in November 2010. The AG is a multilateral forum consisting of 40 participating countries that maintain

export controls on a list of chemicals, biological agents, and related equipment and technology that could be used in a chemical or biological weapons program. The AG periodically reviews items on its control list to enhance the effectiveness of participating governments' national controls and to achieve greater harmonization among these controls.

The November 2010 intersessional decision revised the AG ''List of Biological Agents for Export Control'' to clarify the scope of the AG controls that apply to certain viruses connected with the phenotypes or medical conditions known as ''South American haemorrhagic fever'' and ''Pulmonary and renal syndrome-haemorrhagic fever viruses.'' The purpose of these changes was to address a concern by the AG that the listings for ''South American haemorrhagic fever (Sabia, Flexal, Guanarito)'' and ''Pulmonary and renal syndrome-haemorrhagic fever viruses (Seoul, Dobrova, Puumala, Sin Nombre)'' could be misinterpreted (*e.g.,* by assuming that the causative agents identified in the parentheses represented an exhaustive listing of such viruses). In addition, both of these AG listings referred to phenotypes or medical conditions known to be caused by several distinct species of viruses, some (but not all) of which were identified in parentheses for each listing.

To address this concern, the November 2010 AG intersessional decision removed ''South American haemorrhagic fever'' and ''Pulmonary and renal syndrome-haemorrhagic fever viruses'' from the List of Biological Agents and replaced them with ten viral causative agents for the fevers. Five of these causative agents (*i.e.,* ''Dobrava-Belgrade virus,'' ''Guanarito virus,'' ''Sabia virus,'' ''Seoul virus,'' and ''Sin nombre virus'') were previously identified in parentheses under the listings for the two fevers, while the other five causative agents (*i.e.,* ''Andes virus,'' ''Chapare virus,'' ''Choclo virus,'' ''Laguna Negra virus,'' and ''Lujo virus'') were not previously identified on the AG List. Two other causative agents (*i.e.,* ''Flexal virus'' and ''Puumala virus'') that were previously identified in parentheses under the listings for the two fevers were removed from the AG List. This rule amends Export Control Classification Number (ECCN) 1C351 on the Commerce Control List (CCL) (Supplement No. 1 to part 774 of the EAR) by revising the list of viruses contained in 1C351.a to reflect these changes to the AG List of Biological Agents.

Consistent with the changes to ECCN 1C351 described above, this rule alphabetizes and renumbers the list of viruses in ECCN 1C351.a to conform with the format in the AG List of Biological Agents. In addition, for the convenience of exporters attempting to determine the control status of certain pathogens and toxins, this rule alphabetizes and renumbers the lists of bacteria and toxins contained in ECCN 1C351.c and .d, respectively. Consistent with this reordering, this rule revises references to certain agents identified in the ''CW Controls'' paragraph of this ECCN, in the ''License Requirements Notes'' under the License Requirements section of this ECCN, and/or in the ''Related Controls'' paragraph under the List of Items Controlled section of this ECCN.

Although this rule removes ''Flexal virus'' from ECCN 1C351, consistent with the AG intersessional changes to the AG List of Biological Agents as described above, this virus continues to be listed on the CCL. Specifically, this rule adds ''Flexal virus'' to ECCN 1C360 (Select agents not controlled under ECCN 1C351, 1C352, or 1C354), because the virus is included in the list of select agents and toxins maintained by the Centers for Disease Control and Prevention (CDC), U.S. Department of Health and Human Services, in 42 CFR 73.3(b).

This rule also amends ECCNs 1C351 and 1C352 by revising the ''Related Controls'' paragraph under the List of Items Controlled for each ECCN to correct the references to the regulations maintained by CDC and the Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture, that apply to certain select agents and toxins.

Finally, this rule amends Section 740.20 (License Exception STA), Section 742.18 (license requirements and policies related to the Chemical Weapons Convention), and the List of Items Controlled section in ECCN 1C991 (Vaccines, immunotoxins, medical products, and diagnostic and food testing kits) to update the references to certain items controlled under ECCN 1C351 that were alphabetized and renumbered, as described above. Section 740.20 also is amended to include in paragraph (b)(2)(vi) certain toxins controlled by ECCN 1C351.d that were inadvertently omitted by the License Exception STA rule that BIS published on June 16, 2011 (76 FR 35276). The toxins identified in Section 740.20(b)(2)(vi) may be exported under License Exception STA to countries listed in Section 740.20(c)(1), provided that such exports conform with the limits specified in Section 740.20(b)(2)(vi)(A) and (b)(2)(vi)(B).

None of the changes made by this rule increase the scope of the controls in ECCNs 1C351 and 1C991 (*i.e.,* the items that are controlled under these ECCNs remain the same, although certain items are now specifically identified under separate listings in 1C351.a). As noted above, ''Flexal virus,'' which was previously controlled under ECCN 1C351.a, is now controlled as a ''select agent'' under ECCN 1C360.a; however, the license requirements for this virus remain unchanged.

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as extended by the Notice of August 12, 2010, 75 FR 50681 (August 16, 2010), has continued the EAR in effect under the International Emergency Economic Powers Act.

Saving Clause

Shipments of items removed from eligibility for export or reexport under a license exception or without a license (*i.e.,* under the designator ''NLR'') as a result of this regulatory action that were on dock for loading, on lighter, laden aboard an exporting carrier, or en route aboard a carrier to a port of export, on October 12, 2011, pursuant to actual orders for export or reexport to a foreign destination, may proceed to that destination under the previously applicable license exception or without a license (NLR) so long as they are exported or reexported before October 27, 2011. Any such items not actually exported or reexported before midnight, on October 27, 2011, require a license in accordance with this regulation.

''Deemed'' exports of ''technology'' and ''source code'' removed from eligibility for export under a license exception or without a license (under the designator ''NLR'') as a result of this regulatory action may continue to be made under the previously available license exception or without a license (NLR) before October 27, 2011. Beginning at midnight on October 27, 2011, such ''technology'' and ''source code'' may no longer be released, without a license, to a foreign national subject to the ''deemed'' export controls in the EAR when a license would be required to the home country of the foreign national in accordance with this regulation.

Rulemaking Requirements

1. 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 determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule contains a collection of information subject to the requirements of the PRA. This collection has been approved by OMB under Control Number 0694–0088 (Multi-Purpose Application), which carries a burden hour estimate of 58 minutes to prepare and submit form BIS–748. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Jasmeet Seehra, Office of Management and Budget (OMB), and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, as indicated in the **ADDRESSES** section of this rule.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (See 5 U.S.C. 553(a)(1)). Immediate implementation of these amendments is non-discretionary and fulfills the United States' international obligation to the Australia Group (AG). The AG contributes to international security and regional stability through the harmonization of export controls and seeks to ensure that exports do not contribute to the development of chemical and biological weapons. The AG consists of 40 member countries that act on a consensus basis and the amendments set forth in this rule implement a decision adopted under the AG intersessional silent approval procedures in November 2010 and other changes that are necessary to ensure consistency with the controls maintained by the AG. Since the United States is a significant exporter of the items in this rule, immediate implementation of this provision is necessary for the AG to achieve its purpose. Any delay in implementation will create a disruption in the movement of affected items globally because of disharmony between export control measures implemented by AG members, resulting in tension between member countries. Export controls work best when all countries implement the same export controls in a timely and coordinated manner.

Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Therefore, this regulation is issued in final form.

List of Subjects

15 CFR Part 740

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

15 CFR Part 742

Exports, Foreign trade.

15 CFR Part 774

Exports, Foreign trade, Reporting and recordkeeping requirements.

Accordingly, parts 740, 742 and 774 of the Export Administration Regulations (15 CFR parts 730–774) are amended as follows:

PART 740—[AMENDED]

■ 1. The authority citation for 15 CFR part 740 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 7201 *et seq.;* E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 12, 2010, 75 FR 50681 (August 16, 2010).

■ 2. Section 740.20 is amended by revising paragraph (b)(2)(v) and paragraph (b)(2)(vi) introductory text, as follows:

§ 740.20 License Exception Strategic Trade Authorization (STA).

* * * * *

(b) * * *

(2) * * *

(v) License Exception STA may not be used for any item controlled by ECCN 1C351.a, .b, .c, d.11, .d.12 or .e, ECCNs 1C352, 1C353, 1C354, 1C360, 1E001 (*i.e.,* for technology, as specified in ECCN 1E001, for items controlled by ECCN 1C351.a, .b, .c, .d.11, .d.12 or .e or ECCNs 1C352, 1C353, 1C354 or 1C360) or ECCN 1E351.

(vi) Toxins controlled by ECCN 1C351.d.1 through 1C351.d.10 and 1C351.d.13 through 1C351.d.19 are authorized under License Exception STA to destinations indicated in paragraph (c)(1) of this section, subject to the following limits. For purposes of this paragraph, all such toxins that are sent from one exporter, reexporter or transferor to a single end-user, on the same day, constitute one shipment.

* * * * *

PART 742—[AMENDED]

■ 3. The authority citation for 15 CFR part 742 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; Sec 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of August 12, 2010, 75 FR 50681 (August 16, 2010); Notice of November 4, 2010, 75 FR 68673 (November 8, 2010).

■ 4. Section 742.18 is amended by revising paragraph (a)(1), paragraph (b)(1)(i) introductory text, and paragraphs (b)(1)(ii) and (b)(1)(iii), as follows:

§ 742.18 Chemical Weapons Convention (CWC or Convention).

* * * * *

(a) * * *

(1) Schedule 1 chemicals and mixtures controlled under ECCN 1C351. A license is required for CW reasons to export or reexport Schedule 1 chemicals controlled under ECCN 1C351.d.11 or d.12 to all destinations including Canada. CW applies to 1C351.d.11 for ricin in the form of Ricinus Communis $Agglutinin_{II}$ (RCA_{II}), which is also known as ricin D or Ricinus Communis $Lectin_{III}$ (RCL_{III}), and Ricinus Communis $Lectin_{IV}$ (RCL_{IV}), which is also known as ricin E. CW applies to 1C351.d.12 for saxitoxin identified by C.A.S. #35523–89–8. (Note that the advance notification procedures and annual reporting requirements described in

§ 745.1 of the EAR also apply to exports of Schedule 1 chemicals.)

* * * * *

(b) * * *

(1) * * *

(i) *Exports to States Parties to the CWC.* Applications to export Schedule 1 Chemicals controlled under ECCN 1C351.d.11 or .d.12 to States Parties to the CWC (destinations listed in Supplement No. 2 to part 745 of the EAR) generally will be denied, unless all of the following conditions are met:

* * * * *

(ii) *Exports to States not party to the CWC.* Applications to export Schedule 1 chemicals controlled under ECCN 1C351.d.11 or .d.12 to States not Party to the CWC (destinations not listed in Supplement No. 2 to part 745 of the EAR) generally will be denied, consistent with U.S. obligations under the CWC to prohibit exports of these chemicals to States not Party to the CWC.

(iii) *Reexports.* Applications to reexport Schedule 1 chemicals controlled under ECCN 1C351.d.11 or .d.12 generally will be denied to all destinations (including both States Parties to the CWC and States not Party to the CWC).

* * * * *

PART 774—[AMENDED]

■ 5. The authority citation for 15 CFR part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.,* 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 12, 2010, 75 FR 50681 (August 16, 2010).

■ 6. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, ''Microorganisms'' and ''Toxins,'' ECCN 1C351 is amended by revising the License Requirements section and the ''Related Controls'' and ''Items'' paragraphs in the List of Items Controlled section, to read as follows:

Supplement No. 1 to Part 774—The Commerce Control List

* * * * *

1C351 Human and zoonotic pathogens and ''toxins'', as follows (see List of Items Controlled).

License Requirements

Reason for Control: CB, CW, AT

Control(s)	*Country chart*
CB applies to entire entry ..	CB Column 1.

CW applies to 1C351.d.11 and d.12 and a license is required for CW reasons for all destinations, including Canada, as follows: CW applies to 1C351.d.11 for ricin in the form of (1) Ricinus Communis Agglutinin$_{II}$ (RCA$_{II}$), also known as ricin D or Ricinus Communis Lectin$_{III}$ (RCL$_{III}$) and (2) Ricinus Communis Lectin$_{IV}$ (RCL$_{IV}$), also known as ricin E. CW applies to 1C351.d.12 for saxitoxin identified by C.A.S. #35523–89–8. See § 742.18 of the EAR for licensing information pertaining to chemicals subject to restriction pursuant to the Chemical Weapons Convention (CWC). The Commerce Country Chart is not designed to determine licensing requirements for items controlled for CW reasons.

Control(s)	*Country chart*
AT applies to entire entry ..	AT Column 1.

License Requirement Notes

1. All vaccines and ''immunotoxins'' are excluded from the scope of this entry. Certain medical products and diagnostic and food testing kits that contain biological toxins controlled under paragraph (d) of this entry, with the exception of toxins controlled for CW reasons under d.11 and d.12, are excluded from the scope of this entry. Vaccines, ''immunotoxins'', certain medical products, and diagnostic and food testing kits excluded from the scope of this entry are controlled under ECCN 1C991.

2. For the purposes of this entry, only saxitoxin is controlled under paragraph d.12; other members of the paralytic shellfish poison family (*e.g.* neosaxitoxin) are designated EAR99.

3. Clostridium perfringens strains, other than the epsilon toxin-producing strains of Clostridium perfringens described in c.9, are excluded from the scope of this entry, since they may be used as positive control cultures for food testing and quality control.

License Exceptions

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: (1) Certain forms of ricin and saxitoxin in 1C351.d.11. and d.12 are CWC Schedule 1 chemicals (see § 742.18 of the EAR). The U.S. Government must provide advance notification and annual reports to the OPCW of all exports of Schedule 1 chemicals. See § 745.1 of the EAR for notification procedures. See 22 CFR part 121, Category XIV and § 121.7 for additional CWC Schedule 1 chemicals controlled by the Department of State. (2) The Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture, and the Centers for Disease Control and Prevention (CDC), U.S. Department of Health and Human Services, maintain controls on the possession, use, and transfer within the United States of certain items controlled by this ECCN (for APHIS, see 7 CFR 331.3(b), 9 CFR 121.3(b), and 9 CFR 121.4(b); for CDC, see 42 CFR 73.3(b) and 42 CFR 73.4(b)).

Related Definitions: * * *

Items:

a. Viruses, as follows:

a.1. Andes virus;

a.2. Chapare virus;

a.3. Chikungunya virus;

a.4. Choclo virus;

a.5. Congo-Crimean haemorrhagic fever virus (a.k.a. Crimean-Congo haemorrhagic fever virus);

a.6. Dengue fever virus;

a.7. Dobrava-Belgrade virus;

a.8. Eastern equine encephalitis virus;

a.9. Ebola virus;

a.10. Guanarito virus;

a.11. Hantaan virus;

a.12. Hendra virus (Equine morbillivirus);

a.13. Japanese encephalitis virus;

a.14. Junin virus;

a.15. Kyasanur Forest virus;

a.16. Laguna Negra virus;

a.17. Lassa fever virus;

a.18. Louping ill virus;

a.19. Lujo virus;

a.20. Lymphocytic choriomeningitis virus;

a.21. Machupo virus;

a.22. Marburg virus;

a.23. Monkey pox virus;

a.24. Murray Valley encephalitis virus;

a.25. Nipah virus;

a.26. Omsk haemorrhagic fever virus;

a.27. Oropouche virus;

a.28. Powassan virus;

a.29. Rift Valley fever virus;

a.30. Rocio virus;

a.31. Sabia virus;

a.32. Seoul virus;

a.33. Sin nombre virus;

a.34. St. Louis encephalitis virus;

a.35. Tick-borne encephalitis virus (Russian Spring-Summer encephalitis virus);

a.36. Variola virus;

a.37. Venezuelan equine encephalitis virus;

a.38. Western equine encephalitis virus; or

a.39. Yellow fever virus.

b. Rickettsiae, as follows:

b.1. Bartonella quintana (Rochalimea quintana, Rickettsia quintana);

b.2. Coxiella burnetii;

b.3. Rickettsia prowasecki (a.k.a. Rickettsia prowazekii); or

b.4. Rickettsia rickettsii.

c. Bacteria, as follows:

c.1. Bacillus anthracis;

c.2. Brucella abortus;

c.3. Brucella melitensis;

c.4. Brucella suis;

c.5. Burkholderia mallei (Pseudomonas mallei);

c.6. Burkholderia pseudomallei (Pseudomonas pseudomallei);

c.7. Chlamydophila psittaci (formerly known as Chlamydia psittaci);

c.8. Clostridium botulinum;

c.9. Clostridium perfringens, epsilon toxin producing types;

c.10. Enterohaemorrhagic Escherichia coli, serotype O157 and other verotoxin producing serotypes;

c.11. Francisella tularensis;

c.12. Salmonella typhi;

c.13. Shigella dysenteriae;

c.14. Vibrio cholerae; or

c.15. Yersinia pestis.

d. ''Toxins'', as follows, and ''subunits'' thereof:

d.1. Abrin;
d.2. Aflatoxins;
d.3. Botulinum toxins;
d.4. Cholera toxin;
d.5. Clostridium perfringens toxins;
d.6. Conotoxin;
d.7. Diacetoxyscirpenol toxin;
d.8. HT–2 toxin;
d.9. Microcystin (Cyanginosin);
d.10. Modeccin toxin;
d.11. Ricin;
d.12. Saxitoxin;
d.13. Shiga toxin;
d.14. Staphylococcus aureus toxins;
d.15. T–2 toxin;
d.16. Tetrodotoxin;
d.17. Verotoxin and other Shiga-like ribosome inactivating proteins;
d.18. Viscum Album Lectin 1 (Viscumin); or
d.19. Volkensin toxin.
e. ''Fungi'', as follows:
e.1. Coccidioides immitis; or
e.2. Coccidioides posadasii.

■ 7. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 1— Special Materials and Related Equipment, Chemicals, ''Microorganisms'' and ''Toxins,'' ECCN 1C352 is amended by revising the ''Related Controls'' paragraph in the List of Items Controlled section, to read as follows:

1C352 Animal pathogens, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *
Related Controls: The Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture, and the Centers for Disease Control and Prevention (CDC), U.S. Department of Health and Human Services, maintain controls on the possession, use, and transfer within the United States of certain items controlled by this ECCN (for APHIS, see 7 CFR 331.3(b), 9 CFR 121.3(b), and 9 CFR 121.4(b); for CDC, see 42 CFR 73.3(b) and 42 CFR 73.4(b)).
Related Definitions: * * *
Items:

* * * * *

■ 8. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, ''Microorganisms'' and ''Toxins,'' ECCN 1C360 is amended by revising paragraph (a) in the ''Items'' paragraph in the List of Items Controlled to read as follows:

1C360 Select agents not controlled under ECCN 1C351, 1C352, or 1C354.

* * * * *

List of Items Controlled

Unit: * * *
Related Controls: * * *
Related Definitions: * * *
Items:
Note: * * *

a. Human and zoonotic pathogens, as follows:
a.1. Viruses, as follows:
a.1.a. Central European tick-borne encephalitis viruses, as follows:
a.1.a.1. Absettarov;
a.1.a.2. Hanzalova;
a.1.a.3. Hypr;
a.1.a.4. Kumlinge;
a.1.b. Cercopithecine herpesvirus 1 (Herpes B virus);
a.1.c. Flexal virus;
a.1.d. Reconstructed replication competent forms of the 1918 pandemic influenza virus containing any portion of the coding regions of all eight gene segments;
a.2. [RESERVED];

* * * * *

■ 9. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, ''Microorganisms'' and ''Toxins,'' ECCN 1C991 is amended by revising the ''Items'' paragraph in the List of Items Controlled to read as follows:

1C991 Vaccines, immunotoxins, medical products, diagnostic and food testing kits, as follows (see List of Items controlled).

* * * * *

List of Items Controlled

Unit: * * *
Related Controls: * * *
Related Definitions: * * *
Items:
a. Vaccines against items controlled by ECCN 1C351, 1C352, 1C353, 1C354, or 1C360;
b. Immunotoxins containing items controlled by 1C351.d;
c. Medical products containing botulinum toxins controlled by ECCN 1C351.d.3 or conotoxins controlled by ECCN 1C351.d.6;
d. Medical products containing items controlled by ECCN 1C351.d (except botulinum toxins controlled by ECCN 1C351.d.3, conotoxins controlled by ECCN 1C351.d.6, and items controlled for CW reasons under 1C351.d.11 or .d.12);
e. Diagnostic and food testing kits containing items controlled by ECCN 1C351.d (except items controlled for CW reasons under ECCN 1C351.d.11 or .d.12).

Dated: August 26, 2011.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2011–22677 Filed 9–9–11; 8:45 am]

BILLING CODE 3510–33–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 5

Retail Foreign Exchange Transactions; Conforming Changes to Existing Regulations in Response to the Dodd-Frank Wall Street Reform and Consumer Protection Act

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules; interpretation.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) is amending its regulations governing off-exchange foreign currency transactions with members of the retail public (*i.e.,* retail forex transactions). These amendments (Amendments) are necessary to incorporate into Part 5 of the Commission's regulations changes made to the Commodity Exchange Act (CEA) by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). The Commission is also issuing certain related technical interpretations of various provisions of the CEA as amended by the Dodd-Frank Act with respect to retail forex transactions.

DATES: Effective September 12, 2011.

FOR FURTHER INFORMATION CONTACT: Christopher W. Cummings, Special Counsel, Division of Clearing and Intermediary Oversight, or Barbara S. Gold, Associate Director, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581; telephone number: (202) 418–5450; facsimile number: (202) 418–5528; and electronic mail: *ccummings@cftc.gov* or *bgold@cftc.gov,* respectively.

SUPPLEMENTARY INFORMATION:

I. Background

On July 21, 2010, President Obama signed the Dodd-Frank Act.[1] Title VII of the Dodd-Frank Act [2] amended the CEA [3] to establish a comprehensive new regulatory framework for swaps and security-based swaps. The goal of this legislation was to reduce risk, increase transparency, and promote market integrity within the financial system by,

[1] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111–203, 124 Stat. 1376 (2010). The text of the Dodd-Frank Act may be accessed through the Commission's Web site at *http://www.cftc.gov/.*

[2] Pursuant to Section 701 of the Dodd-Frank Act, Title VII may be cited as the ''Wall Street Transparency and Accountability Act of 2010.''

[3] 7 U.S.C. 1 *et seq.* (2006). The CEA also can be accessed through the Commission's Web site.

among other things: (1) Providing for the registration and comprehensive regulation of swap dealers and major swap participants; (2) imposing clearing and trade execution requirements on standardized derivative products; (3) creating robust recordkeeping and real-time reporting regimes; and (4) enhancing the Commission's rulemaking and enforcement authorities with respect to, among others, all registered entities and intermediaries subject to the Commission's oversight.

To accomplish its goal, the Dodd-Frank Act, among other things, amended the existing definitions in, and added new definitions to, CEA Section 1a, which has resulted in a reorganization and renumbering of the definitions in Section 1a.[4] The Dodd-Frank Act also deleted two classes of persons and added a new class of person permitted to serve, or to offer to serve, as a counterparty to a retail forex transaction under CEA Section 2(c)(2)(B) (''permitted counterparty''), which similarly has resulted in a reorganization and redesignation of the CEA provisions identifying these permitted counterparties.[5]

As is explained below, the foregoing changes to the CEA necessitate corresponding amendments to Part 5 of the Commission's regulations,[6] which concerns retail forex transactions. In this regard, the Commission notes that it is also proposing other rulemakings in response to the Dodd-Frank Act that could affect the Part 5 regulations.[7] The Commission intends to resolve any discrepancies that may arise between any of these other rulemakings and the Amendments in the course of finalizing its rulemakings under the Dodd-Frank Act.

II. The Amendments

A. Amendments Resulting Solely From a Renumbering of a CEA Definition

Several definitions in Regulation 5.1 employ the phrase ''eligible contract participant as that term is defined in [CEA] Section 1a(12).'' Specifically, this phrase is found in the following definitions in Regulation 5.1: ''commodity pool operator'' (paragraph (d)(1) of the regulation); ''commodity trading advisor'' (paragraph (e)(1) of the regulation); ''introducing broker'' (paragraph (f)(1) of the regulation); ''retail forex account'' (paragraph (i) of the regulation); and ''retail forex account agreement'' (paragraph (j) of the regulation). However, as a result of the Dodd-Frank Act, the term ''eligible contract participant'' is now defined in CEA Section 1a(18). By the Amendments, the Commission is amending Regulations 5.1(d)(1), (e)(1), (f)(1), (i) and (j) to reflect this numbering change, such that each of the definitions contained in these regulations refers to CEA Section 1a(18).[8]

Regulations 5.10, which concerns risk assessment recordkeeping applicable to retail forex transactions, and 5.11, which concerns risk assessment reporting applicable to retail forex transactions, provide at paragraphs (c)(2) and (d)(2), respectively, that ''the term 'Foreign Futures Authority' shall have the meaning set forth in [CEA] section 1a(10).'' As a result of the Dodd-Frank Act, this term is now defined in CEA Section 1a(26). The Amendments similarly change Regulations 5.10(c)(2) and 5.11(d)(2) to reflect this numbering change, such that the definition of ''Foreign Futures Authority'' refers to CEA Section 1a(26).

Regulation 5.18 establishes trading and operational standards for persons offering to serve as a retail forex counterparty. Specifically, paragraph (a)(1)(ii) refers to such persons as a ''[f]utures commission merchant as defined in [CEA] Section 1a(20).'' Pursuant to the Dodd-Frank Act, the term ''futures commission merchant'' (FCM) is now defined in CEA Section 1a(28). Accordingly, the Amendments likewise revise Regulation 5.18(a)(1)(ii) so that the FCM reference therein is to CEA Section 1a(28).

B. Amendments Resulting From the Change in Permitted Counterparties

Regulation 5.1(h) defines the term ''retail foreign exchange dealer'' (RFED) to mean ''any person that is, or that offers to be, the counterparty to a retail forex transaction, except for a person described in sub-paragraph (aa), (bb), (cc)(AA), (dd), (ee) or (ff) of [CEA] section 2(c)(2)(B)(i)(II).'' [9] The Dodd-Frank Act: (1) Removed from this list of permitted counterparties the persons previously found in items (dd) and (ff), which respectively refered to certain insurance companies (including a regulated subsidiary or affiliate) and investment bank holding companies; (2) redesignated item (ee) as item (dd); and (3) redesignated item (gg) as item (ff).[10] In light of these changes, the Amendments delete from Regulation 5.1(h)(1) the references therein to items (ee) and (ff) of CEA Section 2(c)(2)(B)(i)(II). For similar reasons, the Amendments change the references in Regulations 5.10(a)(1), 5.11(a)(1) and 5.11(a)(2) to the authority pursuant to which a person is registered with the Commission as an RFED from CEA Section 2(c)(2)(B)(i)(II)(gg) to CEA Section 2(c)(2)(B)(i)(II)(ff).

C. Amendments Related to the FCM Definition

For the effective regulation of retail forex transactions, the CEA and Part 5 distinguish between an FCM that is ''primarily or substantially'' engaged in soliciting and accepting orders for exchange-traded futures contracts and accepting customer funds or property to margin or secure such contracts, who is permitted under CEA Section 2(c)(2)(B)(i)(II)(cc) to engage in retail forex transactions based on its registration as an FCM, and a person that is registered as an FCM but is not ''primarily or substantially'' engaged in those activities, who must register as an RFED in order to engage in retail forex transactions. Regulation 5.1(g) currently provides that the term ''[p]rimarily or substantially means, when used to describe the extent of a futures commission merchant's engagement in the activities described in section 1a(20)'' of the CEA, that the FCM's gross revenues meet certain thresholds, or that the FCM is a clearing member of a derivatives clearing organization.[11] The Commission explained this distinction, which originated in the CFTC Reauthorization Act of 2008 (CRA),[12] as being ''for use in determining whether a registered FCM is primarily or substantially engaged in FCM activities, such that it need not register as an RFED in order to conduct customer business.'' [13]

Thus, the Commission defined the term ''primarily or substantially'' in

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[4] *See* Dodd-Frank Act Section 721(a).

[5] *See* Dodd-Frank Act Section 742(c)(1).

[6] The Commission's regulations are found at 17 CFR Ch. I (2011) and can be accessed through the Commission's Web site, *http://www.cftc.gov.*

[7] *See, e.g.,* Adaptation of Regulations to Incorporate Swaps, 76 FR 33066 (Jun. 7, 2011) (''June 7 Proposal''), whereby in response to the deletion of the term ''derivatives transaction execution facility'' from the CEA by the Dodd-Frank Act, the Commission has proposed to delete reference to the term ''derivatives transaction execution facility'' from Regulation 5.1(m), which defines the term ''retail forex transaction.''

[8] For the same reason, by the June 7 Proposal, the Commission proposed to amend the definition of the term ''retail forex customer'' in paragraph (k) of Regulation 5.1, such that the definition similarly would refer to Section 1a(18).

[9] CEA Section 2(c)(2)(B) generally provides the Commission with authority over retail forex transactions.

[10] As a result of these changes, then, the identification of the permitted counterparties in CEA Section 2(c)(2)(B)(i)(II) runs from (aa) through (dd), skips (ee), and ends at (ff). *See* Part III of this **Federal Register** release, *infra.*

[11] *See* CEA Section 5b and Part 39 of the Commission's regulations.

[12] *See* Title XIII of the Food, Conservation and Energy Act of 2008, Public Law 110–246, 122 Stat. 1651, 2189–2204 (2008).

[13] 75 FR 3282, 3288 (Jan. 20, 2010).

Regulation 5.1(g), and drafted the requirement to register as an RFED if a registered FCM was not engaged primarily or substantially in FCM activities, with reference to the activities described in the then-existing FCM definition and by means of a simple reference to ''the activities described in Section 1a(20)'' of the CEA. However, in addition to renumbering the FCM definition in the CEA from Section 1a(20) to Section 1a(28), the Dodd-Frank Act amended the FCM definition itself to include certain activities involving swaps and retail forex transactions among the activities that bring a person within the FCM definition, and it added to the FCM definition any person that is registered with the Commission as an FCM.[14] In order to maintain the distinction between FCM and RFED established by the CRA, the Amendments amend Regulations 5.1(g) and 5.3(a)(4)(i) such that each of these rules refers solely to those provisions of the CEA's FCM definition that were in effect at the time of adoption of the CRA—*i.e.,* the activities that, pursuant to the Dodd-Frank Act, are now set forth in CEA Sections 1a(28)(A)(i)(I)(aa)(AA) (''the purchase or sale of a commodity for future delivery'') and 1a(28)(A)(i)(II) (''in or in connection with the activities described in [item aa of subclause (I)], accepts any money, securities, or property (or extends credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom'').

III. Interpretation of Dodd-Frank Act Amendments to CEA Sections 2(c)(2)(B) and 2(c)(2)(C)

As is noted above, the Dodd-Frank Act revised the list of permitted counterparties in CEA Section 2(c)(2)(B)(i)(II) from items (aa) through (gg), to items (aa) through (dd) and (ff) (without an item (ee)). It did so in order both to delete insurance companies and investment bank holding companies from the list of permitted counterparties in CEA Section 2(c)(2)(B)(i)(II) and to re-designate the items corresponding to the remaining permitted counterparties.[15] However, in amending CEA Sections 2(c)(2)(B) and 2(c)(2)(C),[16] the Dodd-Frank Act did not adjust certain internal references in these sections to reflect these changes to the list of permitted counterparties.

Thus, for example, at numerous places CEA Section 2(c)(2)(B) continues to refers to item (gg), although item (gg) has been redesignated as item (ff).[17] Similarly, in various other provisions of CEA Sections 2(c)(2)(B) and 2(c)(2)(C) the permitted counterparties *other than FCMs and RFEDs* are listed as either ''item (aa), (bb), (dd), (ee) or (ff)'' of CEA Section 2(c)(2)(B)(i)(II) or ''item (aa) through (ff)'' of CEA Section 2(c)(2)(B)(i)(II).[18] These references now inadvertently include RFEDs, because RFEDs are now listed in item (ff). Finally, these same references inadvertently no longer include a financial holding company, because while the Dodd-Frank Act redesignated this permitted counterparty as item (dd), it nonetheless called for ''striking '(dd)' each place it appears'' in CEA Sections 2(c)(2)(B) and 2(c)(2)(C).[19]

To avoid any impediment to a full implementation of its regulatory program for retail forex transactions that any of the foregoing provisions might present, by this **Federal Register** release the Commission is issuing the following interpretations of the Dodd-Frank Act. First, to clarify that CEA Section 2(c)(2)(B)(i)(II) includes a financial holding company as a permitted counterparty to retail forex transactions, the Commission interprets the directions in Dodd-Frank Act Sections 741(b)(8) and (b)(9) to strike item ''(dd)'' each place it appears as a direction to strike item ''(ee)'' instead.[20] This interpretation is necessary and appropriate because pursuant to the Dodd-Frank Act item (dd) includes a financial holding company as a permitted counterparty to retail forex transactions and item (ee) no longer exists in CEA Section 2(c)(2)(B)(i)(II). Second, to clarify that an RFED is a permitted counterparty, the Commission interprets each reference in CEA Sections 2(c)(2)(B) and 2(c)(2)(C) to ''item (gg) '' as a reference to ''item (ff).'' This interpretation similarly is necessary and appropriate because pursuant to the Dodd-Frank Act item (ff) includes an RFED as a permitted counterparty and item (gg) no longer exists in CEA Section 2(c)(2)(B)(i)(II).

IV. Related Matters

A. Administrative Procedure Act

The Administrative Procedure Act (APA) generally requires an agency to publish notice of a proposed rulemaking in the **Federal Register**.[21] This requirement does not apply, however, if the agency ''for good cause finds * * * that notice and public procedure are impracticable, unnecessary, or contrary to the public interest.'' [22] In addition, the APA generally requires that an agency publish an adopted rule in the **Federal Register** 30 days before it becomes effective, with certain exceptions, including if an agency finds good cause.[23] The Commission finds that notice and solicitation of comment before the effective date of the changes being made herein are unnecessary, inasmuch as the rule changes are entirely non-substantive technical adjustments, and the interpretation would do no more than clarify certain technical drafting anomalies to express what is clearly the intent of the Dodd-Frank Act.[24] Accordingly, pursuant to section 553(b) of the APA, the Commission finds that there is good cause not to follow notice and comment procedures for this rulemaking. For the same reason, the Commission finds, pursuant to section 553(b) of the APA, that the Amendments may be made effective immediately upon publication in the **Federal Register**.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) [25] requires that agencies, in proposing rules, consider the impact of those rules on small businesses.[26] The

[14] *See* Dodd-Frank Act Section 721(a)(13).

[15] *See* Dodd-Frank Act Sections 741(b) and 742(c).

[16] CEA Section 2(c)(2)(C) generally provides the Commission with authority over certain transactions that are not within the scope of CEA Section 2(c)(2)(B).

[17] This occurs once each in CEA Sections 2(c)(2)(B)(iii), 2(c)(2)(B)(iv)(I) and 2(c)(2)(B)(iv)(III), and twice in CEA Section 2(c)(2)(B)(v).

[18] Reference to ''item (aa), (bb), (dd), (ee) or (ff)'' of CEA Section 2(c)(2)(B)(i)(II) occurs in Sections 2(c)(2)(B)(iv)(I)(aa), 2(c)(2)(B)(iv)(I)(bb), 2(c)(2)(B)(iv)(I)(cc), 2(c)(2)(B)(iv)(II)(aa), 2(c)(2)(C)(i)(I)(aa), 2(c)(2)(C)(ii)(II)(aa), 2(c)(2)(C)(iii)(I)(aa), 2(c)(2)(C)(iii)(I)(bb) and 2(c)(2)(C)(iii)(II)(aa). The reference to ''item (aa) through (ff)'' occurs in CEA Section 2(c)(2)(B)(iv)(IV)(aa).

[19] Absent the interpretation being provided herein, the instruction in Dodd-Frank Act Sections 741(b)(8)(A) and 741(b)(9)(A) for ''striking '(dd)' each place it appears'' in CEA Sections 2(c)(2)(B) and 2(c)(2)(C) not only would remove the (dd) item heading from Section 2(c)(2)(B)(i)(II)(dd) (which identifies a financial holding company as a permitted counterparty for retail forex transactions), but it would also affect all of the cross-references to ''item (aa), (bb), (dd), (ee) or (ff),'' identified previously.

[20] Thus, CEA Section 2(c)(2)(B)(i)(II)(dd) retains its designation, and each reference to ''item (aa), (bb), (dd), (ee) or (ff)'' identified previously continues to include a reference to ''a financial holding company.''

[21] *See* 5 U.S.C. 553(b). This requirement does not apply to interpretative rules or general statements of policy.

[22] *Id.*

[23] *See* 5 U.S.C. 553(d).

[24] This finding also satisfies the requirements of the Congressional Review Act, specifically 5 U.S.C. 808(2), allowing the Proposal to become effective, notwithstanding the requirement of 5 U.S.C. 801 (if a Federal agency finds that notice and public comment are ''impracticable, unnecessary or contrary to the public interest,'' a rule ''shall take effect at such time as the Federal agency promulgating the rule determines'').

[25] 5 U.S.C. 601 *et seq.* (2006).

[26] By its terms, the RFA does not apply to ''individuals.'' *See* 48 FR 14933, n. 115 (Apr. 6, 1983).

Commission previously has established certain definitions of ''small entities'' to be used by the Commission in evaluating the impact of its rules on such entities in accordance with the RFA.[27] The Commission previously has determined that FCMs and RFEDs should not be considered small entities for purposes of the RFA.[28] With respect to commodity pool operators (CPOs), the Commission previously has determined that a CPO is a small entity for the purpose of the RFA if it meets the criteria for an exemption from registration under Regulation 4.13(a)(2).[29] Thus, because the Amendments apply to registered CPOs, the RFA is not applicable to them. As for introducing brokers (IBs) and commodity trading advisors (CTAs), the Commission previously has stated that it would evaluate within the context of a particular rule proposal whether all or some affected IBs and CTAs would be considered to be small entities and, if so, the economic impact on them of the particular rule.[30] In this regard, the Commission notes that the Amendments apply to registered IBs and registered CTAs, and do not change their existing obligations or burdens. Moreover, as is explained below, the Amendments will not have a significant economic impact on any person who would be affected thereby, because they will not impose any additional operational requirements or otherwise direct or confine the activities of affected persons. Accordingly, the Chairman hereby certifies pursuant to 5 U.S.C. 605(b) that the Amendments will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA)[31] imposes certain requirements on Federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. The Commission believes that the Amendments will not impose new recordkeeping or information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* Accordingly, the PRA does not apply to this rulemaking.

D. Cost-Benefit Considerations

Section 15(a) of the CEA[32] requires the Commission to consider the costs and benefits of its actions before issuing a rulemaking under the CEA. By its terms, Section 15(a) does not require the Commission to quantify the costs and benefits of a rule or to determine whether the benefits of the rulemaking outweigh its costs; rather, it simply requires that the Commission ''consider'' the costs and benefits of its actions. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular rule is necessary or appropriate to protect the public interest or to effectuate any of the provisions or accomplish any of the purposes of the CEA.

Summary of Amendments. As is explained above, the Amendments to Part 5 ensure that the Commission's regulations governing retail forex transactions reflect changes made to the CEA by the Dodd-Frank Act by, *e.g.,* aligning references in Part 5 to definitional and other provisions in the CEA with the appropriate provisions in the CEA as amended by the Dodd-Frank Act.

Costs. With respect to costs, the Commission has determined that the costs of the Amendments will not be significant. This is because the Amendments will simply amend the current Part 5 text to take into account the numerical and designation changes made to the CEA as a result of the Dodd-Frank Act. No changes are being made to the existing regulatory framework. Thus there will be little (if any) costs to persons who will be affected by the Amendments.

Benefits. With respect to benefits, the Commission has determined that the benefits of the Amendments will be significant. This is because they will maintain the customer protections currently provided under Part 5 by ensuring that the provisions of Part 5 accurately reflect the text of the CEA as amended by the Dodd-Frank Act.

List of Subjects in 17 CFR Part 5

Bulk transfers, Commodity pool operators, Commodity trading advisors, Consumer protection, Customer's money, securities and property, Definitions, Foreign exchange, Minimum financial and reporting requirements, Prohibited transactions in retail foreign exchange, Recordkeeping requirements, Retail foreign exchange dealers, Risk assessment, Special calls, Trading practices.

For the reasons presented above, the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 5—OFF-EXCHANGE FOREIGN CURRENCY TRANSACTIONS

■ 1. The authority citation for part 5 is revised to read as follows:

Authority: 7 U.S.C. 1a, 2, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6m, 6n, 6*o,* 8, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21, and 23, as amended by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111–203, 124 Stat. 1376 (Jul. 21, 2010).

§ 5.1 [Amended]

■ 2. Section 5.1 is amended by:

■ a. Removing from paragraphs (d)(1)(i), (e)(1), (f)(1), (i) and (j) the words ''section 1a(12) of the Act'' and adding in their place the words ''section 1a(18) of the Act'';

■ b. Removing from paragraph (g) introductory text the words ''section 1a(20) of the Act'' and adding in their place the words ''section 1a(28)(A)(i)(I)(aa)(AA) of the Act and section 1a(28)(A)(i)(II) of the Act insofar as that section references the activities described in section 1a(28)(A)(i)(I)(aa)(AA)''; and

■ c. Removing from paragraph (h)(1) the words ''sub-paragraph (aa), (bb), (cc)(AA), (dd), (ee) or (ff)'' and adding in their place the words ''item (aa), (bb), (cc)(AA) or (dd)''.

§ 5.3 [Amended]

■ 3. Section 5.3 is amended by removing from paragraph (a)(4)(i)(A) the words ''section 1a(20) of the Act'' and adding in their place the words ''section 1a(28)(A)(i)(I)(aa)(AA) of the Act and section 1a(28)(A)(i)(II) of the Act insofar as that section references the activities described in section 1a(28)(A)(i)(I)(aa)(AA)''.

§ 5.10 [Amended]

■ 4. Section 5.10 is amended by:

■ a. Removing from paragraph (a)(1) introductory text the words ''section 2(c)(2)(B)(i)(II)(gg) of the Act'' and

[27] *See* 47 FR 18618 (Apr. 30, 1982).

[28] *See* 47 FR 18618, 18619 (Apr. 30, 1982) (FCMs) and 75 FR 55410, 55416 (Sep. 10, 2010) (RFEDs).

[29] *See* 47 FR at 18619–20.

[30] *See* 48 FR 35248, 35276 (Aug. 3, 1993) (IBs) and 47 FR at 18619, 18620 (CTAs).

[31] 44 U.S.C. 3501 *et seq.*

[32] 7 U.S.C. 19(a).

adding in their place the words ''section 2(c)(2)(B)(i)(II)(ff) of the Act''; and

■ b. Removing from paragraph (c)(2) the words ''section 1a(10) of the Act'' and adding in their place the words ''section 1a(26) of the Act''.

§ 5.11 [Amended]

■ 5. Section 5.11 is amended by:

■ a. Removing from paragraph (a)(1) introductory text the words ''Section 2(c)(2)(B)(i)(II)(gg) of the Act'' and adding in their place the words ''section 2(c)(2)(B)(i)(II)(ff) of the Act''; and

■ b. Removing from paragraph (a)(2) introductory text the words ''section 2(c)(2)(B)(i)(II)(gg) of the Act'' and adding in their place the words ''section 2(c)(2)(B)(i)(II)(ff) of the Act''; and

■ c. Removing from paragraph (d)(2) the words ''section 1a(10) of the Act'' and adding in their place the words ''section 1a(26) of the Act''.

§ 5.18 [Amended]

■ 6. Section 5.18 is amended by removing from paragraph (a)(1)(ii) the words ''section 1a(20) of the Act'' and adding in their place the words ''section 1a(28) of the Act''.

Issued in Washington, DC, on September 2, 2011, by the Commission.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2011–23155 Filed 9–9–11; 8:45 am]

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SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Docket No. SSA–2011–0015]

RIN 0960–AH31

Requiring Use of Electronic Services by Certain Claimant Representatives

AGENCY: Social Security Administration.

ACTION: Final rules.

SUMMARY: We are revising our rules to require that claimant representatives use our electronic services as they become available on matters for which the representatives request direct fee payment. In the future, we will publish a notice in the **Federal Register** when we require representatives who request direct fee payment on a matter to use our available electronic services. We are also adding the requirement to use our available electronic services on matters for which the representative requests direct fee payment as an affirmative duty in our representative conduct rules. These revisions reflect the increased use of technology in representatives' business practices. We expect that the use of electronic services will improve our efficiency by allowing us to manage our workloads more effectively. These rules do not require claimants to use our available electronic services directly; they only require their representatives to use the services on matters for which the representatives request direct fee payment.

DATES: These final rules are effective on October 12, 2011.

FOR FURTHER INFORMATION CONTACT: Joann S. Anderson, Office of Income Security Programs, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–6716. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov*.

SUPPLEMENTARY INFORMATION:

Background

We may issue rules and regulations to administer the Social Security Act (Act). 42 U.S.C. 405(a), 902(a)(5), 810(a), and 1383(d)(1).

On September 8, 2008, we published a notice of proposed rulemaking (NPRM) in the **Federal Register** entitled *Revisions to Rules on Representation of Parties,* and we gave the public 60 days to comment. 73 FR 51963.

In the NPRM, we proposed to add an affirmative duty that would have required professional representatives to conduct business with us electronically at the times and in the manner that we prescribe. We proposed to define a professional representative as ''any attorney, any individual other than an attorney, or any entity that holds itself out to the public as providing representational services * * * before us, regardless of whether the representative charges or collects a fee for providing the representational services.'' Proposed sections 404.1703 and 416.1503. We received several comments that opposed our broad definition of professional representative and our proposal that all professional representatives must conduct business with us electronically at the times and in the manner we prescribe.

After careful consideration of these comments, we decided to require some, and encourage all, representatives to use our electronic services as much as possible.

Therefore, we are adding sections 404.1713 and 416.1513 and revising sections 404.1740(b)(4) and 416.1540(b)(4) to require that representatives conduct business with us electronically at the times and in the manner we prescribe on matters for which they request direct fee payment. This means that a representative will be required to use our available electronic services in conducting business with us on any matter for which he or she has or will request direct fee payment.

We continue to consider the rest of the regulatory changes we proposed in the NPRM, and we may publish additional final rules to address them.

Requiring Use of Our Electronic Services

We employ comprehensive usability testing, which includes inviting members of the public to test our electronic services and provide feedback, to ensure that our electronic services work well before we make them publicly available. Even after we make electronic services publicly available, we use customer satisfaction surveys and request user feedback to improve them. In accordance with our usual practice, we intend to employ usability testing and solicit user feedback for any electronic services we may require representatives to use under these final rules. Once we determine that we should make a particular electronic service publicly available because it works well, we will publish a notice in the **Federal Register**. The notice will contain the new requirement(s) and a list of all established electronic service requirements.

If we discover that a representative who has an affirmative duty to use the available electronic services is not complying with our rules, we may investigate to determine if the representative is purposefully violating this duty or attempting to circumvent our rules. We will use our existing rules in sections 20 CFR 404.1740–404.1799 and 416.1540–416.1599 to address potential violations.

We will not penalize the claimant if the representative disregards his or her affirmative duty to use our electronic services. We will not reject or delay a claimant's request or process it differently if a representative fails to comply with this rule, but we may decide to pursue sanctions against the representative in appropriate cases.

We also proposed to add sections 404.1713 and 416.1513, in addition to the affirmative duty in proposed sections 404.1740 and 416.1540. We are adopting, with minor changes, only the provisions of sections 404.1713(a) and 416.1513(a) that we proposed, and we are adopting, with minor changes, our proposed affirmative duty in final sections 404.1740 and 416.1540. We are also making other conforming changes.

Public Comments

We published an NPRM in the **Federal Register** on September 8, 2008, and we gave the public 60 days to comment on our proposed rules. 73 FR 51963. We received comments from 66 individuals and organizations during this period. We carefully read and considered each of them. The comments are available for public viewing at *http://www.regulations.gov*.

The comments we received were detailed and insightful, and they were extremely helpful to our deliberations. These final rules contain a number of changes from our NPRM and reflect the commenters' thoughtful input. Below we discuss and respond to the significant comments related to mandating the use of electronic services. We did not address some technical comments or comments beyond the NPRM's scope. We also did not address comments about the proposed regulatory changes that we are still considering and may adopt in future final rules.

Comment: One commenter thought that the Act prohibits us from creating separate procedures and appeal rights for represented and unrepresented claimants. Another commenter asserted that the Constitution's principles of equal protection prohibit us from creating different standards for different categories of representatives, such as principal representatives and professional representatives.

Response: We did not propose to create separate procedures and appeal rights for represented and unrepresented claimants. Both represented and unrepresented claimants retain the right to file their own appeals using paper forms.

These final rules do not violate the equal protection component of the Due Process Clause of the Fifth Amendment to the Constitution. The final rules do not impose different standards on similarly situated representatives or otherwise categorize representatives based on their characteristics. We also give representatives the choice whether to receive their fees directly from us. On matters for which a representative requests direct fee payment, he or she must use certain electronic services that we prescribe. Nothing in constitutional principles of equal protection is inconsistent with the rules that we are adopting here.

Comment: We received several comments on our proposed definition for professional representative. Some commenters found the term vague, unnecessary, and confusing.

Response: We agree with these commenters. We are not adopting our proposed rules for professional representatives. Instead, we are requiring that representatives use certain electronic services only on matters for which they request direct fee payment.

Comment: A few commenters opposed our electronic services requirement for professional representatives because they said some representatives do not have full electronic access, proper skills, or computer support staff.

Response: We disagree with these comments. We are not mandating that all representatives use our electronic services, but only those who request direct fee payment on a matter. When representatives do not request direct fee payment on a matter due to ineligibility or personal preference, they can continue to use our paper processes and forms.

Comment: A few commenters asserted that the Regulatory Flexibility Act, as amended, requires us to complete a regulatory flexibility analysis because we proposed to require certain representatives to use electronic services, which could impose costs on small businesses.

Response: We disagree with these comments. We certify below that these final rules will not have a significant economic impact on a substantial number of small entities. These final rules give a representative the option of continuing to use paper forms and submitting them to our field offices when the representative does not request direct fee payment. Representatives will decide for themselves whether to use our electronic services. Because representatives make this decision, we do not require any small business to incur any additional costs to do business with us. Therefore, the Regulatory Flexibility Act, as amended, does not require us to perform a regulatory flexibility analysis.

Comment: One commenter opposed our proposed affirmative duty that required professional representatives to conduct business with us electronically at the times and in the manner we prescribe. The commenter claimed that some situations may require representatives to use paper forms, such as when we experience systems problems. Another commenter asked us to explain which due process rights a representative would have if we brought a sanction proceeding based on a circumstance outside of the representative's control.

Response: As stated earlier, we will require that representatives use our electronic services on matters for which they request direct fee payment. We are adopting our proposed affirmative duty for those representatives in final sections 404.1740(b)(4) and 416.1540(b)(4), and we will monitor the representatives' compliance with it. If we find that a representative is not using the required electronic services, or if we receive a complaint that a representative is not following our rules, we will deal with each complaint on an individual basis. If we find that a representative has not used our required electronic services, we will provide him or her with an opportunity for a hearing before an ALJ, who will decide whether to disqualify or suspend the representative.

Regulatory Procedures

Executive Order 12866, as Supplemented by Executive Order 13563

We consulted with the Office of Management and Budget (OMB) and determined that these final rules meet the criteria for a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563. Therefore, OMB reviewed them.

Regulatory Flexibility Act

We certify that these final rules will not have a significant economic impact on a substantial number of small entities. These final rules permit representatives to continue using paper forms on matters for which the representatives do not request direct fee payment. Representatives will make this choice and decide for themselves whether to use our electronic services. Because representatives make this decision, we are not requiring any small business to incur any additional costs to work with us. These final rules do not disadvantage small entities or limit their ability to compete with larger competitors. Additionally, these final rules do not place significant costs on small entities. We anticipate that small entities that decide to use our electronic services may find slight cost savings because of increased efficiency. Therefore, the Regulatory Flexibility Act, as amended, does not require us to perform a regulatory flexibility analysis.

Paperwork Reduction Act

These final rules reference public reporting burdens subject to the Paperwork Reduction Act in 20 CFR 404.1713, 404.1740(b)(4), 416.1513, and 416.1540(b)(4). In these final rules, we are codifying the requirement for

representatives to conduct business with us electronically at the times and in the manner we prescribe on matters for which the representatives request direct fee payment. However, we are not yet requiring them to use the electronic versions of specific OMB-approved collections. We will adjust the burden for affected OMB-approved collections before requiring representatives to use the collections' electronic versions.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.002, Social Security-Retirement Insurance; 96.004, Social Security-Survivors Insurance; and 96.006, Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors, and Disability Insurance, Penalties, Reporting and recordkeeping requirements, Social Security.

20 CFR Part 416

Administrative practice and procedure, Penalties, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Michael J. Astrue,

Commissioner of Social Security.

For the reasons set out in the preamble, we are amending 20 CFR part 404 subpart R and part 416 subpart O as set forth below:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart R—[Amended]

■ 1. The authority citation for subpart R of part 404 is revised to read as follows:

Authority: Secs. 205(a), 206, 702(a)(5), and 1127 of the Social Security Act (42 U.S.C. 405(a), 406, 902(a)(5), and 1320a–6).

■ 2. Add § 404.1713 to read as follows:

§ 404.1713 Mandatory use of electronic services.

A representative must conduct business with us electronically at the times and in the manner we prescribe on matters for which the representative requests direct fee payment. (*See* § 404.1740(b)(4)).

■ 3. Amend § 404.1740 by revising the second sentence of paragraph (b)(2)(vi) and the second sentence of paragraph (b)(3)(ii), and adding paragraph (b)(4), to read as follows:

§ 404.1740 Rules of conduct and standards of responsibility for representatives.

* * * * *

(b) * * *

(2) * * *

(vi) * * * In §§ 404.1560 through 404.1569, we discuss in more detail the evidence we need when we consider vocational factors;

(3) * * *

(ii) * * * This includes providing prompt and responsive answers to our requests for information pertinent to processing of the claim; and

(4) Conduct business with us electronically at the times and in the manner we prescribe on matters for which the representative requests direct fee payment. (*See* § 404.1713).

* * * * *

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart O—[Amended]

■ 4. The authority citation for subpart O of part 416 is revised to read as follows:

Authority: Secs. 702(a)(5), 1127, and 1631(d) of the Social Security Act (42 U.S.C. 902(a)(5), 1320a–6, and 1383(d)).

■ 5. Add § 416.1513 to read as follows:

§ 416.1513 Mandatory use of electronic services.

A representative must conduct business with us electronically at the times and in the manner we prescribe on matters for which the representative requests direct fee payment. (*See* § 416.1540(b)(4)).

■ 6. Amend § 416.1540 by revising the second sentence of paragraph (b)(2)(vi) and the second sentence of paragraph (b)(3)(ii), and adding paragraph (b)(4), to read as follows:

§ 416.1540 Rules of conduct and standards of responsibility for representatives.

* * * * *

(b) * * *

(2) * * *

(vi) * * * In §§ 416.960 through 416.969, we discuss in more detail the evidence we need when we consider vocational factors;

(3) * * *

(ii) * * * This includes providing prompt and responsive answers to our requests for information pertinent to processing of the claim; and

(4) Conduct business with us electronically at the times and in the manner we prescribe on matters for which the representative requests direct fee payment. (*See* § 416.1513).

* * * * *

[FR Doc. 2011–23232 Filed 9–9–11; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

[Docket No. FWS–R7–SM–2011–0004; 70101–1261–0000L6]

RIN 1018–AX52

Subsistence Management Regulations for Public Lands in Alaska—Subpart B, Federal Subsistence Board

AGENCIES: Forest Service, Agriculture; Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This final rule revises the regulations concerning the composition of the Federal Subsistence Board (Board). On October 23, 2009, the Secretary of the Interior announced the initiation of a Departmental review of the Federal Subsistence Management Program in Alaska. The review focused on how the program is meeting the purposes and subsistence provisions of Title VIII of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA), and how the program is serving rural subsistence users. The review proposed several administrative and regulatory changes to strengthen the program and make it more responsive to rural subsistence users. This rule expands the Federal Subsistence Board by two public members who possess personal knowledge of and direct experience with subsistence uses in rural Alaska. This action will afford additional stakeholder input to the process.

DATES: This rule is effective October 12, 2011.

ADDRESSES: The Board meeting transcripts are available for review at the Office of Subsistence Management, 1011 East Tudor Road, Mail Stop 121, Anchorage, Alaska 99503, on *http://www.regulations.gov* at Docket No. FWS–R7–SM–2011–0004, or on the Office of Subsistence Management Web site (*http://alaska.fws.gov/asm/index.cfml*).

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Dr. Polly Wheeler, Office of Subsistence Management; (907) 786–3888 or *subsistence@fws.gov.* For questions specific to National Forest System lands, contact Steve Kessler, Subsistence Program Leader, USDA, Forest Service, Alaska Region, (907) 743–9461 or *skessler@fs.fed.us.*

SUPPLEMENTARY INFORMATION:

Background

Under Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126), the Secretary of the Interior and the Secretary of Agriculture (Secretaries) jointly implement the Federal Subsistence Management Program. This program provides a preference for take of fish and wildlife resources for subsistence uses on Federal public lands and waters in Alaska. The Secretaries published temporary regulations to carry out this program in the **Federal Register** on June 29, 1990 (55 FR 27114), and final regulations were published in the **Federal Register** on May 29, 1992 (57 FR 22940). The Program has subsequently amended these regulations a number of times. Because this program is a joint effort between Interior and Agriculture, these regulations are located in two titles of the Code of Federal Regulations (CFR): Title 36, ''Parks, Forests, and Public Property,'' and Title 50, ''Wildlife and Fisheries,'' at 36 CFR 242.1–28 and 50 CFR 100.1–28, respectively. The regulations contain subparts as follows: Subpart A, General Provisions; Subpart B, Program Structure; Subpart C, Board Determinations; and Subpart D, Subsistence Taking of Fish and Wildlife.

Consistent with subpart B of these regulations, the Secretaries established a Federal Subsistence Board to administer the Federal Subsistence Management Program. The Board is currently made up of:

- A Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture;
- The Alaska Regional Director, U.S. Fish and Wildlife Service;
- The Alaska Regional Director, U.S. National Park Service;
- The Alaska State Director, U.S. Bureau of Land Management;
- The Alaska Regional Director, U.S. Bureau of Indian Affairs; and
- The Alaska Regional Forester, U.S. Forest Service.

Through the Board, these agencies participate in the development of regulations for subparts C and D, which, among other things, set forth program eligibility and specific harvest seasons and limits.

In administering the program, the Secretaries divided Alaska into 10 subsistence resource regions, each of which is represented by a Subsistence Regional Advisory Council (Council). The Councils provide a forum for rural residents with personal knowledge of local conditions and resource requirements to have a meaningful role in the subsistence management of fish and wildlife on Federal public lands in Alaska. The Council members represent varied geographical, cultural, and user interests within each region.

Current Rule

On October 23, 2009, Secretary of the Interior Salazar announced the initiation of a Departmental review of the Federal Subsistence Management Program in Alaska. The review focused on how the Program is meeting the purposes and subsistence provisions of Title VIII of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA), and how the Program is serving rural subsistence users as envisioned when the program began in the early 1990s.

On August 31, 2010, the Secretaries announced the findings of the review, which included several proposed administrative and regulatory changes to strengthen the Program and make it more responsive to those who rely on it for their subsistence uses. One proposal called for adding two public members representing rural Alaskan subsistence users to the Federal Subsistence Board, which would allow additional regional representation and increased stakeholder input in the decisionmaking process.

The Departments published a proposed rule on February 11, 2011 (76 FR 7758), to amend the regulations in subpart B of 36 CFR part 242 and 50 CFR part 100, ''Federal Subsistence Board.'' The proposed rule opened a comment period, which closed on April 12, 2011. The Departments advertised the proposed rule by mail, radio, and newspaper. During the meeting period for the Federal Subsistence Regional Advisory Councils as published in the proposed rule, the Councils met and, in addition to other Council business, formulated recommendations to the Board on the proposed rule and received comments and suggestions from the public and Alaska Native organizations. The Board met on May 3, 2011, to receive additional comments and to discuss recommendations to the Secretaries on the proposed rule. The Board received a total of 6 comments from the public, 7 from Alaska Native organizations, 2 from subsistence resource commissions, 3 from State advisory committees, and 10 from Federal Subsistence Regional Advisory Councils. All comments were posted at *http://www.regulations.gov* at Docket No. FWS–R7–SM–2011–0004.

The Councils had a substantial role in reviewing the proposed rule and making recommendations for the final rule. Moreover, a Council Chair, or a designated representative, presented each Council's recommendations at the Board meeting of May 3, 2011. These final regulations reflect Board review and consideration of Council recommendations and public and Alaska Native organizations' comments. The public received extensive opportunity to review and comment on all proposed changes. Conforming regulatory changes are also made to clarify the designation of alternates for Board members representing Federal agencies and to increase the size of a quorum.

Summary of Comments and Board Recommendation to the Secretaries

The Board received a total of 28 public comments. All but two supported the addition of two members to the Board. One comment was neutral, and another opposed the proposed rule. Both of these comments recommended that the Board membership be changed to be comprised solely of members of the public or Alaska Natives with no Federal agency representation.

All 10 Federal Subsistence Regional Advisory Councils supported the proposed rule. While the majority of comments supported the proposed rule, a majority also recommended that the proposed language be changed from ''* * * two public members representing rural Alaskan subsistence users * * *'' to ''* * * two public members who are rural Alaskan subsistence users * * *''.

After careful review of all public, Tribal, and Native Corporation comments and consideration of the Councils' recommendations, the Board recommended the above language to the Secretaries. The Board's justification for this recommended modification to the language in the proposed rule was:

- To truly represent subsistence users, public members need to be actively participating in the subsistence way of life;
- With the exception of the Chair, active subsistence users are not represented on this Board, but their knowledge and current hunting, fishing, and gathering experience would clearly benefit this Board; and

• This recommendation would demonstrate a genuine commitment to listening to what the Board heard through the public comment process on the proposed rule.

In addition to recommendations and comments on the proposed regulatory language, the Councils' and public comments recommended several selection criteria for new public Board members. While these criteria was not addressed in the proposed rule, the Board consolidated these recommendations and forwarded them to the Secretaries.

On July 25, 2011, Secretary of the Interior Salazar, with concurrence of Secretary of Agriculture Vilsack, notified the Federal Subsistence Board that they approved the addition of two public members to the Board with the following language, '' * * * two public members who possess personal knowledge of and direct experience with subsistence uses in rural Alaska * * * ''. The approved language, while differing slightly from the Board's recommendation, captures the intent of the Board and recommendations made by the Councils, and the majority of comments from Alaska Native organizations and members of the public. The Secretaries responded positively to the recommended selection criteria for public members to the Board.

Tribal Consultation and Comment

As expressed in Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments,'' the Federal officials that have been delegated authority by the Secretaries are committed to honoring the unique government-to-government political relationship that exists between the Federal Government and Federally Recognized Indian Tribes (Tribes) as listed in 75 FR 60810 (October 1, 2010) and the relationship required by statute for consultation and coordination with Alaska Native corporations. Consultation with Alaska Native corporations is based on Public Law 108–199, div. H, Sec. 161, Jan. 23, 2004, 118 Stat. 452, as amended by Public Law 108–447, div. H, title V, Sec. 518, Dec. 8, 2004, 118 Stat. 3267, which provides that: ''The Director of the Office of Management and Budget and all Federal agencies shall hereafter consult with Alaska Native corporations on the same basis as Indian Tribes under Executive Order No. 13175.''

Title VIII of the Alaska National Interest Lands Conservation Act does not provide rights to Tribes for the subsistence taking of wildlife, fish, and shellfish. However, because Tribal members are affected by subsistence regulations, the Secretaries, through the Board, have provided Federally recognized Tribes and Alaska Native corporations an opportunity to consult on this rule.

The Board engaged in outreach efforts for this rule, including a notification letter, to ensure that Tribes and Alaska Native corporations were advised of the mechanisms by which they could participate. The Board provided a variety of opportunities for consultation: Commenting on proposed changes to the existing rule; engaging in dialogue at the Regional Council meetings; engaging in dialogue at the Board's meetings; and providing input in person, by mail, e-mail, or phone at any time during the rulemaking process. The Board is committed to efficiently and adequately providing opportunities to Tribes and Alaska Native corporations for consultation with regard to subsistence rulemaking.

The Board considered Tribes' and Alaska Native corporations' information, input, and recommendations, and addressed their concerns as much as practicable. A total of seven Alaska Native organizations provided comments and recommendations on this rule.

Conformance With Statutory and Regulatory Authorities

Administrative Procedure Act Compliance

The Board has provided extensive opportunity for public input and involvement in compliance with Administrative Procedure Act requirements, including publishing a proposed rule in the **Federal Register**, and receiving public comment on the proposed regulatory change through *http://www.regulations.gov.* There were also opportunities for participation during multiple Regional Council meetings at which Council recommendations were made in consideration of public comments received and opportunity for additional public comment during the Board meeting prior to deliberation and forming a recommendation to the Secretaries. Therefore, the Board believes that sufficient public notice and opportunity for involvement have been given to affected persons regarding the Board's recommendation and the Secretaries' decision.

National Environmental Policy Act Compliance

A Draft Environmental Impact Statement that described four alternatives for developing a Federal Subsistence Management Program was distributed for public comment on October 7, 1991. The Final Environmental Impact Statement (FEIS) was published on February 28, 1992. Based on the public comments received, the analysis contained in the FEIS, and the recommendations of the Federal Subsistence Board and the Department of the Interior's Subsistence Policy Group, the Secretary of the Interior, with the concurrence of the Secretary of Agriculture, through the U.S. Department of Agriculture–Forest Service, selected Alternative IV as identified in the DEIS and FEIS. The Record of Decision (ROD) on Subsistence Management for Federal Public Lands in Alaska was signed April 6, 1992. The selected alternative in the FEIS (Alternative IV) defined the administrative framework of an annual regulatory cycle for subsistence regulations. Several alternatives were considered for the composition of the Board including all Federal agency heads and all public members representing subsistence users. This regulation adding two additional public members to the Board falls within the scope of alternatives. For this reason, the impacts described in the FEIS and ROD are deemed sufficient for this regulation and require no further analysis.

Even in the absence of the consideration of alternatives in the existing programmatic FEIS and ROD, no further NEPA analysis would be required in this instance. There are two reasons for this. The first is that this action is merely administrative in nature and has no environmental impact. The second is that activities of this nature are categorically excluded from the requirements of NEPA under both Department of the Interior (DOI) regulations and Department of Agriculture (USDA) regulations. Specifically, DOI regulations at 43 CFR 46.210 set forth categorical exclusions for both internal organizational changes and the adoption of regulations that are of an administrative nature. Similarly, USDA regulations at 7 CFR 1b.3(a) provide a categorical exclusion for routine activities such as personnel and organizational changes, and similar administrative functions.

The final rule for subsistence management regulations for public lands in Alaska, subparts A, B, and C, implemented the Federal Subsistence Management Program and included a framework for a regulatory cycle for the subsistence taking of wildlife and fish. The following **Federal Register** documents pertain to this rulemaking:

SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA, SUBPARTS A, B, AND C: FEDERAL REGISTER DOCUMENTS PERTAINING TO THE FINAL RULE

Federal Register citation	Date of publication	Category	Details
57 FR 22940	May 29, 1992	Final Rule	''Subsistence Management Regulations for Public Lands in Alaska; Final Rule'' was published in the **Federal Register**.
64 FR 1276	January 8, 1999	Final Rule	Amended the regulations to include subsistence activities occurring on inland navigable waters in which the United States has a reserved water right and to identify specific Federal land units where reserved water rights exist. Extended the Federal Subsistence Board's management to all Federal lands selected under the Alaska Native Claims Settlement Act and the Alaska Statehood Act and situated within the boundaries of a Conservation System Unit, National Recreation Area, National Conservation Area, or any new national forest or forest addition, until conveyed to the State of Alaska or to an Alaska Native Corporation. Specified and clarified the Secretaries' authority to determine when hunting, fishing, or trapping activities taking place in Alaska off the public lands interfere with the subsistence priority.
66 FR 31533	June 12, 2001	Interim Rule	Expanded the authority that the Board may delegate to agency field officials and clarified the procedures for enacting emergency or temporary restrictions, closures, or openings.
67 FR 30559	May 7, 2002	Final Rule	Amended the operating regulations in response to comments on the June 12, 2001, interim rule. Also corrected some inadvertent errors and oversights of previous rules.
68 FR 7703	February 18, 2003	Direct Final Rule	Clarified how old a person must be to receive certain subsistence use permits and removed the requirement that Regional Councils must have an odd number of members.
68 FR 23035	April 30, 2003	Affirmation of Direct Final Rule.	Because no adverse comments were received on the direct final rule (67 FR 30559), the direct final rule was adopted.
69 FR 60957	October 14, 2004	Final Rule	Clarified the membership qualifications for Regional Advisory Council membership and relocated the definition of ''regulatory year'' from subpart A to subpart D of the regulations.
70 FR 76400	December 27, 2005	Final Rule	Revised jurisdiction in marine waters and clarified jurisdiction relative to military lands.
71 FR 49997	August 24, 2006	Final Rule	Revised the jurisdiction of the subsistence program by adding submerged lands and waters in the area of Makhnati Island, near Sitka, AK. This allowed subsistence users to harvest marine resources in this area under seasons, harvest limits, and methods specified in the regulations.
72 FR 25688	May 7, 2007	Final Rule	Revised nonrural determinations.
75 FR 63088	October 14, 2010	Final Rule	Amended the regulations for accepting and addressing special action requests and the role of the Regional Advisory Councils in the process.

An environmental assessment was prepared in 1997 on the expansion of Federal jurisdiction over fisheries and is available from the office listed under **FOR FURTHER INFORMATION CONTACT**. The Secretary of the Interior with the concurrence of the Secretary of Agriculture determined that the expansion of Federal jurisdiction did not constitute a major Federal action significantly affecting the human environment and, therefore, signed a Finding of No Significant Impact.

Section 810 of ANILCA

An ANILCA § 810 analysis was completed as part of the FEIS process on the Federal Subsistence Management Program. The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. The final § 810 analysis determination appeared in the April 6, 1992, ROD and concluded that the Program, under Alternative IV with an annual process for setting subsistence regulations, may have some local impacts on subsistence uses, but will not likely restrict subsistence uses significantly. During the subsequent environmental assessment process for extending fisheries jurisdiction, an evaluation of the effects of this rule was conducted in accordance with § 810. That evaluation also supported the Secretaries' determination that the rule

will not reach the ''may significantly restrict'' threshold that would require notice and hearings under ANILCA § 810(a).

Paperwork Reduction Act

An agency may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. This rule does not contain any new collections of information that require OMB approval. OMB has reviewed and approved the following collections of information associated with the subsistence regulations at 36 CFR part 242 and 50 CFR part 100: Subsistence hunting and fishing applications, permits, and reports, Federal Subsistence Regional Advisory Council Membership Application/Nomination and Interview Forms (OMB Control No. 1018–0075 expires January 31, 2013).

Regulatory Planning and Review (Executive Order 12866)

The Office of Management and Budget (OMB) has determined that this rule is not significant and has not reviewed this rule under Executive Order 12866. OMB bases its determination upon the following four criteria:

(a) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the rule will create inconsistencies with other agencies' actions.

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. In general, the resources to be harvested under this rule are already being harvested and consumed by the local harvester and do not result in an additional dollar benefit to the economy. However, we estimate that two million pounds of meat are harvested by subsistence users annually and, if given an estimated dollar value of $3.00 per pound, this amount would equate to about $6 million in food value statewide. Based upon the amounts and values cited above, the Departments certify that this rulemaking will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Small Business Regulatory Enforcement Fairness Act

Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*), this rule is not a major rule. It does not have an effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Executive Order 12630

Title VIII of ANILCA requires the Secretaries to administer a subsistence priority on public lands. The scope of this Program is limited by definition to certain public lands. Likewise, these regulations have no potential takings of private property implications as defined by Executive Order 12630.

Unfunded Mandates Reform Act

The Secretaries have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.,* that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities. The implementation of this rule is by Federal agencies and there is no cost imposed on any State or local entities or Tribal governments.

Executive Order 12988

The Secretaries have determined that these regulations meet the applicable standards provided in §§ 3(a) and 3(b)(2) of Executive Order 12988, regarding civil justice reform.

Executive Order 13132

In accordance with Executive Order 13132, the rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising subsistence management authority over fish and wildlife resources on Federal lands unless it meets certain requirements.

Executive Order 13175

The Alaska National Interest Lands Conservation Act does not provide rights to Tribes for the subsistence taking of wildlife, fish, and shellfish. However, the Board provided Federally recognized Tribes and Alaska Native Corporations an opportunity to consult on this rule. Consultation with Alaska Native Corporations is based on Public Law 108–199, div. H, Sec. 161, Jan. 23, 2004, 118 Stat. 452, as amended by Public Law 108–447, div. H, title V, Sec. 518, Dec. 8, 2004, 118 Stat. 3267, which provides that: ''The Director of the Office of Management and Budget and all Federal agencies shall hereafter consult with Alaska Native Corporations on the same basis as Indian Tribes under Executive Order No. 13175.''

The Secretaries, through the Board, provided a variety of opportunities for Tribal consultation: commenting on proposed changes to the existing rule; engaging in dialogue at the Regional Council meetings; engaging in dialogue at the Board's meetings; and providing input in person, by mail, e-mail, or phone at any time during this rulemaking process.

Executive Order 13211

This Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. However, this rule is not a significant regulatory action under E.O. 13211, affecting energy supply, distribution, or use, and no Statement of Energy Effects is required.

Drafting Information

Theo Matuskowitz drafted these regulations under the guidance of Dr. Polly Wheeler of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Additional assistance was provided by:

- Daniel Sharp, Alaska State Office, Bureau of Land Management;
- Sandy Rabinowitch and Nancy Swanton, Alaska Regional Office, National Park Service;
- Dr. Glenn Chen, Alaska Regional Office, Bureau of Indian Affairs;
- Jerry Berg, Alaska Regional Office, U.S. Fish and Wildlife Service; and
- Steve Kessler, Alaska Regional Office, U.S. Forest Service.

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

Regulation Promulgation

For the reasons set out in the preamble, the Federal Subsistence Board amends title 36, part 242, and title 50, part 100, of the Code of Federal Regulations, as set forth below.

PART SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA

■ 1. The authority citation for both 36 CFR part 242 and 50 CFR part 100 continues to read as follows:

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

Subpart B—Program Structure

■ 2. Amend § __.10 by revising paragraphs (b)(1) and (d)(2) to read as follows:

§ __.10 Federal Subsistence Board.

* * * * *

(b) * * *

(1) The voting members of the Board are: A Chair to be appointed by the Secretary of the Interior with the concurrence of the Secretary of Agriculture; two public members who possess personal knowledge of and direct experience with subsistence uses in rural Alaska to be appointed by the Secretary of the Interior with the concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; Alaska Regional Director, National Park Service; Alaska Regional Forester, U.S. Forest Service; the Alaska State Director, Bureau of Land Management; and the Alaska Regional Director, Bureau of Indian Affairs. Each Federal agency member of the Board may appoint a designee.

* * * * *

(d) * * *

(2) A quorum consists of five members.

* * * * *

Dated: August 31, 2011.

Ken Salazar,

Secretary of the Interior, Department of the Interior.

Dated: August 16, 2011.

Beth G. Pendleton,

Regional Forester, USDA—Forest Service.

[FR Doc. 2011–23243 Filed 9–9–11; 8:45 am]

BILLING CODE 4310–55–P; 3410–11–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2011–0733; FRL–9462–1]

Interim Final Determination to Stay and Defer Sanctions, San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: EPA is making an interim final determination to stay the imposition of offset sanctions and to defer the imposition of highway sanctions based on a proposed approval of revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portion of the California State Implementation Plan (SIP) published elsewhere in this **Federal Register**. The revisions concern SJVUAPCD Rule 4684, Polyester Resin Operations.

DATES: This interim final determination is effective on September 12, 2011. However, comments will be accepted until October 12, 2011.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2011–0733, by one of the following methods:

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

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

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

Instructions: All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or e-mail. *http://www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: Generally, documents in the docket for this action are available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at *http://www.regulations.gov,* some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material, large maps), and some may not be publicly available in either location (*e.g.,* CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

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

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

I. Background

On January 26, 2010 (75 FR 3996), we published a limited approval and limited disapproval of SJVUAPCD Rule 4684, as adopted locally on September 20, 2007 and submitted by the State on March 7, 2008. We based our limited disapproval action on certain deficiencies in the submittal. This disapproval action started a sanctions clock for imposition of sanctions pursuant to section 179 of the Clean Air Act (CAA) and our regulations at 40 CFR 52.31. Under 40 CFR 52.31(d)(1), offset sanctions apply eighteen months after the effective date of a disapproval and highway sanctions apply six months after the offset sanctions, unless we determine that the deficiencies forming the basis of the disapproval have been corrected.

On August 18, 2011, SJVUAPCD adopted revisions to Rule 4684 that were intended to correct the deficiencies identified in our limited disapproval action. On July 22, 2011, the State submitted a proposed rule with request for parallel processing to EPA. In the Proposed Rules section of today's **Federal Register**, we have proposed full approval of the rule once we receive the final adopted version as a revision to the California SIP because we believe it corrects the deficiencies for SJVUAPCD Rule 4684 identified in our January 26, 2010 disapproval action. Based on today's proposed approval, we are taking this final rulemaking action, effective on publication, to stay the imposition of the offset sanctions and to defer the imposition of the highway sanctions triggered by our January 26, 2010 limited disapproval. This action only addresses SJVUAPCD Rule 4684.

SJVUAPCD Rules 4401 and 4605, Steam-Enhanced Crude Oil Production Wells and Aerospace Assembly and Component Coating Operations, which were also determined to be deficient in our January 26, 2010 limited disapproval action, and the associated sanctions clocks, are being addressed in a separate action.

EPA is providing the public with an opportunity to comment on this stay/deferral of sanctions. If comments are submitted that change our assessment described in this final determination and the proposed full approval of revised SJVUAPCD Rules 4684, we intend to take subsequent final action to reimpose sanctions pursuant to 40 CFR 51.31(d). If no comments are submitted that change our assessment, then all sanctions and sanction clocks will be permanently terminated on the effective date of a final rule approval.

II. EPA Action

We are making an interim final determination to stay the imposition of the offset sanctions and to defer the imposition of the highway sanctions associated with SJVUAPCD Rule 4684 based on our concurrent proposal to approve the State's SIP revision as correcting deficiencies that initiated sanctions.

Because EPA has preliminarily determined that the State has corrected the deficiencies identified in EPA's limited disapproval action, relief from sanctions should be provided as quickly as possible. Therefore, EPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes effect (5 U.S.C. 553(b)(3)). However, by this action EPA is providing the public with a chance to comment on EPA's determination after the effective date, and EPA will consider any comments received in determining whether to reverse such action.

EPA believes that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public interest. EPA has reviewed the State's submittal and, through its proposed action, is indicating that it is more likely than not that the State has corrected the deficiencies that started the sanctions clocks. Therefore, it is not in the public interest to initially impose sanctions or to keep applied sanctions in place when the State has most likely done all it can to correct the deficiencies that triggered the sanctions clocks. Moreover, it would be impracticable to go through notice-and-comment rulemaking on a finding that the State has corrected the deficiencies prior to the rulemaking approving the State's submittal. Therefore, EPA believes that it is necessary to use the interim final rulemaking process to stay and defer sanctions while EPA completes its rulemaking process on the approvability of the State's submittal. Moreover, with respect to the effective date of this action, EPA is invoking the good cause exception to the 30-day notice requirement of the APA because the purpose of this notice is to relieve a restriction (5 U.S.C. 553(d)(1)).

III. Statutory and Executive Order Reviews

This action stays and defers Federal sanctions and imposes no additional requirements.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget.

This action is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action.

The administrator certifies that this action will not have significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rule 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).

This rule does not have tribal implications because it will 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, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

This action does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999).

This rule is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. § 272) do not apply to this rule because it imposes no standards.

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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 to Congress and the Comptroller General. However, section 808 provides that any rule for which the issuing agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). EPA has made such a good cause finding, including the reasons therefor, and established an effective date of September 12, 2011. EPA will submit a report containing this rule 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 rule 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 November 14, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purpose of judicial review nor does it extend the time within which 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 regulations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 31, 2011.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2011–23134 Filed 9–9–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2011–0701; FRL–9462–5]

Interim Final Determination To Stay and Defer Sanctions, San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: EPA is making an interim final determination to stay the imposition of offset sanctions and to defer the imposition of highway sanctions based on a proposed approval of revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portion of the California State Implementation Plan (SIP) published elsewhere in this **Federal Register**. The revisions concern SJVUAPCD Rules 4401 and 4605.

DATES: This interim final determination is effective on September 12, 2011. However, comments will be accepted until October 12, 2011.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2011–0701, by one of the following methods:

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

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

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

Instructions: All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or e-mail. *http://www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: Generally, documents in the docket for this action are available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at *http://www.regulations.gov,* some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material, large maps), and some may not be publicly available in either location (*e.g.,* CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Adrianne Borgia, EPA Region IX, (415) 972–3576, *borgia.adrianne@epa.gov.*

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

I. Background

On January 26, 2010 (75 FR 3996), we published a limited approval and limited disapproval of SJVUAPCD Rules 4401 and 4605, as adopted locally on December 14, 2006 and September 20, 2007 and submitted by the State on May 8, 2007 and March 7, 2008 respectively. We based our limited disapproval action on certain deficiencies in each of the submittals. Our disapproval action started a sanctions clock for imposition of sanctions pursuant to section 179 of the Clean Air Act (CAA) and our regulations at 40 CFR 52.31. Under 40 CFR 52.31(d)(1), offset sanctions apply eighteen months after the effective date of a disapproval and highway sanctions apply six months after the offset sanctions, unless we determine that the deficiencies forming the basis of the disapproval have been corrected.

On June 16, 2011, SJVUAPCD adopted revisions to Rules 4401 and 4605 that were intended to correct the deficiencies identified in our limited disapproval action. On July 28, 2011, the State submitted these revisions to EPA. In the Proposed Rules section of today's **Federal Register**, we have proposed full approval of each of the revised rules because we believe the revisions correct the deficiencies identified in our January 26, 2010 limited disapproval action. Based on today's proposed approval, we are taking this final rulemaking action, effective on publication, to stay the imposition of the offset sanctions and to defer the imposition of the highway sanctions triggered by our January 26, 2010 limited disapproval. This action only addresses SJVUAPCD Rules 4401 and 4605. SJVUAPCD Rule 4684, Polyester Resin Operations, which was also determined to be deficient in our January 26, 2010 limited disapproval action, and its associated sanctions clocks, will be addressed in a separate action.

EPA is providing the public with an opportunity to comment on this stay/deferral of sanctions. If comments are submitted that change our assessment described in this final determination and the proposed full approval of revised SJVUAPCD Rules 4401 and 4605, we intend to take subsequent final action to reimpose sanctions pursuant to 40 CFR 51.31(d). If no comments are submitted that change our assessment, then all sanctions and sanction clocks will be permanently terminated on the effective date of a final rule approval.

II. EPA Action

We are making an interim final determination to stay the imposition of the offset sanctions and to defer the imposition of the highway sanctions associated with SJVUAPCD Rules 4401 and 4605 based on our concurrent proposal to approve the State's SIP revisions as correcting deficiencies that initiated sanctions.

Because EPA has preliminarily determined that the State has corrected the deficiencies identified in EPA's limited disapproval action, relief from sanctions should be provided as quickly as possible. Therefore, EPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes effect (5 U.S.C. 553(b)(3)). However, by this action EPA is providing the public with a chance to comment on EPA's determination after the effective date, and EPA will consider any comments received in determining whether to reverse such action.

EPA believes that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public interest. EPA has reviewed the State's submittal and, through its proposed action, is indicating that it is more likely than not that the State has corrected the deficiencies that started the sanctions clocks. Therefore, it is not in the public interest to initially impose sanctions or to keep applied sanctions in place when the State has most likely done all it can to correct the deficiencies that triggered the sanctions clocks. Moreover, it would be impracticable to go through notice-and-comment rulemaking on a finding that the State has corrected the deficiencies prior to the rulemaking approving the State's submittal. Therefore, EPA believes that it is

necessary to use the interim final rulemaking process to stay and defer sanctions while EPA completes its rulemaking process on the approvability of the State's submittal. Moreover, with respect to the effective date of this action, EPA is invoking the good cause exception to the 30-day notice requirement of the APA because the purpose of this notice is to relieve a restriction (5 U.S.C. 553(d)(1)).

III. Statutory and Executive Order Reviews

This action stays and defers Federal sanctions and imposes no additional requirements.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget.

This action is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action.

The administrator certifies that this action will not have significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rule 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).

This rule does not have Tribal implications because it will 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, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

This action does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999).

This rule is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply to this rule because it imposes no standards.

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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 to Congress and the Comptroller General. However, section 808 provides that any rule for which the issuing agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). EPA has made such a good cause finding, including the reasons therefor, and established an effective date of September 12, 2011. EPA will submit a report containing this rule 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 rule 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 November 14, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purpose of judicial review nor does it extend the time within which 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 regulations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 31, 2011.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2011–23145 Filed 9–9–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2011–0002; Internal Agency Docket No. FEMA–8195]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date.

DATES: *Effective Dates:* The effective date of each community's scheduled suspension is the third date (''Susp.'') listed in the third column of the following tables.

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or for further information, contact David Stearrett, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2953.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the NFIP, 42 U.S.C. 4001 *et seq.;* unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance

with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, FEMA has identified the Special Flood Hazard Areas (SFHAs) in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year, on FEMA's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region I				
Connecticut:				
East Hartford, Town of, Hartford County	090026	December 29, 1972, Emerg; December 18, 1979, Reg; September 16, 2011, Susp.	Sept. 16, 2011	Sept. 16, 2011
Hartford, City of, Hartford County	095080	June 30, 1970, Emerg; April 28, 1972, Reg; September 16, 2011, Susp.	.....do	Do.
Region IV				
Alabama:				
Albertville, City of, Marshall County	010366	October 13, 1976, Emerg; September 4, 1985, Reg; September 16, 2011, Susp.	.....do	Do.
Arab, City of, Marshall County	010345	March 21, 1977, Emerg; August 1, 1987, Reg; September 16, 2011, Susp.	.....do	Do.
Grant, Town of, Marshall County	010282	N/A, Emerg; June 11, 2009, Reg; September 16, 2011, Susp.	.....do	Do.
Guntersville, City of, Marshall County	010311	May 5, 1975, Emerg; August 19, 1991, Reg; September 16, 2011, Susp.	.....do	Do.
Haleyville, City of, Winston County	010303	October 23, 1975, Emerg; June 25, 1976, Reg; September 16, 2011, Susp.	.....do	Do.
Marshall County, Unincorporated Areas	010275	N/A, Emerg; June 4, 1991, Reg; September 16, 2011, Susp.	.....do	Do.
Winston County, Unincorporated Areas	010304	January 14, 1991, Emerg; September 1, 1991, Reg; September 16, 2011, Susp.	.....do	Do.
Mississippi:				
Carthage, City of, Leake County	280097	October 18, 1974, Emerg; August 19, 1985, Reg; September 16, 2011, Susp.	.....do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Leake County, Unincorporated Areas ...	280293	April 23, 1979, Emerg; September 15, 1989, Reg; September 16, 2011, Susp.	.....do	Do.
Pearl River Valley Water Supply District, Leake County.	280338	N/A, Emerg; March 5, 1993, Reg; September 16, 2011, Susp.	.....do	Do.
Walnut Grove, Town of, Leake County	280098	November 1, 2010, Emerg; N/A, Reg; September 16, 2011, Susp.	.....do	Do.
South Carolina:				
Cheraw, Town of, Chesterfield County	450050	March 21, 1974, Emerg; September 29, 1978, Reg; September 16, 2011, Susp.	.....do	Do.
Cherokee County, Unincorporated Areas.	450045	October 21, 1981, Emerg; October 21, 1981, Reg; September 16, 2011, Susp.	.....do	Do.
Chester, City of, Chester County	450048	July 7, 1975, Emerg; July 5, 1982, Reg; September 16, 2011, Susp.	.....do	Do.
Chester County, Unincorporated Areas	450047	August 20, 1975, Emerg; July 5, 1982, Reg; September 16, 2011, Susp.	.....do	Do.
Chesterfield County, Unincorporated Areas.	450228	December 15, 1986, Emerg; November 6, 1991, Reg; September 16, 2011, Susp.	.....do	Do.
Gaffney, City of, Cherokee County	450046	February 11, 1974, Emerg; August 3, 1981, Reg; September 16, 2011, Susp.	.....do	Do.
Great Falls, Town of, Chester County ..	450049	May 27, 1975, Emerg; June 25, 1976, Reg; September 16, 2011, Susp.	.....do	Do.
Newberry, City of, Newberry County	450153	November 27, 1974, Emerg; June 4, 1980, Reg; September 16, 2011, Susp.	.....do	Do.
Newberry County, Unincorporated Areas.	450224	July 2, 1975, Emerg; December 15, 1990, Reg; September 16, 2011, Susp.	.....do	Do.
Whitmire, Town of, Newberry County ...	450156	July 7, 1975, Emerg; February 1, 1991, Reg; September 16, 2011, Susp.	.....do	Do.
Region V				
Wisconsin:				
Balsam Lake, Village of, Polk County ...	550333	April 30, 1975, Emerg; July 1, 1988, Reg; September 16, 2011, Susp.	.....do	Do.
Frederic, Village of, Polk County	550334	March 24, 1975, Emerg; September 1, 1986, Reg; September 16, 2011, Susp.	.....do	Do.
Luck, Village of, Polk County	550335	April 16, 1975, Emerg; July 2, 1987, Reg; September 16, 2011, Susp.	.....do	Do.
Osceola, Village of, Polk County	550336	August 20, 1974, Emerg; January 5, 1984, Reg; September 16, 2011, Susp.	.....do	Do.
Polk County, Unincorporated Areas	550577	April 22, 1975, Emerg; June 4, 1990, Reg; September 16, 2011, Susp.	.....do	Do.
Saint Croix Falls, City of, Polk County ..	550337	July 18, 1975, Emerg; May 1, 1987, Reg; September 16, 2011, Susp.	.....do	Do.
Region VI				
Arkansas:				
Cave City, City of, Sharp County	050313	December 10, 1982, Emerg; May 1, 1985, Reg; September 16, 2011, Susp.	.....do	Do.
Cherokee Village, City of, Sharp County	050603	April 25, 2000, Emerg; April 16, 2004, Reg; September 16, 2011, Susp.	.....do	Do.
Evening Shade, Town of, Sharp County	050412	March 23, 1976, Emerg; November 1, 1985, Reg; September 16, 2011, Susp.	.....do	Do.
Hardy, City of, Sharp County	050330	November 11, 1977, Emerg; September 4, 1985, Reg; September 16, 2011, Susp.	.....do	Do.
Williford, Town of, Sharp County	050575	January 18, 1983, Emerg; March 25, 1985, Reg; September 16, 2011, Susp.	.....do	Do.
Oklahoma:				
Adair, Town of, Mayes County	400256	N/A, Emerg; January 25, 2010, Reg; September 16, 2011, Susp.	.....do	Do.
Chouteau, Town of, Mayes County	400115	May 9, 1975, Emerg; January 26, 1983, Reg; September 16, 2011, Susp.	.....do	Do.
Locust Grove, Town of, Mayes County	400116	May 9, 1975, Emerg; September 11, 1978, Reg; September 16, 2011, Susp.	.....do	Do.
Mayes County, Unincorporated Areas ..	400458	April 8, 1987, Emerg; December 1, 1989, Reg; September 16, 2011, Susp.	.....do	Do.
Pryor Creek, City of, Mayes County	400117	April 21, 1975, Emerg; July 16, 1987, Reg; September 16, 2011, Susp.	.....do	Do.
Salina, Town of, Mayes County	400118	January 26, 1983, Emerg; September 4, 1985, Reg; September 16, 2011, Susp.	.....do	Do.
Spavinaw, Town of, Mayes County	400328	December 23, 1976, Emerg; September 21, 1982, Reg; September 16, 2011, Susp.	.....do	Do.
Texas:				

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Coolidge, City of, Limestone County	480911	June 12, 1987, Emerg; November 1, 1989, Reg; September 16, 2011, Susp.	.....do	Do.
Kosse, Town of, Limestone County	481151	November 19, 1980, Emerg; July 6, 1982, Reg; September 16, 2011, Susp.	.....do	Do.
Limestone County, Unincorporated Areas.	480910	February 6, 1979, Emerg; June 1, 1987, Reg; September 16, 2011, Susp.	.....do	Do.
Mexia, City of, Limestone County	480442	August 18, 1975, Emerg; August 1, 1980, Reg; September 16, 2011, Susp.	.....do	Do.
Region VII				
Iowa:				
Aplington, City of, Butler County	190335	September 3, 2010, Emerg; N/A, Reg; September 16, 2011, Susp.	.....do	Do.
Aredale, City of, Butler County	190035	November 3, 1975, Emerg; August 19, 1986, Reg; September 16, 2011, Susp.	.....do	Do.
Clarksville, City of, Butler County	190336	October 28, 1985, Emerg; September 6, 1989, Reg; September 16, 2011, Susp.	.....do	Do.
New Hartford, City of, Butler County	190038	November 6, 1974, Emerg; September 29, 1986, Reg; September 16, 2011, Susp.	.....do	Do.
Elma, City of, Howard County	190416	May 23, 1978, Emerg; August 1, 1986, Reg; September 16, 2011, Susp.	.....do	Do.
Lime Springs, City of, Howard County ..	190417	January 24, 1977, Emerg; September 1, 1987, Reg; September 16, 2011, Susp.	.....do	Do.
Riceville, City of, Howard County	190418	February 21, 1997, Emerg; March 1, 2000, Reg; September 16, 2011, Susp.	.....do	Do.
Region VIII				
South Dakota:				
Meade County, Unincorporated Areas ..	460054	April 12, 1973, Emerg; August 1, 1978, Reg; September 16, 2011, Susp.	.....do	Do.
Sturgis, City of, Meade County	460055	February 9, 1973, Emerg; June 1, 1977, Reg; September 16, 2011, Susp.	.....do	Do.
Wyoming:				
Dubois, Town of, Fremont County	560018	May 9, 1997, Emerg; November 1, 1998, Reg; September 16, 2011, Susp.	.....do	Do.
Fremont County, Unincorporated Areas	560080	July 8, 1975, Emerg; February 1, 1979, Reg; September 16, 2011, Susp.	.....do	Do.
Hudson, Town of, Fremont County	560019	September 6, 1974, Emerg; July 17, 1978, Reg; September 16, 2011, Susp.	.....do	Do.
Lander, City of, Fremont County	560020	August 23, 1974, Emerg; September 1, 1978, Reg; September 16, 2011, Susp.	.....do	Do.
Riverton, City of, Fremont County	560021	May 18, 1999, Emerg; September 1, 1999, Reg; September 16, 2011, Susp.	.....do	Do.
Shoshoni, Town of, Fremont County	560078	July 5, 1983, Emerg; May 28, 1986, Reg; September 16, 2011, Susp.	.....do	Do.

*do = Ditto.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Sandra K. Knight,

Deputy Associate Administrator for Mitigation.

[FR Doc. 2011–23219 Filed 9–9–11; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 110527309–1508–02]

RIN 0648–BA90

Atlantic Highly Migratory Species; North and South Atlantic Swordfish Quotas

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

ACTION: Final rule.

SUMMARY: This final rule adjusts the North and South Atlantic swordfish quotas for the 2011 fishing year (January 1, 2011, through December 31, 2011) to account for the 2010 underharvest and implement International Commission for the Conservation of Atlantic Tunas (ICCAT) Recommendations 10–02 and 09–03, which maintain the U.S. allocation of the international total allowable catch (TAC) for North and South Atlantic swordfish, respectively. This rule could affect commercial and recreational fishing for swordfish in the Atlantic Ocean, including the Caribbean Sea and Gulf of Mexico, by establishing annual quotas. The effects on commercial and recreational fishermen are expected to be minimal since the

annual quota has not changed and recent years' landings have been less than adjusted quotas.

DATES: Effective on October 12, 2011.

ADDRESSES: Copies of the supporting documents—including the 2007 Environmental Assessment (EA), Regulatory Impact Review (RIR), Final Regulatory Flexibility Analysis (FRFA), and the 2006 Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP)—are available from the HMS Web site at *http://www.nmfs.noaa.gov/sfa/hms/.*

FOR FURTHER INFORMATION CONTACT: Jennifer Cudney or Karyl Brewster-Geisz by phone: 301–427–8503 or by fax: 301–713–1917.

SUPPLEMENTARY INFORMATION: The U.S. Atlantic swordfish fishery is managed under the 2006 Consolidated HMS FMP. Implementing regulations at 50 CFR part 635 are issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.,* and the Atlantic Tunas Convention Act (ATCA), 16 U.S.C. 971 *et seq.* ICCAT is an inter-governmental fishery organization responsible for the conservation of tunas, tuna-like species, and other species (including swordfish) targeted in high seas fisheries or incidentally captured in tuna fisheries, in the Atlantic Ocean and its adjacent seas. The ICCAT Commission can, on the basis of scientific evidence provided by the Standing Committee on Research and Statistics (SCRS) and of other relevant information, adopt Recommendations and Resolutions aimed at maintaining the populations of ICCAT species at levels which will permit maximum sustainable catch. As an active member of ICCAT, the United States is mandated to implement the binding recommendations of ICCAT to comply with this international treaty. Under ATCA, Congress granted the authority to promulgate regulations as may be necessary and appropriate to implement binding recommendations of ICCAT. All ICCAT recommendations are available on the ICCAT Web site at *http://www.iccat.int/en/.*

One swordfish measure adopted at the 2010 meeting, and one swordfish measure adopted at the 2009 meeting but carried through the 2011 fishing year, are the subjects of this rulemaking. Recommendation 10–02, ''Recommendation by ICCAT for the conservation of north Atlantic swordfish'', establishes quota restrictions for participating nations, provides for transfers between nations, maintains minimum size and/or weight limits for swordfish, maintains previous carryover caps, and requires that participating nations submit a report detailing the history of their north Atlantic swordfish fisheries and a management plan. Recommendation 09–03, ''Recommendation by ICCAT on south Atlantic swordfish catch limits'', establishes catch limits for participating nations in the south Atlantic swordfish fishery, provides for transfers of quota between member nations, and maintains a carryover cap in the event of underharvest. Implications of Recommendation 10–02 and Recommendation 09–03 are discussed in the relevant sections below.

Information on the proposed rule can be found in 75 FR 36892 (June 23, 2011) and are not repeated here. A brief summary of the actions in this final rule can be found below.

North Atlantic Swordfish Quota

This final rule adjusts the total available North Atlantic swordfish quota for the 2011 fishing year (January 1, 2011, through December 31, 2011) to account for the 2010 underharvest, and transfers 25 metric tons (mt) whole weight (ww) (18.8 mt dressed weight (dw)) of quota to Canada from the reserve category in conformance with ICCAT Recommendation 10–02. ICCAT recommendation 10–02 replaces the provisions of previous ICCAT Recommendations.

The 2010 North Atlantic swordfish baseline quota is 2,937.6 mt dw. The estimated total North Atlantic swordfish underharvest for 2010 was 2,370.6 mt dw, which exceeds the maximum carryover cap of 1,468.8 mt dw, established in ICCAT Recommendation 06–02 and extended by ICCAT Recommendation 10–02. Therefore, NMFS is carrying forward the maximum amount allowed by the recommendation. Thus, the baseline quota plus the underharvest carryover maximum of 1,468.8 mt dw equals an adjusted quota of 4,406.4 mt dw for the 2011 fishing year (Table 1).

South Atlantic Swordfish Quota

This final rule adjusts the total available South Atlantic swordfish quota for the 2011 fishing year (January 1, 2011, through December 31, 2011) to account for the 2010 underharvest and transfer the total South Atlantic underharvest of 75.0 metric tons (mt) dressed weight (dw), plus 0.2 mt dw from the 2011 baseline quota, (100 mt ww) to Namibia, Côte d'Ivoire, and Belize in conformance with ICCAT Recommendation 09–03.

The ICCAT South Atlantic swordfish measure, recommendation 09–03, is a 3-year measure that maintains the U.S. quota of 100 mt ww (75.2 mt dw). Recommendation 09–03 states that a total of 100 mt ww (75.2 mt dw) of the U.S. South Atlantic swordfish quota must be transferred to other countries. These transfers are 50 mt ww (37.6 mt dw) to Namibia, 25 mt ww (18.8 mt dw) to Côte d'Ivoire, and 25 mt ww (18.8 mt dw) to Belize. In 2010, the 100 mt ww (75.2 mt dw) that was transferred to these countries came entirely from the 2009 U.S. underharvested quota. In 2010, landings totaled 0.2 mt dw, and the United States therefore has 75.0 mt dw of the 2010 underharvest available for transfer and will transfer the remaining 0.2 mt dw from the 2011 baseline quota. Therefore, the 2011 available quota for South Atlantic swordfish is 75.0 mt dw (see Table 1).

Response to Comments

NMFS received two written comments on the proposed rule, which are summarized below with NMFS's responses. One submission was anonymous, while the other was from an industry organization (Blue Water Fishermen's Association). One submission included comments that were both relevant to the rule and beyond the scope of this rulemaking; the comments beyond the scope of the rulemaking were separated into a third comment for the record.

Comment 1: NMFS received one comment in opposition to the establishment of North and South Atlantic commercial swordfish quotas and one comment that provided general support for ICCAT swordfish quotas.

Response: The establishment of annual swordfish quotas is necessary to comply with ICCAT Recommendation 10–02 and ICCAT Recommendation 09–03. Under ATCA, the United States is obligated to promulgate regulations as may be necessary and appropriate to carry out the ICCAT recommendations.

Comment 2: One commenter noted that there was ''no underharvest'' in the 2010 fishery and noted problems with the regulations.gov Web page.

Response: NMFS disagrees with the statement that there was no underharvest in 2010; the adjusted 2010 quota for North Atlantic swordfish was 4,406.4 mt dw, and the landings amounted to 2,035.8 mt dw. A total of 2,370.6 mt dw of available swordfish quota was not landed in 2010 and is therefore considered underharvest. Finally, the comment noted problems with regulations.gov which were addressed system-wide shortly after the docket for the proposed rule was created. Problems associated with regulations.gov were not considered to adversely impact the general public

because alternative methods for comment submission were provided in the proposed rule. Additionally, a second submission was received through regulations.gov after the complaints in the comment were addressed, indicating a successful resolution of the problem.

Comment 3: NMFS should (1) replace time-area closures with adjustments on the domestic gear restrictions (*i.e.,* circle hooks, etc.), and re-open the closed areas within the U.S. EEZ to assist in the revitalization of the fishery; (2) reinstate a 33 lb (15 kg) weight limit on swordfish because NMFS is ''exceeding ICCAT recommendations'' by removing the 33 lb minimum weight for swordfish; and, (3) consider the conservation impacts on swordfish stocks that come with transferring U.S. quota away from U.S. fishermen to countries that do not exercise the same conservation standards.

Response: These issues are beyond the scope of this action. First, this rule addresses quota specifications, not time/area closures and other management measures. Secondly, ICCAT recommendation 10–02 provides for two minimum size alternatives for Contracting Parties. Contracting Parties may restrict fishermen to a minimum size of 25 kg live weight OR 125 cm lower jaw fork length (LJFL) with 15 percent tolerance; alternatively, Contracting Parties may restrict fishermen to a minimum size of 15 kg live weight OR 119 cm LJFL with no tolerance. In 2009, NMFS decided to simplify swordfish minimum size to facilitate enforcement. Minimum length and weight were considered equal in effect and refer to the same size of fish; therefore NMFS decided to drop the minimum weight requirement of 33 lbs (15 kg) and only use a minimum length to protect juvenile swordfish. 50 CFR § 635.20 (2009) Since NMFS maintained the ICCAT minimum size recommendation of 119 cm LFJL and ICCAT recommendation 10–02 provides the option of using a minimum size or a minimum weight, NMFS disagrees that the Agency is exceeding ICCAT recommendations by only implementing a 119 cm LFJL. Thirdly, the annual transfers of quota are necessary to comply with ICCAT Recommendation 10–02, as agreed upon by the Contracting Parties, which explicitly states that the United States is to transfer 25 mt ww (18.8 mt dw) of North Atlantic swordfish quota and 100 mt ww (75.2 mt dw) of South Atlantic swordfish quota, among other things. Per the ATCA, the United States is obligated to implement ICCAT-approved recommendations.

Changes From the Proposed Rule

No changes have been made to the proposed rule in this final rule.

TABLE 1—LANDINGS AND QUOTAS FOR THE ATLANTIC U.S. SWORDFISH FISHERIES (2007–2011)

[Values are in metric tons of dressed weight (dw)]

North Atlantic swordfish quota (mt dw)	2007	2008	2009	2010**	2011
Baseline Quota	2,937.6	2,937.6	2,937.6	2,937.6	2,937.6
Quota Carried Over	1,468.8	1,468.8	1,468.8	1,468.8	1,468.8
Adjusted Quota	4,406.4	4,406.4	4,406.4	4,406.4	4,406.4
Quota Allocation:					
Directed Category	3,601.9	3,620.7	3,639.5	3,658.3	3,677.1
Incidental Category	300.0	300.0	300.0	300.0	300.0
Reserve Category	504.5	485.7	466.9	448.1	429.3
Utilized Quota:					
Landings	1,907.3	1,752.7	2,027.0	**2,035.8	TBD
Reserve Transfer to Canada	18.8	18.8	18.8	18.8	18.8
Total Underharvest	2,480.3	2,634.9	2,360.6	**2,370.6	TBD
Dead Discards	109.8	149.8	106.8	98.3	TBD
Carryover Available†	1,468.8	1,468.8	1,468.8	1,468.8	TBD
South Atlantic swordfish quota (mt dw)	**2007**	**2008**	**2009**	**2010****	**2011**
Baseline Quota	75.2	75.2	75.2	75.2	75.2
Quota Carried Over	75.2	75.2	75.2	*0.0	*−0.2
Adjusted quota	150.4	150.4	75.2	75.2	75.0
Landings	0.0	0.0	0.0	**0.2	TBD
Carryover Available	75.2	75.2	75.2	75.0	TBD

† Underharvest is capped at 50 percent of the baseline quota allocation for the North Atlantic and 75.2 dw (100 mt ww) for the South Atlantic.
* Under 09–03, 100 mt ww of the U.S. underharvest and base quota, as necessary, was transferred to Namibia (37.6 mt dw, 50 mt ww), Côte d'Ivoire (18.8 mt dw, 25 mt ww), and Belize (18.8 mt dw, 25 mt ww).
** 2010 landings information is preliminary and is subject to change based on the 2011 ICCAT National Report.

Classification

The Assistant Administrator for Fisheries has determined that this final rule is necessary for the conservation and management of Atlantic swordfish and that it is consistent with the 2006 Consolidated HMS FMP, the Magnuson-Stevens Act, ATCA, and other applicable law.

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

List of Subjects in 50 CFR Part 635

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

Dated: September 7, 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 635 is amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

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

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

■ 2. In § 635.27, paragraph (c)(1)(i)(B) is revised to read as follows:

§ 635.27 Quotas.

* * * * *

(c) * * *

(1) * * *

(i) * * *

(B) A swordfish from the North Atlantic swordfish stock landed by a vessel for which an incidental catch permit for swordfish or an HMS Angling or Charter/Headboat permit has been issued, or caught after the effective date of a closure of the directed fishery from a vessel for which a directed fishery permit or a handgear permit for swordfish has been issued, is counted against the incidental catch quota. The annual incidental category quota is 300 mt dw for each fishing year.

* * * * *

[FR Doc. 2011–23269 Filed 9–9–11; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 76, No. 176
Monday, September 12, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 31

[NRC–2011–0214]

Impacts of Compatibility Changes in General License Regulations

AGENCY: Nuclear Regulatory Commission.

ACTION: Public meeting and request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) plans to hold public meetings on September 20, 2011, in Lisle, Illinois, and on September 22, 2011, in Mansfield, Massachusetts, to solicit information on impacts to manufacturers and distributors and end-users of generally licensed devices from revising the compatibility categories of Title 10 of the Code of Federal Regulations (10 CFR) 31.5 and 31.6 from ''B'' to ''C.'' In addition to providing information on impacts at the public meetings, information on the issues raised in this document may be submitted to the NRC at any time through the end of the comment period.

DATES: Submit comments on the issues raised in the Discussion section of this document by October 30, 2011. Comments received after this date will be considered if it is practical to do so, but the Commission cannot assure consideration of comments received after the expiration date. It is not the intent of the NRC to respond to comments received on the issues raised in this document, but to inform the Commission on the impacts of their previous decisions.

ADDRESSES: Please include Docket ID NRC–2011–0214 in the subject line of your comments. For additional instructions on submitting comments and instructions on accessing documents related to this action, see ''Submitting Comments and Accessing Information'' in the **SUPPLEMENTARY INFORMATION** section of this document.

You may submit comments on the issues raised in the Discussion section of this document 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–2011–0214. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; e-mail: *Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.
- *E-mail comments to: Rulemaking.Comments@nrc.gov.* If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at 301–415–1677.
- *Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays. (telephone: 301–415–1677).
- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.

FOR FURTHER INFORMATION CONTACT: Stephen Poy, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–7135; e-mail: *Stephen.Poy@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Submitting Comments and Accessing Information

Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site, *http://www.regulations.gov.* Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

You can access publicly available documents related to this proposed rule using the following methods:

- *NRC's Public Document Room (PDR):* The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*
- *Federal Rulemaking Web Site:* Public comments and supporting materials related to this proposed rule can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2011–0214.

Background

On December 2, 2010, the Commission issued a Staff Requirements Memorandum, SECY–10–0105, [Final Rule: Limiting the Quantity of Byproduct Material in a Generally Licensed Device (RIN 3150–AI33; NRC–2008–0272) (ADAMS Accession No. ML100690242)] and acted on the final rule that would amend 10 CFR part 31. The amendment would have limited the quantity of byproduct material contained in a generally licensed device to below one-tenth (1/10) of the International Atomic Energy Agency Category 3 thresholds. Individuals possessing devices with byproduct material at or above 1/10 of the Category 3 threshold values would have been required to apply for and obtain a specific license. After review, the Commission decided to disapprove the publication of the final rule, but approved revising the compatibility categories of §§ 31.5 and 31.6 from Category B to Category C. The NRC program elements in Category B are those that apply to activities that have direct and significant transboundary implications. An Agreement State should adopt program elements essentially identical to those of the NRC program elements in Category C. The

NRC program elements in Category C are those that do not meet the criteria of Category A or B, but the essential objectives of which an Agreement State should adopt to avoid conflict, duplication, gaps, or other conditions that would jeopardize an orderly pattern in the regulation of agreement material on a nationwide basis. An Agreement State should adopt the essential objectives of the NRC program elements. The Commission also directed the staff to solicit information on the impacts of the change in compatibility. These meetings represent one mechanism being used to solicit information on the impacts of this change.

Discussion

On December 2, 2010, the Commission issued SECY–10–0105 and acted on the final rule that would amend 10 CFR part 31. The Commission decided to disapprove the publication of the final rule while revising the compatibility categories of §§ 31.5 and 31.6 from B to C. The Commission directed staff to report back with a description of which Agreement States, if any, will act to modify their program as a result of the change in compatibility for §§ 31.5 and 31.6, how the programs were modified and provide an analysis of any transboundary impacts to the regulated community, particularly for those operating on a multi-state basis. The NRC staff queried the Agreement States to collect information on their current regulatory program, and whether they intend to modify their current regulations equivalent to §§ 31.5 and 31.6. The feedback from the States received to date was that the Agreement States do not intend to modify their current general license (GL) regulatory programs as a result of the Commission's decision to revise the compatibility categories of §§ 31.5 and 31.6 from B to C. Therefore, the NRC staff has assumed that the current Agreement State GL regulatory environment is the base case for evaluating impacts on manufacturers and distributors and end-users. Given the assumption that the current regulatory environment will continue, the staff concluded that there would be minimal impact to manufacturers, distributors, and end-users of generally licensed devices. If this is incorrect, please provide the following information that details the impact to your business:

(a) What would be the impacts of changing the compatibility categories of §§ 31.5 and 31.6 from B to C?

(b) What would be the distribution impediments?

(c) If there are any other impacts brought about by changes in the State regulations, please explain.

To assist the NRC staff in evaluating the impact of the change in compatibility, the NRC staff requests additional information in the following areas:

From Manufacturers/Distributors, it is necessary to understand:

(a) What are the current practices used by companies to address multiple jurisdictions and the registration requirements of generally licensed devices and §§ 31.5 and 31.6 (or the State equivalent)?

(b) What are the costs incurred by companies by doing business in multiple jurisdictions with regard to the registration requirements of generally licensed devices and §§ 31.5 and 31.6 (or the State equivalent)?

(c) What are the costs to health and safety in doing business in multiple jurisdictions with regard to the registration requirements of generally licensed devices and §§ 31.5 and 31.6 (or the State equivalent)?

(d) Do you have any comments on the regulation of generally licensed devices associated to §§ 31.5 and 31.6 (or the State equivalent) that affect you with regard to where your company is located or where your customers are located?

From the End-Users, it is necessary to understand:

(a) What is the difference in cost of generally licensed devices purchased by you in comparison to devices without radioactive material with regard to the registration requirements of generally licensed devices and §§ 31.5 and 31.6 (or the State equivalent)?

(b) What regulatory costs influence your decisions in the generally licensed devices that are purchased?

(c) What choices are made by you regarding health and safety and security with regard to which generally licensed devices are purchased by you?

(d) Do you have any comments regarding the regulation of generally licensed devices associated to §§ 31.5 and 31.6 (or the State equivalent) that affect you with regard to where you are using your generally licensed devices?

In addition to providing information at the public meetings, a submittal of information in response to the preceding questions may be sent to the contact listed in the **FOR FURTHER INFORMATION CONTACT** section of this document through the end of the comment period.

Public Meetings

In selecting the dates for these public meetings, it is the goal for the NRC staff to organize and execute a facilitated discussion through which comments and suggestions can be obtained from the participants and attendees on the topics and issues identified in this document. The information obtained will help the NRC to better understand the impacts on the generally licensed device community of this change in compatibility.

Each public meeting is planned for one day. The NRC staff will be available with background information to have an informal discussion from 12 p.m. to 2 p.m. The NRC staff will make a brief presentation and then solicit information from the public from 2 p.m. to 5:30 p.m.

The address for the meeting locations and final agenda for the public meetings will be available at least 10 days prior to the meetings on the NRC Public Meeting Schedule Web Site at *http://www.nrc.gov/public-involve/public-meetings/index.cfm*. Prior to the meeting, attendees are required to register with the meeting organizer to ensure sufficient accommodations can be made for their participation. Please let the contact person know if special services are needed (hearing impaired, *etc.*).

Dated at Rockville, Maryland, this 1st day of September 2011.

For the Nuclear Regulatory Commission.

Jim Luehman,

Acting Director, Division of Materials Safety and State Agreements, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. 2011–23225 Filed 9–9–11; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket No. EERE–2011–BT–STD–0047]

RIN 1904–AC56

Energy Conservation Program for Consumer Products and Certain Commercial and Industrial Equipment: Energy Conservation Standards for Direct Heating Equipment

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

ACTION: Notice of extension of public comment period.

SUMMARY: This notice announces that the period for submitting comments on the notice of proposed rulemaking for direct heating equipment is extended to October 14, 2011.

DATES: DOE will accept comments, data, and information regarding the notice of proposed rulemaking for direct heating equipment received no later than 5 p.m. EDT on October 14, 2011.

ADDRESSES: Any comments submitted must identify the notice of proposed rulemaking for direct heating equipment and provide docket number EERE–2011–BT–STD–0047 and/or RIN number 1904–AC56. Comments may be submitted using any of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *E-mail: Brenda.Edwards@ee.doe.gov.* Include docket number EERE–2011–BT–STD–0047 and/or RIN 1904–AC56 in the subject line of the message. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or ASCII file format and avoid the use of special characters or any form of encryption.

• *Postal Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. Please submit one signed original paper copy.

• *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza, SW., 6th Floor, Washington, DC 20024. Please submit one signed original paper copy.

Docket: The docket is available for review at *http://www.regulations.gov,* including **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials. All documents in the docket are listed in the *http://www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure. The *http://www.regulations.gov* Web page contains simple instructions on how to access all documents, including public comments, in the docket.

For further information on how to submit a public comment, review other public comments and the docket, contact Ms. Brenda Edwards at (202) 586–2945 or by e-mail: *Brenda.Edwards@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Mohammed Khan, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–7892. E-mail: *Mohammed.Khan@ee.doe.gov.*

Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–9507. E-mail: *Eric.Stas@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: On July 22, 2011, DOE published a notice of proposed rulemaking (NOPR) in the **Federal Register** (76 FR 43941) which proposed amendments to DOE's definition for ''vented hearth heater.'' The NOPR provided for the submission of written comments by September 20, 2011. DOE held a public meeting to receive comment on its proposal on September 1, 2011. At the public meeting interested parties requested that DOE provide additional support materials for the NOPR, which DOE plans to post to its Web site. In order to provide interested parties with adequate time to review and respond to the additional materials, DOE has determined that an extension of the public comment period is appropriate and is hereby extending the comment period. DOE will consider any comments received by 5 p.m. EDT on October 14, 2011.

Further Information on Submitting Comments

Under 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies: one copy of the document including all the information believed to be confidential, and one copy of the document with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include (1) a description of the items, (2) whether and why such items are customarily treated as confidential within the industry, (3) whether the information is generally known by or available from other sources, (4) whether the information has previously been made available to others without obligation concerning its confidentiality, (5) an explanation of the competitive injury to the submitting person which would result from public disclosure, (6) when such information might lose its confidential character due to the passage of time, and (7) why disclosure of the information would be contrary to the public interest.

Issued in Washington, DC, on September 2, 2011.

Kathleen B. Hogan,

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

[FR Doc. 2011–23238 Filed 9–9–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

10 CFR Parts 430 and 431

[Docket Number EERE–2011–BT–NOA–0038]

Energy Conservation Program: Treatment of ''Smart'' Appliances in Energy Conservation Standards and Test Procedures

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

ACTION: Notice of extension of public comment period.

SUMMARY: This document announces that the period for submitting comments on the request for information on ''smart'' appliances is extended to September 30, 2011. DOE seeks information and comments related to the analytical treatment of ''smart'' appliances in the development of DOE's energy conservation standards, as well as in test procedures used to demonstrate compliance with DOE's standards and qualification as an ENERGY STAR product.

DATES: The U.S. Department of Energy (DOE) will accept comments, data, and information regarding the request for information on ''smart'' appliances published August 5, 2011 (76 FR 47518) if they are received no later than September 30, 2011.

ADDRESSES: Any comments submitted must identify the request for information on ''smart'' appliances and provide docket number EERE–2011–BT–NOA–0038. Comments may be submitted using any of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *E-mail: SmartApplianceRFI-2011-NOA-0038@ee.doe.gov.* Include docket number EERE–2011–BT–NOA–0038 in the subject line of the message. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or ASCII file format and avoid the use of special characters or any form of encryption.

• *Postal Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J,

1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. Please submit one signed original paper copy.

• *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza, SW., 6th Floor, Washington, DC 20024. Please submit one signed original paper copy.

Docket: For access to the docket to read background documents or comments received, please call Ms. Brenda Edwards at the above telephone number for additional information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information may be sent to Ms. Ashley Armstrong, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: 202–586–6590. E-mail: *Ashley.Armstrong@ee.doe.gov.*

In the Office of the General Counsel, contact Ms. Elizabeth Kohl, U.S. Department of Energy, 1000 Independence Ave., SW., Room 6A–179, Washington, DC 20585. Telephone: 202–586–7796; E-mail: *Elizabeth.Kohl@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: On August 5, 2011, DOE published a request for information (RFI) in the **Federal Register** (76 FR 47518) to request information on the treatment of ''smart'' appliances in the development of DOE's energy conservation standards, as well as in test procedures used to demonstrate compliance with DOE's standards and qualification as an ENERGY STAR product. The RFI provided for the submission of comments by September 6, 2011. Commenters requested an extension of the comment period given the Labor Day holiday and in order to have additional time to prepare and submit their comments. DOE has determined that an extension of the public comment period is appropriate based on the foregoing reasons and is hereby extending the comment period. DOE will consider any comments received by September 30, 2011 and deems any comments received between September 6, 2011 and September 30, 2011 to be timely submitted.

Further Information on Submitting Comments

Under 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies: One copy of the document including all the information believed to be confidential, and one copy of the document with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include (1) a description of the items, (2) whether and why such items are customarily treated as confidential within the industry, (3) whether the information is generally known by or available from other sources, (4) whether the information has previously been made available to others without obligation concerning its confidentiality, (5) an explanation of the competitive injury to the submitting person which would result from public disclosure, (6) when such information might lose its confidential character due to the passage of time, and (7) why disclosure of the information would be contrary to the public interest.

Issued in Washington, DC, on September 2, 2011.

Kathleen B. Hogan,

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

[FR Doc. 2011–23237 Filed 9–9–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0894; Airspace Docket No. 11–AWP–14]

Proposed Amendment of Class E Airspace; Mercury, NV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at Mercury, Desert Rock Airport, Mercury, NV. Decommissioning of the Mercury Non-Directional Beacon (NDB) at Mercury, Desert Rock Airport has made this action necessary for the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Comments must be received on or before October 27, 2011.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2011–0894; Airspace Docket No. 11–AWP–14, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA 2011–0894 and Airspace Docket No. 11–AWP–14) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2011–0894 and Airspace Docket No. 11–AWP–14.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the

Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue, SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by amending Class E airspace extending upward from 700 feet above the surface for standard instrument approach procedures at Mercury, Desert Rock Airport, Mercury, NV. Airspace reconfiguration is necessary due to the decommissioning of the Mercury NDB and cancellation of the NDB approach. Controlled airspace is necessary for the safety and management of IFR operations at the airport.

Class E airspace designations are published in paragraph 6005, of FAA Order 7400.9V, dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

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

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, and effective September 15, 2011 is amended as follows:

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

* * * * *

AWP NV E5 Mercury, NV [Amended]

Mercury, Desert Rock Airport, NV
(Lat. 36°37′10″ N., long. 116°01′58″ W.)

That airspace extending upward from 700 feet above the surface within a 4.3-mile radius of the Mercury, Desert Rock Airport. That airspace extending upward from 1,200 feet above the surface within the area bounded by a line beginning at lat. 36°41′00″ N., long. 116°26′33″ W.; to lat. 36°41′00″ N., long. 115°56′00″ W.; to lat. 36°16′00″ N., long. 115°56′00″ W.; to lat. 36°16′00″ N., long. 116°08′03″ W.; to lat. 36°36′00″ N., long. 116°26′33″ W.; thence to the point of beginning, excluding the portion within Restricted Area R–4808N.

Issued in Seattle, Washington, on August 31, 2011.

Robert Henry,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. 2011–23191 Filed 9–9–11; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Chapter II

[Release Nos. 33–9257; 34–65262; 39–2479; IA–3271; IC–29781; File No. S7–36–11]

Retrospective Review of Existing Regulations

AGENCY: Securities and Exchange Commission.

ACTION: Request for information.

SUMMARY: On July 11, 2011, the President issued Executive Order 13579, ''Regulation and Independent Regulatory Agencies,'' which, among other things, states that independent regulatory agencies, no less than executive agencies, should promote the goal, set forth in Executive Order 13563 of January 18, 2011, of a regulatory system that protects ''public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation.'' In furtherance of its ongoing efforts to update regulations to reflect market developments and changes in the regulatory landscape, and in light of Executive Order 13579, the Securities and Exchange Commission (''Commission'') invites interested members of the public to submit comments to assist the Commission in considering the development of a plan for the retrospective review of its regulations.

DATES: Comments must be submitted on or by: October 6, 2011.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/other.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number S7–36–11 on the subject line; or

• Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

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 S7–36–11. This file number should be included on the subject line if e-mail is used. To help us 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/other.shtml*). Comments are also 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. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Robert G. Bagnall, Attorney-Fellow, Office of the General Counsel, 202–551–7939.

SUPPLEMENTARY INFORMATION:

Background—Current Commission Processes for Retrospective Analysis of Existing Regulations

Because today's financial markets are dynamic and fast-moving, the regulations affecting those markets and participants in these markets must be reviewed over time and revised as necessary so that the regulations continue to fulfill the Commission's mission. The Commission has long had in place formal and informal processes for the review of existing rules to assess the rules' continued utility and effectiveness in light of continuing evolution of the securities markets and changes in the securities laws and regulatory priorities. Key examples of the ongoing processes of the Commission and staff for review of existing rules include the following:

• The Commission and staff review existing regulations retrospectively as part of studies of broad substantive program areas. For example, in March 2011, the Commission initiated a broad review of offering and reporting requirements affecting issuers. The Commission posted a regulatory review Web page seeking suggestions from the public on ''modifying, streamlining, expanding, or repealing existing rules to better promote economic growth, innovation, competitiveness and job creation'' consistent with our mandates to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation.[1]

• Consistent with section 610(a) of the Regulatory Flexibility Act, the Commission annually reviews each of its rules that has become final within the past ten years. In connection with that review, the Commission publishes a list of the rules scheduled to be reviewed by the Commission staff during the next twelve months.[2] The Commission's stated policy is to review all such final rules to assess their continued utility with a view to identifying those rules in need of modification or even rescission.[3]

• The Commission and staff frequently receive and consider suggestions to review existing rules through various types of communications, ranging from formal petitions for rulemaking to informal correspondence from investors, investor and industry groups, Congress, fellow regulators, the bar and the public.

• The Commission and staff frequently discuss the need to revisit existing rules through formal and informal public engagement, including advisory committees, roundtables, town hall meetings, speeches, conferences and other meetings.

• The Commission staff may identify existing regulations that may merit review through its compliance inspection and examination functions, enforcement investigations, and the receipt of requests for exemptive relief or Commission or staff guidance.

• A significant portion of the Commission's rulemaking activity already involves the consideration of changes to existing rules. Commission staff, in preparing rulemaking proposals, routinely consider related existing rules and assess whether to recommend changes to, or the elimination of, those existing rules.

Executive Order 13579

On July 11, 2011, the President signed Executive Order 13579, ''Regulation and Independent Regulatory Agencies.'' The Executive Order states that independent regulatory agencies, to facilitate the periodic review of existing significant regulations, ''should consider how best to promote retrospective analysis of rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned. The review of existing rules ''should also consider strengthening, complementing, or modernizing rules where necessary or appropriate—including, if relevant, undertaking new rulemaking.'' [4]

Executive Order 13579 also states that, within 120 days, each independent agency ''should develop and release to the public a plan, consistent with law and reflecting its resources and regulatory priorities and processes, under which the agency will periodically review its existing significant regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives.''

Request for Comments

In furtherance of its ongoing efforts to update regulations to reflect market developments and changes in the regulatory landscape, and in light of Executive Order 13579, the Commission invites public comments on the development of a plan for retrospective review of existing significant regulations. The Commission welcomes general comments on what the scope and elements of such a plan should be. In addition, the Commission encourages commenters to respond to the questions below:

1. What factors should the Commission consider in selecting and prioritizing rules for review?

2. How often should the Commission review existing rules?

3. Should different rules be reviewed at different intervals? If so, which categories of rules should be reviewed more or less frequently, and on what basis?

4. To what extent does relevant data exist that the Commission should consider in selecting and prioritizing rules for review and in reviewing rules, and how should the Commission assess such data in these processes? To what extent should these processes include

[1] *See http://www.sec.gov/spotlight/regulatoryreviewcomments.shtml.*

[2] *See, e.g.,* Regulatory Flexibility Agenda, Securities Act Release No. 9194 (March 3, 2011), 76 FR 40208 (July 7, 2011).

[3] When the Commission implemented the Regulatory Flexibility Act in 1980, it stated that it ''intend[ed] to conduct a broader review [than that required by that Act], with a view to identifying those rules in need of modification or even rescission.'' Securities Act Release No. 6302 (Mar. 20, 1981), 46 FR 19251 (Mar. 30, 1981).

[4] Memorandum for the Heads of Independent Regulatory Agencies, M–11–28, ''Executive Order 13579, ''Regulation and Independent Regulatory Agencies'' (July 22, 2011), *http://www.whitehouse.gov/sites/default/files/omb/memoranda/2011/m11-28.pdf.*

reviewing financial economic literature or conducting empirical studies? How can our review processes obtain and consider data and analyses that address the benefits of our rules in preventing fraud or other harms to our financial markets and in otherwise protecting investors?

5. What can the Commission do to modify, streamline, or expand its regulatory review processes?

6. How should the Commission improve public outreach and increase public participation in the rulemaking process?

7. Is there any other information that the Commission should consider in developing and implementing a preliminary plan for retrospective review of regulations?

Please note that the Commission is not soliciting comment in this notice on specific existing Commission rules to be considered for review. Any comments regarding a currently pending Commission rule proposal, including proposed amendments to existing rules, should be directed to the comment file for the relevant rule proposal.[5]

We anticipate that any processes set forth in a Commission plan will reflect constraints imposed by limits on resources and competing priorities.[6] Accordingly, the Commission encourages commenters to consider what additional steps, if any, beyond the Commission's current review processes could be implemented effectively and efficiently in light of the Commission's overall resource constraints and responsibilities.

The Commission is issuing this request for information solely for information and program-planning purposes. The Commission will consider the comments submitted and may use them as appropriate in the preparation of a retrospective review plan but does not anticipate responding to each comment submitted. While responses to this request do not bind the Commission to any further actions, all submissions will be made publicly available on [sec.gov or regulations.gov].

By the Commission.

Dated: September 6, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–23179 Filed 9–9–11; 8:45 am]

BILLING CODE 8011–01–P

[5] *See http://www.sec.gov/rules/submitcomments.htm.*

[6] Executive Order 13579 states that an agency's plan should reflect ''its resources and regulatory priorities and processes.''

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2010–0476; FRL–9462–8]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Section 110(a)(2) Infrastructure Requirements for the 1997 8-Hour Ozone and the 1997 and 2006 Fine Particulate Matter National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve submittals from the State of Maryland pursuant to the Clean Air Act (CAA) sections 110(k)(2) and (3). These submittals address the infrastructure elements specified in CAA section 110(a)(2), necessary to implement, maintain, and enforce the 1997 8-hour ozone and fine particulate matter ($PM_{2.5}$) national ambient air quality standards (NAAQS) and the 2006 $PM_{2.5}$ NAAQS. This proposed action is limited to the following infrastructure elements which were subject to EPA's completeness findings pursuant to CAA section 110(k)(1) for the 1997 8-hour ozone NAAQS dated March 27, 2008 and the 1997 $PM_{2.5}$ NAAQS dated October 22, 2008: 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M), or portions thereof; and the following infrastructure elements for the 2006 $PM_{2.5}$ NAAQS: 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M), or portions thereof.

DATES: Written comments must be received on or before October 12, 2011.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2010–0476 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–2010–0476, 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–2011–0476. 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, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Marilyn Powers, (215) 814–2380, or by e-mail at *powers.marilyn@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On July 18, 1997, EPA promulgated a revised 8-hour ozone NAAQS (62 FR 38856) and a new $PM_{2.5}$ NAAQS (62 FR 38652). The revised ozone NAAQS is based on 8-hour average concentrations. The 8-hour averaging period replaced the previous 1-hour averaging period, and the level of the NAAQS was changed from 0.12 parts per million (ppm) to 0.08 ppm. The new $PM_{2.5}$ NAAQS established a health-based $PM_{2.5}$ standard of 15.0 micrograms per cubic meter ($\mu g/m^3$) based on a 3-year average of annual mean $PM_{2.5}$ concentrations, and a twenty-four hour standard of 65 $\mu g/m^3$ based on a 3-year average of the 98th percentile of 24-hour concentrations. EPA strengthened the 24-hour $PM_{2.5}$ NAAQS from 65 $\mu g/m^3$ to 35 $\mu g/m^3$ on October 17, 2006 (71 FR 61144).

Section 110(a) of the CAA requires States to submit State Implementation Plans (SIPs) that provide for the implementation, maintenance, and enforcement of new or revised NAAQS within three years following the promulgation of such NAAQS. In March of 2004, Earthjustice initiated a lawsuit against EPA for failure to take action against states that had not made SIP submissions to meet the requirements of sections 110(a)(1) and (2) for the 1997 8-hour ozone and $PM_{2.5}$ NAAQS, *i.e.,* failure to make a ''finding of failure to submit the required SIP 110(a) SIP elements.'' On March 10, 2005, EPA entered into a Consent Decree with Earthjustice that obligated EPA to make official findings in accordance with section 110(k)(1) of the CAA as to whether states have made required complete SIP submissions, pursuant to sections 110(a)(1) and (2), by December 15, 2007 for the 1997 8-hour ozone NAAQS and by October 5, 2008 for the 1997 $PM_{2.5}$ NAAQS. EPA made such findings for the 1997 8-hour ozone NAAQS on March 27, 2008 (73 FR 16205) and on October 22, 2008 (73 FR 62902) for the 1997 $PM_{2.5}$ NAAQS. These completeness findings did not include findings relating to: (1) Section 110(a)(2)(C) to the extent that such subsection refers to a permit program as required by part D Title I of the CAA; (2) section 110(a)(2)(I); and (3) section 110(a)(2)(D)(i), which had been addressed by a separate finding issued by EPA on April 25, 2005 (70 FR 21147). Therefore, this action does not cover these specific elements.

This action also does not include the portions of sections 110(a)(2)(C), (D)(i)(II), and (J) as they pertain to the PSD permit program, and the portion of section 110(a)(2)(D)(i)(II) as it pertains to visibility. These portions of these elements will be addressed by separate actions.

II. Summary of State Submittal

Maryland provided multiple submittals to satisfy the section 110(a)(2) requirements that are the subject of this proposed action for the 1997 8-hour ozone NAAQS and the 1997 and 2006 $PM_{2.5}$ NAAQS. The submittals shown in Table 1 address the infrastructure elements, or portions thereof, identified in section 110(a)(2) that EPA is proposing to approve.

TABLE 1—110(a)(2) ELEMENTS, OR PORTIONS THEREOF, EPA IS PROPOSING TO APPROVE FOR THE 1997 OZONE AND $PM_{2.5}$ NAAQS AND THE 2006 $PM_{2.5}$ NAAQS FOR MARYLAND

Submittal date	1997 8-Hour ozone	1997 $PM_{2.5}$	2006 $PM_{2.5}$
July 27, 2007	A, B, C, D(ii), E, F, G, H, J, K, L, M		
November 30, 2007	G		
April 3, 2008		A, B, C, D(ii), E, F, G, H, J, K, L, M	
April 16, 2010		G	G
July 21, 2010			A, B, C, D(ii), E, F, G, H, J, K, L, M
July 21, 2010			Documentation showing public process was met.

EPA analyzed the above identified submissions and other related submissions. Based upon this analysis, EPA is proposing to make a determination that such submittals meet the requirements of section 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M), or portions thereof, for the 1997 8-hour ozone and $PM_{2.5}$ NAAQS and the 2006 $PM_{2.5}$ NAAQS. A detailed summary of EPA's review of and rationale for approving Maryland's submittals may be found in the Technical Support Document (TSD) for this action, which is available online at *http://www.regulations.gov,* Docket number EPA–R03–OAR–2011–0476.

III. Proposed Action

EPA is proposing to approve Maryland's submittals that provide the basic program elements specified in the CAA sections 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M), or portions thereof, necessary to implement, maintain, and enforce the 1997 8-hour ozone and $PM_{2.5}$ NAAQS and the 2006 $PM_{2.5}$ NAAQS. EPA is soliciting public comments on the issues discussed in this notice and the related TSD. 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 section 110(a)(2) infrastructure requirements for the 1997 8-hour ozone and $PM_{2.5}$ NAAQS, and the 2006 $PM_{2.5}$ NAAQS, 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, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: August 11, 2011.

W.C. Early,

Acting, Regional Administrator, Region III.

[FR Doc. 2011–23280 Filed 9–9–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2011–0733; FRL–9462–2]

Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from polyester resin operations. We are approving a local rule that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action. In a separate interim final action published in the Rules section in today's **Federal Register**, we are deferring related CAA sanctions that would otherwise apply to the SJVUAPCD.

DATES: Any comments must arrive by October 12, 2011.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2011–0733, by one of the following methods:

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

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

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

Instructions: All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or e-mail. *http://www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: Generally, documents in the docket for this action are available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at *http://www.regulations.gov,* some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material, large maps), and some may not be publicly available in either location (*e.g.,* CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

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

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

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I. The State's Submittal

A. What rule did the State submit?

By letter dated July 22, 2011, CARB submitted to EPA on behalf of SJVUAPCD a proposed rule, with request for parallel processing.[1] See June 22, 2011 letter to Jared Blumenfeld, Regional Administrator, EPA Region 9, from James N. Goldstene, Executive Officer, CARB.

Table 1 lists the rule addressed by this proposal with the rule title.

TABLE 1—RULE SUBMITTED BY CALIFORNIA FOR PARALLEL PROCESSING

Local agency	Rule No.	Rule title
SJVUAPCD	4684	Polyester Resin Operations.

CARB's July 22, 2011 parallel processing request includes the District Notice of Public Hearing to be held on August 18, 2011 and the amended District Rule 4684. SJVUAPCD amended Rule 4684 on June 16, 2011. Due to procedural issues with the local public notification process, SJVUAPCD readopted these amendments on August 18, 2011 and expects CARB to submit them to EPA soon.

EPA is granting CARB's request that EPA ''parallel process'' our review and propose action on the rule. All of the relevant documents are available for

[1] Under EPA's ''parallel processing'' procedure, EPA proposes rulemaking action concurrently with the State's proposed rulemaking. If the State's proposed rule is changed, EPA will evaluate that subsequent change and may publish another notice of proposed rulemaking. If no significant change is made, EPA will publish a final rulemaking on the rule after responding to any submitted comments. Final rulemaking action by EPA will occur only after the rule has been fully adopted by California and submitted formally to EPA for incorporation into the SIP. See 40 CFR part 51, appendix V.

review in the docket for today's proposed rulemaking.

B. Are there other versions of this rule?

We approved an earlier version of Rule 4684 (adopted locally December 20, 2001) into the SIP on June 26, 2002 (67 FR 42999). We also finalized a simultaneous limited approval and limited disapproval of a subsequent version of Rule 4684 (adopted locally on September 20, 2007) on January 26, 2010 (75 FR 3996), thereby incorporating that version of the rule into the SIP. The SJVUAPCD adopted revisions to the SIP-approved version on September 17, 2009 and CARB submitted them to us on May 17, 2010, but we did not act on those revisions. On July 22, 2011, CARB submitted a request to EPA to approve further draft revisions to Rule 4684 using EPA's authority to parallel process SIP revisions. SJVUAPCD adopted these amendments on August 18, 2011 and expects CARB to submit them to EPA soon. While we are only acting on the ''parallel processing'' version, we have reviewed materials provided with previous submittals.

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

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires States to submit regulations that control VOC emissions. Rule 4684 limits VOC emissions from polyester resin operations, associated organic solvent cleaning and storage, and disposal of solvents and waste solvent materials. EPA's technical support document (TSD) has more information about this rule.

II. EPA's Evaluation and Action

A. How is EPA evaluating the rule?

Several statutory provisions apply to EPA's evaluation of the rules. CAA section 110(a)(2)(A) requires that regulations submitted to EPA for approval into a SIP must be clear and legally enforceable. CAA section 110(l) prohibits EPA from approving any SIP revision that would interfere with any applicable requirement concerning attainment and reasonable further progress (RFP) or any other applicable requirement of the CAA, and CAA section 193 prohibits the modification of any SIP-approved control requirement in effect before November 15, 1990, in a nonattainment area. CAA section 172(c)(1) requires nonattainment areas to implement all reasonably available control measures (RACM), including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology (RACT), as expeditiously as practicable. In addition, under CAA section 182(b)(2), ozone nonattainment areas classified as moderate or above must implement RACT for all VOC sources covered by a Control Technique Guideline (CTG) document and for all other major sources of VOCs. The SJVUAPCD regulates an ozone nonattainment area that is classified as Extreme under both the one-hour ozone and eight-hour ozone standards (40 CFR 81.305 (2011)) and Rule 4684 applies to major sources, as well as sources covered by a CTG document. Therefore, Rule 4684 must fulfill RACT requirements for VOCs.

Guidance and policy documents that we use to evaluate enforceability and RACT requirements include the following:

1. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,'' EPA, May 25, 1988 (the Bluebook).
2. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001 (the Little Bluebook).
3. ''Control Techniques Guidelines for Fiberglass Boat Manufacturing Materials,'' EPA–453/R–08–004, September 2008.

B. Does the rule meet the evaluation criteria?

We believe this rule is consistent with the relevant CAA requirements and guidance regarding enforceability, RACT, and SIP revisions. The TSD has more information on our evaluation.

C. EPA Recommendations to Further Improve the Rule

The TSD describes one additional rule revision that we recommend for the next time the local agency modifies the rule but is not currently the basis for rule disapproval.

D. Proposed Action, Public Comment and Final Action

Because EPA believes the submitted rule fulfills all relevant requirements, we are proposing to fully approve it as described in section 110(k)(3) of the Act once we receive the final adopted version as a revision to the California SIP. If the final version of the rule submitted for SIP approval differs substantially from the version proposed and submitted for ''parallel processing,'' this will result in the need for additional proposed rulemaking on this rule.

We will accept comments from the public on this proposal for the next 30 days. Unless we receive convincing new information during the comment period, we intend to publish a final approval action that will incorporate this rule into the federally enforceable SIP. Our final action will permanently terminate the sanctions clocks associated with our January 26, 2010 action on the effective date of the final approval.

III. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed 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 Clean Air Act; and
- Does not provide EPA with the discretionary authority to address disproportionate human health or

environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed action 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, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: August 31, 2011.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2011–23136 Filed 9–9–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2011–0701; FRL–9462–4]

Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portion of the California State Implementation Plan (SIP). These revisions concern: volatile organic compound (VOC) emissions from steam enhanced crude oil production and aerospace coating operations. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action. In a separate interim final action published in the Rules section in today's **Federal Register**, we are deferring sanctions that would otherwise apply to the SJVUAPCD.

DATES: Any comments must arrive by October 12, 2011.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2011–0701, by one of the following methods:

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

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

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

Instructions: All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or e-mail. *http://www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: Generally, documents in the docket for this action are available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at *http://www.regulations.gov,* some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material, large maps), and some may not be publicly available in either location (*e.g.,* CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Adrianne Borgia, EPA Region IX, (415) 972–3576, *borgia.adrianne@epa.gov.*

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

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I. The State's Submittal

A. What rules did the State submit?

Table 1 lists the rules addressed by this proposal with the dates that they were amended by the local air agency and submitted by the California Air Resources Board.

TABLE 1—SUBMITTED RULES

Local Agency	Rule No.	Rule title	Amended	Submitted
SJVUAPCD	4401	Steam-Enhanced Crude Oil Production Wells	06/16/11	07/28/11
SJVUAPCD	4605	Aerospace Assembly and Component Coating Operations	06/16/11	07/28/11

On August 3, 2011, EPA determined that the submittal for SJVUAPCD Rules 4401 and 4605 met the completeness criteria in 40 CFR part 51 Appendix V, which must be met before formal EPA review.

B. Are there other versions of these rules?

On January 26, 2010 (75 FR 3996) we finalized a limited approval of versions of Rules 4401 and 4605 that were adopted locally on December 14, 2006 and September 20, 2007 respectively, thereby incorporating those versions of the two rules into the SIP. We simultaneously finalized a limited disapproval of the same two rules based on our identification of deficiencies in each of these rules. SJVUAPCD adopted revisions to the SIP-approved versions on June 16, 2011 that were intended to address the deficiencies identified in our January 2010 action, and CARB submitted these revisions to us on July 28, 2011.

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

SJVUAPCD Rules 4401 and 4605 are both intended to limit emissions of VOCs, which help produce ground-level ozone and smog that are harmful to human health and the environment. Section 110(a) of the CAA requires States to submit regulations that control VOC emissions.

SJVUAPCD Rule 4401, Steam-Enhanced Crude Oil Production Wells, is designed to limit VOC emissions at steam-enhanced crude oil production wells. The rule establishes requirements for inspection, maintenance and replacement/retrofit of leaking components. It includes administrative and recordkeeping requirements, such as inspection logs. The purpose of this rule amendment is to correct the rule deficiency in Section 6.2.4 as identified by EPA and to clarify existing rule provisions by removing expired language throughout the rule.

SJVUAPCD Rule 4605, Aerospace Assembly and Component Coating Operations, is designed to limit VOC emissions at these operations. The rule establishes limits for coatings used in the aerospace industry and defines alternative emission control system requirements. It also includes recordkeeping, reporting, and monitoring requirements. The primary purpose of the June 2011 rule amendment is to correct deficiencies identified by EPA in the January 26, 2010 (75 FR 3996) final rulemaking on the previous version of this rule.

EPA's technical support documents (TSDs) for Rules 4401 and 4605 have more information about these rules.

II. EPA's Evaluation and Action

A. How is EPA evaluating the rules?

Several statutory provisions apply to EPA's evaluation of the rules. CAA section 110(a)(2)(A) requires that regulations submitted to EPA for approval into a SIP must be clear and legally enforceable. CAA section 110(l) prohibits EPA from approving any SIP revision that would interfere with any applicable requirement concerning attainment and reasonable further progress (RFP) or any other applicable requirement of the CAA, and CAA section 193 prohibits the modification of any SIP-approved control requirement in effect before November 15, 1990, in a nonattainment area. CAA section 172(c)(1) requires nonattainment areas to implement all reasonably available control measures (RACM), including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology (RACT), as expeditiously as practicable. In addition, under CAA section 182(b)(2), ozone nonattainment areas classified as moderate or above must implement RACT for all VOC sources covered by a Control Technique Guideline (CTG) document and for all other major sources of VOCs. The SJVUAPCD regulates an ozone nonattainment area that is classified as Extreme under both the one-hour ozone and eight-hour ozone standards (40 CFR 81.305 (2011)) and Rules 4401 and 4605 apply to sources covered by a CTG document. Therefore, Rules 4401 and 4605 must fulfill RACT requirements for VOCs.

Guidance and policy documents that we use to evaluate enforceability and RACT requirements consistently include the following:

1. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,'' EPA, May 25, 1988 (the Bluebook).

2. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001 (the Little Bluebook).

3. EPA's CTG titled, ''Surface Coating Operations at Aerospace Manufacturing & Rework Operations'' (EPA–453/R–97–004, December 1997).

4. EPA's CTG titled, ''Control of VOC Emissions from Solvent Metal Cleaning'' (EPA–450/2–77–022, November 1977) SJVAPCD's 2009 RACT SIP Demonstration (April 16, 2009).

B. Do the rules meet the evaluation criteria?

We believe these rules are consistent with the relevant statutory criteria and guidance regarding enforceability, RACT and SIP relaxations. We also believe these rules have adequately addressed the deficiencies identified in our January 26, 2010 action by removing inappropriate director's discretion in Rule 4401, and adding and lowering emission limits consistent with the relevant national guidance in Rule 4605.

The TSD for each rule has more information on our evaluation.

C. EPA Recommendations To Further Improve The Rules

The TSDs describe additional rule revisions that we recommend for the next time the local agency modifies these rules but are not currently the basis for rule disapproval.

D. Public Comment and Final Action

Because EPA believes the submitted rules fulfill all relevant requirements and incorporate revisions that correct the deficiencies identified for both Rule 4401 and 4605 in the limited disapproval on January 26, 2010 (75 FR 3996), we are proposing to fully approve them under section 110(k)(3) of the Act. We will accept comments from the public on this proposal for the next 30 days. Unless we receive convincing new information during the comment period, we intend to publish a final approval action that will incorporate these rules into the Federally enforceable SIP. Our final action will permanently terminate the sanctions clocks associated with our January 26, 2010 action on the effective date of the final approval.

III. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed 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) because application of those requirements would

be inconsistent with the Clean Air Act; and

• Does not provide EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed action 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, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: August 31, 2011.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2011–23142 Filed 9–9–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 745

[EPA–R04–OPPT–2010–0789; FRL–9457–7]

Lead-Based Paint Renovation, Repair and Painting, and Pre-Renovation Education Activities in Target Housing and Child Occupied Facilities; North Carolina and Mississippi; Notice of Self-certification Program Authorization, Request for Public Comment, Opportunity for Public Hearing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Program authorization, request for comments and opportunity for public hearing.

SUMMARY: This notice announces that on January 21, 2010, the State of North Carolina and on March 31, 2010, the State of Mississippi were deemed authorized under section 404(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2684(a), to administer and enforce requirements for a renovation, repair and painting program in accordance with section 402(c)(3) of TSCA, 15 U.S.C. 2682(c)(3), and a lead-based paint pre-renovation education program in accordance with 406(b) of TSCA, 15 U.S.C. 2686(b). This notice also announces that EPA is seeking comment during a 45-day public comment period, and is providing an opportunity to request a public hearing within the first 15 days of this comment period, on whether these North Carolina and Mississippi programs are at least as protective as the Federal programs and provide for adequate enforcement. This notice also announces that the authorization of the North Carolina and Mississippi 402(c)(3) and 406(b) programs, which were deemed authorized by regulation and statute on January 21, 2010, and March 31, 2010, respectively, will continue without further notice unless EPA, based on its own review and/or comments received during the comment period, disapproves one or both of these North Carolina and Mississippi program applications.

DATES: Comments, identified by Docket Control Number EPA–R04–OPPT–2010–0789, must be received on or before October 27, 2011. In addition, a public hearing request must be submitted on or before September 27, 2011.

ADDRESSES: Comments and requests for a public hearing may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Section I of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is important that you identify Docket Control Number EPA–R04–OPPT–2010–0789 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Elizabeth Wilde, Technical Contact, Children's Health and Lead Section, Pesticides and Toxics Substances Branch, Air, Pesticides and Toxics Management Division, United States Environmental Protection Agency, 61 Forsyth Street, Atlanta, Georgia 30303–8960. The telephone number where Ms. Wilde can be reached is: (404) 562–8998. Ms. Wilde can be contacted via electronic mail at *wilde.liz@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. General Information
II. Background
III. State Program Description Summaries
IV. Federal Overfiling
V. Withdrawal of Authorization

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, to entities offering Lead Safe Renovation courses, and to firms and individuals engaged in renovation and remodeling activities of pre-1978 housing and child-occupied facilities in the States of Mississippi and North Carolina. Individuals and firms falling under the North American Industrial Classification System (NAICS) codes 231118, 238210, 238220, 238320, 531120, 531210, 53131, *e.g.,* General Building Contractors/Operative Builders, Renovation Firms, Individual Contractors, and Special Trade Contractors like Carpenters, Painters, Drywall workers, and Plumbers, ''Home Improvement'' Contractors, as well as Property Management Firms and some Landlords are also affected by these rules. This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed here could also be affected. The NAICS codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get additional information, including copies of this document or other related documents?

1. *Electronically:* you may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at *http://www.epa.gov/* or from *http://www.regulations.gov/*. You can also go directly to the **Federal Register** listings at *http://www.gpoaccess.gov/fr/.*

2. *In person:* you may read this document, and certain other related documents, by visiting the North Carolina Department of Health and Human Services, 1912 Mail Service Center, Raleigh, NC 27699–1912, contact person, Mr. Donald Chaney, telephone number: (919) 707–5974, or by visiting the Mississippi Department of Environmental Quality, 101 W. Capitol St., Jackson, MS 39201, contact person, Mr. Jimmie Asbill, telephone number (601) 961–5164. You may also read this document, and certain other related documents, by visiting the United States Environmental Protection Agency, Region 4 Office, 61 Forsyth Street, Atlanta, Georgia 30303–8960. You should arrange your visit to the EPA office by contacting the technical person listed under **FOR FURTHER INFORMATION CONTACT**. Also, EPA has established an official record for this action under Docket Control Number EPA–R04–OPPT–2010–0789. The official record consists of the documents specifically referenced in this action, this notice, the State of North Carolina

and Mississippi 402(c)(3) and 406(b) program authorization applications, any public comments received during an applicable comment period, and other information related to this action.

C. How and to whom do I submit comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is important that you identify Docket Identification Number EPA–R04–OPPT–2010–0789 in the subject line on the first page of your response.

Submit your comments, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *By mail:* Submit your comments and hearing requests to: Elizabeth Wilde, Technical Contact, Children's Health and Lead Section, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, 61 Forsyth Street, Atlanta, GA 30303–8960.

3. *By person or courier:* Deliver your comments and hearing requests to: Children's Health and Lead Section, Pesticides and Toxic Substances Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

4. *By fax:* 404–562–8973.

5. *By e-mail:* You may submit your comments and hearing requests electronically by e-mail to: *wilde.liz@epa.gov*, or mail your computer disk to the address identified above. Do not submit any information electronically that you consider Confidential Business Information (CBI). Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in Microsoft Word or ASCII file format.

Instructions: Direct your comments to Docket ID Number EPA–R04–OPPT–2010–0789. 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 or any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the 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.

D. How should I handle CBI information that I want to submit to the agency?

Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark on each page the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM that you mail to EPA as CBI, and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person identified under **FOR FURTHER INFORMATION CONTACT**.

E. What should I consider as 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.

2. Describe any assumptions that you use.

3. Provide copies of any technical information and/or data you use that support your views.

4. If you estimate potential burden or costs, explain how you arrive at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice or collection activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, identify the Docket Control 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.

II. Background

A. What action is the agency taking?

EPA is announcing that the State of North Carolina on January 21, 2010, and the State of Mississippi on March 30, 2010, were deemed authorized under section 404(a) of TSCA, and 40 CFR 745.324(d)(2), to administer and enforce requirements for a renovation, repair and painting program in accordance with section 402(c)(3) of TSCA, 15 U.S.C. 2682(c)(3), and a lead-based paint pre-renovation education program in accordance with section 406(b) of TSCA, 15 U.S.C. 2686(b). This notice also announces that EPA is seeking comment and providing an opportunity to request a public hearing on whether both the States' programs are at least as protective as the Federal programs and provide for adequate enforcement. The 402(c)(3) program ensures that training providers are accredited to teach renovation classes, that individuals performing renovation activities are properly trained and certified as renovators, that firms are certified as renovation firms, and that specific work practices are followed during renovation activities. The 406(b) program ensures that owners and occupants of target housing are provided information concerning potential hazards of lead-based paint exposure before certain renovations are begun.

On January 21, 2010, North Carolina submitted an application under section 404 of TSCA requesting authorization to administer and enforce requirements for a renovation, repair and painting program in accordance with section 402(c)(3) of TSCA, and a pre-renovation education program in accordance with section 406(b) of TSCA, and submitted a self-certification that these programs are at least as protective as the Federal programs and provides for adequate enforcement. Therefore, pursuant to section 404(a) of TSCA, and 40 CFR 745.324(d)(2), the North Carolina renovation program and pre-renovation education program are deemed authorized as of the date of submission and until such time as the Agency disapproves the program application or withdraws program authorization. Pursuant to section 404(b) of TSCA and 40 CFR 745.324(e)(2), EPA is providing notice, opportunity for public comment and opportunity for a public hearing on whether North Carolina's program application for both programs is at least as protective as the Federal programs and provides for adequate enforcement. If a hearing is requested and granted, EPA will issue a **Federal Register** notice announcing the date, time and place of the hearing. The authorization of the North Carolina 402(c)(3) and 406(b) programs, which were deemed authorized by EPA on January 21, 2010, will continue without further notice unless EPA, based on its own review and/or comments received during the comment period, disapproves one or both of these North Carolina program applications.

On March 30, 2010, Mississippi submitted an application under section 404 of TSCA requesting authorization to administer and enforce requirements for a renovation, repair and painting program in accordance with section 402(c)(3) of TSCA, and a pre-renovation education program in accordance with section 406(b) of TSCA, and submitted a self-certification that these programs are at least as protective as the Federal programs and provides for adequate enforcement. Therefore, pursuant to section 404(a) of TSCA, and 40 CFR 745.324(d)(2), the Mississippi renovation program and pre-renovation education program are deemed authorized as of the date of submission and until such time as the Agency disapproves the program application or withdraws program authorization. Pursuant to section 404(b) of TSCA and 40 CFR 745.324(e)(2), EPA is providing notice, opportunity for public comment and opportunity for a public hearing on whether Mississippi's application for both programs is at least as protective as the Federal programs and provides for adequate enforcement. If a hearing is requested and granted, EPA will issue a **Federal Register** notice announcing the date, time and place of the hearing. The authorization of the Mississippi 402(c)(3) and 406(b) programs, which were deemed authorized by EPA on May 3, 2010, will continue without further notice unless EPA, based on its own review and/or comments received during the comment period, disapproves one or both of these Mississippi program applications.

B. What is EPA's authority for taking this action?

On October 28, 1992, the Housing and Community Development Act of 1992, Public Law 102–550, became law. Title X of that statute was the Residential Lead-Based Paint Hazard Reduction Act of 1992. That Act amended TSCA (15 U.S.C. 2601 *et seq.*) by adding Title IV (15 U.S.C. 2681–2692), entitled ''Lead Exposure Reduction.'' On April 22, 2008, EPA promulgated the final TSCA section 402(c)(3) regulations governing renovation activities. *See* 73 FR 21692. These regulations require that in order to do renovation activities for compensation, renovators must first be properly trained and certified, must be associated with a certified renovation firm, and must follow specific work practice standards, including recordkeeping requirements. In addition, the rule prescribes requirements for the training and certification of dust sampling technicians. On June 1, 1998, EPA promulgated the final TSCA section 406(b) regulations governing pre-renovation education requirements in target housing. See 63 FR 29908. This program ensures that owners and occupants of target housing are provided information concerning potential hazards of lead-based paint exposure before certain renovations are begun on that housing. In addition to providing general information on the health hazards associated with exposure to lead, EPA developed the lead hazard information pamphlet. This pamphlet advises owners and occupants to take appropriate precautions to avoid exposure to lead-contaminated dust and debris that are sometimes generated during renovations. EPA believes that regulation of renovation activities and the distribution of the pamphlet will help to reduce the exposures that cause serious lead poisonings, especially in children under age 6, who are particularly susceptible to the hazards of lead.

Under section 404 of TSCA, a state may seek authorization from EPA to administer and enforce its own pre-renovation education program or renovation, repair and painting program in lieu of the Federal programs. The regulations governing the authorization of a state program under both sections 402 and 406 of TSCA are codified at 40 CFR part 745, subpart Q. States that choose to apply for program authorization must submit a complete application to the appropriate regional EPA office for review. Those applications will be reviewed by EPA within 180 days of receipt of the complete application. To receive EPA approval, a state must demonstrate that its program is at least as protective of human health and the environment as the Federal program, and provides for adequate enforcement, as required by Section 404(b) of TSCA. EPA's regulations at 40 CFR Part 745, subpart Q, provide the detailed requirements a state program must meet in order to obtain EPA approval. A state may choose to certify that its own pre-renovation education program or renovation, repair and painting program meets the requirements for EPA approval, by submitting a letter signed by the Governor or Attorney General stating that the program is at least as protective of human health and the environment as the Federal program and provides for adequate enforcement. Upon submission of such a certification letter, the program is deemed authorized pursuant to TSCA section 404(a) and 40 CFR 745.324(d)(2). This authorization becomes ineffective, however, if EPA disapproves the application or withdraws the program authorization.

III. State Program Description Summaries

The following program summary is from North Carolina's self-certification application:

Program Summary; State of North Carolina; Renovation, Repair, and Painting Program/Lead-Safe Renovator Certification Program

The State of North Carolina has implemented a lead-based paint hazard management program for renovation, repair, and painting in lieu of having a Federally administered program apply in the State. The Lead-Based Paint Hazard Management Program for Renovation, Repair and Painting (LHMP–RRP) is implemented through the North Carolina Department of Health and Human Services, Division of Public Health, Health Hazards Control Unit (NCDHHS). The North Carolina Legislature ratified House Bill 1151 on

August 11, 2009, granting the North Carolina Commission for Public Health (CPH) authority to establish Rules. The CPH approved the LHMP–RRP Temporary Rules on October 30, 2009. The LHMP–RRP Rules (10A NCAC 41C .0900–.0907) became effective date on January 1, 2010, and implementation of the Program was effective January 1, 2010.

Requirements of the LHMP–RRP include the following: accreditation of renovation and dust sampling technician training providers and training courses; certification of renovation firms and individuals that perform renovations, cleaning verification and dust sampling in target housing or child occupied facilities; required work practice standards for lead-based paint renovation activities: record retention, information distribution and reporting requirements.

The LHMP–RRP Rules are applicable to all persons engaged in renovation activities for compensation in target housing and child-occupied facilities built before 1978. However, an individual who performs renovations of a residential dwelling that is owned and occupied by that person, or that person's immediate family, is exempt from the requirements. Definitions are adopted from the EPA Federal regulation, contained in 40 CFR Part 745 subparts E and L. The Federal and LHMP regulations do not mandate the performance of renovation activities, but instead establish requirements and procedures to follow when renovation activities are conducted.

The LHMP–RRP regulatory requirements for the accreditation of lead-based paint renovation activities training programs are consistent with the accreditation of the Federal program. Training providers conducting training in North Carolina must be accredited by the NCDHHS Program. All initial and refresher training courses conducted in North Carolina must be accredited by the NCDHHS Program.

Several requirements of the state program that are not included in the Federal program include: a requirement that approval of the training program's course is contingent on submittal of an application and successfully completing an on-site audit, and training providers must submit a written notification of intent to teach the course in North Carolina ten working days prior to the start date of the course.

The state certification requirements include the certification of firms and individual categories of renovator and dust sampling technician. Each individual certification category must submit an application for certification, meet required training course requirements and be employed by a certified renovation firm when conducting renovation activities for compensation.

Work practice standards that are required for performing lead-based paint renovation activities for compensation in target housing or child-occupied facilities are equivalent to the work practice standards in the Federal regulations.

The LHMP–RRP compliance and enforcement elements are comparable to the compliance and enforcement requirements of the Federal program. As in the Federal regulations, the Rules provide for the suspension and revocation of training provider accreditation, training course accreditation, firm certification and individual certification. Additionally, administrative and civil penalties may be assessed for violations. Criminal actions can also be pursued. The renovation firm and individual certification requirements assist in conducting an effective compliance and enforcement program.

North Carolina's LHMP–RRP provides for establishing reciprocity agreements with other states, Tribes, or territories with authorized programs which have consistent requirements for certification of individuals and firms and accreditation of training courses and providers. The Federal regulations encourage states to establish reciprocity procedures.

North Carolina's LHMP–RRP requires that information be provided to the person contracting for the renovation when an EPA-recognized test kit is used to determine the presence of lead-based paint prior to the start of renovation activities.

Outreach activities have a high priority in the LHMP–RRP. The objective of the outreach program is to educate and make the public and regulated community aware of the hazards of lead-based paint and of the regulatory requirements applicable to lead-based paint renovation activities. The overall goal of the outreach program is to protect public health and the environment from the hazards of lead-based paint.

The cost of the State program will be supported by available Federal grants and fees collected by NCDHHS. The LHMP–RRP provides for the collection of fees and allows for acceptance of Federal grants. Fees are assessed for the accreditation of training providers and training courses, certification of renovation firms and dust sampling technicians.

The following program summary is from Mississippi's self certification application:

Program Summary; State of Mississippi; Renovation, Repair, and Painting Program; Lead-Safe Renovator Certification Program

The State of Mississippi, through the Mississippi Department of Environmental Quality (MDEQ), will implement the lead-based paint Renovation, Repair, and Painting Program and the Pre-Renovation Education Program. Requirements of the programs will include accreditation of lead-based paint renovation activities in target housing and child-occupied facilities, required work practice standards for conducting lead-based paint renovation activities, and pre-renovation education requirements that must be followed prior to performing a renovation.

Regulations setting out the procedures and requirements for the accreditation of lead-based paint activities training programs, the certification of individuals and firms engaged in lead-based paint renovation activities, the work practice standards to be followed in performing lead-based paint renovation activities and required pre-renovation education requirements were adopted by the Mississippi Commission on Environmental Quality on December 10, 2009. Requirements under the regulations will be applicable beginning on the effective date of the regulations. Authority to administer and enforce a state program as protective as the Federal lead-based paint program was provided for in the amended ''Lead-Based Activity Accreditation and Certification Act'' which was passed by the Mississippi Legislature during its 2009 regular session.

Mississippi's lead-based paint renovation program regulations are applicable to all persons engaged in lead-based paint activities in target housing and child-occupied facilities. However, persons who perform lead-based paint activities within residential dwellings they own are exempt from the regulations unless the residential dwelling is occupied by a person or persons other than the owner or owner's immediate family while these activities are being performed, or a child having an elevated blood lead level resides in the building. Also exempt from the required work practice standards of the regulations are renovations performed in target housing if the firm performing the renovation has obtained a statement signed by the owner that the renovation will occur in the owner's residence, no child under age 6 resides there, no

pregnant woman resides there, the housing is not a child-occupied facility, and the owner acknowledges that the renovation firm will not be required to use the work practices applicable to renovation activities. Also, the regulations do not require the performance of lead-based paint renovation activities, but establish requirements and procedures to follow when lead-based paint renovations are performed.

Pursuant to Mississippi's statute and regulations, each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government having jurisdiction over any property or facility, or engaged in any activity resulting, or which may result, in a lead-based paint hazard, and each officer, agent, or employee thereof shall be subject to, and comply with all of the requirements of these regulations regarding lead-based paint renovation activities.

The State regulatory requirements for the accreditation of lead-based paint activities training programs are consistent with the accreditation requirements of the Federal program. The Federal model plan was followed in developing the State accreditation requirements. All initial and refresher lead-based paint activities training programs must be accredited. Several requirements of the State accreditation program which are not included in the Federal regulations are: (1) A requirement that the principal instructors and guest instructors teaching hands-on work practice standards must successfully complete the training course requirements of the accredited training course to be taught; (2) a requirement that training programs notify the MDEQ prior to conducting a training course; and (3) a requirement that approval of a training program's lead-based paint activities course is contingent on a satisfactory on-site course audit.

The State renovation certification program requirements include the certification of firms, renovators and dust sampling technicians. The State program certification requirements are essentially equivalent to the Federal requirements. Each certification discipline must meet required academic and/or experience requirements of the State program regulations to be certified. The State program will require renovators and dust sampling technicians to be certified with the certification to be renewed annually. Certification will enable the program to ensure individuals performing as renovators and dust sampling technicians are properly trained and qualified to perform those activities. Yearly renewals will enable the State program to conduct a more effective certification program. The certification will assist the program inspectors in assuring qualified individuals are on the work site.

The State program work practice standards that must be followed by persons performing lead-based paint renovation activities in target housing and child-occupied facilities are equivalent to the work practice standards in the Federal regulations. The work practice standards in the Federal regulations were followed in developing the State work practice standards. An additional requirement of the State program (which is not included in the Federal program) requires the filing of a project notification, in writing, prior to the commencement of any lead-based paint renovation activity. The project notification requirement will assist in conducting an effective compliance and enforcement program.

The State program provides for establishing reciprocity arrangements with other states and/or Indian Tribes with authorized programs which have certification, educational, and experience requirements consistent with those of the State of Mississippi and which grants equal certificating and accreditation privileges to persons certified and training programs accredited in Mississippi. This provision is consistent with the Federal regulations which encourage states to establish reciprocity procedures.

The State renovation program will include the pre-renovation education program requirements of the Federal Pre-Renovation Education (PRE) program. These program requirements were adopted by the legislature during the 2009 legislative session. The pamphlet, *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools,* must be distributed per the regulations prior to the beginning of any renovation project by a firm. Outreach activities have a high priority in the State program. The objective of the outreach program is to educate and make the public and regulated community aware of the hazards of lead-based paint. The outreach program will also inform the public and regulated community of the regulatory requirements applicable to lead-based paint activities. The overall goal of the outreach program is to protect the environment and health of the people within the State.

The cost of the State program will be supported by Federal grants and fees. The fees will be assessed for certification of individuals and firms, accreditation of training programs and renovations projects.

The Mississippi Commission on Environmental Quality and the Mississippi Department of Environmental Quality have adequate authority to administer and enforce all regulatory requirements of the State program. The enforcement authorities provided by State statutes and regulations are adequate to ensure the State program is as protective as the Federal program. The compliance and enforcement elements of the State program are comparable to the compliance and enforcement elements of the Federal program. As provided for in the Federal program, the State program provides for the suspension, revocation, or modification of training program accreditation and certifications of individuals and firms.

IV. Federal Overfiling

Section 404(b) of TSCA makes it unlawful for any person to violate, or fail or refuse to comply with, any requirement of an approved State program. Therefore, EPA reserves the right to exercise its enforcement authority under TSCA against a violation of, or a failure or refusal to comply with, any requirement of an authorized State program.

V. Withdrawal of Authorization

Pursuant to section 404(c) of TSCA, the EPA Administrator may withdraw authorization of a State or Indian Tribal renovation, repair and painting program, and/or a lead-based paint pre-renovation education program, after notice and opportunity for corrective action, if the program is not being administered or enforced in compliance with standards, regulations, and other requirements established under the authorization. The procedures U.S. EPA will follow for the withdrawal of an authorization are found at 40 CFR 745.324(i).

List of Subjects in 40 CFR 745

Environmental protection, Hazardous substances, Lead Poisoning, Reporting and recordkeeping requirements.

Dated: August 11, 2011.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2011–23257 Filed 9–9–11; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 76, No. 176
Monday, September 12, 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

Economic Research Service

Notice of Intent To Request New Information Collection

AGENCY: Economic Research Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to send comments regarding any aspect of this proposed information collection. This is a new collection for a Survey on Rural Community Wealth and Health Care Provision.

DATES: Written comments on this notice must be received on or before November 14, 2011 to be assured of consideration.

ADDRESSES: Address all comments concerning this notice to John Pender, Resource and Rural Economics Division, Economic Research Service, U.S. Department of Agriculture, 1800 M. St., NW., Room N4056, Washington, DC 20036–5801. Comments may also be submitted via fax to the attention of John Pender at 202–694–5774 or via e-mail to *jpender@ers.usda.gov.* Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov,* and follow the online instructions for submitting comments electronically.

FOR FURTHER INFORMATION CONTACT: For further information contact John Pender at the address in the preamble. Tel. 202–694–5568.

SUPPLEMENTARY INFORMATION: All written comments will be open for public inspection at the office of the Economic Research Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at 1800 M. St., NW., Room N4056, Washington, DC 20036–5801.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments and replies will be a matter of public record. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Title: Survey on Rural Community Wealth and Health Care Provision.

OMB Number: 0536–XXXX.

Expiration Date: Three years from the date of approval.

Type of Request: New collection.

Abstract: This survey will collect information on the assets and investments of rural communities and their influence on recruitment and retention of rural health care providers, and on the effects of rural health care provision on economic development of rural communities. This information will contribute to a better understanding of the roles that rural communities play in promoting or retarding the development and provision of health care services, and of how improved health care provision contributes to development of these communities. Such understanding is critical to develop effective policies to address the challenge of inadequate access to health care services in many rural communities, and to realize the opportunities offered by improved health care provision to attract and keep residents in rural areas, provide employment, and improve the quality of life.

Health care services is one of the largest and most rapidly growing industries in rural America, and adequate provision of health care services is increasingly critical for achieving economic development and improved well-being of rural people. In many rural communities, health care services is the largest employer, and rapid growth in this sector is occurring and will continue to occur, especially as the Baby-Boom generation retires. Provision of adequate health care services is likely to be one of the key factors in attracting retirees and other migrants to rural areas, helping to stem persistent outmigration from many of these areas and in some cases, contributing to rural growth and prosperity. Despite recent growth and potential for continued growth in this sector, many rural communities suffer from poor access to health care services, especially because of the limited supply of health care professionals. Addressing these access problems likely will become increasingly important as the Patient Protection and Affordable Care Act is implemented, increasing rural people's access to health insurance.

Although substantial research has investigated the problems of attracting and retaining health care providers in rural areas, very little of this research addresses the issue from the perspective of rural communities themselves. For example, prior research has established that physicians who grew up in a rural area, who attended a medical school with a rural emphasis, or who completed a residency in a rural hospital are more likely than other physicians to locate their practice in a rural community. Policies and programs that provide incentives to physicians to locate in rural areas have also been shown to increase recruitment of physicians to rural areas, although the impacts on retention of physicians are more questionable. Much less research has focused on factors affecting recruitment and retention of health care providers other than physicians to rural areas, or on the roles local communities play in affecting these decisions. Of the research that investigates the roles of local communities, the studies have been conducted in only a few communities with a small number of respondents, limiting the ability to draw conclusions applicable to broader rural regions.

The proposed rural community survey will address this information gap by collecting information from representatives of 150 rural communities in three regions of the United States and from health care providers in the same communities. The

survey will investigate the perspectives of community leaders and organizations concerning the need for improved access to health care services, the local community assets that attract or repel health care providers, the investments and efforts undertaken or planned to recruit and retain health care service providers, and the effects of changes in health care service provision on other aspects of community development. The survey will also investigate the perspective of health care providers on the factors affecting their decisions to locate, continue and change their operations in these rural communities, including the influence of community assets and investments such as improvements in local schools, availability of Internet broadband or other infrastructure, provision of child care services, recreational opportunities, and other factors.

The three proposed study regions include the lower Mississippi Delta region (including parts of the States of Mississippi, Louisiana, Arkansas and Tennessee), the Southern Great Plains region (including parts of Texas, Oklahoma, Kansas, Nebraska, New Mexico, and Colorado), and part of the Upper Midwest region (including parts of Missouri, Iowa, Minnesota, Wisconsin and Illinois). These regions include areas with high rates of poverty and severe constraints to health care access—especially in the Delta and Southern Great Plains—while incomes and health care access are relatively more favorable in the Upper Midwest region. All three of these regions include rural areas where growth in health sector employment has been an important contributor to overall employment growth in recent years, as well as areas where less growth has occurred. These regions also include important variations in health status of the populations, presence of different racial and ethnic groups, social capital, and other key factors hypothesized to be related to rural health care provision.

The communities (towns and surrounding counties and hospital service areas (HSAs)) studied in the survey will be selected using a stratified random sample. Potential respondents for each sampled community will be identified by accessing public information sources and by telephone screening. From the town, community leaders such as the town mayor, council representatives, business leaders or other stakeholders involved in recruiting and integrating health care providers to the community will be included on the respondent sample list. A sample of local health care providers in the selected town—in most cases limited to primary health care providers such as administrators of rural clinics, physicians, nurse practitioners, and dentists—will also be identified. At the county level, the list will include relevant representatives of the county government—such as the county executive and officials in the health and economic development departments—as well as civil society organizations and others involved at that level in seeking to improve health care provision. At the HSA level, the sample will include hospital administrators and other provider representatives. A total of 10 to 15 respondents will be interviewed in each selected community (including health care providers and leaders/stakeholders in the town, county and HSA). The interviews will be conducted by telephone and are expected to require on average about 20 minutes per respondent, based upon the experience of the organization that will implement the survey (Survey and Behavioral Research Services Group, Iowa State University) in implementing community level surveys of similar scope and size.

The sample for each selected community will be strategically managed in order to provide the maximum survey response. Advance letters and a colorful information sheet/brochure will be mailed to potential respondents. A project Web site will be available with additional information, and a toll-free number will be provided for those who have questions or concerns. Confidentiality of responses will be both assured and ensured. After the advance letters/packets are sent, all reasonable efforts will be made to contact and interview the respondents in the sample. Paper or online copies of the survey will be made available to those who are unable or unwilling to complete a telephone interview.

All study instruments will be kept as simple and respondent-friendly as possible. Participation in the survey will be voluntary and confidential. Survey responses will be used for statistical analysis and to produce research reports only; not for any other purpose. Data files from the survey will not be released to the public. Responses will be linked to secondary data to augment information with no additional respondent burden. For example, the survey data will be combined with available county level data from the Census Bureau on community socioeconomic and demographic characteristics and data from the Department of Health and Human Services on health care provision and health status indicators, to analyze factors affecting local changes in health care provision.

The telephone survey will be conducted within a six month period during 2012. After the telephone survey and analysis of its results are completed, a follow up information collection will be conducted in a sub-sample of the surveyed communities (at most 40), with the goal of deepening understanding of (i) how and why the community factors that appear to influence recruitment and retention of health care providers (as will be identified by the telephone survey) are able to do so, and (ii) how development of the health care sector contributes to broader economic development in rural communities. This second phase will use more qualitative methods, including in depth individual and focus group interviews, and will be completed in 2013. This notice focuses on the telephone survey; another notice will be provided before the second phase begins.

Authority: These data will be collected under the authority of 7 U.S.C. 2204(a) and sec. 501 of the Rural Development Act of 1972 (7 U.S.C. 2661). Individually identifiable data collected under this authority are governed by 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents. This Notice is submitted in accordance with the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3501, *et seq.*) and Office of Management and Budget regulations at 5 CFR part 1320. ERS also complies with OMB Implementation Guidance, ''Implementation Guidance for Title V of the E–Government Act, Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA)'', 72 FR 33362, June 15, 2007.

Affected Public: Respondents will include health care providers, local government and community leaders, and other stakeholders involved in recruiting and retaining health care providers in rural communities.

Estimated Number of Respondents and Respondent Burden: The telephone survey will be completed at one point in time within a six month period in 2012. The survey will have a complex mixed survey administration to include telephone screening, pre-notification letter with Web access, multi-contact telephone interviewing, and follow-up non-respondent mail questionnaires. The time required for respondents and non-respondents to read the notification materials, review instructions, participate in the screening interview, and decide whether to complete the questionnaire is estimated to average 15 minutes per person. Completion time for each questionnaire respondent is estimated to average 20 minutes per completed questionnaire. In addition, the screening interviews used to select

the sample will involve telephone conversations with knowledgeable people in each community. We estimate that this may require 15 minute interviews with up to 8 people per community, or a maximum burden of 2 hours per sample community.

Full Study: The maximum sample size for the full study is 2,812 respondents (15 respondents maximum per community × 150 communities/80% response rate). The expected overall response rate is 80 percent. The maximum total estimated response burden for all of those participating in the study is 1,313 hours (2,250 respondents × 35 minutes per respondent [1]) and for the non-respondents is 141 hours (562 non-respondents × 15 minutes per non-respondent [2]). In addition, we estimate a maximum burden of 300 hours on non-sample interviewees contacted during the pre-sample screening process for the full study (150 communities × 8 interviewees/community × 15 minutes per interviewee).

Pilot Study: A pilot test of the survey will be done in advance of the full survey. The purpose of the pilot is to evaluate the survey protocol, and test instruments and questionnaires. The initial sample size for this phase of the research is 100 respondents (10 respondents per community × 10 communities). The expected response rate is 80 percent. The total estimated burden for full respondents in the pilot testing is 47 hours (100 respondents × 80 percent × 35 minutes per respondent), and for non-respondents is 5 hours (100 respondents × 20 percent × 15 minutes per non-respondent). In addition, we estimate a maximum burden of 20 hours on non-sample interviewees contacted during the pre-sample screening process for the pilot study (10 communities × 8 interviewees/community × 15 minutes per interviewee).

The total respondent burden, including the pilot and full study, is estimated at 1,826 hours (see table below).

TABLE—ESTIMATED RESPONDENT BURDEN FOR THE SURVEY ON RURAL COMMUNITY WEALTH AND HEALTH CARE PROVISION

Item	Pilot study	Full study	Total
Sample size	100	2,812	2,912
Responses			
—Number	80	2,250	2,330
—Minutes/response	35	35	
—Burden hours	47	1,313	1,360
Non-responses			
—Number	20	562	582
—Minutes/response	15	15	
—Burden hours	5	141	146
Pre-sample screening interviews			
—Number	80	1,200	1,280
—Minutes/interview	15	15	
—Burden hours	20	300	320
Total burden hours	72	1,754	1,826

Dated: August 31, 2011.

Laurian Unnevehr,

Acting Administrator, Economic Research Service.

[FR Doc. 2011–23158 Filed 9–9–11; 8:45 am]

BILLING CODE 3410–18–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2011–0016]

National Advisory Committee on Microbiological Criteria for Foods

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: This notice is announcing that the National Advisory Committee on Microbiological Criteria for Foods (NACMCF) will hold public meetings of the full Committee and subcommittees on September 27–30, 2011. The Committee will discuss: (1) Control strategies for reducing foodborne Norovirus infections, and (2) Study of microbiological criteria as indicators of process control or insanitary conditions.

DATES: The full Committee will hold an open meeting on Friday, September 30, 2011, from 9 a.m. to 12 p.m. The Subcommittee on control strategies for reducing foodborne Norovirus infections and the Subcommittee on study of microbiological criteria as indicators of process control or insanitary conditions will hold concurrent open meetings on Tuesday, September 27, Wednesday, September 28, and Thursday, September 29, 2011, from 8:30 a.m. to 5 p.m.

ADDRESSES: The September 27–29, 2011, subcommittee meetings will be held at the Patriot's Plaza 3, 9th Floor OPHS Conference Rooms, 355 E Street, SW., Washington, DC 20024. The September 30, 2011, full Committee meeting will be held in the conference room at the south end of the U.S. Department of Agriculture (USDA) cafeteria located in the South Building, 1400 Independence Avenue, SW., Washington, DC 20250. All documents related to the full Committee meeting will be available for public inspection in the FSIS Docket Room, USDA, 1400 Independence Avenue, SW., Patriots Plaza 3, Mailstop 3782, Room 163A, Washington, DC 20250–3700, between 8:30 a.m. and 4:30 p.m., Monday through Friday, as soon as they become available. The NACMCF documents will also be available on the Internet at *http://www.fsis.usda.gov/Regulations_&_Policies/Federal_Register_Notices/index.asp.*

FSIS will finalize an agenda on or before the meeting dates and post it on the FSIS Web page at *http://www.fsis.usda.gov/News/Meetings_&_Events/.* Please note that the meeting agenda is subject to change due to the time required for Committee discussions; thus, sessions could start or end earlier

[1] The 35 minutes per respondent includes 15 minutes to review the materials, participate in the screening interview, and decide whether to participate, and 20 minutes to complete the questionnaire.

[2] The 15 minutes per non-respondent is to review the materials, participate in the screening interview, and decide whether to participate.

or later than anticipated. Please plan accordingly if you would like to attend a particular session or participate in a public comment period.

Also, the official transcript of the September 30, 2011, full Committee meeting, when it becomes available, will be kept in the FSIS Docket Room at the above address and will also be posted on *http://www.fsis.usda.gov/About/NACMCF_Meetings/.*

The mailing address for the contact person is: Karen Thomas-Sharp, USDA, FSIS, Office of Public Health Science, Stop 3777, PP 3, #47, 1400 Independence Avenue, SW., Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Persons interested in making a presentation, submitting technical papers, or providing comments at the September 30, plenary session should contact Karen Thomas-Sharp, phone (202) 690–6620, fax (202) 690–6334, e-mail: *Karen.thomas-sharp@fsis.usda.gov* or at the mailing address above. Persons requiring a sign language interpreter or other special accommodations should notify Mrs. Thomas-Sharp by September 15, 2011.

SUPPLEMENTARY INFORMATION:

Background

The NACMCF was established in 1988, in response to a recommendation of the National Academy of Sciences for an interagency approach to microbiological criteria for foods, and in response to a recommendation of the U.S. House of Representatives Committee on Appropriations, as expressed in the Rural Development, Agriculture, and Related Agencies Appropriation Bill for fiscal year 1988. The charter for the NACMCF is available for viewing on the FSIS Internet Web page at *http://www.fsis.usda.gov/About/NACMCF_Charter/.*

The NACMCF provides scientific advice and recommendations to the Secretary of Agriculture and the Secretary of Health and Human Services on public health issues relative to the safety and wholesomeness of the U.S. food supply, including development of microbiological criteria and review and evaluation of epidemiological and risk assessment data and methodologies for assessing microbiological hazards in foods. The Committee also provides scientific advice and recommendations to the Centers for Disease Control and Prevention and the Departments of Commerce and Defense.

Dr. Elisabeth A. Hagen, Under Secretary for Food Safety, USDA, is the Committee Chair; Mr. Michael Landa, Acting Director of the Food and Drug Administration's Center for Food Safety and Applied Nutrition (CFSAN), is the Vice-Chair; and Ms. Gerri Ransom, FSIS, is the Executive Secretary.

At the subcommittee meetings the week of September 27–29, 2011, the groups will discuss:

- Control strategies for reducing foodborne Norovirus infections, and
- Study of microbiological criteria as indicators of process control or insanitary conditions.

Documents Reviewed by NACMCF

FSIS intends to make available to the public all materials that are reviewed and considered by NACMCF regarding its deliberations. Generally, these materials will be made available as soon as possible after the full Committee meeting. Further, FSIS intends to make these materials available in electronic format on the FSIS Web page (*http://www.fsis.usda.gov*), as well as in hard copy format in the FSIS Docket Room. Often, an attempt is made to make the materials available at the start of the full Committee meeting when sufficient time is allowed in advance to do so.

Disclaimer: NACMCF documents and comments posted on the FSIS Web site are electronic conversions from a variety of source formats. In some cases, document conversion may result in character translation or formatting errors. The original document is the official, legal copy.

In order to meet the electronic and information technology accessibility standards in Section 508 of the Rehabilitation Act, NACMCF may add alternate text descriptors for non-text elements (graphs, charts, tables, multimedia, *etc.*). These modifications only affect the online copies of the documents.

Copyrighted documents will not be posted on the FSIS Web site, but will be available for inspection in the FSIS Docket Room.

USDA Nondiscrimination Statement

USDA prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status (Not all prohibited bases apply to all programs).

Persons with disabilities who require alternative means for communication of program information (Braille, large print, and audiotape) should contact USDA's Target Center at (202) 720–2600 (voice and TTY).

To file a written complaint of discrimination, write USDA, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250–9410 or call (202) 720–5964 (voice and TTY). USDA is an equal opportunity provider and employer.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it online through the FSIS Web page located at *http://www.fsis.usda.gov/regulations_&_policies/Federal_Register_Notices/index.asp.*

FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update is also available on the FSIS Web page. Through the Listserv and Web page, FSIS is able to provide information to a much broader and more diverse audience. In addition, FSIS offers an electronic mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/News_&_Events/Email_Subscription/.* Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

Done at Washington, DC on September 2, 2011.

Alfred V. Almanza,

Administrator.

[FR Doc. 2011–23173 Filed 9–9–11; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Clearwater National Forest; ID; Upper Lochsa Land Exchange EIS

ACTION: Notice of Intent To Prepare a Supplemental Draft Environmental Impact Statement.

SUMMARY: The Forest Service will prepare a Supplemental Draft Environmental Impact Statement (SDEIS) for the Upper Lochsa Land Exchange. In the proposed land exchange the Forest Service would acquire approximately 39,371 acres of checkerboard land from Western Pacific Timber (WPT) located in Idaho and Clearwater Counties. The land is intermingled with the Clearwater National Forest near Powell, Idaho in the upper Lochsa River drainage. The Forest Service would convey to WPT an equal value of National Forest System (NFS) land located in Benewah, Bonner, Clearwater, Idaho Kootenai and Latah counties on the Clearwater, Nez Perce and Idaho Panhandle National Forests. The Notice of Availability for the Draft EIS for this project was published in the **Federal Register** (#72824 Vol. 75, No. 227) on November 26, 2010. An SDEIS is being prepared to analyze a new alternative for exchange. The Idaho County Commissioners commented on the DEIS and stated that except for the No Action Alternative the rest of the alternatives analyzed would have negative economic impacts to Idaho County. The Commissioners identified approximately 45,043 acres of NFS land on the Nez Perce National Forest, entirely within Idaho County, that could be considered for exchange for the approximately 39,371 acres of checkerboard land that primarily lie within Idaho County. The Forest Service considered the proposal carefully and determined that an SDEIS is required to analyze an alternative where all the Federal lands proposed for exchange are in Idaho County.

DATES: Scoping is not required for supplements to environmental impact statements (40 CFR 1502.9(c) (4). There was extensive public involvement during the original public scoping for the project and during comment to the Draft EIS. The Forest Service is not inviting scoping comments at this time. However, a Notice of Exchange Proposal is required (36 CFR 254.8) and will be published four times in the local papers of record. The purpose of this four week notice is to invite the public to submit comments and concerns about the exchange proposal, including knowledge of any liens, encumbrances, or other claims involving the new land being considered for exchange. The public can respond in writing to the Notice of Exchange Proposal and comments must be postmarked within 45 days after the initial date of publication.

ADDRESSES: The line officer responsible for this analysis is: Rick Brazell, Forest Supervisor, Clearwater National Forest, 12730 HWY 12, Orofino, ID 83544.

FOR FURTHER INFORMATION CONTACT: Teresa Trulock, Project Manager at the Clearwater National Forest (208) 935–4256.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The purpose of this proposed land exchange is to consolidate land ownership in the upper Lochsa River drainage to provide more efficient and effective resource management.

This purpose can be achieved by exchanging parcels of federal lands for WPT lands. Need—The current ownership pattern has a considerable effect on how the Forest Service manages NFS lands in the upper Locsha River drainage. Over the years, differing management practices on the private lands has influenced resource management decision on the NFS lands. The mixed ownership pattern also reduces the ability to apply ecosystem management principles across the landscape. More effective conservation and management of natural resources can be achieved by consolidating these lands and managing the ecosystem as a whole. For example, current ownership results in an inability to use fuel and topography to engage fires on a cost-effective basis. Also, more efficiency can be gained by reducing administrative costs associated with boundary maintenance and cost share roads.

In general the land exchange provides the opportunity for the Forest Service to acquire checkerboard lands which encompass the headwaters of the Lochsa River and hold outstanding values for aquatic and terrestrial species along with significant cultural resources.

Modified Proposed Action

The DEIS identified Alternative B as the Modified Proposed Action. In the Modified Proposed Action, the Forest Service proposes a land-for-land exchange which includes approximately 17,854 acres of National Forest System land for approximately 39,371 acres of WPT land. The lands included in this modified proposed action are located within Benewah, Clearwater, Latah, Bonner, Kootenai and Idaho Counties.

The federal lands consist of scattered parcels located on the Nez Perce, Clearwater and Idaho Panhandle National Forest in north Idaho. For the most part, federal parcels are timbered and are characterized by irregular boundaries surrounded by mixed ownership and small tracts of land isolated from other national Forest land.

The WPT lands proposed for exchange are checkerboard lands intermingled with Clearwater National Forest lands in the upper Lochsa River drainage. For the past 50 years, WPT lands were managed primarily for timber production. For the most part these lands currently meet State Best Management Practices for timber production lands.

The modified proposed action would authorize the transfer of land ownership and management authority, including the mineral estate, between the two parties. The modified proposed action would not authorize any site-specific management activities by either party.

New Alternative

The DEIS analyzed five alternatives: Alternative A—No Action, Alternative B—Modified Proposed Action, Alternative C—Land Exchange with a Purchase Component, Alternative D—Land Exchange and Purchase with Phased Implementation and Alternative E—Direct Purchase of Non-Federal Lands. The DEIS identified Alternative D as the Forest Service Preferred Alternative.

The SDEIS is being completed to analyze the additional alternative where all the Federal lands proposed for exchange are in Idaho County. The additional federal lands being considered for exchange include approximately 45,043 acres of NFS lands on the Nez Perce National Forest. These are generally described as three tracts of land located to the east and to the south of Grangeville, Idaho and two tracts of land located to the northwest of Riggins, Idaho. These five NFS tracts of land are relatively large ranging in size from 3,200 acres to nearly 20,000 acres. They are located along the edge of the Nez Perce National Forest bordering private and State lands. For the most part these tracts are timbered.

These Federal lands are being considered in addition to approximately 17,854 acres that have been analyzed for exchange in the DEIS for a total of approximately 62,897 acres. It is anticipated that this is more than adequate federal acreage to complete an equal value land exchange. The new federal land proposed will be refined through future public involvement processes.

Responsible Official

Rick Brazell, Forest Supervisor, Clearwater National Forest, 12730 HWY 12, Orofino, Idaho 83544.

Nature of Decision To Be Made

The decision to be made is whether or not to complete a land exchange between the Forest Service and Western Pacific Timber. In the decision, the Forest Supervisor will answer the following questions based on the environmental analysis: (1) Whether the modified proposed action will proceed as proposed, as modified by an alternative, or not at all, (2) whether the project requires any Forest Plan amendments? This decision will be documented in the Record of Decision for the Upper Lochsa Land Exchange Final Environmental Impact Statement (FEIS). If the decision that is made would require an amendment to any of the Forest Plans, the analysis and documentation for the amendment will be included. The decision will be subject to appeal in accordance with 36 CFR 215.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: The SDEIS is expected to be available for public review and comment in October 2011. The comment period for the SDEIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the project, comments on the SDEIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the SDEIS. Comments may also address the adequacy of the SDEIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21).

Dated: August 29, 2011.

Rick Brazell,

Forest Supervisor, Clearwater National Forest.

[FR Doc. 2011–23141 Filed 9–9–11; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Alaska Saltwater Sport Fishing Economic Survey.

OMB Control Number: None.

Form Number(s): NA.

Type of Request: Regular submission (request for a new information collection).

Number of Respondents: 2,397.

Average Hours per Response: Full survey, 30 minutes; follow-up telephone survey, 10 minutes.

Burden Hours: 1,154.

Needs and Uses: This request is for a new information collection.

The National Marine Fisheries Service (NMFS) plans to conduct a survey to collect data for conducting economic analyses of marine sport fishing in Alaska. This survey is necessary to understand the factors that affect the economic value of marine recreational fishing trips and improve estimates of fishing trip value.

The Federal Government is responsible for the management of the Pacific halibut sport fishery off Alaska, while the State of Alaska manages the salmon sport fisheries (chinook, coho, sockeye, chum and pink), as well as several other saltwater sport fisheries. The survey's scope covers marine sport fishing for Pacific halibut, salmon, and other popular marine sport species in Alaska (*e.g.,* lingcod and rockfish). The data collected from the survey will be used to estimate the demand for and value of marine fishing to anglers and to analyze how the type of fish caught, fishery regulations, and other factors affect fishing values and anglers' decisions to participate in Alaska marine fishing activities. The economic information provided from the survey will update and augment information collected in an earlier survey conducted in 2007 and is necessary to help inform fishery managers about the economic values of Alaska marine sport fisheries and the changes to participation in these fisheries with proposed regulations.

Affected Public: Individuals or households.

Frequency: One time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: OIRA_Submission@omb.eop.gov.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov.*

Dated: September 6, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–23177 Filed 9–9–11; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–909]

Certain Steel Nails From the People's Republic of China: Preliminary Results and Preliminary Rescission, in Part, of the Antidumping Duty Administrative Review and Preliminary Intent To Rescind New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''Department'') is conducting an administrative review and new shipper review (''NSR'') of the antidumping duty *Order*[1] on certain steel nails (''nails'') from the People's Republic of China (''PRC'') for the period of review (''POR'') August 1, 2009, through July 31, 2010, and August 1, 2009, through August 5, 2010, respectively. The Department has preliminarily determined that The Stanley Works (Langfang) Fastening Systems Co., Ltd. (''Stanley Langfang''), and Stanley Black & Decker (''The Stanley Works'')/ Stanley Fastening Systems, LP (collectively ''Stanley''), Tianjin Jinghai County Hongli Industry and Business Co., Ltd. (''Hongli''), and Tianjin Jinchi Metal Products Co., Ltd. (''Jinchi''), all made sales of subject merchandise at less than normal value (''NV''). The Department has also preliminarily determined that Shanghai Colour Co., Ltd. and Wuxi Colour Co., Ltd. (collectively ''Shanghai Colour'')'s single sale to the United States does not constitute a *bona fide* transaction. Therefore, we have preliminarily rescinded the new shipper review with regard to Shanghai Colour. If these preliminary results are adopted in our final results of this review, the Department will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on all appropriate entries of subject merchandise during the POR. Interested parties are invited to comment on these preliminary results.

DATES: *Effective Date:* September 12, 2011.

FOR FURTHER INFORMATION CONTACT: Alexis Polovina, Ricardo Martinez, or Javier Barrientos, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3927, (202) 482–4532, or (202) 482–2243, respectively.

SUPPLEMENTARY INFORMATION:

Case Timeline

On August 27, 2010, pursuant to 19 CFR 351.214(b) and (c), the Department received an NSR request from Shanghai Colour.

On September 29, 2010, the Department published in the **Federal Register** a notice of initiation of an administrative review of the antidumping duty order on nails from the PRC, for 222 companies.[2]

On October 4, 2010, the Department published in the **Federal Register** a notice of initiation of a new shipper review of nails from the PRC, for Shanghai Colour.[3] On April 28, 2011, the Department published a notice rescinding the administrative review with respect to 160 companies and extending the time period for issuing the preliminary results by 90 days to August 1, 2011.[4] [5] [6]

Between October 25, 2010, and June 30, 2011, Shanghai Colour submitted responses to the Department's original and supplemental questionnaires. Between January 21, 2011, and July 19, 2011, Stanley, Hongli, and Jinchi submitted responses to the Department's original and supplemental questionnaires.

On July 11, 2011, the Department aligned the antidumping duty new shipper and administrative reviews.[7]

Respondent Selection

Section 777A(c)(1) of the Tariff Act of 1930, as amended (''Act'') directs the Department to calculate individual dumping margins for each known exporter or producer of the subject merchandise. However, section 777A(c)(2) of the Act gives the Department discretion to limit its examination to a reasonable number of exporters or producers if it is not practicable to examine all exporters or producers involved in the review.

The Department initiated a review for the 222 companies for which it received a timely request for review. *See 2nd AR Initiation.* On October 28, 2010, the Department released CBP data for entries of the subject merchandise during the POR under administrative protective order (''APO'') to all interested parties with access to the APO, inviting comments regarding the CBP data and respondent selection. Between November 5, 2010, and November 8, 2010, Stanley and Petitioner[8] submitted comments on the respondent selection process. On November 22 and 24, 2010, respectively, Petitioner met with the Senior Director, China/NME Unit, for AD/CVD Operations and the Deputy Assistant Secretary for Import Administration regarding respondent selection. On November 26, 2010, Hongli requested to be selected as a mandatory respondent or to be permitted to participate as a voluntary respondent. On December 14, 2010, Stanley requested to be selected as a mandatory respondent or to be permitted to participate as a voluntary respondent.

After assessing its resources, on December 16, 2010, the Department issued its respondent selection memorandum. The Department determined that the number of

[1] *See Notice of Antidumping Duty Order: Certain Steel Nails from the People's Republic of China,* 73 FR 44961 (August 1, 2008) (''*Order*'').

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 75 FR 60076 (September 29, 2010) (''*2nd AR Initiation*'').

[3] *See Certain Steel Nails from the People's Republic of China: Initiation of Antidumping Duty New Shipper Review,* 75 FR 61132 (October 4, 2010).

[4] *See Certain Steel Nails from the Peoples' Republic of China: Notice of Extension of Time Limits and Partial Rescission of the Second Antidumping Duty Administrative Review,* 76 FR 23788 (April 28, 2011) (''*Rescission*'').

[5] The Department incorrectly identified three companies, Cana (Tianjin) Hardware Ind., Co., Ltd.; Huanghua Jinhai Metal Products Co., Ltd.; and Qingdao Jisco Co., Ltd., in the *Rescission* as having separate rates. These three companies do not have separate rates from previous reviews and may still be under review as part of the PRC-wide entity. The Department intends to issue liquidation instructions for the PRC-wide entity 15 days after publication of the final results of this review. Although Qingdao Jisco Co., Ltd. submitted a Separate Rate Certification stating it received a separate rate in the investigation, Qingdao Jisco Co., Ltd. in fact never received a separate rate. In the investigation, as a producer, Qingdao Jisco Co., Ltd. received a combination rate, however, in the first review, the separate rate was assigned to the exporter, Jisco Corporation. *See Certain Steel Nails from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances,* 73 FR 33977, 33981 (June 16, 2008) (''*Investigation*''). *See also Certain Steel Nails from the People's Republic of China: Final Results of the First Antidumping Duty Administrative Review,* 76 FR 16379, 16382 (March 23, 2011) (''*1st Review*'').

[6] Additionally, in Petitioner's December 28, 2010, withdrawal request, Petitioner withdrew requests for review on Shanxi Tianli Enterprise Co., Ltd. and Shanxi Tianli Enterprise Co. The Department subsequently rescinded the review for both companies, although the Department had not ever initiated a review of Shanxi Tianli Enterprise Co. We clarified with Petitioner and they explained that they considered both companies to be variations of the same company. As such, the Department intends to liquidate Shanxi Tianli Enterprise Co., Ltd. at the PRC-wide rate 15-days after publication of the final results of this review.

[7] *See* Memorandum to the File, through Matthew Renkey, Office 9 Acting Program Manager, from Ricardo Martinez Rivera, Case Analyst, dated July 11, 2011, Certain Steel Nails from the People's Republic of China: Alignment of the New Shipper Review of Shanghai Colour Co., Ltd and Wuxi Colour Co., Ltd. (''Shanghai Colour'') with the 2nd Administrative Review.

[8] Mid Continent Nail Corporation.

companies (*i.e.,* 222) was too large a number for individual reviews and that the Department could reasonably examine three exporters subject to this review. Pursuant to section 777A(c)(2)(B) of the Act, the Department selected Stanley, Hongli, and Qingdao Jisco Co., Ltd. (''Jisco'') as mandatory respondents.[9] On December 17, 2010, the Department issued an antidumping duty questionnaire to these three mandatory respondents. On January 21, 2011, after receiving requests for withdrawal of review from Jisco and Petitioner, the Department selected Jinchi as a mandatory respondent in place of Jisco.[10] On January 21, 2011, the Department issued an antidumping duty questionnaire to Jinchi.

New Shipper Review Bona Fide Analysis

Consistent with the Department's practice, we investigated the *bona fide* nature of Shanghai Colour's sale for this NSR. In evaluating whether a single sale in a NSR is commercially representative, and therefore *bona fide,* the Department considers, *inter alia,* such factors as: (1) Timing of the sale; (2) price and quantity; (3) the expenses arising from the transaction; (4) whether the goods were sold at a profit; and (5) whether the transaction was made on an arms-length basis.[11] Accordingly, the Department considers a number of factors in its *bona fide* analysis, ''all of which may be specific to the commercial realities surrounding an alleged sale of subject merchandise.'' [12] In examining Shanghai Colour's sale in relation to these factors, the Department found evidence that indicates this sale was non-*bona fide.*[13] Therefore, we preliminarily find that the new shipper sale by Shanghai Colour was not made on a *bona fide* basis and, thus, preliminarily determine that Shanghai Colour has not met the requirements to qualify as a new shipper during this POR.

Preliminary Rescission of the New Shipper Review

For the foregoing reasons, and as discussed in the *bona fide* memo, the Department finds that the sale by Shanghai Colour is not *bona fide* and that the sale does not provide a reasonable or reliable basis for calculating a dumping margin. Because this non-*bona fide* sale was the only sale of subject merchandise during the POR, the Department is preliminarily rescinding the NSR.

Preliminary Partial Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(3), we have preliminarily determined that the following companies made no shipments of subject merchandise during the POR: (1) Beijing Hongsheng Metal Co., Ltd.; (2) Besco Machinery Industry (Zhejiang) Co., Ltd.; (3) Certified Products International Inc. (''CPI''); (4) Chiieh Yung Metal Ind. Corp.; (5) China Staple Enterprise (Tianjin) Co., Ltd.; (6) CYM (Nanjing) Nail Manufacture Co., Ltd.; (7) Jining Huarong Hardware Products Co., Ltd.; (8) Nanjing Yuechang Hardware Products Co., Ltd.; (9) PT Enterprise Inc.; (10) Qidong Liang Chyuan Metal Industry Co., Ltd.; (11) Shanghai Tengyu Hardware Tools Co., Ltd.; (12) Shanxi Yuci Broad Wire Products Co., Ltd.; and (13) Zhejiang Gem-Chun Hardware Accessory Co., Ltd.; (collectively, the ''No Shipment Respondents'').

Subsequent to receiving no-shipment certifications from the No Shipment Respondents, the Department examined entry statistics obtained from CBP. The Department also issued no-shipment inquiries to CBP, asking it to provide any information contrary to our preliminary findings of no entries of subject merchandise for merchandise manufactured and shipped by the above companies.[14] For nine companies, we did not receive any response from CBP, thus indicating that there were no entries of subject merchandise into the United States exported by these companies. CBP did indicate potential entries of nails during the POR for four companies. The Department requested CBP entry packages for the four companies. Between November 24, 2010 and March 2, 2011, we placed these entry packets on the record and requested comments from interested parties.[15] After reviewing the responses, and the corrected entry documents, we preliminarily conclude that these companies did not have entries of subject merchandise during the POR. Consequently, we are preliminarily rescinding the reviews with respect to the No Shipment Respondents.

Facts Otherwise Available

Section 776(a)(1) of the Act mandates that the Department use facts available (''FA'') if necessary information is not available on the record of an antidumping proceeding. In addition, section 776(a)(2) of the Act mandates that the Department use FA where an interested party or any other person: (A) Withholds information requested by the Department; (B) fails to provide requested information by the requested date or in the form and manner requested; (C) significantly impedes an antidumping proceeding; or (D) provides information that cannot be verified.

Section 776(b) of the Act provides that, in selecting from among the facts otherwise available, the Department may employ an adverse inference if an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information.[16]

In this case, two of the mandatory respondents, Stanley and Jinchi, used unaffiliated tollers for production of tolled intermediate inputs. Jinchi was unable to obtain the factors of production (''FOPs'') from any of its tollers and Stanley was unable to obtain the FOPs from a number of its galvanizing tollers. Both respondents attempted to obtain the FOPs from their unaffiliated tollers and documented these attempts.[17] We do not find that they failed to cooperate by not acting in the best of their abilities. Consistent with our treatment of missing tolled FOPs of an intermediate input in the first administrative review,[18] the

[9] *See* Memorandum regarding: Respondent Selection for the Antidumping Duty Administrative Review of Certain Steel Nails from the People's Republic of China, dated December 16, 2010 (''First Respondent Selection Memo'').

[10] *See* Memorandum regarding: Second Antidumping Duty Administrative Review of Certain Steel Nails from the People's Republic of China: Replacement of Respondent Selected for Individual Examination, dated January 21, 2011 (''Second Respondent Selection Memo'').

[11] *See Tianjin Tiancheng Pharmaceutical Co.* v. *the United States,* 366 F. Supp. 2d 1246, 1250 (CIT 2005).

[12] *See Hebei New Donghua Amino Acid Co.* v. *the United States,* 374 F. Supp. 2d 1333, 1342 (CIT 2005).

[13] *See* Memorandum regarding: *Bona Fide* Sales Analysis and Intent to Rescind the Review with Respect to Shanghai Colour, dated August 31, 2011.

[14] *See* Memoranda to Michael Walsh, Director, AD/CVD/Revenue Policy & Programs, from Jim Doyle, Office Director, dated between October 28, 2010, and December 17, 2010, Request for U.S. Entry Documents: Certain Steel Nails from the People's Republic of China.

[15] *See* Second Antidumping Duty Administrative Review of Certain Steel Nails from the People's Republic of China (''PRC''): No Shipment Supplemental Questionnaire Letters from the Department of Commerce, to Besco, CPI, China Staple, and Tengyu, dated between November 24, 2010, and March 2, 2011.

[16] *See* Statement of Administrative Action, accompanying the Uruguay Round Agreements Act (''URAA''), H.R. Rep. No. 103–316, 870 (1994) (''SAA''); *see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From the Russian Federation,* 65 FR 5510, 5518 (February 4, 2000).

[17] *See* Stanley's Supplemental Section D at 1–8, and Supplemental Section D at 1–17, dated May 13, 2011; Jinchi's Supplemental Sections C&D at Exhibits 17 and 19, dated May 16, 2011.

[18] *See Certain Steel Nails from the People's Republic of China: Final Results of the First*

Department has preliminarily applied neutral FA (facts available without an adverse inference) in accordance with section 776(a)(1) of the Act. As neutral FA for Jinchi, the Department is using Jinchi's own production experience because Jinchi also performs the same production steps in-house as the tollers. As neutral FA for Stanley, the Department is using the reported FOPs from Stanley's galvanizers because Stanley did not perform galvanizing itself.

Additionally, all three of the mandatory respondents purchased subject merchandise nails from unaffiliated producers, but were unable to obtain the FOPs for all or a portion of the purchased nails. Hongli eventually was able to obtain the FOPs but because they were submitted to the Department unsolicited and untimely, the Department rejected these FOPs.[19] Because the respondents attempted to obtain the FOPs from the unaffiliated producers and documented these attempts,[20] we do not find that they failed to cooperate by not acting in the best of their abilities. Therefore, for the preliminary results the Department has applied neutral FA in accordance with section 776(a)(1) of the Act. However, after the preliminary results, we intend to issue questionnaires directly to the unaffiliated producers requesting the FOP data. For Hongli and Jinchi, because they do not produce the same type of nails that they purchased from the unaffiliated suppliers (*i.e.,* masonry nails cut from steel plate), the Department will apply as neutral FA the weighted average margin calculated for these respondents' other U.S. sales of subject merchandise reported by Hongli and Jinchi. As neutral FA for Stanley, the Department will use Stanley's own production data, as it produces the same type of nails for which it was unable to obtain the FOP data.

Scope of the Order

The merchandise covered by this proceeding includes certain steel nails having a shaft length up to 12 inches. Certain steel nails include, but are not limited to, nails made of round wire and nails that are cut. Certain steel nails may be of one piece construction or constructed of two or more pieces. Certain steel nails may be produced from any type of steel, and have a variety of finishes, heads, shanks, point types, shaft lengths and shaft diameters. Finishes include, but are not limited to, coating in vinyl, zinc (galvanized, whether by electroplating or hot dipping one or more times), phosphate cement, and paint. Head styles include, but are not limited to, flat, projection, cupped, oval, brad, headless, double, countersunk, and sinker. Shank styles include, but are not limited to, smooth, barbed, screw threaded, ring shank and fluted shank styles. Screw-threaded nails subject to this proceeding are driven using direct force and not by turning the fastener using a tool that engages with the head. Point styles include, but are not limited to, diamond, blunt, needle, chisel and no point. Finished nails may be sold in bulk, or they may be collated into strips or coils using materials such as plastic, paper, or wire. Certain steel nails subject to this proceeding are currently classified under the Harmonized Tariff Schedule of the United States (''HTSUS'') subheadings 7317.00.55, 7317.00.65 and 7317.00.75.

Excluded from the scope are steel roofing nails of all lengths and diameter, whether collated or in bulk, and whether or not galvanized. Steel roofing nails are specifically enumerated and identified in ASTM Standard F 1667 (2005 revision) as Type I, Style 20 nails. Also excluded from the scope are the following steel nails: (1) Non-collated (*i.e.,* hand-driven or bulk), two-piece steel nails having plastic or steel washers (caps) already assembled to the nail, having a bright or galvanized finish, a ring, fluted or spiral shank, an actual length of 0.500″ to 8″, inclusive; and an actual shank diameter of 0.1015″ to 0.166″, inclusive; and an actual washer or cap diameter of 0.900″ to 1.10″, inclusive; (2) Non-collated (*i.e.,* hand-driven or bulk), steel nails having a bright or galvanized finish, a smooth, barbed or ringed shank, an actual length of 0.500″ to 4″, inclusive; an actual shank diameter of 0.1015″ to 0.166″, inclusive; and an actual head diameter of 0.3375″ to 0.500″, inclusive; (3) Wire collated steel nails, in coils, having a galvanized finish, a smooth, barbed or ringed shank, an actual length of 0.500″ to 1.75″, inclusive; an actual shank diameter of 0.116″ to 0.166″, inclusive; and an actual head diameter of 0.3375″ to 0.500″, inclusive; and (4) Non-collated (*i.e.,* hand-driven or bulk), steel nails having a convex head (commonly known as an umbrella head), a smooth or spiral shank, a galvanized finish, an actual length of 1.75″ to 3″, inclusive; an actual shank diameter of 0.131″ to 0.152″, inclusive; and an actual head diameter of 0.450″ to 0.813″, inclusive.[21]

Also excluded from the scope of this proceeding are corrugated nails. A corrugated nail is made of a small strip of corrugated steel with sharp points on one side. Also excluded from the scope of this proceeding are fasteners suitable for use in powder-actuated hand tools, not threaded and threaded, which are currently classified under HTSUS 7317.00.20 and 7317.00.30. Also excluded from the scope of this proceeding are thumb tacks, which are currently classified under HTSUS 7317.00.10.00.

Also excluded from the scope of this proceeding are certain brads and finish nails that are equal to or less than 0.0720 inches in shank diameter, round or rectangular in cross section, between 0.375 inches and 2.5 inches in length, and that are collated with adhesive or polyester film tape backed with a heat seal adhesive. Also excluded from the scope of this proceeding are fasteners having a case hardness greater than or equal to 50 HRC, a carbon content greater than or equal to 0.5 percent, a round head, a secondary reduced-diameter raised head section, a centered shank, and a smooth symmetrical point, suitable for use in gas-actuated hand tools. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

Surrogate Country and Surrogate Value Data

On February 1, 2011, the Department sent interested parties a letter inviting comments on surrogate country selection and surrogate value data.[22] On March 1, 2011, Petitioner, Hongli, and Jinchi submitted surrogate country comments. For a detailed discussion of the selection of the surrogate country, see ''Surrogate Country'' section below. On May 2, 2011, the Department

Antidumping Duty Administrative Review, 76 FR 16379 (March 23, 2011) and accompanying Issues and Decision Memorandum at Comment 17.

[19] *See* Letter to Hongli, regarding Antidumping Duty Administrative Review of Certain Nails from the People's Republic of China: Rejection of Untimely and Unsolicited Information, dated June 30, 2011.

[20] *See* Stanley's Supplemental Section D at 1–8, and Supplemental Section D at 1–7, dated May 13, 2011; Hongli's Section C&D at 2, dated February 2, 2011; Jinchi's Supplemental Sections C&D at Exhibits 17 and 19, dated May 16, 2011.

[21] As the result of a changed circumstances review, the Department partially revoked the order with respect to these four specific types of steel nails, effective August 1, 2009. *See Certain Steel Nails from the People's Republic of China: Final Results of Antidumping Duty Changed Circumstances Review,* 76 FR 30101 (May 24, 2011).

[22] *See* The Department's Letter regarding: Antidumping Duty Review of Certain Steel Nails from the People's Republic of China (''PRC''): Surrogate Country List, attaching January 31, 2011, Memorandum to Alex Villanueva, Program Manager, Office 9, AD/CVD Operations, from Carole Showers, Director, Office for Policy, Request for List of Surrogate Countries for an Antidumping Duty Review of the Antidumping Duty Order on Certain Steel Nails (''Nails'') from the People's Republic of China (''Surrogate Country List'').

received surrogate value information from interested parties.[23] All the surrogate values placed on the record were obtained from sources in India.[24] Between May 12, 2011, and June 24, 2011, parties submitted additional arguments and data regarding the selection and calculation of the surrogate values.[25]

Non-Market Economy (''NME'') Country Status

The Department considers the PRC to be an NME country.[26] In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. No party has challenged the designation of the PRC as an NME country in this review. Therefore, we continue to treat the PRC as an NME country for purposes of these preliminary results and calculated normal value in accordance with section 773(c) of the Act, which applies to all NME countries.

Surrogate Country

When the Department reviews imports from an NME country and the available information does not permit the Department to determine NV pursuant to section 773(a) of the Act, then pursuant to section 773(c)(4) of the Act, the Department bases NV on an NME producer's factors of production (''FOPs''), to the extent possible, in one or more market-economy countries that (1) are at a level of economic development comparable to that of the NME country, and (2) are significant producers of comparable merchandise. The Department has determined that India, Philippines, Indonesia, Ukraine, Thailand, and Peru are countries comparable to the PRC in terms of economic development. *See* Surrogate Country List.

Based on publicly available information placed on the record, the Department determines India to be a reliable source for surrogate values because India is at a comparable level of economic development, pursuant to section 773(c)(4) of the Act, is a significant producer of comparable merchandise, and has publicly available and reliable data with which to value FOPs. *See* Surrogate Country List. Furthermore, all the surrogate values placed on the record by the parties were obtained from sources in India. Accordingly, the Department has selected India as the surrogate country for purposes of valuing the FOPs because it meets the Department's criteria for surrogate country selection. India is also the surrogate country the Department selected in the last administrative review and investigation.[27]

Separate Rates

In proceedings involving NME countries, there is a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty rate.[28] Exporters can demonstrate this independence through the absence of both *de jure* and *de facto* government control over export activities. *Id.* The Department analyzes each entity exporting the subject merchandise under a test arising from the *Notice of Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588, 20589 (May 6, 1991) (''*Sparklers*''), as further developed in *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585, 22586–87 (May 2, 1994) (''*Silicon Carbide*''). However, if the Department determines that a company is wholly foreign-owned or located in a market economy (''ME''), then a separate rate analysis is not necessary to determine whether it is independent from government control. *See, e.g., PET Film,* 73 FR at 55040. In addition to the three mandatory respondents, Stanley, Hongli, and Jinchi, the Department received separate rate applications (''SRAs'') or certifications (''SRCs'') from 15 companies (the ''Separate Rate Applicants'').[29] Because Stanley is wholly foreign-owned, a separate-rate analysis is not necessary to determine whether it is independent from government control, so we preliminarily grant Stanley a separate rate. In contrast, because Hongli, Jinchi, and the Separate Rate Applicants have all stated that they are either joint ventures between Chinese and foreign companies, or are wholly Chinese-owned companies, the Department must analyze whether these companies can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

1. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies, and; (3) other formal measures by the government decentralizing control of companies. *See Sparklers* at 20589.

The evidence submitted by Hongli, Jinchi, and the Separate Rate Applicants supports a preliminary finding of absence of *de jure* governmental control based on the following: (1) An absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) applicable legislative enactments decentralizing control of the companies; and (3) other formal measures by the government decentralizing control of companies. *See* each company's SRA, SRC, and/or Section A response, dated November 3, 2010, through February 28, 2011 (where each individually-reviewed or separate-rate respondent stated that it had no relationship with any level of the PRC government with respect to ownership, internal management, and business operations).

2. Absence of De Facto Control

Typically the Department considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) Whether the export prices are set by or are subject to the approval of a governmental agency; (2) whether the respondent has authority to negotiate and sign contracts and other

[23] *See* Letters to the Secretary of Commerce, Surrogate Value Submissions, from Wiley Rein and Grunfeld, Desiderio, Lebowitz, Silverman & Klestadt LLP, dated May 2, 2011.

[24] *See id.*

[25] *See* Letters to the Secretary of Commerce, Rebuttal Surrogate Value Submissions, from Wiley Rein and Grunfeld, Desiderio, Lebowitz, Silverman & Klestadt LLP, dated May 12, 2011, through July 15, 2011.

[26] *See Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Coated Free Sheet Paper from the People's Republic of China,* 72 FR 30758, 30760 (June 4, 2007), unchanged in *Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China,* 72 FR 60632 (October 25, 2007) (''*CFS Paper*'').

[27] *See Investigation,* 73 FR at 33980 and *1st Review,* 76 FR at 16381.

[28] *See Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 73 FR 55039, 55040 (September 24, 2008) (''*PET Film*'').

[29] These companies include: (1) Dezhou Hualude Hardware Products Co., Ltd.; (2) Hengshui Mingyao Hardware & Mesh Products Co., Ltd.; (3) Huanghua Jinhai Hardware Products Co., Ltd.; (4) Huanghua Xionghua Hardware Products Co., Ltd.; (5) Koram Panagene Co., Ltd.; (6) Qingdao D & L Group Ltd.; (7) Romp (Tianjin) Hardware Co., Ltd.; (8) Shandong Dinglong Import & Export Co., Ltd.; (9) Shanghai Curvet Hardware Products Co., Ltd.; (10) Shanghai Jade Shuttle Hardware Tools Co., Ltd.; (11) Shanghai Yueda Nails Industry Co., Ltd.; (12) Shanxi Tianli Industries Co.; (13) Tianjin Lianda Group Co., Ltd.; (14) Tianjin Universal Machinery Imp & Exp Corporation; and (15) Tianjin Zhonglian Metals Ware Co., Ltd.

agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.[30] The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

We determine that, for the individually-reviewed respondents and Separate Rate Applicants, the evidence on the record supports a preliminary finding of absence of *de facto* governmental control based on record statements and supporting documentation showing the following: (1) Each exporter sets its own export prices independent of the government and without the approval of a government authority; (2) each exporter retains the proceeds from its sales and makes independent decisions regarding disposition of profits or financing of losses; (3) each exporter has the authority to negotiate and sign contracts and other agreements, and; (4) each exporter has autonomy from the government regarding the selection of management. *See* each company's SRA, SRC, and/or Section A response, dated November 3, 2010, through February 28, 2011.

The evidence placed on the record of this investigation by the individually-reviewed respondents and the Separate Rate Applicants demonstrates an absence of *de jure* and *de facto* government control with respect to each of the exporter's exports of the merchandise under investigation, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide.* As a result, we have preliminarily determined that it is appropriate to grant the Separate Rate Applicants a margin based on the experience of the individually-reviewed respondents.

Calculation of Margin for Separate Rate Companies

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 where 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 instructs 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 practice in this regard, in reviews involving limited respondent selection based on exporters accounting for the largest volume of trade, has been to average the rates for the selected companies, excluding zero and *de minimis* rates and rates based entirely on facts available.[31] 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 this instance, consistent with our practice, we have preliminarily established a margin for the Separate Rate Applicants based on the rate we calculated for the mandatory respondents whose rates were not zero, *de minimis,* or based entirely on facts available.[32]

PRC-Wide Entity

As discussed above, in this administrative review we limited the selection of respondents using CBP import data. *See* First and Second Respondent Selection Memos. In this case, we made available to the companies who were not selected, the separate rates application and certification, which were put on the Department's Web site. *See 2nd AR Initiation.* Because some parties for which a review was requested did not apply for separate rate status, the PRC–Wide entity is considered to be part of this review.[33] The following companies did not apply for separate rates and are thus considered to be part of the PRC-wide entity:

(1) Aironware (Shanghai) Co., Ltd.
(2) Beijing Daruixing Global Trading Co., Ltd.
(3) Beijing Daruixing Nail Products Co., Ltd.
(4) Beijing Hong Sheng Metal Products Co., Ltd.
(5) Beijing Tri-Metal Co., Ltd.
(6) Cana (Tianjin) Hardware Ind., Co., Ltd.
(7) China Silk Trading & Logistics Co., Ltd.
(8) Chongqing Hybest Tools Group Co., Ltd.
(9) CYM (Nanjing) Nail Manufacture Co., Ltd.
(10) Faithful Engineering Products Co., Ltd.
(11) Handuk Industrial Co., Ltd.
(12) Hong Kong Yu Xi Co., Ltd.
(13) Huanghua Jinhai Metal Products Co., Ltd.
(12) Huanghua Huarong Hardware Products Co., Ltd.
(13) Jinding Metal Products Ltd.
(14) Kyung Dong Corp.
(15) Nanjing Dayu Pneumatic Gun Nails Co., Ltd.
(16) Qingdao Jisco Co., Ltd.
(17) Rizhao Handuck Fasteners Co., Ltd.
(18) Senco-Xingya Metal Products (Taicang) Co., Ltd.
(19) Shandong Minimetals Co., Ltd.
(20) Shanghai Chengkai Hardware Product Co., Ltd.
(21) Shanghai Seti Enterprise International Co., Ltd.
(22) Shanxi Tianli Enterprise Co., Ltd.
(23) Shouguang Meiqing Nail Industry Co., Ltd.
(24) Sinochem Tianjin Imp & Exp Shenzhen Corp.
(25) Superior International Australia Pty Ltd.
(26) Suzhou Xingya Nail Co., Ltd.
(27) Tianjin Baisheng Metal Products Co., Ltd.
(28) Tianjin Jurun Metal Products Co., Ltd.
(29) Wintime Import & Export Corporation Limited of Zhongshan
(30) Wuxi Qiangye Metalwork Production Co., Ltd.
(31) Xuzhou CIP International Group Co., Ltd.
(32) Yitian Nanjing Hardware Co., Ltd.
(33) Zhejiang Gem-Chun Hardware Accessory Co., Ltd.
(34) Zhongshan Junlong Nail Manufactures Co., Ltd.

Date of Sale

The date of sale is generally the date on which the parties agree upon all substantive terms of the sale, which

[30] *See Silicon Carbide,* 59 FR at 22586–87; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China,* 60 FR 22544, 22545 (May 8, 1995).

[31] *See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review,* 73 FR 52273, 52275 (September 9, 2008) and accompanying Issues and Decision Memorandum at Comment 6.

[32] *See, e.g., Fourth Administrative Review of Certain Frozen Warrnwater Shrimp From the People's Republic of China: Preliminary Results, Preliminary Partial Rescission of Antidumping Duty Administrative Review and Intent Not To Revoke, In Part,* 75 FR 11855, 11859 (March 12, 2010).

[33] *See, e.g., Certain Preserved Mushrooms From the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review,* 71 FR 64930, 64933 (November 6, 2006).

normally includes the price, quantity, delivery terms and payment terms.[34]

19 CFR 351.401(i) states that, ''{i}n identifying the date of sale of the merchandise under consideration or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the normal course of business. The Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.'' [35] However, as noted by the Court of International Trade (''CIT'') in *Allied Tube,* a party seeking to establish a date of sale other than invoice date bears the burden of establishing that ''a different date better reflects the date on which the exporter or producer establishes the material terms of sale.'' *See Allied Tube,* 132 F. Supp. 2d at 1090 (quoting 19 CFR 351.401(i)).

Stanley reported that the earlier of invoice date or shipment date is the appropriate date of sale. *See* Stanley's section A questionnaire response at 27–29, dated January 21, 2011, and Stanley's supplemental section A questionnaire response at 15–17, dated March 4, 2011. Consistent with the regulatory presumption for invoice date and because the Department found no evidence on the record contrary to Stanley's claims, for these preliminary results, the Department used the invoice date as the date of sale. Consistent with the Department's practice, for those sales where shipment date preceded invoice date, the Department used the shipment date as the date of sale.[36]

Hongli and Jinchi reported that the PRC Export Declaration is the appropriate date of sale. *See* Hongli's section A questionnaire response at 12, dated January 21, 2011, and Hongli's supplemental A questionnaire response at 12–14, dated March 16, 2011, and Jinchi's section A questionnaire response at 11, dated February 28, 2011, and Jinchi's supplemental section A at 1, dated April 7, 2011. As explained above, the Department will not use a date other than the date of invoice unless a party provides sufficient evidence that a different date better reflects the date on which the material terms of sale were established. *See* 19 CFR 351.401(i). Hongli and Jinchi did not provide such evidence. Instead, Hongli and Jinchi merely asserted that the PRC Export Declaration date is the correct date of sale without any discussion of when the material terms of sale such as price and quantity were established for their sales. Therefore, given the respondents' failure to demonstrate that a date other then invoice date better reflects the date on which the material terms of sale were established the Department is following the presumption established in its regulation and using the invoice date as the date of sale.

Fair Value Comparison

In accordance with section 751(a)(2)(A) of the Act, to determine whether sales of nails to the United States by Stanley, Hongli, or Jinchi, were made at less than normal value, we compared the export price (''EP'') or constructed export price (''CEP''), as appropriate, to NV, as described in the ''U.S. Price,'' and ''Normal Value'' sections of this notice.

U.S. Price

A. Export Price

For Hongli and Jinchi, in accordance with section 772(a) of the Act, we based the U.S. price for sales on EP because the first sale to an unaffiliated purchaser in the United States was made prior to importation, and the use of CEP was not otherwise warranted. In accordance with section 772(c) of the Act, we calculated EP by deducting the applicable movement expenses and adjustments from the gross unit price. We based these movement expenses on surrogate values where a PRC company provided the service and was paid in Renminbi (''RMB''). *See* ''Factors of Production'' section below for further discussion. For details regarding our EP calculations, see Memorandum regarding: Antidumping Duty Administrative Review of Certain Steel Nails from the People's Republic of China: Tianjin Jinchi Metal Products Co., Ltd., dated concurrently with this notice; *see also* Memorandum regarding: Antidumping Duty Administrative Review of Certain Steel Nails from the People's Republic of China: Tianjin Jinghai County Hongli Industry and Business Co., Ltd.,'' dated concurrently with this notice.

B. Constructed Export Price

In accordance with section 772(b) of the Act, we based the U.S. price for Stanley's sales on CEP because the first sale to an unaffiliated customer was made by Stanley's U.S. affiliate. In accordance with section 772(c)(2)(A) of the Act, we calculated CEP by deducting the applicable expenses from the gross unit price charged to the first unaffiliated customer in the United States. Further, in accordance with section 772(d)(1) of the Act and 19 CFR 351.402(b), where appropriate, we deducted from the starting price the applicable selling expenses associated with economic activities occurring in the United States. In addition, pursuant to section 772(d)(3) of the Act, we made an adjustment to the starting price for CEP profit. We based movement expenses on either surrogate values or actual expenses, where appropriate. For details regarding our CEP calculations, and for a complete discussion of the calculation of the U.S. price for Stanley, *see* Memorandum regarding: Antidumping Duty Administrative Review of Certain Steel Nails from the People's Republic of China: Stanley,'' dated concurrently with this notice.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine NV using an FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department bases NV on FOPs because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under the Department's normal methodologies.[37]

Factor Valuation Methodology

In accordance with 19 CFR 351.408(c)(1), the Department will normally use publicly available information to value the FOPs, but when a producer sources an input from an ME country and pays for it in an ME currency, the Department may value the factor using the actual price paid for the input. During the POR, Stanley reported

[34] *See Carbon and Alloy Steel Wire Rod From Trinidad and Tobago: Final Results of Antidumping Duty Administrative Review,* 72 FR 62824 (November 7, 2007) and accompanying Issues and Decision Memorandum at Comment 1; *see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products from Turkey,* 65 FR 15123 (March 21, 2000) and accompanying Issues and Decision Memorandum at Comment 2.

[35] *See* 19 CFR 351.401(i); *see also Allied Tube & Conduit Corp.* v. *United States,* 132 F. Supp. 2d 1087, 1090–1092 (CIT 2001) (''*Allied Tube*'').

[36] *See* 19 CFR 351.401(i).

[37] *See, e.g., Preliminary Determination of Sales at Less Than Fair Value, Affirmative Critical Circumstances, In Part, and Postponement of Final Determination: Certain Lined Paper Products From the People's Republic of China,* 71 FR 19695, 19703 (April 17, 2006), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China,* 71 FR 53079 (September 8, 2006).

that it purchased certain inputs from an ME supplier and paid for the inputs in an ME currency. *See* Stanley's Supplemental Section D, dated May 13, 2011. The Department has a rebuttable presumption that ME input prices are the best available information for valuing an input when the total volume of the input purchased from all ME sources during the period of investigation or review exceeds 33 percent of the total volume of the input purchased from all sources during the period. *See Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments,* 71 FR 61716, 61717–18 (October 19, 2006) (''*Antidumping Methodologies''*).

In this case, unless case-specific facts provide adequate grounds to rebut the Department's presumption, the Department will use the weighted-average ME purchase price to value the input. Alternatively, when the volume of an NME firm's purchases of an input from ME suppliers during the period is below 33 percent of its total volume of purchases of the input during the period, but where these purchases are otherwise valid and there is no reason to disregard the prices, the Department will weight-average the ME purchase price with an appropriate SV according to their respective shares of the total volume of purchases, unless case-specific facts provide adequate grounds to rebut the presumption. *See Antidumping Methodologies.* When a firm has made ME input purchases that may have been dumped or subsidized, are not *bona fide,* or are otherwise not acceptable for use in a dumping calculation, the Department will exclude them from the numerator of the ratio to ensure a fair determination of whether valid ME purchases meet the 33 percent threshold. *See Antidumping Methodologies.*

In accordance with section 773(c) of the Act, we calculated NV based on FOP data reported by the respondents. To calculate NV, we multiplied the reported per-unit factor-consumption rates by publicly available surrogate values. In selecting surrogate values, the Department is tasked with using the best available information on the record. *See* section 773(c) of the Act. To satisfy this statutory requirement, we compared the quality, specificity, and contemporaneity of the potential surrogate value data.[38] The Department's practice is to select, to the extent practicable, surrogate values which are: publicly available; representative of non-export, broad market average values; contemporaneous with the POR; product-specific; and exclusive of taxes and import duties.[39] As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to the surrogate values derived from Indian Import Statistics a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory where appropriate. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp.* v. *United States,* 117 F.3d 1401, 1407–08 (Fed. Cir. 1997). For a detailed description of all surrogate values selected in these preliminary results, *see* Memorandum regarding: Antidumping Duty Administrative Review of Certain Steel Nails from the People's Republic of China: Surrogate Values for the Preliminary Results, dated concurrently with this notice (''Preliminary Surrogate Value Memo'').

For these preliminary results, we concluded that data from Indian Import Statistics and other publicly available Indian sources constitute the best available information on the record for the surrogate values for the respondents' raw materials, packing, by-products, energy, and the surrogate financial ratios. The record shows that data in the Indian Import Statistics, as well as those from the other publicly available Indian sources, are contemporaneous with the POR, product-specific, tax-exclusive, and represent a broad market average. *See* Preliminary Surrogate Value Memo. In those instances where we could not obtain publicly available information contemporaneous with the POR we adjusted the surrogate values, consistent with our practice using where appropriate the Indian Wholesale Price Index (''WPI'') as published in the International Financial Statistics of the International Monetary Fund.[40]

The Department used Indian import data from the Global Trade Atlas (''GTA'') published by Global Trade Information Services, Inc., which is sourced from the Directorate General of Commercial Intelligence & Statistics, Indian Ministry of Commerce, to determine the surrogate values for certain raw materials, by-products, and packing material inputs. The Department has disregarded statistics from NMEs, countries with generally available export subsidies, and countries listed as ''unidentified'' in GTA in calculating the average value. In accordance with the *Omnibus Trade and Competitiveness Act of 1988* legislative history, the Department continues to apply its long-standing practice of disregarding surrogate values if it has a reason to believe or suspect the source data may be subsidized.[41] In this regard, the Department has previously found that it is appropriate to disregard such prices from *e.g.,* Indonesia, South Korea and Thailand, because we have determined that these countries maintain broadly available, non-industry specific export subsidies.[42] Based on the existence of these subsidy programs that were generally available to all exporters and producers in these countries at the time of the POI, the Department finds that it is reasonable to infer that all exporters from Indonesia, South Korea and Thailand may have benefitted from these subsidies.

Additionally, consistent with our practice, we disregarded prices from NME countries and excluded imports labeled as originating from an ''unspecified'' country from the average value, because the Department could not be certain that they were not from

[38] *See, e.g., Fresh Garlic From the People's Republic of China: Final Results of Antidumping Duty New Shipper Review,* 67 FR 72139 (December 4, 2002) and accompanying Issues and Decision Memorandum at Comment 6; *Final Results of First New Shipper Review and First Antidumping Duty Administrative Review: Certain Preserved Mushrooms From the People's Republic of China,* 66 FR 31204 (June 11, 2001) and accompanying Issues and Decision Memorandum at Comment 5.

[39] *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam,* 69 FR 42672, 42682 (July 16, 2004), unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam,* 69 FR 71005 (December 8, 2004).

[40] *See, e.g., Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty New Shipper Reviews,* 69 FR 46498, 46500 (August 3, 2004).

[41] Omnibus Trade and Competitiveness Act of 1988, Conf. Report to Accompany H.R. 3, H.R. Rep. No. 576, 100th Cong., 2nd Sess. (1988) at 590.

[42] *See, e.g., Expedited Sunset Review of the Countervailing Duty Order on Carbazole Violet Pigment 23 from India,* 75 FR 13257 (March 19, 2010) and accompanying Issues and Decision Memorandum at 4–5; *Expedited Sunset Review of the Countervailing Duty Order on Certain Cut-to-Length Carbon Quality Steel Plate from Indonesia,* 70 FR 45692 (August 8, 2005) and accompanying Issues and Decision Memorandum at 4; *See Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review,* 74 FR 2512 (January 15, 2009) and accompanying Issues and Decision Memorandum at 17, 19–20; *See Certain Hot-Rolled Carbon Steel Flat Products from Thailand: Final Results of Countervailing Duty Determination,* 66 FR 50410 (October 3, 2001) and accompanying Issues and Decision Memorandum at 23.

either an NME country or a country with general export subsidies.[43]

The Department valued electricity using the updated electricity price data for small, medium, and large industries, as published by the Central Electricity Authority, an administrative body of the Government of India, in its publication titled *Electricity Tariff & Duty and Average Rates of Electricity Supply in India,* dated March 2008. These electricity rates represent actual country-wide, publicly-available information on tax-exclusive electricity rates charged to small, medium, and large industries in India. We did not inflate this value because utility rates represent current rates, as indicated by the effective dates listed for each of the rates provided.

The Department valued water using data from the Maharashtra Industrial Development Corporation (''MIDC'') as it includes a wide range of industrial water tariffs. To value water, we used the average rate for industrial use from MIDC water rates at *http://www.midcindia.org.*

The Department valued truck freight expenses using a per-unit average rate calculated from data on the Infobanc Web site: *http://www.infobanc.com/logistics/logtruck.htm.* The logistics section of this Web site contains inland freight truck rates between many large Indian cities. Since this value is not contemporaneous with the POR, the Department deflated the rate using WPI.

To value factory overhead, selling, general, and administrative (''SG&A'') expenses, and profit, the Department used the audited financial statements of Bansidhar Granites, Nasco Steel Pvt Ltd., and J&K Wire and Steel.

Labor

Section 773(c) of the Act provides that the Department will value the FOPs in NME cases using the best available information regarding the value of such factors in an ME country or countries considered to be appropriate by the administering authority. The Act requires that when valuing FOPs, the Department utilize, to the extent possible, the prices or costs of factors of production in one or more ME countries that are (1) at a comparable level of economic development and (2) significant producers of comparable merchandise. *See* section 773(c)(4) of the Act.

Previously, the Department used regression-based wages that captured the worldwide relationship between per capita Gross National Income (''GNI'') and hourly manufacturing wages, pursuant to 19 CFR 351.408(c)(3), to value the respondent's cost of labor. However, on May 14, 2010, the Court of Appeals for the Federal Circuit (''CAFC''), in *Dorbest Ltd.* v. *United States,* 604 F.3d 1363, 1372 (Fed. Cir. 2010) (''*Dorbest*''), invalidated 19 CFR 351.408(c)(3). As a consequence of the CAFC's ruling in *Dorbest,* the Department no longer relies on the regression-based wage rate methodology described in its regulations. On February 18, 2011, the Department published in the **Federal Register** a request for public comment on the interim methodology, and the data sources.[44]

On June 21, 2011, the Department revised its methodology for valuing the labor input in NME antidumping proceedings.[45] In *Labor Methodologies,* the Department determined that the best methodology to value the labor input is to use industry-specific labor rates from the primary surrogate country. Additionally, the Department determined that the best data source for industry-specific labor rates is Chapter 6A: Labor Cost in Manufacturing, from the International Labor Organization (ILO) Yearbook of Labor Statistics (''Yearbook'').

In these preliminary results, the Department calculated the labor input using the wage method described in *Labor Methodologies.* To value the respondent's labor input, the Department relied on data reported by India to the ILO in Chapter 6A of the Yearbook. The Department further finds the two-digit description under ISIC–Revision 3 (''Manufacture of Fabricated Metal Products, Except Machinery and Equipment'') to be the best available information on the record because it is specific to the industry being examined, and is therefore derived from industries that produce comparable merchandise. Accordingly, relying on Chapter 6A of the Yearbook, the Department calculated the labor input using labor data reported by India to the ILO under Sub-Classification 28 of the ISIC–Revision 3 standard, in accordance with section 773(c)(4) of the Act. For these preliminary results, the calculated industry-specific wage rate is $1.22. A more detailed description of the wage rate calculation methodology is provided in the Preliminary Surrogate Value Memo.

As stated above, the Department used India ILO data reported under Chapter 6A of Yearbook, which reflects all costs related to labor, including wages, benefits, housing, training, *etc.* Because the financial statements used to calculate the surrogate financial ratios include itemized detail of labor costs, the Department made adjustments to certain labor costs in the surrogate financial ratios. *See Labor Methodologies,* 76 FR at 36093.

Currency Conversion

Where necessary, the Department made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

Preliminary Results of Review

The Department preliminarily determines that the following weighted-average dumping margins exist:

Manufacturer/Exporter	Weighted average margin (Percent)
(1) The Stanley Works (Langfang) Fastening Systems Co., Ltd. (''Stanley Langfang''), and Stanley Black & Decker (''The Stanley Works'')/Stanley Fastening Systems, LP[46]	1.24
(2) Tianjin Jinghai County Hongli Industry and Business Co., Ltd.	19.59
(3) Tianjin Jinchi Metal Products Co., Ltd.	31.27
(4) Dezhou Hualude Hardware Products Co., Ltd.	7.60
(5) Hengshui Mingyao Hardware & Mesh Products Co., Ltd.	7.60
(6) Huanghua Jinhai Hardware Products Co., Ltd.	7.60

[43] *See Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China: Notice of Preliminary Results of the New Shipper Review,* 75 FR 47270, 47273 (August 5, 2010); *see also Drill Pipe From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances, and Postponement of Final Determination,* 75 FR 51004, 51006 (August 18, 2010).

[44] *See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor, Request for Comment,* 76 FR 9544 (February 18, 2011).

[45] *See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor,* 76 FR 36092 (June 21, 2011) (''*Labor Methodologies*'').

Manufacturer/Exporter	Weighted average margin (Percent)
(7) Huanghua Xionghua Hardware Products Co., Ltd.	7.60
(8) Koram Panagene Co., Ltd.	7.60
(9) Qingdao D & L Group Ltd.	7.60
(10) Romp (Tianjin) Hardware Co., Ltd.	7.60
(11) Shandong Dinglong Import & Export Co., Ltd.	7.60
(12) Shanghai Curvet Hardware Products Co., Ltd.	7.60
(13) Shanghai Jade Shuttle Hardware Tools Co., Ltd.	7.60
(14) Shanghai Yueda Nails Industry Co., Ltd.	7.60
(15) Shanxi Tianli Industries Co.	7.60
(16) Tianjin Lianda Group Co., Ltd.	7.60
(17) Tianjin Universal Machinery Imp & Exp Corporation	7.60
(18) Tianjin Zhonglian Metals Ware Co., Ltd.	7.60
PRC-Wide Rate	118.04

Disclosure and Public Hearing

The Department intends to disclose to parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice.[47]

In accordance with 19 CFR 351.301(c)(3)(ii), for the final results of this administrative review, interested parties may submit publicly available information to value FOPs within 20 days after the date of publication of these preliminary results. Interested parties must provide the Department with supporting documentation for the publicly available information to value each FOP. In regard to this publicly available information and in accordance with 19 CFR 351.301(c)(1), interested parties may submit factual information to rebut, clarify, or correct such factual information no later than ten days after the date such factual information is served on the interested party. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record. The Department generally cannot accept the submission of additional, previously absent-from-the-record alternative surrogate value information pursuant to 19 CFR 351.301(c)(1).[48] Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review.[49] Rebuttal briefs and rebuttals to written comments must be limited to issues raised in such briefs or comments and must be filed no later than five days after the deadline for filing case briefs.[50] The Department requests that interested parties provide an executive summary of each argument contained within the case briefs and rebuttal briefs.

The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review. The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review. In accordance with 19 CFR 351.212(b)(1), we are calculating importer- (or customer-) specific assessment rates for the merchandise subject to this review. Where the respondent has reported reliable entered values, we calculate importer- (or customer-) specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to each importer (or customer) and dividing this amount by the total entered value of the sales to each importer (or customer). Where an importer- (or customer-) specific *ad valorem* rate is greater than *de minimis,* we will apply the assessment rate to the entered value of the importers'/customers' entries during the POR, pursuant to 19 CFR 351.212(b)(1).

Where we do not have entered values for all U.S. sales to a particular importer/customer, we calculate a per-unit assessment rate by aggregating the antidumping duties due for all U.S. sales to that importer (or customer) and dividing this amount by the total quantity sold to that importer (or customer).[51] To determine whether the duty assessment rates are *de minimis,* in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer- (or customer-) specific *ad valorem* ratios based on the estimated entered value. Where an importer- (or customer-) specific *ad valorem* rate is zero or *de minimis,* we will instruct CBP to liquidate appropriate entries without regard to antidumping duties.[52]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For the exporters listed above, the cash deposit rate will be the rate established in the final results of this review (except, if the rate is zero or *de minimis, i.e.,* less than 0.5 percent, a zero cash deposit rate will be required for that company); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 118.04

[46] Stanley Fastening Systems LP and Stanley Fastening LP, two names that were initiated upon, appear to be slight variations of The Stanley Works (Langfang) Fastening Systems Co., Ltd., and Stanley Black & Decker/Stanley Fastening Systems, LP (collectively ''Stanley''). As such, the Department is assigning Stanley's rate to both variations of the name.

[47] *See* 19 CFR 351.224(b).

[48] *See Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part,* 72 FR 58809 (October 17, 2007) and accompanying Issues and Decision Memorandum at Comment 2.

[49] *See* 19 CFR 351.309(c).

[50] *See* 19 CFR 351.309(d).

[51] *See* 19 CFR 351.212(b)(1).

[52] *See* 19 CFR 351.106(c)(2).

percent; [53] 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 exporter(s) that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These preliminary results are issued and published in accordance with sections 751(a)(1), 751(a)(2)(B) and 777(i)(1) of the Act, 19 CFR 351.221(b)(4), and 19 CFR 351.214.

Dated: August 31, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–23148 Filed 9–9–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Application(s) for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be postmarked on or before October 3, 2011. Address written comments to Statutory Import Programs Staff, Room 3720, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. at the U.S. Department of Commerce in Room 3720.

Docket Number: 11–056. *Applicant:* Battelle Energy Alliance, 2525 North Freemont Ave., Idaho Falls, ID 83415. *Instrument:* Electron Microscope. *Manufacturer:* FEI Company, the Netherlands. *Intended Use:* The instrument will be used to analyze nuclear fuels and materials for energy production. The experiments will involve structural and chemical analyses of materials on the atomic resolution scale. Current U.S. manufactured instruments do not reach the sensitivity level of this instrument. *Justification for Duty-Free Entry:* There are no instruments of the same general category manufactured in the United States. *Application accepted by Commissioner of Customs:* August 16, 2011.

Docket Number: 11–057. *Applicant:* Battelle Energy Alliance, 2525 North Freemont Ave., Idaho Falls, ID 83415. *Instrument:* Electron Microscope. *Manufacturer:* FEI Company, Czech Republic. *Intended Use:* The instrument will be used to analyze nuclear fuels and materials for energy production. The experiments will involve structural and chemical analyses of materials on the electron based nanometer scale. Current U.S. manufactured instruments do not reach the sensitivity level of this instrument. *Justification for Duty-Free Entry:* There are no instruments of the same general category manufactured in the United States. *Application accepted by Commissioner of Customs:* August 15, 2011.

Docket Number: 11–058. *Applicant:* University of Texas at Austin, Texas Materials Institute, 1 University Station C2201, Austin, TX 78712. *Instrument:* Electron Microscope. Manufacturer: FEI Company, the Netherlands. *Intended Use:* The instrument will be used to study materials such as polymers, metals, ceramics, and biological specimens like tissues, viruses, and bacteria, to determine the morphology of multiphase materials, determine the particle size and size distribution, probe the sample's surface topography, and determine the chemical composition of materials at nanometer scale. Scanning electron microscopy is the only technique that allows direct imaging of material features within the nanometer size range. *Justification for Duty-Free Entry:* There are no instruments of the same general category manufactured in the United States. *Application accepted by Commissioner of Customs:* August 9, 2011.

Dated: September 2, 2011.

Gregory Campbell,

Director, IA Subsidies Enforcement Office.

[FR Doc. 2011–23256 Filed 9–9–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Decision of Panel.

SUMMARY: On August 19, 2011, the binational panel issued its decision in the review of the final results of the 2004/2005 antidumping administrative review made by the U.S. Department of Commerce, respecting Stainless Steel Sheet and Strip in Coils from Mexico, NAFTA Secretariat File Number USA–MEX–2007–1904–01. The binational panel affirmed in part and remanded in part the Commerce's determination. Copies of the panel decision are available from the U.S. Section of the NAFTA Secretariat.

FOR FURTHER INFORMATION CONTACT: Ellen M. Bohon, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter has been conducted in accordance with these Rules.

[53] *See Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates From the People's Republic of China,* 70 FR 24502, 24505 (May 10, 2005), for an explanation on the derivation of the PRC-wide rate.

Panel Decision: On April 14, 2010, the initial decision was issued by this panel remanding to the U.S. Department of Commerce to: (1) Recalculate Mexinox's dumping margins without zeroing, and (2) to recalculate the indirect selling expense ratio (ISE) in a manner not inconsistent with the panel's opinion and affirming Commerce's determinations on all other issues being contested. The Department's decision in the final results of the 2004/2005 antidumping review was, in all other respects, upheld.

On August 19, 2011, with two dissenting views, the panel majority remanded to Commerce its Remand Determination to comply with its instructions in the April 2010 initial decision. The panel directed Commerce to issue its Final Re-determination on this second remand within thirty (30) days from the date of this panel decision.

Dated: September 6, 2011.

Ellen M. Bohon,

U.S. Secretary, NAFTA Secretariat.

[FR Doc. 2011–23160 Filed 9–9–11; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

International Trade Administration

Brandeis University, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscope

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Room 3720, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 11–042. Applicant: Brandeis University, Waltham, MA 02454. Instrument: Technai G2 F20 Twin Electron Microscope. Manufacturer: FEI Company, the Netherlands. Intended Use: See notice at 76 FR 48803, August 9, 2011.

Docket Number: 11–043. Applicant: Mississippi State University, Pearl, MS 39208. Instrument: Transmission Electron Microscope. Manufacturer: JEOL, Ltd., Japan. Intended Use: See notice at 76 FR 47148, August 4, 2011.

Docket Number: 11–049. Applicant: University of Missouri, Columbia, MO 65211. Instrument: Electron Microscope. Manufacturer: FEI Company, Czech Republic. Intended Use: See notice at 76 FR 48803, August 9, 2011.

Docket Number: 11–051. Applicant: DOD Uniformed Services University of the Health Sciences, Bethesda, MD 20814–4799. Instrument: Transmission Electron Microscope. Manufacturer: JEOL, Ltd., Japan. Intended Use: See notice at 76 FR 48803, August 9, 2011.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, is being manufactured in the United States at the time the instrument was ordered. Reasons: Each foreign instrument is an electron microscope and is intended for research or scientific educational uses requiring an electron microscope. We know of no electron microscope, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of each instrument.

Dated: September 2, 2011.

Gregory W. Campbell,

Director, Subsidies Enforcement Office, Import Administration.

[FR Doc. 2011–23277 Filed 9–9–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of Chicago, et al.; Notice of Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Room 3720, U.S. Department of Commerce, 14th and Constitution Ave., NW., Washington, DC.

Docket Number: 11–030. *Applicant:* University of Chicago, Institute for Genomic Systems and Biology, Chicago, IL 60637. *Instrument:* Digital Scanned Laser Microscope. *Manufacturer:* Emblem GMBH, Germany. *Intended Use:* See notice at 76 FR 48803, August 9, 2011. *Comments:* None received. *Decision:* Approved. We know of no instruments of equivalent scientific value to the foreign instruments described below, for such purposes as this is intended to be used, that was being manufactured in the United States at the time of its order. *Reasons:* The instrument will be used to study the functions and properties of biological materials, such as biomedical specimens, through microscopy imaging and recording of fluorescently labeled, light-sensitive samples. The DSLM is a new prototype not available commercially.

Docket Number: 11–044. *Applicant:* University of Chicago, Argonne National Laboratory, Lemont, IL 60439. *Instrument:* Magneto-optical Kerr Microscope System. *Manufacturer:* Evico Magnetics GmgH, Germany. *Intended Use:* See notice at 76 FR 47148, August 4, 2011. *Comments:* None received. *Decision:* Approved. We know of no instruments of equivalent scientific value to the foreign instruments described below, for such purposes as this is intended to be used, that was being manufactured in the United States at the time of its order. *Reasons:* The instrument will be used for real-time imaging of magnetic domains, as well as provide Kerr effect magnetic hysteresis loops, thereby providing important information on the reversal behavior in ferromagnetic films.

Docket Number: 11–045. *Applicant:* University of California Santa Barbara, Santa Barbara, CA 93106–5050. *Instrument:* Ultrasonic Fatigue Testing Equipment. *Manufacturer:* University of Natural Resources and Applied Life Sciences, Austria. *Intended Use:* See notice at 76 FR 48803, August 9, 2011. *Comments:* None received. *Decision:* Approved. We know of no instruments of equivalent scientific value to the foreign instruments described below, for such purposes as this is intended to be used, that was being manufactured in the United States at the time of its order. *Reasons:* The instrument is a highly specialized system for studying a wide range of materials used in very high cycle, high temperature applications, such as light metals, composite metal/ceramics, titanium alloys and superalloys.

Docket Number: 11–046. *Applicant:* University of California Los Angeles, Los Angeles, CA 90095. *Instrument:* Luminescence Reader. *Manufacturer:* Technical University of Denmark, Riso National Laboratory, Denmark. *Intended Use:* See notice at 76 FR 48803, August 9, 2011. *Comments:* None received. *Decision:* Approved. We know of no instruments of equivalent scientific value to the foreign instruments described below, for such purposes as this is intended to be used, that was being manufactured in the United States at the time of its order. *Reasons:* The instrument will be used to study the age of rock and sediment samples using thermoluminescence, optically stimulated luminescence and infrared luminescence.

Dated: September 2, 2011.

Gregory W. Campbell,

Director, Subsidies Enforcement Office, Import Administration.

[FR Doc. 2011–23275 Filed 9–9–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–938]

Citric Acid and Certain Citrate Salts From the People's Republic of China: Extension of Time Limit for the Final Results of the Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Dave Layton at (202) 482–0371 or Austin Redington at (202) 482–1664; AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On June 8, 2011, the Department of Commerce (''Department'') published the preliminary results of the administrative review of the countervailing duty order on citric acid and certain citrate sales from People's Republic of China, covering the period September 19, 2008, through December 31, 2009. *See Citric Acid and Certain Citrate Sales from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review,* 76 FR 33219 (June 8, 2011) (''*Preliminary Results''*). In the *Preliminary Results* we stated that we would issue our final results for the countervailing duty administrative review no later than 120 days after the date of publication of the *Preliminary Results.*

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), requires the Department to issue the final results of an administrative review within 120 days of the publication of the *Preliminary Results.* If it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend this deadline to a maximum of 180 days.

Extension of Time Limits for Final Results

The Department has determined that completion of the final results of this review within the original time period (*i.e.,* by October 6, 2011) is not practicable. We are currently verifying the responses of the respondents, and will require time to write verification reports and allow interested parties adequate time to comment. Also, in the instant review, the Department needs additional time to conduct a post-preliminary analysis of lending programs, the respondents' creditworthiness, and inputs supplied for less than adequate remuneration. *See Preliminary Results,* 76 FR at 33238. Therefore, the Department is extending the time limit for completion of the final results to not later than December 5, 2011, which is 180 days from the date of publication of the *Preliminary Results,* in accordance with section 751(a)(3)(A) of the Act.

We are issuing and publishing this notice in accordance with sections 751(a) and 777(i)(1) of the Act.

Dated: September 6, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–23281 Filed 9–9–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–802]

Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On March 4, 2011, the Department of Commerce (''Department'') published the *Preliminary Results* of the fifth administrative review of the antidumping duty order on certain frozen warmwater shrimp (''shrimp'') from the Socialist Republic of Vietnam (''Vietnam'').[1] We gave interested parties an opportunity to comment on the *Preliminary Results* and, based upon our analysis of the comments and information received, we made changes to the margin calculations for the final results of this review. The final weighted-average margins are listed below in the ''Final Results of the Review'' section of this notice. The period of review (''POR'') is February 1, 2009, through January 31, 2010.

DATES: Effective Date: September 12, 2011.

FOR FURTHER INFORMATION CONTACT: Susan Pulongbarit, Paul Walker, or Jerry Huang, 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) 482–4013, (202) 482–0413, or (202) 482–4047, respectively.

SUPPLEMENTARY INFORMATION:

Case History

As noted above, on March 4, 2011, the Department published the *Preliminary Results* of this administrative review. Between March 9, 2011, and March 31, 2011, the Department requested that Camimex, Minh Phu Seafood Corporation (and its affiliates Minh Qui Seafood Co., Ltd., and Minh Phat Seafood Co., Ltd.) (collectively ''the Minh Phu Group''), and Nha Trang Seaproduct Company (and its affiliates, NT Seafoods Corporation, Nha Trang Seafoods—F.89 Joint Stock Company, and NTSF Seafoods Joint Stock Company) (collectively, ''Nha Trang Seafoods Group'') (hereinafter collectively ''mandatory respondents''), submit publicly ranged quantities of their reported U.S. transactions. On March 14, 2011, through April 1, 2011, the mandatory respondents submitted the publicly ranged quantities of their reported U.S. transactions to the Department.

On March 24, 2011, the Department received post-*Preliminary Results* surrogate value information to value factors of production (''FOP'') for the final results from the Petitioners,[2] the Processors,[3] and the Respondents.[4] On

[1] *See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Preliminary Results, Partial Rescission, and Request for Revocation, In Part, of the Fifth Administrative Review,* 76 FR 12054 (March 4, 2011) (''*Preliminary Results''*).

[2] This includes the Ad Hoc Shrimp Trade Action Committee (''Petitioners'').

[3] This includes the American Shrimp Processors Association (''ASPA'') and Louisiana Shrimp Association (''LSA'') (collectively, ''Processors'').

[4] This includes: the mandatory respondents, Bac Lieu Fisheries Joint Stock Company, Ca Mau Seafood Joint Stock Company, Can Tho Agricultural and Animal Products Imex Company, Cuulong Seaproducts Company, Danang Seaproducts Import Export Corporation, Investment Commerce Fisheries Corporation, Minh Hai Export Frozen Seafood Processing Joint Stock Company, Cadovimex Seafood Import- Export and Processing Joint Stock Company, Minh Hai Joint-Stock Seafoods Processing Company, Nha Trang Fisheries Joint Stock Company, Phu Cuong Jostoco Corp., Phuong Nam Foodstuff Corp., Soc Trang Seafood

April 4, 2011, the Department received information to rebut the post-*Preliminary Results* surrogate value information from the Processors.

The Department invited interested parties to comment on the *Preliminary Results.* Between April 4, 2011, and April 25, 2011, the Department received case and rebuttal briefs from the Petitioners, the Processors, the Respondents, and CamRanh/Contessa.[5] [6] On June 22, 2011, the Department extended the time limit for completion of the final results of this administrative review until August 16, 2011.[7] On June 23, 2011, following the Court of Appeals for the Federal Circuit's decision in *Dorbest,*[8] the Department invited comments from parties regarding the Department's wage rate methodology.[9] Between July 7, 2011, and July 15, 2011, the Department received labor wage rate comments and rebuttals from Petitioners, Processors, and certain Vietnamese Respondents. As a result of our analysis, the Department has made changes to the *Preliminary Results.* On August 11, 2011, the Department extended the time limit for completion of the final results of this administrative review until August 31, 2011.[10]

Scope of the Order

The scope of the order includes certain warmwater shrimp and prawns, whether frozen, wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,[11] 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, whiteleg 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 the order. In addition, food preparations (including dusted shrimp), which are not ''prepared meals,'' that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of the 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) canned warmwater shrimp and prawns (HTS subheading 1605.20.1040); and (7) certain battered shrimp. Battered 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. When dusted in accordance with the definition of dusting above, the battered shrimp product is also coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products covered by the 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 the order is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties are addressed in ''Fifth Administrative Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Issues and Decision Memorandum for the Final Results,'' (August 31, 2011) (''I&D Memo''). A list of the issues which parties raised, and to which the Department responded 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 Web site 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 and comments received from interested parties regarding our *Preliminary Results,* the Department has made certain revisions to the margin calculation for Camimex, the Nha Trang Seafoods Group, and the Minh Phu Group. For further analysis of these revisions, *see* the I&D Memo and company specific analysis memoranda. For changes to the surrogate values, *see* the I&D Memo and ''Memorandum to the File, through Scot T. Fullerton, Program Manager, AC/CVD Operations, Office 9, from Jerry Huang, International Trade Analyst, AD/CVD Operations, Office 9, Fifth Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Surrogate Values for the Final Results,'' (August 31, 2011).

Final Partial Rescission

In the *Preliminary Results,* the Department preliminarily rescinded the review with respect to Gallant Ocean (Vietnam) Co., Ltd., Kien Cuong Seafood Processing Import Export Joint-Stock

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Joint Stock Company, Thuan Phuoc Seafoods and Trading Corporation and UTXI Aquatic Products Processing Corporation (collectively, ''Respondents'').

[5] CamRanh and Contessa Premium Foods Inc., hereafter referred to as ''CamRanh/Contessa.''

[6] Case briefs were not submitted by Viet Hai Seafood Co., Ltd., *et al.* or Amanda Foods.

[7] *See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Extension of Final Results of Antidumping Duty Administrative Review,* 76 FR 36519 (June 22, 2011).

[8] *See Dorbest Limited* v. *United States,* 604 F.3d 1363, 1372 (Fed. Cir. 2010) (''*Dorbest*'').

[9] *See* Letter to All Interested Parties, From Paul Walker, Regarding 2009–2010 Antidumping Duty administrative Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam, dated June 23, 2011.

[10] See *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Extension of Time Limit for Final Results of Antidumping Duty Administrative Review,* 76 FR 49729 (August 11, 2011).

[11] ''Tails'' in this context means the tail fan, which includes the telson and the uropods.

Company, Quoc Viet Seaproducts Processing Trading Import and Export Co., Ltd., Viet Hai Foods Co., Ltd. and its branch Nam Hai Foodstuff and Export Company Ltd.,[12] Vinh Loi Import Export Company, and Vinh Hoan Corporation. These companies reported that they had no shipments of subject merchandise to the United States during the POR. As stated in the *Preliminary Results,* the Department's examination of shipment data from U.S. Customs and Border Protection (''CBP'') for these companies confirmed that there were no entries of subject merchandise from them during the POR.[13] The Department did not receive any comments regarding the preliminary rescission of these companies. Therefore, the Department is rescinding the administrative review with respect to these companies.

Separate Rates

In proceedings involving NME countries, it is the Department's practice to begin with a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty rate. *See Separate Rates and Combination Rates in Antidumping Investigations involving Non-Market Economy Countries,* 70 FR 17233 (April 5, 2005); *see also Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China,* 71 FR 53079, 53080 (September 8, 2006); and *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, 29307 (May 22, 2006).

In our *Preliminary Results,* we determined that, in addition to the mandatory respondents, the following 27 companies met the criteria for separate rate status: Amanda Foods (Vietnam) Limited; Bac Lieu Fisheries Joint Stock Company; C.P. Vietnam Livestock Corporation; Cafatex Fishery Joint Stock Corporation, aka Cafatex Corp.; Cadovimex Seafood Import-Export and Processing Joint Stock Company, aka CADOVIMEX–VIETNAM; Ca Mau Seafood Joint Stock Company, aka Seaprimexco Vietnam; Camranh Seafoods and Branch of Cam Ranh; Can Tho Import Export Fishery Limited Company, aka CAFISH; CATACO Sole Member Limited Liability Company, aka CATACO; Coastal Fisheries Development Corporation, aka COFIDEX; Cuulong Seaproducts Company, aka Cuulong Seapro; Danang Seaproducts Import Export Corporation, aka Seaprodex Danang and its branch Tho Quang Seafood Processing and Export Company; Grobest & I–Mei Industrial Vietnam Co., Ltd., aka Grobest; Investment Commerce Fisheries Corporation, aka INCOMFISH; Kim Anh Company, Limited; Minh Hai Export Frozen Seafood Processing Joint Stock Company, aka Minh Hai Jostoco; Minh Hai Joint-Stock Seafoods Processing Company, aka Seaprodex Minh Hai; Ngoc Sinh Private Enterprise and its branch, Ngoc Sinh Seafoods Processing and Trading Enterprise, aka Ngoc Sinh Seafoods; Nhat Dhuc Co., Ltd.; Nha Trang Fisheries Joint Stock Company, aka Nha Trang Fisco; Phu Cuong Jostoco Seafood Corporation; Phuong Nam Foodstuff Corp., aka Phuong Nam Co., Ltd.; Sao Ta Foods Joint Stock Company, aka FIMEX VN; Soc Trang Seafood Joint Stock Company, aka STAPIMEX; Thuan Phuoc Seafoods and Trading Corporation; UTXI Aquatic Products Corporation, aka UTXICO; and Viet Hai Seafood Co., Ltd., a/k/a Vietnam Fish One Co., Ltd. The Department has not received any information since the issuance of the *Preliminary Results* that provides a basis for reconsideration of this treatment. Therefore, the Department continues to find that the above-named companies meet the criteria for a separate rate.

Separate Rate Calculation

The separate rate is determined based on the estimated weighted-average antidumping margins established for exporters and producers individually investigated, excluding zero and *de minimis* margins or margins based entirely on facts available.[14] [15] We note that it is the Department's practice to calculate the rate based on the average of the margins calculated for those companies selected for individual review, weighted by each company's publicly-ranged quantity of reported U.S. transactions.[16] Due to requests to protect business proprietary information, we were unable to apply our normal methodology of calculating a weighted-average margin in the *Preliminary Results,* and instead calculated a simple average.[17] Since the *Preliminary Results,* the Department has obtained publicly-ranged quantities of reported U.S. transactions. Therefore, for these final results, the Department has assigned to the separate rate respondents a weighted-average of the Minh Phu Group and Camimex's margin to the companies not selected for individual examination.

Vietnam-Wide Entity

In the *Preliminary Results* the Department treated certain Vietnamese exporters/producers as part of the Vietnam-wide entity because they did not demonstrate that they operate free of government control.[18] Since the *Preliminary Results,* the Department has received comments noting that several companies were incorrectly included in the Vietnam-wide entity.[19] As discussed in the I&D Memo, the Department inadvertently included certain company names in the Vietnam-wide entity.[20] For the final results, the Department has updated the list indicating which companies are to be included in the Vietnam-wide entity.[21] No additional information was placed on the record with respect to the remaining 41 companies after the *Preliminary Results.* Because the Department begins with the presumption that all companies within a NME country are subject to government control, and because only the companies listed under the ''Final Results of Review'' section below have overcome that presumption, the Department is applying a single antidumping rate, *i.e.,* the Vietnam-wide entity rate, to all other exporters of subject merchandise from Vietnam. The Vietnam-wide rate applies to all entries of the merchandise under consideration, except for those from companies which have received a separate rate.

Revocation

In the *Preliminary Results,* the Department noted that four companies [22] requested revocation pursuant to 19 CFR 351.222. Also, in the *Preliminary Results,* the Department denied these requests for revocation. The Department has not received any

[12] We note that Viet Hai Foods Co., Ltd. and its branch Nam Hai Foodstuff and Export Company Ltd. were inadvertently included in the ''Preliminary Results of Review Section'' of the *Preliminary Results.*

[13] *See Preliminary Results,* 76 FR at 12055.

[14] See e.g.. First Administrative Review of Steel Wire Garment Hangers From the People's Republic of China: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 76 FR 27994 (May 13, 2011).

[15] See I&D Memo at Comment 4.

[16] *See Ball Bearings and Parts Thereof From France, et al.: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part,* 75 FR 53661, 53663 (Sept. 1, 2010).

[17] *See Preliminary Results,* 76 FR at 12058.

[18] *See Preliminary Results* at Attachment I.

[19] *See* I&D Memo at Comment 7.

[20] *See Id.*

[21] *See* I&D Memo at Appendix II.

[22] Camimex, Grobest & I–Mei Industrial (Vietnam) Co., Ltd. (''Grobest'') and Phuong Nam Foodstuff Corp. (''Phuong Nam'') (collectively, the ''revocation companies'').

information since the issuance of the *Preliminary Results* that provides a basis for reconsideration of this treatment. For the final results we have continued to deny these companies' revocation requests.

Final Results of the Review

The weighted-average dumping margins for the POR are as follows:

Exporter	Margin (percent)
Camau Frozen Seafood Processing Import Export Corporation (''CAMIMEX'') aka Camimex aka Camau Seafood Factory No. 4 aka Camau Seafood Factory No. 5 aka Camau Frozen Seafood Processing Import & Export aka Camau Frozen Seafood Processing Import Export Corp. (CAMIMEX–FAC 25) aka Frozen Factory No. 4 aka Camau Frozen Seafood Processing Import Export Corporation	0.83
Minh Phu Group: Minh Phat Seafood Co., Ltd. aka Minh Phat Seafood aka Minh Phu Seafood Export Import Corporation (and affiliates Minh Qui Seafood Co., Ltd. and Minh Phat Seafood Co., Ltd.) aka Minh Phu Seafood Corp. aka Minh Phu Seafood Corporation aka Minh Qui Seafood aka Minh Qui Seafood Co., Ltd. aka Minh Phu Seafood Pte aka Minh Phat aka Minh Qui	1.15
Nha Trang Seafoods Group: Nha Trang Seaproduct Company (''Nha Trang Seafoods'') aka Nha Trang Seaproduct Company Nha Trang Seafoods aka Nha Trang Seaproduct Company Nha Trang Seafoods aka NT Seafoods Corporation (''NT Seafoods'') aka Nha Trang Seafoods—F.89 Joint Stock Company (''Nha Trang Seafoods—F.89'') aka NTSF Seafoods Joint Stock Company (''NTSF Seafoods'')	*de minimus*
Amanda Foods (Vietnam) Limited (''Amanda Foods'')	1.04
Bac Lieu Fisheries Joint Stock Company aka Bac Lieu Fisheries Company Limited (''Bac Lieu'') aka Bac Lieu Fisheries Company Limited aka Bac Lieu Fisheries Limited Company aka Bac Lieu Fisheries Company Limited aka Bac Lieu Fis aka Bac Lieu Co. Ltd. aka Bac Lieu Fisheries aka Bac Lieu Fisheries Co. Ltd	1.04
C.P. Vietnam Livestock Company Limited aka C.P. Vietnam Livestock Corporation (''C.P. Vietnam'') aka C.P. Vietnam Livestock Corporation aka C.P. Vietnam Livestock Co. Ltd. Aka CP Livestock	1.04
Cadovimex Seafood Import-Export and Processing Joint Stock Company (''CADOVIMEX-VIETNAM'') aka Cadovimex-Vietnam aka Cai Doi Vam Seafood Import-Export Company (''Cadovimex'') aka Cai Doi Vam Seafood Import-Export Company (Cadovimex) aka Cai Doi Vam Seafood aka Cai Doi Vam Seafood Im-Ex Company (Cadovimex) aka Cai Doi Vam Seafood Processing Factory aka Caidoivam Seafood Company (Cadovimex) aka Caidoivam Seafood Im-Ex Co. aka Cadovimex Seafood Import-Export and Processing Joint Stock Company aka Cai Doi Vam Seafood Import-Export Company aka Cadovimex	1.04
Cafatex Fishery Joint Stock Corporation (''Cafatex Corp.'') aka Cafatex Fishery Joint Stock Corporation (''CAFATEX CORP.'') aka Cantho Animal Fisheries Product Processing Export Enterprise (Cafatex) aka Cafatex aka Cafatex Vietnam aka Xi Nghiep Che Bien Thuy Suc San Xuat Kau Cantho aka Cas aka	

Exporter	Margin (percent)
Cas Branch aka Cafatex Saigon aka Cafatex Fishery Joint Stock Corporation aka Cafatex Corporation aka Taydo Seafood Enterprise aka Cafatex Corp. aka Cafatex Corporation	1.04
Cam Ranh Seafoods Processing Enterprise Pte aka Cam Ranh Seafoods Processing Enterprise Company (“Camranh Seafoods”) aka Camranh Seafoods aka Branch of Camranh Seafoods Processing Enterprise Pte—Quang Ninh Seaproduct Factory aka Quang Ninh Seaproduct Factory (Camranh Seafoods’ Branch)	1.04
CATACO Sole Member Limited Liability Company Can Tho Agricultural and Animal Products Import Export Company (“CATACO”) aka Can Tho Agricultural and Animal Product Import Export Company (“CATACO”) aka Can Tho Agricultural Products aka CATACO aka Can Tho Agricultural and Animal Products Imex Company	1.04
Can Tho Import Export Fishery Limited Company (“CAFISH”)	1.04
Coastal Fishery Development aka Coastal Fisheries Development Corporation (“Cofidec”) aka Coastal Fisheries Development Corporation (Cofidec) aka COFIDEC aka Coastal Fisheries Development Corporation aka Coastal Fisheries Development Co. aka Coastal Fisheries Development Corp	1.04
Cuulong Seaproducts Company (“Cuu Long Seapro”) aka Cuu Long Seaproducts Limited (“Cuulong Seapro”) aka Cuulong Seapro aka Cuulong Seaproducts Company (“Cuulong Seapro”) aka Cuu Long Seaproducts Company (“Cuu Long Seapro”) aka Cuu Long Seaproducts Company aka Cuu Long Seapro aka Cuulong Seaproducts Company (“Cuu Long Seapro”) aka Cuu Long Seaproducts Limited (Cuulong Seapro) aka Cuulong Seapro aka Cuulong Seaproduct Company aka Cuulong Seaproducts Company	1.04
Danang Sea Products Import Export Corporation aka Danang Seaproducts Import Export Corporation (“Seaprodex Danang”) aka Danang Seaproducts Import Export Corporation aka Danang Seaproduct Import-Export Corporation aka Danang Seaproducts Import Export aka Tho Quang Seafood Processing & Export Company aka Seaprodex Danang aka Tho Quang Seafood Processing and Export Company aka Tho Quang aka Tho Quang Co	1.04
Grobest & I-Mei Industrial Vietnam aka Grobest aka Grobest & I-Mei Industrial (Vietnam) Co., Ltd. aka Grobest & I-Mei Industrial (Vietnam) Co., Ltd. (“Grobest”) aka Grobest & I-Mei Industry Vietnam	1.04
Investment Commerce Fisheries Corporation (“Incomfish”) aka Incomfish aka Investment Commerce Fisheries Corp. aka Incomfish Corp. aka Incomfish Corporation aka Investment Commerce Fisheries aka Investment Commerce Fisheries Corporation aka Incomfish Corporation	1.04
Kim Anh Company Limited (“Kim Anh”)	1.04
Minh Hai Export Frozen Seafood Processing Joint Stock Company aka Minh Hai Jostoco aka	

Exporter	Margin (percent)
Minh Hai Export Frozen Seafood Processing Joint-Stock Company (“Minh Hai Jostoco”) aka Minh Hai Export Frozen Seafood Processing Joint Stock Company (“Minh Hai Jostoco”) aka Minh Hai Export Frozen Seafood Processing Joint-Stock Company aka Minh Hai Joint Stock Seafood Processing Joint-Stock Company aka Minh Hai Export Frozen Seafood Processing Joint-Stock Co., aka Minh-Hai Export Frozen Seafood Processing Joint-Stock Company	1.04
Minh Hai Joint-Stock Seafoods Processing Company (“Seaprodex Minh Hai”) aka Sea Minh Hai aka Minh Hai Joint-Stock Seafoods Processing Company aka Seaprodex Minh Hai aka Seaprodex Min Hai aka Seaprodex Minh Hai (Minh Hai Joint Stock Seafoods Processing Co.) aka Seaprodex Minh Hai Factory aka Seaprodex Minh Hai Factory No. 69 aka Seaprodex Minh Hai Workshop 1 aka Seaprodex Minh Hai-Factory No. 78 aka Workshop I Seaprodex Minh Hai	1.04
Minh Hai Sea Products Import Export Company (“Seaprimex Co”) aka Minh Hai Sea Products Import Export Company (Seaprimex Co) aka Ca Mau Seafood Joint Stock Company (“SEAPRIMEXCO”) aka Seaprimexco Vietnam aka Seaprimexco aka Ca Mau Seafood Joint Stock Company (“Seaprimexco”) aka Minh Hai Seaproducts Import Export Corporation aka Seaprimexco aka Minh Hai Seaproducts Co Ltd. (Seaprimexco) aka Ca Mau Seafood Joint Stock Company (“Seaprimexco Vietnam”)	1.04
Ngoc Sinh Private Enterprise aka Ngoc Sinh Seafoods aka Ngoc Sinh Seafoods Processing and Trading Enterprise aka Ngoc Sinh Fisheries aka Ngoc Sinh Private Enterprises aka Ngoc Sinh Seafoods Processing and Trading Enterprises aka Ngoc Sinh aka Ngoc Sinh Seafood Processing Company aka Ngoc Sinh Seafoods (Private Enterprise)	1.04
Nhat Duc Co., Ltd. aka Nhat Duc Co., Ltd. (“Nhat Duc”)	1.04
Nha Trang Fisheries Joint Stock Company (“Nha Trang Fisco”) aka Nha Trang Fisheries Joint Stock Company aka Nhatrang Fisheries Joint Stock Company aka Nha Trang Fisco aka Nhatrang Fisco aka Nha Trang Fisheries, Joint Stock aka Nha Trang Fisheries Joint Stock Company (Nha Trang Fisco)	1.04
Phu Cuong Jostoco Seafood Corporation aka Phu Cuong Seafood Processing and Import-Export Co., Ltd. aka Phu Cuong Seafood Processing and Import Export Company Limited aka Phu Cuong Jostoco Corp	1.04
Phuong Nam Co., Ltd. (“Phuong Nam”) aka Western Seafood Processing and Exporting Factory (“Western Seafood”) aka Phuong Nam Foodstuff Corp. aka Phuong Nam Co. Ltd	1.04
Sao Ta Foods Joint Stock Company (“Fimex VN”) aka Sao Ta Foods Joint Stock Company aka Fimex VN aka Sao Ta Seafood Factory aka Saota Seafood Factory	1.04
Soc Trang Aquatic Products and General Import Export Company (“Stapimex”) aka Soc Trang Seafood Joint Stock Company (“Stapimex”) aka Soc Trang Seafood Joint Stock Company aka Soc Trang Aquatic Products and General Import Export Company aka Stapimex aka Soc Trang Aquatic Products and General Import Export Company-(Stapimex) aka Stapimex Soc Trans Aquatic Products and General Import Export Company aka	

Exporter	Margin (percent)
Stapmex	1.04
Thuan Phuoc Seafoods and Trading Corporation aka Thuan Phuoc aka Frozen Seafoods Factory No. 32 aka Frozen Seafoods Fty aka Seafoods and Foodstuff Factory aka My Son Seafoods Factory aka Seafoods and Foodstuff Factory Vietnam	1.04
UTXI Aquatic Products Processing Company aka UT XI Aquatic Products Processing Company aka UT–XI Aquatic Products Processing Company aka UTXI aka UTXI Co. Ltd. aka Khanh Loi Seafood Factory aka Hoang Phuong Seafood Factory aka UTXI Aquatic Products Processing Corporation (''UTXICO'') aka UTXI Aquatic Products Processing Corporation aka UTXICO	1.04
Viet Hai Seafood Co., Ltd. aka Vietnam Fish One Co., Ltd. (''Fish One'') aka Viet Hai Seafoods Company Ltd. (''Vietnam Fish One Co. Ltd.'')	1.04
Vietnam-wide Entity	25.76

Assessment

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review. Pursuant to 19 CFR 351.212(b)(1), the Department will calculate importer-specific (or customer) per unit duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. The Department will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate is above *de minimis.*

Cash Deposit Requirements

The following cash-deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Tariff Act of 1930, as amended (''the Act''): (1) For the exporters listed above, the cash deposit rate will be the rate established in these final results of review (except, if the rate is zero or *de minimis, i.e.,* less than 0.5 percent, a zero cash deposit rate will be required for that company); (2) for previously investigated or reviewed Vietnamese and non-Vietnamese 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 Vietnamese exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the Vietnamese-wide rate of 25.76 percent; and (4) for all non-Vietnamese exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the Vietnamese exporters that supplied that non-Vietnamese 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 final reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of the return or 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 notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: August 31, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

Appendix I—Issues & Decision Memorandum

Comment 1: Surrogate Country
Comment 2: Surrogate Values
A. Shrimp
B. Shrimp Conversion Ratio
C. Shrimp Count-size Error
D. Inclusion of Imports Specifying Bangladeshi Origin
E. Cartons
F. Purchased Ice
G. Water
H. Containerization
I. Labor
J. Financial Ratios
Comment 3: Zeroing
Comment 4: Separate Rate Companies
Comment 5: Changes to the Minh Phu Group Margin Program
A. Quantity
B. Marine Insurance
Comment 6: Customs Instructions
A. Corrections to Cash Deposit and Liquidation Instructions
B. Liquidation Instructions

Comment 7: Name Corrections for Certain Companies

[FR Doc. 2011–23278 Filed 9–9–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No.: 110727437–1433–01]

Soliciting Input on Research and Development Priorities for Desirable Features of a Nationwide Public Safety Broadband Network

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice and request for comment.

SUMMARY: The U.S. Department of Commerce's (DoC) National Institute of Standards and Technology (NIST) is seeking input on various possible features of a new nationwide interoperable public safety broadband network. This input will be used by NIST to help determine research and development priorities in anticipation of the President's Wireless Innovation (WIN) Fund to help drive innovation of next-generation network technologies.

DATES: Comments are requested by 5 p.m. EDT on October 12, 2011.

ADDRESSES: Comments should be sent to Dereck Orr, *dereck.orr@nist.gov*.

FOR FURTHER INFORMATION CONTACT: Dereck Orr, Office of Law Enforcement Standards, National Institute of Standards and Technology, 325 Broadway, Boulder, Colorado 80305, telephone number (303) 497–5400. Mr. Orr's e-mail address is *dereck.orr@nist.gov*.

SUPPLEMENTARY INFORMATION: The public safety community (law enforcement, fire, and emergency medical service) is experiencing a generational shift in technology that will revolutionize the way it communicates. Traditionally, emergency responders have used land mobile radio technology. This technology has limited data capabilities and suffers from a large installed base of thousands of stand-alone proprietary systems with non-contiguous spectrum assignments. As a result, public safety has long struggled with effective cross-agency/jurisdiction communications and lags far behind the commercial sector in data capability. Congressional legislation has made broadband spectrum that was cleared by the transition from analog to digital broadcast television (referred to as the Digital Television (DTV) Transition) available to public safety for broadband communications. The newly available spectrum will allow for a unified system operating on common spectrum bands, fostering nationwide roaming, interoperability, and access to broadband data. However, public safety has several unique requirements that are not currently reflected in broadband technology.

In August 2010, the U.S. Department of Justice Community Oriented Policing Services (COPS) office held the National Forum on Public Safety Broadband Needs. More than 20 public safety practitioners identified the following 15 operational requirements, each of which relate to at least four overarching themes (resiliency, availability and reliability, security, and affordability/commercial alignment):

(1) A dedicated high-quality network connection always available for sending and receiving continual data streams to support monitoring and resource tracking;

(2) At a minimum, access to initial and updated basic incident information (voice- and text-based incident data);

(3) An infrastructure that is hardened and secure, providing a high level of system availability;

(4) When voice is converged for normal operations and in the event the infrastructure is compromised, public safety communications must remain stable and with clear voice communications;

- Infrastructure-less communications, with talk-around for the ability to talk one-to-one and one-to-many
- Optimal audio quality during adverse field conditions
- No latency on mission critical voice applications

(5) Geographic coverage that has no limitations within the footprint of the National Public Safety Broadband Network;

(6) Dynamic management and control of the network;

(7) Interoperability, including with existing public safety-based systems;

(8) Ability to send and receive large amounts of information;

(9) A non-proprietary network based on industry standards;

(10) Single devices that support voice, video, and data;

(11) Access to and from external information sources;

(12) Easy integration with other technologies;

(13) Automatic management and control of the network;

(14) Current and future enhancements available to commercial consumers are provided to public safety with no limitations; and

(15) Ability to send, receive, and process information from the public (citizens and media).

The COPS report is available at: *http://www.cops.usdoj.gov/files/RIC/Publications/e021111338-broadband-forum.pdf.*

Since then, the Obama Administration has announced its support for legislation that would create a not-for-profit Public Safety Broadband Corporation to oversee the deployment of a nationwide network that meets the needs of local, state, Tribal, and Federal public safety communities.[1] The Administration has also proposed a $3 billion WIN Fund to help drive innovation through research, experimentation, testbeds, and applied development. Of the $3 billion, $500 million will be devoted to research and development (R&D) for the new public safety broadband network.[2] The Public Safety Innovation Fund (PSIF), NIST's component of the proposed WIN Fund, helps spur the development of cutting-edge wireless technologies. NIST is working with industry, its Federal partners and public safety organizations to conduct R&D to support new standards, technologies and applications to advance public safety communications. Core components of this program include documenting public safety requirements and driving the adoption of those requirements into the appropriate standards; developing the capability for communications between currently deployed public safety narrowband systems and the future nationwide broadband network; and establishing a roadmap that seeks to capture and address public safety's needs beyond what can be provided by the current generation of broadband technology and driving technological progress in that direction. Through pre-competitive research, development, reference applications, and demonstration projects, NIST will accomplish these goals.

In pursuit of these goals, NIST seeks comments on the following possible features of the nationwide public safety broadband network. These more

[1] Comments of the National Telecommunications and Information Administration before the Federal Communications Commission in the matter of Service Rules for the 698–747, 747–762 and 777–792 Band (WT Docket No. 06–150); Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band (PS Docket No. 06–229); Amendment of Part 90 of the Commission's Rules (WP Docket No. 07–100). *http://www.ntia.doc.gov/filings/2011/NTIA_Public_Safety_Network_Comments_06102011.pdf.*

[2] President Obama Details Plan to Win the Future through Expanded Wireless Access. *http://www.whitehouse.gov/the-press-office/2011/02/10/president-obama-details-plan-win-future-through-expanded-wireless-access.*

technical features were identified by the NIST Visiting Committee on Advanced Technology with the input of public safety and their identified operational requirements. Among other things, NIST seeks to understand the extent to which these features and requirements can be satisfied through existing commercially available technology or though technology that could become available in the relative short-term, assuming appropriate research and development. Information obtained from this solicitation will be used to inform the potential use of grant funds to spur innovation in those areas not currently commercialized.

Feature List (organized around the four overarching themes noted above):

To ensure resiliency in an emergency:

• *Resiliency:* The ability of operable systems to recover from mishap, change, misfortune, or variation in mission or operating requirements.[3]

• *Self-Organizing:* Self-organizing networks dynamically manage their own configuration by automatically making changes to ensure messages reach their destinations.[4]

• *Meshing (ad-hoc device-to-device communication):* A type of networking where each node must not only capture and disseminate its own data, but also serve as a relay for other sensor nodes, that is, it must collaborate to propagate the data in the network.[5]

• *Adaptability:* The ability of the network and/or device to modify/change behavior based upon external conditions.

To ensure reliability and availability:

• *Prioritization:* The ability to prioritize network traffic based on assigned priority schemes.

• *Quality of Service (QoS):* The set of standards and mechanisms for ensuring high-quality performance for critical applications. By using QoS mechanisms, network administrators can use existing resources efficiently and ensure the required level of service without reactively expanding or over-provisioning their networks. The goal of QoS is to provide preferential delivery service for the applications that need it by ensuring sufficient bandwidth, controlling latency and jitter, and reducing data loss.[6]

To enable security:

• *Strong, Dynamic Access Control:* Access control lists can be configured to control both inbound and outbound traffic on networks and authentication/verification of users/devices on the network.[7] The level of access control should be sufficient to allow for entree into a broad set of systems and databases needed by public safety (*e.g.,* criminal history databases, medical records, public work records, *etc.*).

To ensure affordability/commercial alignment:

• *Compatibility with Commercial Infrastructure:* The utilization of a variety of commercial services when public safety is in areas not covered by the public safety broadband network.

• *Network sharing:* The shared use of infrastructure between commercial and public safety users.

• *Multi-Modal:* The ability of the network to support voice, video, data, and multimedia simultaneously.

• *Scalability:* The ability of a system, network, or process to handle growing amounts of work in a graceful manner or its ability to be enlarged to accommodate that growth.[8] At the design phase, this could include requirements to ensure that scalability can be achieved, to the extent possible, by software enhancements and upgrades as opposed to by hardware replacements. Scalability also includes the need, in the case of a large scale event, to accommodate a rapid increase in the number of users in a limited geographic area.

• *Power Awareness:* The ability of network/devices to control power functions.

• *Standardized Common Interfaces:* Protocols, Application Program Interfaces, application platforms, radio capabilities, etc. that allow for competitive provisioning.

• *Uniform, Universal Access:* The ability to access the network and data anywhere at any time through any device.

Request for Comments

For each feature listed above, NIST is requesting input on the following:

• Your assessment of the importance of the feature in relation to a Nationwide Public Safety Broadband Network;

• Current gaps that exist preventing the realization of the full potential of the feature;

• Possible research and development that could take place to close any technical gaps;

• Any challenges that public safety could face in realizing the full potential of these features given currently implemented solutions;

• Best practices from other industries that could be leveraged to expedite public safety's realization of these key features.

Additionally, NIST is requesting input on the following further considerations for the nationwide public safety network:

• What is the importance of employing open standards for the nationwide public safety network?

• What is the need, if any, for commonality of functions across the system?

• What is the importance of a multi-vendor environment for the network and what are the lessons learned in deploying a multi-vendor environment from the cellular and other industries?

• What can be done to ensure both short- and long-term affordability of the network for all types of public safety agencies?

• In a recent report, the President's Council of Advisors on Science and Technology suggested the need to develop methods for implementing a ''survivable core'' of cyber-infrastructure that would be relied upon to provide truly essential services in the event of a catastrophic cyber-attack.[9] Please comment on how NIST should pursue this recommendation. Among other things, commenters should address whether the goal should be to design a separate survivable core that is integrated and interoperable with the primary public safety network, or instead to design the primary network such that it can reconstitute rapidly—following a catastrophic event—to achieve some ''core'' level of service.

• What is the marginal cost of the feature/functionality versus equipment available today?

• What network features or requirements have not been identified above, the lack of which may impair the network's ability to adequately serve the needs of public safety?

• How should NIST engage public safety practitioners and technologists as part of the planned R&D projects to ensure proper prioritization of efforts and effectiveness of developed solutions?

This request for information coincides with other work NIST is doing to support the nationwide public safety broadband network, including a demonstration network from the Public

[3] *http://publicsafety.fcc.gov/pshs/clearinghouse/core-concepts/resiliency.htm.*

[4] *http://www.wina.org/WireSol/Documents/Whitepaper%20-%20Self%20Organizing%20Networks%20for%20In-Plant%20Applications.pdf.*

[5] *http://en.wikipedia.org/wiki/Mesh_networking.*

[6] http://*technet.microsoft.com/en-us/library/cc757120(WS.10).aspx.*

[7] *http://en.wikipedia.org/wiki/Access_control_list.*

[8] *http://en.wikipedia.org/wiki/Scalability.*

[9] President's Council of Advisors on Science and Technology, Report to the President and Congress (Dec. 2010) (*http://www.whitehouse.gov/sites/default/files/microsites/ostp/pcast-nitrd-report-2010.pdf*), pp. 55–56.

Safety Communications Research program in Boulder, Colorado.[10]

Dated: September 6, 2011.

Willie E. May,

Associate Director for Laboratory Programs.

[FR Doc. 2011–23180 Filed 9–9–11; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA681

Marine Mammals; Pinniped Removal Authority

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

ACTION: Notice; request for comments.

SUMMARY: NMFS received an application under section 120 of the Marine Mammal Protection Act (MMPA) from the states of Idaho, Oregon and Washington (states) requesting authorization to intentionally take, by lethal methods, individually identifiable California sea lions (*Zalophus californianus*) that prey on Pacific salmon and steelhead (*Onchorhyncus spp.*) listed as threatened or endangered under the Endangered Species Act (ESA) in the Columbia River in Washington and Oregon. This authorization is requested as part of a larger effort to protect and recover listed salmonid stocks in the river. Pursuant to the MMPA, NMFS has determined that the application contains sufficient information to warrant convening a Pinniped-Fishery Interaction Task Force (Task Force), which will occur after the close of the public comment period. NMFS solicits comments on the application and other relevant information related to pinniped predation at Bonneville Dam.

DATES: Comments and information must be received by October 12, 2011.

ADDRESSES: You may submit comments, identified by NOAA–NMFS–2011–0216, by any of the following methods:

Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov.*

Mail: Comments on the application should be addressed to: Assistant Regional Administrator, Protected Resources Division, NMFS, 1201 NE. Lloyd Blvd., Suite 1100, Portland, OR 97232.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, *etc.*) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Garth Griffin, (503) 231–2005 or Brent Norberg (206) 526–6550 or Shannon Bettridge, (301) 427–8402.

SUPPLEMENTARY INFORMATION:

Electronic Access

Further information is available via the Internet, including the states' application, background information on pinniped predation on listed salmonids, NMFS' past authorizations of lethal removal at Bonneville Dam, descriptions of nonlethal efforts to address the predation, NMFS' 2008 Final Environmental Assessment, and 2011 Supplemental Information Report to the 2008 Final Environmental Assessment. The Internet address is: *http://www.nwr.noaa.gov/Marine-Mammals/Seals-and-Sea-Lions/Sec-120-Authority.cfm*

Statutory Authority

Section 120 of the MMPA (16 U.S.C. 1361, *et seq.*) allows the Secretary of Commerce, acting through the Assistant Administrator for Fisheries (Assistant Administrator), NMFS, to authorize the intentional lethal taking of individually identifiable pinnipeds that are having a significant negative impact on the decline or recovery of salmonids that are listed as threatened or endangered under the ESA. The authorization applies only to pinnipeds that are not listed under the ESA, or designated as a depleted or strategic stock under the MMPA. Pursuant to section 120(b) and (c), a state may request authorization to lethally remove pinnipeds, and the Assistant Administrator is required to: (1) Review the application to determine whether the applicant has produced sufficient evidence to warrant establishing a Task Force to address the situation described in the application; (2) Establish the Task Force and publish a notice in the **Federal Register** requesting public comment on the application if sufficient evidence has been produced; (3) Consider any recommendations made by the Task Force in making a determination whether to approve or deny the application; and (4) If approved, immediately takes steps to implement the intentional lethal taking, which shall be performed by Federal or state agencies, or qualified individuals under contract to such agencies.

The MMPA requires the Task Force be composed of the following: (1) NMFS/NOAA staff, (2) scientists who are knowledgeable about the pinniped interaction, (3) representatives of affected conservation and fishing community organizations, (4) treaty Indian tribes, (5) the states, and (6) such other organizations as NMFS deems appropriate. The Task Force reviews the application, other background information, the factors contained in section 120(d), and public comments and, as required by section 120, recommends to NMFS whether to approve or deny the application. The Task Force is also required to submit with its recommendation a description of the specific pinniped individual or individuals; the proposed location, time, and method of such taking; criteria for evaluating the success of the action; the duration of the intentional lethal taking authority; and a suggestion for non-lethal alternatives, if available and practicable, including a recommended course of action.

Background

In December 2006, NMFS received an application co-signed by the Washington Department of Fish and Wildlife, the Oregon Department of Fish and Wildlife, and the Idaho Department of Fish and Game requesting authorization to intentionally take, by lethal methods, individually identifiable California sea lions in the Columbia River, which are having a significant negative impact on the recovery of threatened and endangered Pacific salmon and steelhead. After deeming the states' application complete, NMFS published a notice in the **Federal Register** seeking public comment on the application and also requested names of potential members of the Task Force (see 72 FR 4239, January 30, 2007). After the close of the public comment period, NMFS announced the formation of the Task Force, which consisted of 18 members (72 FR 44833, August 9, 2007). The notice also identified a list of questions that NMFS considered relevant to its section 120 decision-making process. The Task Force completed and submitted its report to NMFS on November 5, 2007. Of the 18

[10] *http://www.pscr.gov/projects/broadband/700mhz_demo_net/700mhz_ps_demo_net.php.*

Task Force members, all recommended that non-lethal sea lion deterrence measures continue. Seventeen of the eighteen members supported lethal removal of California sea lions while one member from the Humane Society of the United States (HSUS) opposed the states' application and any lethal removal.

After receiving and reviewing the Task Force recommendations, NMFS developed a proposed action and a range of reasonable alternatives and evaluated the environmental impacts of the proposed action and alternatives in a draft Environmental Assessment (EA) in accordance with the National Environmental Policy Act (NEPA). The draft EA, entitled *Reducing the Impact on At-Risk Salmon and Steelhead by California Sea Lions in the Area Downstream of Bonneville Dam on the Columbia River, Oregon and Washington,* was made available for public comment for a 30-day comment period (73 FR 3453, January 18, 2008). More than 3,500 comments were received, including comments from several Task Force member organizations (e.g., states, tribes, HSUS) and others including the Marine Mammal Commission and a member of Congress. NMFS considered all public comments received on the states' application, the draft EA, and other relevant information, and finalized its EA and MMPA analyses. NMFS determined that its proposed action of authorizing the lethal removal of a limited number of individually identifiable California sea lions would not, pursuant to NEPA, result in a significant impact on the human environment, and that, pursuant to the MMPA, individually identifiable pinnipeds are having a significant negative impact on the decline or recovery of at-risk salmonids. Following these determinations, NMFS issued letters of authorization to Idaho, Oregon and Washington on March 17, 2008, and included specific terms and conditions related to the lethal removal program. On March 24, 2008, NMFS published a notice in the **Federal Register** informing the public of its final decision on the states' application (73 FR 15483, March 24, 2008).

Shortly after NMFS issued the 2008 section 120 LOA, HSUS and others filed a complaint in the U.S. District Court for the District of Oregon. Plaintiffs alleged that NMFS' approval of the lethal removal of California sea lions violated the MMPA and NEPA. In November 2008, the district court issued an order upholding NMFS' approval of the lethal removal program and NMFS' evaluation of impacts under NEPA. Plaintiffs appealed, and on November 23, 2010, the Ninth Circuit issued a decision overturning NMFS' section 120 LOA, but upheld NMFS' analysis and finding under NEPA. The Ninth Circuit recognized the significance of pinniped predation at Bonneville Dam and noted there are many sources of mortality that need to be controlled in order to recover endangered and threatened salmonids. The court also recognized that ''sea lion predation is a serious and potentially significant problem [at Bonneville Dam], and that Congress, in enacting section 120 of the MMPA, has authorized NMFS to give priority to ESA-listed salmonid populations over MMPA-protected pinnipeds *under specific circumstances.'' Humane Society of the U.S.* v. *Locke,* 626 F.3d 1040, 1054 (9th Cir. 2010). However, the court concluded that NMFS' record lacked a satisfactory explanation concerning two main points: (1) The seemingly inconsistent findings that sea lion predation is significant for purposes of the MMPA, but similar or greater levels of take of the same salmonid populations by fisheries and hydropower operations on the Columbia River is not significant under other authorities (*e.g.,* NEPA); and (2) the agency's failure to explain adequately why a California sea lion predation rate of greater than 1 percent results in a significant negative impact on the decline or recovery of salmonid populations. The Ninth Circuit instructed the district court to vacate NMFS' section 120 decision and remand the decision to NMFS ''to afford the agency the opportunity either to articulate a reasoned explanation for its action or to adopt a different action with a reasoned explanation that supports it'' (Id. at 1053).

In response to the litigation, the states submitted a letter to NMFS dated December 7, 2010 requesting that their LOA be reissued. NMFS evaluated the states' request, developed a supplemental information report to determine whether there was a need to supplement the 2008 EA and Finding of No Significant Impact (FONSI), considered a recently completed program effectiveness report by the Task Force *Final Report and Recommendations of the Marine Mammal Protection Act Section 120 Pinniped-Fishery Interaction Task Force: Columbia River 3-Year Review and Evaluation, December 17, 2010,* and prepared a comprehensive analysis which took into account the Ninth Circuit's concerns and also included a more robust explanation of the agency's decision to authorize lethal removal of individually identifiable pinnipeds. On May 12, 2011, NMFS reissued an LOA to the states, relying in large part on its administrative record supporting the 2008 LOA and the new analyses prepared since the Ninth Circuit decision. See *http://www.nwr.noaa.gov/Marine-Mammals/Seals-and-Sea-Lions/Sec-120-Authority.cfm* for this LOA.

One week after NMFS issued the 2011 LOA, HSUS filed a lawsuit in the U.S. District Court for the District of Columbia. HSUS once again challenged NMFS' decision alleging, among other things, that the agency: (1) Violated the MMPA when it failed to follow section 120's procedural requirements, (2) failed to adequately explain the agency's inconsistent factual findings that sea lion predation is having a significant negative impact on the decline or recovery of listed salmonids and that much greater take levels by fisheries and hydropower operations are insignificant under NEPA, and (3) violated NEPA when it issued a supplemental information report instead of preparing a supplemental EA or an EIS. After considering HSUS' filing, particularly its allegation that NMFS did not afford the public an opportunity to participate in the section 120 process, NMFS, after consulting with the states, revoked the 2011 LOA on July 27, 2011. HSUS subsequently filed a Notice of Voluntary dismissal and the case was dismissed on August 15, 2011.

In order to prepare for the 2012 pinniped-salmonid conflict, Oregon, Washington and Idaho submitted a new application for lethal removal on August 18, 2011. The states are requesting a new 5-year MMPA section 120 predatory California sea lion removal authorization identical to the permit NMFS issued to the states on May 12, 2011. Under the authorization the States propose to remove no more than 1% of the potential biological removal (PBR) limit (defined below) for the California sea lion population annually. The states define an individually identifiable predatory California sea lions as having natural or applied features that allow them to be individually distinguished from other California sea lions and have been observed eating salmonids at Bonneville Dam, in the ''observation area'' below the dam, in the fish ladders, or above the dam, between January 1 and May 31 of any year; have been observed at Bonneville Dam on a total of five days (consecutive days, days within a single season, or days over multiple years) between January 1 and May 31 of any year; and are sighted at Bonneville Dam after they have been subjected to active non-lethal deterrence. The states propose to review

the lethal removal program on an annual basis and evaluate its effectiveness at reducing sea lion predation on salmonids at Bonneville Dam. The evaluations will determine whether the states will continue the removal program in each subsequent year, and if an extension of the authority is needed at the end of the five year period. The expected benefit from implementing the authorization would be to reduce the recent, unmanageable (using only non-lethal techniques), and growing source of ESA listed salmonid mortality. No lethal removal activities will be conducted until such time as NMFS makes a final decision on the states' pending application.

The application contains information on (1) pinniped population trends, feeding habits, location and timing of the interaction and the number of individual animals involved; (2) efforts to non-lethally deter the pinnipeds and the relative success of those efforts; (3) the extent of the injury or impact caused by pinnipeds on the fishery resource; and (4) the extent that pinniped behavior presents a threat to public safety, as outlined in section 120(d) of the MMPA.

The application presents data from the most recent *U.S. Pacific Marine Mammal Stock Assessment Report* indicating that the U.S. stock of California sea lions is not listed as ''threatened'' or ''endangered'' under the Endangered Species Act, nor as ''depleted'' or ''strategic'' under the MMPA. The population has been growing at 5.6% per year and is estimated to number a minimum of 238,000 animals. The PBR level (*i.e.,* the number of animals that could safely be lost to human caused mortality annually without impacting the status of the population) is 8,511 animals. The states propose to remove no more than 1% of PBR (85) of California sea lions annually. The application also summarizes data from observations conducted at the dam since 2002 showing that California sea lion annual presence at the dam increased from 59 days in 2002 to 145 days in 2010 reflecting that over time they have tended to arrive earlier and stay later in the year and that attendance by one or more sea lions has become more consistent throughout the season. As of fall 2010, a total of 264 California sea lions have been uniquely identified by the U.S. Army Corps of Engineers observers using records of applied brands and natural markings. The application reports that data from observations conducted in 2011 have yet to become available but early indications are that 2011 was an unusual year because winter/spring river flow conditions appeared to delay salmonid run timing and thus affected sea lion attendance and predation at the dam.

The application reports the results of sea lion food habits research (scat and gastrointestinal analysis) conducted at the dam from 2006 through 2010 confirming that salmonids are the dominant prey of California sea lions feeding near the dam. Adult salmonid remains were found in over 92% of sea lion scat collected from haul out sites at and near the dam. Sixteen gastrointestinal tracts were collected from California sea lions sea lions that were taken at the dam under the 2008 authorization. Except for one tract that was empty, all tracts collected contained identifiable salmonid remains.

As reported in the application, the analysis of observations conducted by the U.S. Army Corps of Engineers from 2002 through 2010 showed that the minimum expanded estimate of salmonids consumed by California sea lions within the observation zone below the dam increased from 1,010 to 5,095 fish annually. In spite of fluctuating run sizes, and apparently independent of annual run strength, salmonid consumption by sea lions has increased steadily. The application points out that the observed increase in consumption is masked when the estimated consumption in the observation zone is expressed as a percentage of run size because when fish passage is high the relative percent consumed is smaller even though the number of fish eaten by sea lions continues to rise. The application further explains that estimated losses of salmonids to sea lions at the dam are minimum estimates because they only apply to daylight predation within ¼ mile of the Bonneville Dam tailrace and forebay structures. Many more predation events are known to occur beyond the small area where observers on the dam can see and record events accurately. In addition to salmonids killed immediately by predation, many fish are also injured by predation attempts which may contribute to delayed mortality that has not been quantified. Both wild and marked hatchery origin salmonids are taken by sea lions.

Of the 13 threatened and endangered salmonid populations in the Columbia River the application identifies eight that are potentially impacted by California sea lions in the river and five that are particularly vulnerable at Bonneville Dam. Of the species present at the dam concurrent with sea lions, one population, upper Columbia River spring Chinook, is listed as endangered under the ESA and four populations are listed as threatened—Snake River spring/summer Chinook, lower Columbia River steelhead, mid-Columbia River steelhead, and Snake River steelhead. Marine mammal predation is only one of many threats facing these fish populations and the states seek authorization to manage predation as part of a larger comprehensive fish recovery strategy that is attempting to reduce the impacts across all threats. Beyond marine mammal predation the recovery actions include habitat improvement, hydroelectric system mitigation, harvest reductions, hatchery reforms and bird and fish predation management that are beyond the scope of, but referenced in, the application.

Lastly, the application reports that numbers of California sea lions in the Columbia River have been growing since the 1990s and some animals have become aggressive and caused injuries to fishers along the main stem of the river and its tributaries.

Request for Comments and Other Information

NMFS solicits public comments on the states' application and any additional information that should be considered by the Task Force in making its recommendation, or by NMFS in making its determination whether to approve or deny the application.

The Assistant Administrator has considered the states' application and determined that it provides sufficient evidence to warrant establishing a Task Force. The application describes the means of identifying individual pinnipeds, includes a detailed description of the problem interactions between pinnipeds and listed salmonids at and below Bonneville Dam, and describes the expected benefits of potential taking of pinnipeds. The application also documents past nonlethal efforts to prevent problem interactions. See *http://www.nwr.noaa.gov/Marine-Mammals/Seals-and-Sea-Lions/Sec-120-Authority.cfm.*

NMFS is seeking comments on a number of issues related to the pinniped-salmonid conflict at Bonneville Dam. These matters include, but are not limited to, the following:

(1) Any new information on pinnipeds in the action area (e.g., population, presence, predation) since 2008;

(2) Any new information concerning salmonids (e.g., status and trends, recovery planning, passage counts,

predation versus run size, hatchery versus wild components) since 2008;

(3) Any new information concerning non-lethal deterrence measures since 2008;

(4) The effect of permanent pinniped removals carried out under the 2008 LOA (i.e., impacts to California sea lion populations or salmonid populations);

(5) Any new information concerning predation on salmonids by other species since 2008; and,

(6) Recommendations made by the Task Force at its October/November 2010 meeting concerning the effectiveness of the 2008 LOA.

We are also including, for the public's consideration and comment, our proposed interpretation of the MMPA standard ''significant negative impact''; a list of the factors we propose to consider in deciding whether that standard is met; and our proposed interpretation of what is meant by ''individually identifiable pinnipeds'' that are having a significant negative impact.

Pursuant to section 120(b)(1) of the MMPA, NMFS is required to make a determination whether individually identifiable pinnipeds are having a significant negative impact on the decline or recovery of at-risk salmonid fishery stocks. As we explained in 2008, Congress did not define the phrase ''individually identifiable pinnipeds which are having a significant negative impact.'' Thus, NMFS applied a two-part test in which the agency would first determine whether pinnipeds collectively are having a significant negative impact on listed salmonids and next determine which pinnipeds are significant contributors to that impact and therefore, may be authorized for removal. We continue to find this two-step test to be reasonable in light of the facts and circumstances at Bonneville Dam. We also propose, given the lack of guidance from Congress, that the plain meaning of the term ''significant negative impact'' as used in section 120 should be employed. Our view is that in order for California sea lions to be having a significant negative impact on the decline or recovery of at-risk salmonids, the impact has to be ''meaningful'' and not ''insignificant'' or ''meaningless.''

In determining whether to approve the states' application, we will be guided primarily by the factors supplied by Congress in section 120(d). Congress directed NMFS to consider four categories of information to determine whether to approve or deny a states' request: (1) Populations trends and feeding habits of the pinnipeds; location, timing and manner of the interaction; and number of individual pinnipeds involved; (2) past non-lethal deterrence efforts and whether the applicant has demonstrated that no feasible and prudent alternatives exist and that the applicant has taken all reasonable nonlethal steps without success; (3) extent to which the pinnipeds are causing undue injury or impact, or imbalance with, other species in the ecosystem, including fish populations; and (4) extent to which the pinnipeds are exhibiting behavior that presents an ongoing threat to public safety (see 16 U.S.C. 1389(d)).

We interpret this specific, detailed, and narrow inquiry mandated by Congress as supplying the factors we should consider when determining whether pinniped predation is having a ''significant negative impact'' on at-risk salmonids. Moreover, as these factors are detailed and specific, and are the only factors Congress mandated, we propose to give them great weight. This approach is further supported by the structure of section 120 and the context in which Congress adopted it. MMPA section 120 applies to a specific and narrow set of circumstances—namely, addressing an interspecies conflict where, as in this case, one species is healthy, robust, and increasing in size and the other is listed as threatened or endangered or is in a state of decline. Pinniped predation on at-risk salmonids has been an emerging and unchecked source of mortality, a problem that Congress specifically addressed when it amended the MMPA in 1994.

Consistent with our interpretation and view of MMPA section 120, and guided by the inquiry Congress required in section 120, we propose that the determination of whether pinnipeds are having a ''significant negative impact'' on salmonids should also be informed by the following factors, a number of which we relied upon in 2008. They include:

(1) The predation is measurable, growing, and could continue to increase if not addressed;

(2) The level of adult salmonid mortality is sufficiently large to have a measurable effect on the numbers of listed adult salmonids contributing to the viability of the affected ESUs/DPSs;

(3) The mortality rate for listed salmonids is comparable to mortality rates from other sources that have led to corrective action under the ESA;

(4) Non-lethal deterrence efforts have been unsuccessful at reducing the numbers of sea lions or amount of predation;

(5) The predation rate from California sea lions increases when salmonid run sizes decrease;

(6) The combined effect of California sea lion and Steller sea lion predation on at-risk salmonids at Bonneville Dam; and,

(7) The fact that California sea lion numbers reached their highest since 2004, thereby demonstrating that their numbers are as yet unpredictable and can easily grow.

With respect to determining which animals are ''individually identifiable pinnipeds,'' NMFS proposes, as it did in 2008, to extend any future authorization only to predatory animals with physical features distinguishing them from other pinnipeds (e.g., natural features, brands, or other applied marks) thus meeting the requirement that they be ''individually identifiable.'' To be considered predatory, an animal must:

(1) Have been observed eating salmonids at Bonneville Dam in the ''observation area'' (*i.e.,* either below or above the dam or in the fish ladders) between January 1 and May 31 of any year;

(2) Have been observed at Bonneville Dam in the observation area on a total of any 5 days (consecutive days, days within a single season, or days over multiple years) between January 1 and May 31 of any year; and

(3) Be sighted at Bonneville Dam in the observation area after having been subjected to active non-lethal deterrence.

Our view is that an animal meeting all of these criteria has learned that the area contains a preferred prey item and is successful in pursuing it in that area, is persistent in pursuing that prey item, and is not likely to be deterred from pursuing that prey item by non-lethal means. Given its success at obtaining prey in the area and its resistance to non-lethal deterrence efforts, such an animal has shown itself to be making a significant contribution to the pinniped predation problem at Bonneville Dam and is not a naïve animal that can be driven away from the area through non-lethal means.

Finally, we do not propose to adopt the suggestion, made by some commenters during our prior process, that we equate determinations under NEPA or ESA with determinations under section 120 of the MMPA. The ESA and NEPA contain their own standards, definitions, and purposes, which results in a different inquiry. NEPA and the ESA have broad mandates and require agencies to evaluate the effects of the proposed action in combination with other activities that may affect the broader environment (NEPA) or threatened and endangered species (ESA), respectively. In contrast, section 120 focuses solely

on pinniped predation on at-risk salmonids. NEPA's inquiry focuses on the effects of a proposed action on the quality of the ''human environment'', which is defined broadly by the Council on Environmental Quality's regulation (see 40 CFR 1508.14). In addition, the term ''significantly'' has a specific meaning under the NEPA regulations and a determination whether an action results in a significant impact on the quality of the human environment is informed by a multitude of factors (see 40 CFR 1508.27). In contrast, section 120 focuses on a very narrow and specific conflict and asks only whether pinniped predation is having a significant negative impact on the decline or recovery of at-risk salmonids.

Under the ESA, NMFS must determine whether a proposed action is ''likely to jeopardize the continued existence'' of a threatened or endangered species or ''result in the destruction or adverse modification'' of designated critical habitat (16 U.S.C. 1536(a)(2)). Under these standards, NMFS has adopted regulations that focus the inquiry on the impacts of a proposed action on the species as a whole or its designated critical habitat (see 50 CFR 402.02 and 402.14). Moreover, as part of its section 7 analysis, NMFS considers the ''effects of the action,'' which includes the proposed action combined with the effects of other activities that are interrelated or interdependent with the proposed action, which will be added to the environmental baseline. An action may not jeopardize the continued existence of a species or result in the destruction or adverse modification of critical habitat, even though it has significant adverse effects to a listed individual or group of individuals. In sum, the ESA's analytical process, like that of NEPA, is well-defined by regulation and there is substantial agency guidance on both ESA and NEPA implementation, unlike that of MMPA, section 120.

Establishment of the Task Force

NMFS intends to schedule a Task Force meeting in October 2011 to consider the states' application. NMFS will invite member organizations from the 2008 Task Force to participate on the 2011 Task Force in order to take advantage of their expertise and familiarity with the subject matter. NMFS will provide the public with prior notice of the Task Force meeting as soon as a date is scheduled.

Dated: September 6, 2011.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–23266 Filed 9–9–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA692

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a meeting of the Ad Hoc Headboat Advisory Panel.

DATES: The meeting will be 9 a.m. to 5 p.m. on Tuesday, September 27, 2011.

ADDRESSES: The meeting will be held at the Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607; telephone: (813) 348–1630.

Council address: Gulf of Mexico Fishery Management Council, 2203 N. Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Dr. Assane Diagne, Economist; Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to discuss potential headboat pilot programs in the Gulf of Mexico. Issues to be discussed include the design, implementation, monitoring, review, and, evaluation of headboat pilot programs.

Copies of the agenda and other related materials can be obtained by calling (813) 348–1630 or can be downloaded from the Council's ftp site, *ftp.gulfcouncil.org.*

Although other non-emergency issues not on the agenda may come before the Ad Hoc Headboat Advisory Panel for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Actions of the Ad Hoc Headboat Advisory Panel will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kathy Pereira at the Council (see **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: September 6, 2011.

Tracey L. Thompson,

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

[FR Doc. 2011–23149 Filed 9–9–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA693

Fisheries of the South Atlantic; South Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The South Atlantic Fishery Management Council will hold a meeting of its Snapper Grouper Advisory Panel (AP) in Charleston, SC.

DATES: The meeting will take place October 5–6, 2011. See **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meeting will be held at the Charleston Marriott Hotel, 170 Lockwood Blvd., Charleston, SC 29403; telephone: (800) 968–3569; fax: (843) 723–0276.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405; telephone: (843) 571–4366 or toll free (866) SAFMC–10; fax: (843) 769–4520; e-mail: *kim.iverson@safmc.net.*

SUPPLEMENTARY INFORMATION: Members of the Snapper Grouper AP will meet from 9 a.m. on October 5, 2011 until 5:30 p.m. on October 6, 2011.

Issues to be addressed at the meeting include updates on the following amendments: the Comprehensive Annual Catch Limit (ACL) Amendment; Amendments 18A and 18B addressing management of black sea bass and

golden tilefish, respectively; Amendment 24 regarding the rebuilding of red grouper stocks; and Amendment 20A, addressing changes to the wreckfish Individual Transferable Quota (ITQ) Program. An update will also be given on the removal of the 240-foot (40-fathom) closure (Regulatory Amendment 11) and the new Marine Recreational Information Program (MRIP) methodology to estimate recreational catches. Issues to include in Comprehensive Ecosystem-Based Amendment 3 will also be discussed, including approaches to minimize bycatch mortality of speckled hind and warsaw grouper and possible ways to evaluate impacts from the commercial wreckfish fishery and recreational deep-dropping on bottom habitat. The AP will give input on red porgy and vermilion snapper stocks and provide recommendations to the Council.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 3 days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

Dated: September 6, 2011.

Tracey L. Thompson,

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

[FR Doc. 2011–23150 Filed 9–9–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA637

Takes of Marine Mammals Incidental to Specified Activities; Piling and Structure Removal in Woodard Bay Natural Resources Conservation Area, Washington

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 an application from the Washington State Department of Natural Resources (DNR) for an Incidental Harassment Authorization (IHA) to take marine mammals incidental to restoration activities within the Woodard Bay Natural Resources Conservation Area (NRCA). Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an IHA to the DNR to take, by Level B Harassment only, harbor seals during the specified activity.

DATES: Comments and information must be received no later than October 12, 2011.

ADDRESSES: Comments on the application 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. The mailbox address for providing e-mail comments is *ITP.Laws@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 (*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.

A copy of the application containing a list of the references used in this document, as well as supplemental documents, 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: Ben Laws, 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 specified 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 published in the **Federal Register** to provide public notice and initiate a 30-day comment period.

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 Level B harassment as defined below. Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny the authorization. If authorized, the IHA would be effective for one year from date of issuance.

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 July 1, 2011, NMFS received an application from the DNR for renewal of an IHA for the taking, by Level B harassment only, of small numbers of harbor seals (*Phoca vitulina*) incidental to activities conducted in association with a habitat restoration project within the Woodard Bay NRCA, Washington. After NMFS review and minor changes to the document, DNR submitted an adequate and complete application on August 3, 2011. DNR was first issued an IHA that was valid from November 1, 2010, through February 28, 2011 (75 FR 67951). The specified activity includes all or part of the following actions, dependent on final funding levels: Removal of 20,000 ft^2 (1,858 m^2) of derelict pier superstructure and 400 derelict, creosoted timber pilings from Chapman Bay Pier and vicinity, and maintenance on 10,000 ft^2 (929 m^2) of Chapman Bay Pier to enhance bat roost habitat. Pilings would be removed by vibratory hammer extraction methods or by direct pull with cables. The superstructure materials would be removed by excavator and/or cables suspended from a barge-mounted crane. Maintenance and enhancement of bat roost habitat would include replacement of old stringers and installation of flashing and lumber to create optimal spacing and heat requirements for the bat maternity roost. Equipment employed would include power tools and a generator. The proposed activities would occur during the designated in-water work window of November 1 through February 28 (2011–12), and are estimated to take approximately 40 days in total.

Description of the Specified Activity

The Woodard Bay NRCA, located within Henderson Inlet in southern Puget Sound, was designated by the Washington State Legislature in 1987 to protect a large, intact complex of nearshore habitats and related biological communities, and to provide opportunities for low-impact public use and environmental education for the people of Washington. The site includes the former Weyerhaeuser South Bay Log Dump, which operated from the 1920s until the 1980s. The remnant structures from the log dump, including several hundred creosoted timber pilings and a trestle and pier, continue to negatively impact nearshore ecosystems protected by the conservation area. Therefore, the DNR has begun restoration activities in the NRCA to remove these dilapidated structures in order to enhance ecological structure and function.

However, certain remnant log booms are not planned for removal—and, in fact, have been maintained—due to their function as habitat for harbor seals. These few remnant log boom structures have been utilized as haul-out habitat for resting, pupping and molting for more than 30 years, and play an important role in supporting a healthy population of harbor seals. Seals concentrate and primarily haul out at only two locations within the NRCA (see Figure 4 in DNR's application and Figure 1 in DNR's Monitoring Report).

There are currently two different haul-out sites within NRCA. The north site, located adjacent to the northern tip of the Chapman Bay Pier, is composed of several rows of log booms fastened to creosoted pilings. The south site, located east of the Chapman Bay Pier in the main operational area of the log dump, is composed of 6 log boom rows and 1 floating platform attached to creosoted pilings. The booms are utilized year-round by harbor seals of all ages and are ideal for harbor seal pupping due to easy access to water escape routes and the low platform for pups to get in and out of the water (Calambokidis *et al.,* 1991; Lambourn *et al.,* 2007). In recent years, the log boom haul-out area has decreased significantly because logs have decayed, sunk, or floated away (Lambourn *et al.,* 2007), and attempts by DNR and a local resident have been made to re-establish some of the lost haul-out area. These booms are situated among the piles and structure planned for removal. The DNR anticipates harbor seals will flush into the water upon crew arrival and onset of pile and structure removal activities; hence, harbor seals may be behaviorally harassed during pile removal and other restoration activities. The DNR is thus requesting an IHA to take harbor seals, by Level B harassment only, incidental to the specified restoration activities.

Proposed restoration activities requested under the IHA are funding dependent. They include all or part of the following:

- Removal of 20,000 ft^2 (1,858 m^2) of pier superstructure and 400 pilings from Chapman Bay Pier and vicinity.
- Maintenance on 10,000 ft^2 (929 m^2) of Chapman Bay Pier to enhance bat roost habitat.

Work will be accomplished by barge and skiffs. The pilings will be removed by vibratory hammer or by direct pull with cables; both methods are suspended from a barge-mounted crane. The vibratory hammer is a large steel device lowered on top of the pile, which then grips and vibrates the pile until it is loosened from the sediment. The pile is then pulled up by the hammer and placed on a barge. For direct pull, a cable is set around the piling to grip and lift the pile from the sediment. The superstructure materials will be removed by excavator and/or cables suspended from a barge-mounted crane.

Approximately 400 12–24 in (0.3–0.6 m) diameter pilings would be removed near but not directly adjacent to haul-outs. An approximate maximum of 60 pilings would be removed per day. The vibratory hammer typically vibrates for less than one minute per pile, so there would be no more than 60 non-consecutive minutes of hammer vibration over an 8-hour period. After vibration, a choker is used to lift the pile out of the water where it is placed on the barge for transport to an approved disposal site. Pilings that cannot be removed by hammer or cable, or that break during extraction, would be recorded via global positioning system for divers to relocate at the final phase of project activities. The divers would then cut the pilings at or below the mudline using underwater chainsaws. Operations would begin on the pilings and structures that are furthest from the seal haul-out so that there is an opportunity for the seals to adjust to the presence of the contractors and their equipment. Vibratory extraction operations are expected to occur for approximately 15 days over the course of the 4-month work window (November 1 through February 28). Other work days would be spent removing pier superstructure, which does not involve vibratory extraction. NMFS anticipates that the presence of crew and use of a vibratory hammer would result in behavioral harassment. The portion of the Chapman Bay Pier that would be removed is more than 100 yards (91 m) from the closest haul-out area. Although this activity does not involve vibratory extraction, it has the potential to result in behavioral harassment due to the close proximity to working crew.

Maintenance and enhancement of bat roost habitat will include replacement of old stringers and installation of flashing and lumber to create optimal spacing and heat requirements for the maternity roost. Equipment employed will include power tools and a generator. Presence of crew conducting enhancement of bat habitat on the pier may result in behavioral harassment of seals, by flushing the seals from the haul-out.

Description of Marine Mammals in the Area of the Specified Activity

Harbor seals are the only marine mammal regularly found within the action area. Two Steller sea lions

(*Eumetopias jubatus*) were observed, at a distance, swimming in Henderson Inlet during site restoration activities in 2010. There have been very few sightings of Steller sea lions in Henderson Inlet. They do not breed in Puget Sound, do not regularly use the action area, and, as such, are not likely to be affected by restoration activities. Steller sea lions are not considered further in this document.

Species Description—Harbor seals, which are members of the Phocid family (true seals), inhabit coastal and estuarine waters and shoreline areas from Baja California, Mexico to western Alaska. For management purposes, differences in mean pupping date (*i.e.,* birthing) (Temte, 1986), movement patterns (Jeffries, 1985; Brown, 1988), pollutant loads (Calambokidis *et al.,* 1985) and fishery interactions have led to the recognition of three separate harbor seal stocks along the west coast of the continental U.S. (Boveng, 1988). The three distinct stocks are: (1) Inland waters of Washington (including Hood Canal, Puget Sound, and the Strait of Juan de Fuca out to Cape Flattery), (2) outer coast of Oregon and Washington, and (3) California (Carretta *et al.,* 2007). The inland waters of Washington stock is the only stock that may occur within the project area.

The average weight for adult seals is about 180 lb (82 kg) and males are slightly larger than females. Male harbor seals weigh up to 245 lb (111 kg) and measure approximately 5 ft (1.5 m) in length. The basic color of harbor seals' coat is gray and mottled but highly variable, from dark with light color rings or spots to light with dark markings (NMFS 2008c).

Population Abundance—Estimated population numbers for the inland waters of Washington, including the Hood Canal, Puget Sound, and the Strait of Juan de Fuca out to Cape Flattery, are 14,612 individuals (Carretta *et al.,* 2007). Between 1983 and 1996, the annual rate of increase for this stock was 6 percent (Jeffries *et al.,* 1997). Based on this information and trends of other harbor seal stocks, the current abundance estimate is likely an underestimate. Based on the analyses of Jeffries *et al.* (2003) and Brown *et al.* (2005), both the Washington and Oregon coastal harbor seal stock have reached carrying capacity and are no longer increasing. Harbor seals are not listed as depleted nor considered strategic under the MMPA or as endangered or threatened under the Endangered Species Act (ESA). The stock is within its Optimum Sustainable Population level (Jeffries *et al.,* 2003). Harbor seals are considered the most abundant resident pinniped species in Puget Sound (Lance and Jeffries, 2009).

The harbor seal population within the NRCA is considered one of the healthier ones in southern Puget Sound. Seal numbers have been monitored at the site since 1977, when there were less than 50 seals. In 1996, the highest count year, there were 600 seals. The average maximum annual count between 1977 and 2008 was 315 seals (Buettner *et al.,* 2008). Annual seal counts end by October and numbers of individuals decline throughout the winter. From 2006 to 2009, October counts averaged 171 and ranged between 79 and 275 (Lambourn, 2010).

Distribution—Harbor seals are coastal species, rarely found more than 12 mi (20 km) from shore, and frequently occupy bays, estuaries, and inlets (Baird, 2001). Individual seals have been observed several miles upstream in coastal rivers. Ideal harbor seal habitat includes haul-out sites, shelter during the breeding periods, and sufficient food (Bjørge, 2002). Haul-out areas can include intertidal and subtidal rock outcrops, sandbars, sandy beaches, peat banks in salt marshes, and man-made structures such as log booms, docks, and recreational floats (Wilson, 1978; Prescott 1982; Schneider and Payne, 1983; Gilber and Guldager, 1998; Jeffries *et al.,* 2000). Human disturbance can affect haul-out choice (Harris *et al.,* 2003).

Behavior and Ecology—Harbor seals are typically seen in small groups resting on tidal reefs, boulders, mudflats, man-made structures, and sandbars. Harbor seals are opportunistic feeders that adjust their patterns to take advantage of locally and seasonally abundant prey (Payne and Selzer, 1989; Baird, 2001; Bjørge, 2002). The harbor seal diet consists of fish and invertebrates (Bigg, 1981; Roffe and Mate, 1984; Orr *et al.,* 2004). Although harbor seals in the Pacific Northwest are common in inshore and estuarine waters, they primarily feed at sea (Orr *et al.,* 2004) during high tide. Researchers have found that they complete both shallow and deep dives during hunting depending on the availability of prey (Tollit *et al.,* 1997). Their diet in Puget Sound consists of common prey resources such as hake, herring and adult and out-migrating juvenile salmonids.

Harbor seals mate at sea and females give birth during the spring and summer, although the pupping season varies by latitude. In coastal and inland regions of Washington, pups are born from April through January. Pups are generally born earlier in the coastal areas and later in inland waters (Calambokidis and Jeffries, 1991; Jeffries *et al.,* 2000). Suckling harbor seal pups spend as much as forty percent of their time in the water (Bowen *et al.,* 1999).

The remnant log booms at the Woodard Bay NRCA support a year-round population of harbor seals, which use the boom structures for haul-out habitat to rest, pup, and molt in two primary locations; to the east and to the north of the Chapman Bay Pier (see Figure 4 in DNR's application). Haul-out behavior is shown to be affected by time of day and tide cycle, as well as factors related to seasonal weather patterns such as air temperature, wind speed, cloud cover, and sea conditions (Buettner *et al.,* 2008). Annually, use of the log booms peaks from July, when females haul out to give birth to their pups, through October, during the late pupping season and molt (WA DNR, 2002).

Acoustics—In air, harbor seal males produce a variety of low-frequency (less than 4 kHz) vocalizations, including snorts, grunts, and growls. Male harbor seals produce communication sounds in the frequency range of 100–1,000 Hz (Richardson *et al.,* 1995). Pups make individually unique calls for mother recognition that contain multiple harmonics with main energy below 0.35 kHz (Bigg, 1981; Thomson and Richardson, 1995). Harbor seals hear nearly as well in air as underwater and had lower thresholds than California sea lions (*Zalophus californianus*) (Kastak and Schusterman, 1998). Kastak and Schusterman (1998) reported airborne low frequency (100 Hz) sound detection thresholds at 65.4 dB re: 20 µPa for harbor seals. In air, they hear frequencies from 0.25–30 kHz and are most sensitive from 6–16 kHz (Richardson, 1995; Terhune and Turnbull, 1995; Wolski *et al.,* 2003).

Adult males also produce underwater sounds during the breeding season that typically range from 0.25–4 kHz (duration range: 0.1 s to multiple seconds; Hanggi and Schusterman, 1994). Hanggi and Schusterman (1994) found that there is individual variation in the dominant frequency range of sounds between different males, and Van Parijs *et al.* (2003) reported oceanic, regional, population, and site-specific variation that could be vocal dialects. In water, they hear frequencies from 1–75 kHz (Southall *et al.,* 2007) and can detect sound levels as weak as 60–85 dB re: 1 µPa within that band. They are most sensitive at frequencies below 50 kHz; above 60 kHz sensitivity rapidly decreases.

Potential Effects on Marine Mammals

Potential effects of DNR's proposed activities are likely to be limited to behavioral disturbance of seals at the two described log boom haul-outs. Other potential disturbance could result from the introduction of sound into the environment as a result of pile removal activities; however, this is unlikely to cause an appreciably greater amount of harassment in either numbers or degree, in part because it is anticipated that most seals would be disturbed initially by physical presence of crews and vessels or by sound from vessels.

There is a general paucity of data on sound levels produced by vibratory extraction of timber piles; however, it is reasonable to assume that extraction would not result in higher sound pressure levels (SPLs) than vibratory installation of piles. As such, NMFS assumes that source levels from the proposed activity would not be as high as average source levels for vibratory installation of 12–24 in steel piles (155–165 dB; Caltrans, 2009). NMFS' general in-water harassment thresholds for pinnipeds exposed to continuous noise, such as that produced by vibratory pile extraction, are 190 dB root mean square (rms) re: 1 μPa as the potential onset of Level A (injurious) harassment and 120 dB RMS re: 1 μPa as the potential onset of Level B (behavioral) harassment. These levels are considered precautionary and NMFS is currently revising these thresholds to better reflect the most recent scientific data.

Vibratory extraction would not result in sound levels near 190 dB; therefore, injury would not occur. However, noise from vibratory extraction would likely exceed 120 dB near the source and may induce responses in-water such as avoidance or other alteration of behavior at time of exposure. However, seals flushing from haul-outs in response to small vessel activity and the presence of work crews would already be considered as 'harassed'; therefore, any harassment resulting from exposure to sound pressure levels above the 120 dB criterion for behavioral harassment would not be considered additional.

The airborne sound disturbance criteria for Level A harassment is 90 dB RMS re: 20 μPa for harbor seals. Based on information on airborne source levels measured for pile driving with vibratory hammer, removal of wood piles is unlikely to exceed 90 dB (WA DNR, 2011); further, the vibratory hammer would be outfitted with a muffling device ensuring that airborne SPLs are no higher than 80 dB. Potential effects of the action on harbor seals are detailed in the following text.

Behavioral Disturbance

Disturbance can result in a variety of effects, such as subtle or dramatic changes in behavior or displacement. Behavioral reactions of marine mammals are difficult to predict because they are dependent on numerous factors, including species, maturity, experience, activity, reproductive state, time of day, and weather. If a marine mammal does react to a stimulus by changing its behavior or moving a small distance, the impacts of that change may not be important to the individual, the stock, or the species as a whole. However, if marine mammals are displaced from an important feeding or breeding area for a prolonged period, impacts on the animals could be important. In general, pinnipeds seem more tolerant of, or at least habituate more quickly to, potentially disturbing stimuli than do cetaceans, and generally seem to be less responsive to exposure to industrial sound than most cetaceans.

Because the few available studies show wide variation in response to stimuli, pinniped responses are difficult to quantify. The literature shows that a range of effects are possible, including no obvious visible response, or behavioral responses that may include annoyance and increased alertness, visual orientation towards the stimulus, investigation of the stimulus, change in movement pattern or direction, habituation, alteration of feeding and social interaction, or temporary or permanent avoidance of the affected area. Minor behavioral responses do not necessarily cause long-term effects to the individuals involved. Severe responses include panic, immediate movement away from the stimulus, and stampeding, which could potentially lead to injury or mortality (Southall *et al.,* 2007).

In their comprehensive review of available literature, Southall *et al.* (2007) reported that the limited data suggest exposures between approximately 90 and 140 dB generally do not appear to induce strong behavioral responses in pinnipeds, while higher levels of pulsed sound, ranging between 150 and 180 dB, will prompt avoidance of an area. For airborne sound Southall *et al.* (2007) note there is extremely limited data suggesting very minor, if any, observable behavioral responses by pinnipeds exposed to airborne pulses of 60 to 80 dB.

Southall *et al.* (2007) noted that quantitative studies on behavioral reactions of pinnipeds to sound are rare, but described the following:

- Harris *et al.* (2001) observed the response of ringed (*Pusa hispida*), bearded (*Erignathus barbatus*), and spotted seals (*Phoca largha*) to underwater operation of a single air gun and an eleven-gun array. Received exposure levels were 160 to 200 dB. In some instances, seals exhibited no response to sound.
- Blackwell *et al.* (2004) observed ringed seals during impact installation of steel pipe pile. Received underwater SPLs were measured at 151 dB at 63 m. The seals exhibited either no response or only brief orientation response (defined as ''investigation or visual orientation'').
- In addition, Blackwell *et al.* (2004) studied the response of ringed seals within 500 m of impact driving of steel pipe pile to airborne sound. Received levels of airborne sound were measured at 93 dB at a distance of 63 m. Seals had either no response or limited response to pile driving. Reactions were described as ''indifferent'' or ''curious.''
- Miller *et al.* (2005) observed responses of ringed and bearded seals to a seismic air gun array. Received underwater sound levels were estimated at 160 to 200 dB. There were fewer seals present close to the sound source during air gun operations in the first year, but in the second year the seals showed no avoidance. In some instances, seals were present in very close range of the sound. The authors concluded that there was ''no observable behavioral response'' to seismic air gun operations.

Jacobs and Terhune (2002) observed harbor seal reactions to acoustic harassment devices (AHDs) with source level of 172 dB deployed around aquaculture sites. Seals were generally unresponsive to sounds from the AHDs. During two specific events, individuals came within 141 and 144 ft (43 and 44 m) of active AHDs and failed to demonstrate any measurable behavioral response; estimated received levels based on the measures given were approximately 120 to 130 dB.

Kastelein *et al.* (2006) exposed nine captive harbor seals in an approximately 82 x 98 ft (25 x 30 m) enclosure to non-pulse sounds used in underwater data communication systems (similar to acoustic modems). Test signals were frequency modulated tones, sweeps, and bands of sound with fundamental frequencies between 8 and 16 kHz; 128 to 130 ±3 dB source levels; 1- to 2-s duration (60–80 percent duty cycle); or 100 percent duty cycle. They recorded seal positions and the mean number of individual surfacing behaviors during control periods (no exposure), before exposure, and in 15-min experimental sessions (n = 7 exposures for each sound

type). Seals generally swam away from each source at received levels of approximately 107 dB, avoiding it by approximately 16 ft (5 m), although they did not haul out of the water or change surfacing behavior. Seal reactions did not appear to wane over repeated exposure (*i.e.,* there was no obvious habituation), and the colony of seals generally returned to baseline conditions following exposure. The seals were not reinforced with food for remaining in the sound field.

Reactions of harbor seals to the simulated sound of a 2-megawatt wind power generator were measured by Koschinski *et al.* (2003). Harbor seals surfaced significantly further away from the sound source when it was active and did not approach the sound source as closely. The device used in that study produced sounds in the frequency range of 30 to 800 Hz, with peak source levels of 128 dB at 1 m at the 80- and 160-Hz frequencies.

Vessel sounds do not seem to have strong effects on seals in the water, but the data are limited. When in the water, seals appear to be much less apprehensive about approaching vessels. Some would approach a vessel out of apparent curiosity, including noisy vessels such as those operating seismic airgun arrays (Moulton and Lawson, 2002). Gray seals (*Halichoerus grypus*) have been known to approach and follow fishing vessels in an effort to steal catch or the bait from traps. In contrast, seals hauled out on land often are quite responsive to nearby vessels. Terhune (1985) reported that northwest Atlantic harbor seals were extremely vigilant when hauled out and were wary of approaching (but less so passing) boats. Suryan and Harvey (1999) reported that Pacific harbor seals commonly left the shore when powerboat operators approached to observe the seals. Those seals detected a powerboat at a mean distance of 866 ft (264 m), and seals left the haul-out site when boats approached to within 472 ft (144 m).

Hearing Impairment and Other Physiological Effects

Temporary or permanent hearing impairment is a possibility when marine mammals are exposed to very strong sounds. Hearing impairment is measured in two forms: temporary threshold shift (TTS) and permanent threshold shift (PTS). PTS is considered injurious whereas TTS is not, as it is temporary and hearing is fully recoverable. Non-auditory physiological effects might also occur in marine mammals exposed to strong underwater sound. Possible types of non-auditory physiological effects or injuries that may occur in mammals close to a strong sound source include stress, neurological effects, bubble formation, and other types of organ or tissue damage. It is possible that some marine mammal species (*i.e.,* beaked whales) may be especially susceptible to injury and/or stranding when exposed to strong pulsed sounds, particularly at higher frequencies. Neither auditory nor non-auditory physiological effects are anticipated to occur as a result of DNR activities.

PTS is presumed to be likely if the hearing threshold is reduced by more than 40 dB (*i.e.,* 40 dB of TTS). Due to the low source levels produced by vibratory extraction, NMFS does not expect that marine mammals will be exposed to levels that could elicit PTS; therefore, it will not be discussed further. The following subsection discusses in somewhat more detail the possibilities of TTS.

TTS—TTS, reversible hearing loss caused by fatigue of hair cells and supporting structures in the inner ear, is the mildest form of hearing impairment that can occur during exposure to a strong sound (Kryter, 1985). While experiencing TTS, the hearing threshold rises and a sound must be stronger in order to be heard. TTS can last from minutes or hours to (in cases of strong TTS) days. For sound exposures at or somewhat above the TTS threshold, hearing sensitivity in both terrestrial and marine mammals recovers rapidly after exposure to the sound ends.

NMFS considers TTS to be a form of Level B harassment rather than injury, as it consists of fatigue to auditory structures rather than damage to them. Pinnipeds have demonstrated complete recovery from TTS after multiple exposures to intense sound, as described in the studies below (Kastak *et al.,* 1999, 2005). The NMFS-established 190-dB injury criterion is not considered to be the level above which TTS might occur. Rather, it is the received level above which, in the view of a panel of bioacoustics specialists convened by NMFS before TTS measurements for marine mammals became available, one could not be certain that there would be no injurious effects, auditory or otherwise, to pinnipeds. Few data on sound levels and durations necessary to elicit mild TTS have been obtained for marine mammals, and none of the published data concern TTS elicited by exposure to multiple pulses of sound.

Human non-impulsive sound exposure guidelines are based on exposures of equal energy (the same sound exposure level [SEL]; SEL is reported here in dB re: 1 μPa^2-s/re: 20 μPa^2-s for in-water and in-air sound, respectively) producing equal amounts of hearing impairment regardless of how the sound energy is distributed in time (NIOSH, 1998). Until recently, previous marine mammal TTS studies have also generally supported this equal energy relationship (Southall *et al.,* 2007). Three newer studies, two by Mooney *et al.* (2009a, b) on a single bottlenose dolphin (*Tursiops truncatus*) exposed to either playbacks of U.S. Navy mid-frequency active sonar or octave-band sound (4–8 kHz) and one by Kastak *et al.* (2007) on a single California sea lion exposed to airborne octave-band sound (centered at 2.5 kHz), concluded that for all sound exposure situations, the equal energy relationship may not be the best indicator to predict TTS onset levels. Generally, with sound exposures of equal energy, quieter sounds (lower SPL) of longer duration were found to induce TTS onset more than louder sounds (higher SPL) of shorter duration. Given the available data, the received level of a single seismic pulse (with no frequency weighting) might need to be approximately 186 dB SEL in order to produce brief, mild TTS.

There are few known studies conducted on pinniped TTS responses to non-pulsed underwater or airborne sound. The first three studies described in the following text were performed in the same lab and on the same test subjects, and, therefore, the results may not be applicable to all pinnipeds or in field settings.

- Kastak and Schusterman (1996) studied the response of harbor seals to non-pulsed construction sound, reporting TTS of about 8 dB.
- Kastak *et al.* (1999) reported TTS of approximately 4–5 dB in three species of pinnipeds (harbor seal, California sea lion, and northern elephant seal [*Mirounga angustirostris*]) after underwater exposure for approximately 20 minutes to sound with frequencies ranging from 100–2,000 Hz at received levels 60–75 dB above hearing threshold. This approach allowed similar effective exposure conditions to each of the subjects, but resulted in variable absolute exposure values depending on subject and test frequency. Recovery to near baseline levels was reported within 24 hours of sound exposure.
- Kastak *et al.* (2005) followed up on their previous work, exposing the same test subjects to higher levels of sound for longer durations. The animals were exposed to octave-band sound for up to 50 minutes of net exposure. The study reported that the harbor seal experienced TTS of 6 dB after a 25-

minute exposure to 2.5 kHz of octave-band sound at 152 dB (183 dB SEL).

• Bowles *et al.* (unpubl. data) exposed pinnipeds to simulated sonic booms (airborne sound). Harbor seals demonstrated TTS at 143 dB peak and 129 dB SEL.

• Kastak *et al.* (2004) used the same test subjects as in Kastak *et al.* (2005), exposing the animals to non-pulsed airborne sound (2.5 kHz octave-band sound) for 25 minutes. The harbor seal demonstrated 6 dB of TTS after exposure to 99 dB (131 dB SEL).

The sound level necessary to cause TTS in pinnipeds depends on exposure duration; with longer exposure, the level necessary to elicit TTS is reduced (Schusterman *et al.,* 2000; Kastak *et al.,* 2005,2007). The literature has not drawn conclusions on levels of underwater non-pulsed sound (*e.g.,* vibratory pile removal) likely to cause TTS. Although underwater sound levels produced by the DNR project may be approximately equal to the lower end of sound levels produced in studies that have induced TTS in pinnipeds, there is a general lack of controlled, quantifiable field studies related to this phenomenon, existing studies have had varied results, and there are no universally accepted standards for the amount of exposure time likely to induce TTS (Southall *et al.,* 2007).

While it may be inferred that TTS could theoretically result from the DNR project, it is highly unlikely, due to the source levels and duration of exposure possible. In summary, it is expected that elevated sound will have only a negligible probability of causing TTS in individual seals. Further, seals are likely to be disturbed via the approach of work crews and vessels long before the beginning of any pile removal operations and would be apprised of the advent of increased underwater sound via the soft start of the vibratory hammer. It is not expected that airborne sound levels would induce any form of behavioral harassment, much less TTS in individual pinnipeds.

The DNR and other organizations, such as the Cascadia Research Collective, have been monitoring the behavior of harbor seals present within the NRCA since 1977. Past disturbance observations at Woodard Bay NRCA have shown that seal harassment results from the presence of non-motorized vessels (*e.g.,* recreational kayaks and canoes), motorized vessels (*e.g.,* fishing boats), and people (Calambokidis and Leathery, 1991; Buettner *et al.,* 2008). Calambokidis and Leathery (1991) found that the mean distance that seals entered the water in response to any type of vessel was 56 m. Most commonly seals were disturbed when vessels were 26 to 50 m from the haul-out; however, only at distances greater than 125 m was there a sharp decrease in the proportion of groups disturbed. Seals entered the water in response to people on foot at up to 256 m although, on many occasions, people were able to pass less than 100 m from seals without noticeable disturbance while intentionally maintaining a low profile (Calambokidis and Leathery, 1991). Furthermore, the distances at which seals were disturbed varied significantly by vessel type; seals entered the water at a greater distance in response to non-motorized vessels as compared to motorized vessels. It is hypothesized that because the latter are more readily detectable than the former, seals are more readily aware of their presence at greater distances and do not react to the same extent upon close approach (Buettner *et al.,* 2008).

Buettner *et al.* (2008) also noted the difference in vigilance of seals based on float location during pupping season. For example, seals on floats located on the outer edges of the log boom area, which are thus subjected to greater amounts of vessel traffic, were indifferent to vessels unless the vessels came right up to the log booms. Contrarily, seals on the floats located in the central area of the log booms, and hence not exposed to as much traffic, were more vigilant and more sensitive to disturbances. These observations suggest that, while seals are susceptible to anthropogenic disturbance, a certain amount of habituation may occur at these haul-outs.

During emergency maintenance operations on the haul-out in 2008, seals present on the log booms flushed when the vessel first entered the haul-out area, but appeared to become habituated quickly thereafter. Maintenance operations included installation of new log booms to restore habitat. Seals initially flushed in response to onset of work but quickly acclimated to crew presence and would haul out on booms directly adjacent to the small barge used during maintenance. Furthermore, Suryan and Harvey (1991) found that harbor seals hauled-out at Puffin Island, WA, were more tolerant to subsequent harassments than they were to the initial harassment. However, sudden presence of a disturbance source (*e.g.,* kayaker) can induce strong behavioral reactions.

In summary, based on the preceding discussion and on observations of harbor seals during past management activities in Woodard Bay, NMFS has preliminarily determined that impacts to harbor seals during restoration activities would be limited to behavioral harassment of limited duration and limited intensity (*i.e.,* temporary flushing at most) resulting from physical disturbance. It is anticipated that seals would be initially disturbed by the presence of crew and vessels associated with the habitat restoration project. Seals entering the water following such disturbance could also be exposed to underwater SPLs greater than 120 dB (*i.e.,* constituting harassment); however, given the short duration and low energy of vibratory extraction of 12–24 in timber piles, PTS would not occur and TTS is not likely. Abandonment of any portion of the haul-out is not expected either, as harbor seals have been documented as quickly becoming accustomed to the presence of work crews. During similar activities carried out under the previous IHA, seals showed no signs of abandonment or of using the haul-outs to a lesser degree.

Anticipated Effects on Habitat

Marine mammal habitat would be temporarily ensonified by low sound levels resulting from habitat restoration effort. The piles designated to be removed have been treated with creosote, a wood preservative that is also toxic to the environment. Removing these piles will have beneficial impacts to the NRCA, including marine mammal habitat, by preventing the leaching of creosote chemicals, including polycyclic aromatic hydrocarbons, into the marine environment. No log booms would be removed; therefore, no impacts to the physical availability of haul-out habitat would occur. Any disturbance to substrate in the NRCA would be localized and of a temporary nature, resulting from the extraction of piles. As such, temporary impacts at most may be expected to the habitat of harbor seal prey species. No prey species are known to utilize the pilings themselves.

Summary of Previous Monitoring

DNR complied with the mitigation and monitoring required under the previous authorization. In accordance with the 2010 IHA, DNR submitted a final monitoring report, which described the monitoring effort and observations made. During the course of these activities, DNR recorded one harbor seal mortality, described later in this document. Otherwise, DNR did not exceed the take levels authorized under the 2010 IHA.

The IHA stipulated that monitoring be conducted on at least 15 days of work, at the following times:

• The first two days of the project;

• When the contractors were mobilizing to a new location;
• During two days of every week when activities were occurring within 100 yd (91 m) of the haul-out area;
• During five of the days of work on the Chapman Bay Pier; and
• For at least six other days during the 40-day work period, which were decided when the project schedule was provided by the contractor.

However, due to a scheduling error on the part of the monitoring contractor, observations in fact occurred on only 14 days. Restoration activities ended before the final required day of monitoring could be conducted.

At least one protected species observer (PSO) was stationed at both of the observation sites on 14 of the days that construction occurred in the NRCA. Monitoring began 30 minutes prior to the contractor's start time (7 a.m.) and ended 30 minutes after the contractor left the site. Counts were conducted every half hour unless there was a disturbance, in which case another count was conducted. Each of the two haul-outs was counted separately and added together for the total number of seals hauled out. In the event of harassment, PSOs recorded the nature of the activity, proximity to haul-outs, and the number of seals that flushed into the water (*i.e.,* were harassed). The take number was calculated by subtracting the number of seals hauled out after the disturbance from the most recent count prior to the disturbance.

Harbor seal disturbances were recorded and broken down into disturbance types based on cause of disturbance. Each disturbance was given a code and proximity in meters from haul-outs was recorded (Table 1). Proximity in relation to haul-outs was calculated using satellite imagery. All incidental harassment takes related to construction activity occurred at the south haul-out (site 1; see Figure 1 in DNR's monitoring report). In total, 356 takes by harassment were observed during the 14 days of observation (Table 1) resulting in a mean of 25 seals disturbed per monitored day. Extrapolating that average out for all 35 days of restoration activity that occurred provides a total estimated take of 875, less than the authorized take (by Level B harassment) of 1,539. This extrapolated estimate is likely to be biased high since monitored days were chosen in part to sample days with activities most likely to disturb seals.

TABLE 1—AGGREGATE HARBOR SEAL COUNTS AND DISTURBANCES FROM TWO HAUL-OUT SITES

Date	Start time	Finish time	Conditions	Pre-activity count	Peak daily count	Disturbance code	Proximity to haul-out (m)	Total daily takes
Nov 1	0930	1630	Overcast, rain	8	18	MS, PP	<10	5
Nov 2	0630	1800	Sunny	97	127	DB	>300	69
Nov 9	0630	1800	Overcast, rain	71	72	MS	>160	31
Nov 12	0630	1730	Sunny	67	100	MS, MB	>150	76
Nov 15	0630	1730	Overcast, rain	27	39	N/A	>130	0
Nov 16	0630	1700	Overcast, rain	40	54	BC	<250	25
Nov 18	0630	1750	Partly cloudy	8	15	BC	>130	6
Nov 19	0630	1730	Partly cloudy	121	127	MS	>130	34
Nov 22	0630	1730	Partly cloudy, snow	35	37	MS, BC	>130	13
Dec 8	0630	1730	Overcast, rain	1	17	N/A	>300	0
Dec 10	0630	1600	Partly cloudy	20	34	BC	>100	30
Dec 16	0630	1730	Sunny	36	41	MS, VH	>100	38
Dec 20	0630	1600	Overcast, rain	0	0	N/A	>130	0
Dec 21	0630	1700	Sunny	43	43	MS, DB	>75	29

Activity codes: MS: motorized skiff; BC: Barge/Crane; VH: Vibratory hammer; PR: Pile removal; PP: Pile painting; MB: Mobilize barge; DB: Dive boat

Harbor seals were generally hauled out prior to the work day with the majority of seals at the south haul-out. The construction crew stayed at a distance of over 150 m from the haul-outs when maneuvering back and forth from shore to their barge anchored greater than 150 m offshore from the haul-outs. The seals appeared to be relatively unaffected by the movement of the crane barge at distances greater than 150 m. The majority of incidental harassment takes were caused by the work skiff maneuvering back and forth, despite the distance from the haul-outs. Once the seals entered the water, the majority typically did not return to the haul-out during same-day monitoring effort, although there were never large groups of seals observed in the water after a disturbance. Seals that remained on the haul-out after a disturbance showed no signs of adverse behavior. Given that there have been no dedicated observations at the NRCA during this time of year (*i.e.,* November–February) it is difficult to say whether the decreased number of harbor seals hauled out (as compared with average October counts) was caused by construction activity or seasonal distribution. It is likely, however, that the latter is the case, as November represents the post-breeding and molting period, when harbor seals are less reliant on the haul-outs.

On December 21, 2010, divers retrieving underwater broken pilings discovered a deceased young female harbor seal entangled in a line attached to a buoy used to mark the location of broken pilings. It is uncertain how long the seal had been entangled in the line; however, DNR reported that the line was placed there sometime November 1–3, 2010, when the DNR dive team was marking the broken pilings. Gross necropsy showed the seal was in good body condition, and drowning due to entanglement was likely the cause of death for this animal. All appropriate reporting protocols were followed.

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 DNR has proposed to continue mitigation measures, as stipulated in the 2010 IHA, designed to minimize disturbance to harbor seals within the action area in consideration of timing, location, and equipment use. Foremost, pile and structure removal would only occur between November and February (*i.e.,* within the designated in-water

work window designed to reduce impacts to fish species in Woodard Bay), outside of harbor seal pupping and molting seasons. Therefore, no impacts to pups from the specified activity during these sensitive time periods would occur. In addition, the following measures would be implemented:

- The DNR would approach the action area slowly to alert seals to their presence from a distance and would begin pulling piles at the farthest location from the log booms used as harbor seal haul-out areas;
- No piles within 30 yards (27 m) of the two main haul-out locations identified in the IHA application would be removed;
- The contractor or PSO would survey the operational area for seals before initiating activities and wait until the seals are at a sufficient distance (*i.e.,* 50 ft [15 m]) from the activity so as to minimize the risk of direct injury from the equipment or from a piling or structure breaking free;
- The DNR would require the contractor to initiate a vibratory hammer soft start at the beginning of each work day; and
- The vibratory hammer power pack would be outfitted with a muffler to reduce in-air noise levels to a maximum of 80 dB.

The soft start method involves a reduced energy vibration from the hammer for the first 15 seconds and then a one minute waiting period. This method would be repeated twice before commencing with operations at full power.

In addition, and as a result of the unauthorized mortality described previously, DNR will no longer mark broken pilings with buoys for later retrieval by divers. The entanglement and subsequent death of a harbor seal in one of these buoy lines was considered to be an unusual occurrence and is unlikely to happen again. Nonetheless, contractors will be required to record broken piling locations for divers using a global positioning system instead of marking pilings with buoys or flags. This measure eliminates the possibility of such mortality.

NMFS considered but rejected one additional mitigation measure, the requirement to conduct a sound source verification study. NMFS has in the past required some applicants to conduct such a study to ensure that the production of increased levels of sound is no greater than the level analyzed in estimating incidental take. However, as described previously in this document, source levels produced by the vibratory hammer would be no greater than 80 dB in-air and are conservatively estimated at approximately 155–165 dB underwater. The underwater source levels would likely be lower, as those are measured levels from installation of steel piles. Underwater source levels from this project would likely be less both because the action is extraction, not installation, and because of the pile material (timber rather than steel). Further, seals exposed to sound greater than 120 dB would likely be previously disturbed by the presence of crews and vessels and by vessel noise. NMFS acknowledges that sound source verification would be preferred; however, the applicant is funding-limited, and the significant expenditure required by such a study would result in a correspondingly lesser amount of restoration work able to be completed. The requirement of a sound source verification study would have limited utility for the harbor seals, would be impracticable for the applicant, and would result in less restoration accomplished. Thus, the end result would likely be a long-term net negative for the harbor seals considered in this document.

NMFS has carefully evaluated the applicant's mitigation measures as proposed and considered their effectiveness in past implementation to preliminarily determine whether they are likely to effect the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures includes 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; (3) the practicability of the measure for applicant implementation, including consideration of personnel safety, and practicality of implementation.

Injury, serious injury, or mortality to pinnipeds could likely only result from startling animals inhabiting the haul-out into a stampede reaction. Even in the event that such a reaction occurred, it is unlikely that it would result in injury, serious injury, or mortality, as the activities would occur outside of the pupping season, and access to the water from the haul-outs is relatively easy and unimpeded. However, DNR has proposed to approach haul-outs gradually from a distance, and would begin daily work at the farthest distance from the haul-out in order to eliminate the possibility of such events. During the previous year of work under NMFS' authorization, implementation of similar mitigation measures has resulted in no known injury, serious injury, or mortality (other than the previously described incident, which may be considered atypical and outside the scope of the mitigation measures considered in relation to disturbing seals from the haul-outs). Based upon the DNR's record of management in the NRCA, as well as information from monitoring DNR's implementation of the improved mitigation measures as prescribed under the previous IHA, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable adverse impacts on marine mammal species or stocks and their habitat.

Proposed Monitoring and Reporting

In order to issue an ITA 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.

DNR's proposed monitoring plan adheres to protocols already established for Woodard Bay to the maximum extent practical for the specified activity. Monitoring of both the north and south haul-outs would occur for a total of 15 out of the 40 work days, during the first 5 days of project activities, when the contractors are mobilizing and starting use of the vibratory hammer; during 5 days when activities are occurring within 100 yd (91 m) of the haul-out area; and during 5 additional days, to be decided when the schedule of work is provided by the contractor. Monitoring of both haul-outs would be performed by at least one NMFS approved PSO. The PSO would (1) Be on-site prior to crew and vessel arrival to determine the number of seals present pre-disturbance; (2) maintain a low profile during this time to minimize disturbance from monitoring; and (3) conduct monitoring beginning 30 minutes prior to crew arrival, during pile removal activities, and for 30 minutes after crew leave the site.

The PSO would record incidental takes (*i.e.,* numbers of seals flushed from the haul-out). This information would be determined by recording the number of seals using the haul-out on each monitoring day prior to the start of

restoration activities and recording the number of seals that flush from the haul-out or, for animals already in the water, display adverse behavioral reactions to vibratory extraction. A description of the disturbance source, the proximity in meters of the disturbance source to the disturbed animals, and observable behavioral reactions to specific disturbances would also be noted. In addition, the PSO would record:

- The number of seals using the haul-out on each monitoring day prior to the start of restoration activities for that day;
- Seal behavior before, during and after pile and structure removal;
- Monitoring dates, times and conditions;
- Dates of all pile and structure removal activities; and
- After correcting for observation effort, the number of seals taken over the duration of the habitat restoration project.

Within 30 days of the completion of the project, DNR would submit a monitoring report to NMFS that would include a summary of findings and copies of field data sheets and relevant daily logs from the contractor.

NMFS considered but rejected an expanded monitoring plan that would require DNR to conduct monitoring as described but for every day of construction (40 days). NMFS does not believe that monitoring need be conducted at all times during this low-level activity as there is no potential for serious injury or mortality (the previously described entanglement incident notwithstanding) and the probability of an animal being physically injured from the equipment is extremely low if not discountable. In addition, no other marine mammal species are likely to be present within the action area, and are therefore not likely to be affected by DNR's activities. Similar to scientific research studies, when correcting for effort, the DNR and NMFS should be able to adequately determine the number of animals taken and impacts of the project on marine mammals based on the proposed monitoring plan. Should extreme reactions of seals occur (*e.g.,* apparent abandonment of the haul-out) at any time during the project, DNR will stop removal activities and consult with NMFS. However, as described in this notice, based on previous scientific disturbance studies at NRCA, extreme reactions are not anticipated. Finally, as described previously, funding is limited for DNR's important restoration work, requiring a balance between the level of monitoring that is necessary to adequately characterize disturbance of harbor seals and the significant funding required to implement monitoring. NMFS feels that the proposed monitoring plan strikes the proper balance.

Estimated Take by Incidental Harassment

As described previously in this document, annual seal counts in Woodard Bay end by October. Seals utilize haul-out habitat from spring or summer until approximately October for breeding, pupping, and molting. After October, numbers of individuals at the haul-outs are expected to decline throughout the winter. From 2006 to 2009, October counts averaged 171 and ranged between 79 and 275 (Lambourn, 2010).

Under the 2010 IHA, seals were monitored for 14 days during November and December 2010. During that time, total peak counts ranged from 0 to 127, and averaged 52 (Oliver and Calambokidis, 2011), confirming that seal numbers decline after October. In estimating take under the previous IHA, DNR used the mean number of seals from October counts (171) in the absence of any data from the months when the activity would take place. However, DNR also assumed that seals would not be disturbed by activity occurring greater than 100 yd (91 m) away from the haul-outs, and proposed to conduct a portion of activity at the Woodard Bay trestle, which is not located near the haul-outs. The result was that DNR considered only 9 days of activity to have the potential for harassment of harbor seals. The assumption that harbor seals would not be disturbed at distances greater than 100 yd proved to be incorrect; however, because the best available data regarding numbers of seals (October count data) was very conservative, DNR did not underestimate take (1,539 takes estimated versus 875 takes estimated based on monitoring data).

DNR now proposes that all potential days of activity (40 days) may potentially result in incidental harassment of harbor seals. Using the average count from November-December 2010 (52), the result is an estimated incidental take of 2,080 harbor seals (40 days x 52 seals per day). NMFS considers this to be a highly conservative estimate in comparison with the estimated actual take of 875 seals from 2010, which is nonetheless based upon the best available scientific information.

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 determining whether or not authorized incidental take will have a negligible impact on affected species stocks, NMFS considers a number of criteria regarding the impact of the proposed action, including the number, nature, intensity, and duration of Level B harassment take that may occur. Although DNR's restoration activities may harass pinnipeds hauled out in Woodard Bay, impacts are occurring to a small, localized group of animals. No mortality or injury is anticipated or proposed for authorization, nor will the proposed action result in long-term impacts such as permanent abandonment of the haul-out. Seals will likely become alert or, at most, flush into the water in reaction to the presence of crews and equipment. However, seals have been observed as becoming habituated to physical presence of work crews, and quickly re-inhabit haul-outs upon cessation of stimulus. In addition, the proposed restoration actions may provide improved habitat function for seals, both indirectly through a healthier prey base and directly through restoration and maintenance of man-made haul-out habitat. No impacts would be expected at the population or stock level.

No pinniped stocks known from the action area are listed as threatened or endangered under the ESA or determined to be strategic or depleted under the MMPA. Recent data suggests that harbor seal populations have reached carrying capacity.

Although the estimated take of 2,080 is relatively high in comparison with the estimated population of 14,612 for the Washington Inland Waters stock of harbor seals (14 percent), the number of individual seals harassed will be low, with individual seals likely harassed multiple times. In addition, although the estimated take is based upon the best scientific information available, NMFS considers the estimate to be highly conservative. For similar restoration activities in 2010, estimated actual take was much lower (875 seals, albeit over 35 work days rather than the 40 estimated for 2011).

Mitigation measures would minimize onset of sudden and potentially dangerous reactions and overall disturbance. In addition, restoration

work is not likely to affect seals at both haul-outs simultaneously, based on location of the crew and barge. Further, although seals may initially flush into the water, based on previous disturbance studies and maintenance activity at the haul-outs, the DNR expects seals will quickly habituate to piling and structure removal operations. For these reasons no long term or permanent abandonment of the haul-out is anticipated. The proposed action is not anticipated to result in injury, serious injury, or mortality to any harbor seal. The DNR would not conduct habitat restoration operations during the pupping and molting season; therefore, no pups would be affected by the proposed action and no impacts to any seals would occur as a result of the specified activity during these sensitive time periods.

Based on the foregoing analysis, behavioral disturbance to pinnipeds in Woodard Bay would be of low intensity and limited duration. To ensure minimal disturbance, DNR would implement the mitigation measures described previously, which NMFS has preliminarily determined will serve as the means for effecting the least practicable adverse effect on marine mammal stocks or populations and their habitat. NMFS preliminarily finds that DNR's restoration activities would result in the incidental take of small numbers of marine mammals, and that the requested number of takes will have no more than a negligible impact on the affected species and 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).

There are no ESA-listed marine mammals found in the action area; therefore, no consultation under the ESA is required.

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 prepared an Environmental Assessment (EA) to consider the direct, indirect and cumulative effects to the human environment resulting from issuance of an IHA to DNR. NMFS signed a Finding of No Significant Impact on October 27, 2010. NMFS has reviewed the proposed application and preliminarily determined that there are no substantial changes to the proposed action or new environmental impacts or concerns. Therefore, NMFS has determined that a new or supplemental EA or Environmental Impact Statement is likely unnecessary. Before making a final determination in this regard, NMFS will review public comments and information submitted by the public and others in response to this notice. The EA referenced above is available for review at *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.*

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to authorize the take of marine mammals incidental to DNR's restoration activities, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: September 2, 2011.

Helen M. Golde,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–23164 Filed 9–9–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 11–14]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 11–14 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: September 6, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

AUG 24 2011

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 11-14, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance to Peru for defense articles and services estimated to cost $50 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

William E. Landay III
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Statement of Technology

Transmittal No. 11–14

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Peru

(ii) *Total Estimated Value:*

Major Defense Equipment *	$ 0 million
Other	$ 50 million
TOTAL	$ 50 million

* as defined in Section 47(6) of the Arms Export Control Act.

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* 4 each MK57 MOD 10 NATO SEASPARROW Surface Missile Systems (NSSMS) without RIM–7 missiles, MK57 Installation and Check Out (INCO) kits, spare and repair parts, support and test equipment, publications and technical documentation, personnel training, U.S. Government and contractor engineering, technical and logistics support services, and other related elements of logistical and program support.

(iv) *Military Department:* Navy (LBC)

(v) *Prior Related Cases, if any:* None.

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None.

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Annex attached.

(viii) *Date Report Delivered to Congress:* August 24, 2011.

POLICY JUSTIFICATION

Peru—NATO SEASPARROW Surface Missile Systems

The Government of Peru has requested a possible sale of four (4) each MK57 MOD 10

NATO SEASPARROW Surface Missile Systems (NSSMS) without RIM–7 missiles, MK57 Installation and Check Out (INCO) Kits, spare and repair parts, support and test equipment, publications and technical documentation, personnel training, U.S. Government (USG) and contractor engineering, technical and logistics support services, and other related elements of logistical and program support. The estimated cost is $50 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of Peru which has been, and continues to be, an important force for political stability and economic progress in South America.

The proposed sale will improve Peru's capability to meet current and future threats of enemy anti-ship weapons. Peru will use the enhanced capability of the MK57 MOD 10 NSSMS on its four LUPO class (aka Aguirre) Class frigates purchased from Italy in 2004. The frigates have MK57 MOD 2 NATO SEASPARROW Systems modified to fire the ASPIDE air defense missile. The systems retain the ability to fire the RIM–7 SEASPARROW missile, and Peru intends to move from the ASPIDE missile to the RIM–7 SEASPARROW in a future purchase. Peru, which already has MK 57 Missile Systems, will have no difficulty absorbing these additional systems into its inventory.

The proposed sale of this equipment will not alter the basic military balance in the region.

The prime contractors will be Raytheon Technical Service Company in Norfolk, VA and Raytheon Integrated Defense Systems in Portsmouth, RI. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Peru.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 11–14

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The sale of the MK 57 Mod 10 NSSMs under this proposed sale will result in the transfer of sensitive technological information to Peru. Both classified and unclassified defense equipment will be involved. Specifically, the MK 73 Mod 3 Solid State Transmitter is Secret and contains sensitive technology.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. 2011–23181 Filed 9–9–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

RIN 1894–AA01

[Docket ID ED–2011–OS–0008]

Race to the Top Fund Phase 3

AGENCY: Department of Education.

ACTION: Notice of proposed requirements.

SUMMARY: The Secretary of Education (Secretary) proposes requirements for Phase 3 of the Race to the Top program. In this phase the Department would make awards to States that were finalists but did not receive funding under the Race to the Top Fund Phase 2 competition held in fiscal year (FY) 2010. We take this action to specify the information and assurances that applicants must provide in order to receive funding under the Race to the Top Fund Phase 3 award process.

DATES: We must receive your comments on or before October 12, 2011.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments by fax or by e-mail. Please submit your comments only one time in order to ensure that we do not receive duplicate copies. In addition, please include the Docket ID and the term ''Race to the Top Fund Phase 3 Awards'' at the top of your comments.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''How To Use This Site.''
- *Postal Mail, Commercial Delivery, or Hand Delivery.* If you mail or deliver your comments about these proposed requirements, address them to the Implementation and Support Unit (*Attention:* Race to the Top Fund Phase 3 Comments), U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–6200.
- *Privacy Note:* The Department's policy for comments received from members of the public (including those comments submitted by mail, commercial delivery, or hand delivery) is to make these submissions available for public viewing in their entirety on the Federal eRulemaking Portal at *http://www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available on the Internet.

FOR FURTHER INFORMATION CONTACT: Meredith Farace, Implementation and Support Unit, 400 Maryland Avenue, SW., Washington, DC 20202–6200. Telephone: (202) 401–8368 or by e-mail: *phase3comments@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Invitation to Comment: We invite you to submit comments regarding this notice. To ensure that your comments have maximum effect in developing the notice of final requirements, we urge you to identify clearly the specific proposed requirement that each comment addresses.

We invite you also to assist us in complying with the specific requirements of Executive Order 12866 and Executive Order 13563 and their overall direction to Federal agencies to reduce regulatory burden where possible. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of this program.

During and after the comment period, you may inspect all public comments about this notice by accessing Regulations.gov. You may also inspect the public comments in person in room 7E208, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Purpose of Program: The Race to the Top program, the largest competitive education grant program in U.S. history, is designed to provide incentives to States to implement system-changing reforms that result in improved student achievement, narrowed achievement

gaps, and increased high school graduation and college enrollment rates.

Program Authority: American Recovery and Reinvestment Act of 2009 (ARRA), Division A, Section 14006, Public Law 111–5, as amended by section 310 of Division D, Title III of Public Law 111–117, the Consolidated Appropriations Act, 2010, and section 1832(a)(2) of Public Law 112–10, the Department of Defense and Full-Year Continuing Appropriations Act, 2011. (*Note:* In the ARRA, the Race to the Top program is referred to as State Incentive Grants.)

Proposed Requirements:

Background

On February 17, 2009, President Obama signed into law the ARRA, historic legislation designed to stimulate the economy, support job creation, and invest in critical sectors, including education. The ARRA laid the foundation for education reform by supporting investments in innovative strategies that are most likely to lead to improved results for students, long-term gains in school and school system capacity, and increased productivity and effectiveness. In particular, the ARRA authorized and provided $4.35 billion for the Race to the Top Fund, a competitive grant program designed to encourage and reward States creating the conditions for education innovation and reform by implementing ambitious plans in four core areas: Enhancing standards and assessments, improving the collection and use of data, increasing teacher effectiveness and achieving equity in teacher distribution, and turning around struggling schools.

In 2010, the Department awarded approximately $4 billion in Race to the Top State grant funds in two phases. On March 29, 2010, the Department announced the award of approximately $600 million to Delaware and Tennessee under the Race to the Top Phase 1 competition. On August 24, 2010, the Department announced the award of approximately $3.4 billion in Race to the Top funding to the winners of the Phase 2 competition: the District of Columbia, Florida, Georgia, Hawaii, Maryland, Massachusetts, New York, North Carolina, Ohio, and Rhode Island. In addition to these awards to States to implement comprehensive reform plans, the Department awarded approximately $330 million on September 2, 2010, under a separate Race to the Top Assessment competition, to two groups of States to develop a new generation of assessments aligned with a common set of college- and career-ready standards.

In announcing the winners of the Phase 2 competition, the Secretary noted that ''[we] had many more competitive applications than money to fund them in this round'' and expressed the hope that any Race to the Top funding included in the Department's FY 2011 appropriations would be available for Phase 3 Race to the Top awards. In particular, there were nine finalists in the Phase 2 competition held in the summer of 2010 that did not receive funding despite submitting bold and ambitious plans for comprehensive reforms and innovations in their systems of elementary and secondary education. These nine finalists were Arizona, California, Colorado, Illinois, Kentucky, Louisiana, New Jersey, Pennsylvania, and South Carolina.

On April 15, 2011, President Obama signed into law Public Law 112–10, the Department of Defense and Full-Year Continuing Appropriations Act, 2011 (FY 2011 Appropriations Act), which made $698.6 million available for the Race to the Top Fund, authorized the Secretary to make awards on ''the basis of previously submitted applications,'' and amended the ARRA to permit the Secretary to make grants for improving early childhood care and learning under the program. On May 25, 2011, the Department announced that approximately $500 million of these funds would support the new Race to the Top—Early Learning Challenge program and that approximately $200 million would be made available to some or all of the nine unfunded finalists from the 2010 Race to the Top Phase 2 competition. While $200 million is not sufficient to support full implementation of the plans submitted during the Phase 2 competition, the Department believes that making these funds available to the remaining nine finalists is the best way to create incentives for these States to carry out the bold reforms proposed in their applications. The Department may use any unused funds from Race to the Top Phase 3 to make awards in the Race to the Top—Early Learning Challenge program. Conversely, the Department may use any unused funds from the Race to the Top—Early Learning Challenge program to make awards for Race to the Top Phase 3.

In this notice, we propose specific requirements that would apply to Race to the Top Phase 3 awards. To receive a share of the approximately $200 million in Race to the Top Phase 3 funds, eligible applicants would need to meet these requirements.

As with Race to the Top Phase 1 and Phase 2, it is the Department's intent to encourage and reward States that are creating and maintaining conditions for education innovation and reform; achieving significant improvement in student outcomes, including making substantial gains in student achievement, closing achievement gaps, improving high school graduation rates, ensuring student preparation for success in college and careers; and implementing ambitious plans in the following four core education reform areas:

(a) Adopting internationally benchmarked standards and assessments that prepare students for success in college and the workplace;

(b) Building data systems that measure student success and inform teachers and principals about how they can improve their practices;

(c) Increasing teacher and principal effectiveness and achieving equity in the distribution of effective teachers and principals; and

(d) Turning around our lowest achieving schools.

Under the Race to the Top Phase 3 award process proposed in this notice, eligible applicants would be limited to Race to the Top Phase 2 finalists that did not receive a Phase 2 award, and those eligible applicants could apply for a proportional share of these funds. Race to the Top Phase 3 funding is not at the level of funding that was available for the Race to the Top Phase 1 and Phase 2 competitions. Accordingly, we are proposing that eligible applicants (1) select from among the activities they proposed to implement in their Phase 2 applications those activities that will have the greatest impact on advancing their overall statewide reform plans, (2) use Race to the Top Phase 3 funding to support those specific activities, and (3) ensure that such activities are consistent with the ARRA requirement to allocate 50 percent of Race to the Top funds to local educational agencies (LEAs).

We are further proposing to require that an eligible applicant provide a set of assurances reaffirming its commitment to maintain, at a minimum, the conditions for reform that it established in its Phase 2 application in each of the four core education reform areas. These assurances reflect the importance of the State's dedication to successfully implementing the comprehensive statewide reforms envisioned under the Race to the Top program.

These proposed requirements also include a requirement that an applicant provide an assurance that the State is in compliance with the Education Jobs Fund maintenance-of-effort (MOE) requirement in section 101(10)(A) of Public Law 111–226. The MOE requirement under the Education Jobs Fund program is more stringent in some

respects than the MOE requirement under the State Fiscal Stabilization Fund (SFSF) program. Unlike the SFSF MOE requirement, which in some cases may allow a State to maintain overall levels of support for education while actually reducing funding for either elementary and secondary education or for public institutions of higher education (IHEs), a State can meet the Education Jobs Fund MOE requirement only by maintaining support for both elementary and secondary education and public IHEs. For this reason, we believe that the Education Jobs Fund MOE requirement is a better measure of whether a State is demonstrating the commitment to funding education needed to create the conditions for education innovation and reform consistent with the Race to the Top program.

Proposed Requirements

The Secretary proposes the following requirements for Race to the Top awards. Except where otherwise indicated in this notice of proposed requirements, the applicable final requirements and definitions of key terms from the notice of final priorities, requirements, definitions, and selection criteria, published in the **Federal Register** on November 18, 2009 (74 FR 59688) apply to the Race to the Top Phase 3 application process.

I. Proposed Award Process

The Department proposes to make awards through a two-part process. Under the first part of this process, States that meet the eligibility requirements would submit an application that (1) meets the application requirements and (2) provides the application assurances.

Under the second part of the Race to the Top Phase 3 application process, the Department would notify all eligible applicants that met the application requirements and provided the assurances required by the first part of the process, and would provide an estimate of the Race to the Top Phase 3 funds available to them based on the number of qualified applicants. Qualified applicants would then be required to submit, for review and approval by the Secretary, a detailed plan and budget describing the activities selected from the State's Phase 2 application that would be implemented with Race to the Top Phase 3 funding in accordance with the Budget Requirements in this notice.

II. Proposed Eligibility Requirements

States that were finalists, but did not receive grant awards, in the 2010 Race to the Top Phase 2 competition are eligible to receive Race to the Top Phase 3 awards. Therefore, only the States of Arizona, California, Colorado, Illinois, Kentucky, Louisiana, New Jersey, Pennsylvania, and South Carolina are eligible to apply for Race to the Top Phase 3 awards.

III. Proposed Application Requirements

A State must submit an application that includes the signatures of the Governor, the State's chief school officer, and the president of the State board of education, or their authorized representatives (if applicable).

IV. Proposed Application Assurances

The Governor or authorized representative of the Governor of a State must provide the following assurances in the State's Race to the Top Phase 3 application:

(a) The State is in compliance with the Education Jobs Fund maintenance-of-effort (MOE) requirements in section 101(10)(A) of Public Law 111–226.

(b) The State is in compliance with the State Fiscal Stabilization Fund Phase 2 requirements with respect to Indicator (b)(1) regarding the State's statewide longitudinal data system. (*See* notice of final requirements, definitions, and approval criteria for the State Fiscal Stabilization Fund Program published in the **Federal Register** on November 12, 2009 (74 FR 58436).)

(c) At the time the State submits its application, there are no legal, statutory, or regulatory barriers at the State level to linking data on student achievement or student growth to teachers and principals for the purpose of teacher and principal evaluation.

(d) The State will maintain its commitment to improving the quality of its assessments, evidenced by the State's participation in a consortium of States that—

(i) Is working toward jointly developing and implementing common, high-quality assessments aligned with the consortium's common set of K–12 standards; and

(ii) Includes a significant number of States.

(e) The State will maintain, at a minimum, the conditions for reform described in its Race to the Top Phase 2 application, including—

(i) The State's adoption and implementation of a common set of college- and career-ready standards, as specified in section (B)(1)(ii) of the State's Race to the Top Phase 2 application;

(ii) The State's statutory and regulatory framework related to improving teacher and school leader effectiveness and ensuring an equitable distribution of effective teachers and leaders, as described in section D of the State's Race to the Top Phase 2 application;

(iii) The State's statutory and regulatory framework for implementing effective school and LEA turnaround measures, as described in section E of the State's Race to the Top Phase 2 application; and

(iv) The State's statutory and regulatory framework for supporting the creation and expansion of high-performing charter schools and other innovative schools, as described in section (F)(2) of its Race to the Top Phase 2 application.

(f) The State will maintain its commitment to comprehensive reforms and innovation designed to increase student achievement and to continued progress in the four reform areas specified in the ARRA, including the adoption and implementation of internationally benchmarked standards and assessments, improving the collection and use of data, increasing teacher effectiveness and equity in the distribution of effective teachers, and turning around the State's lowest achieving schools.

(g) The State will select activities for funding that are consistent with the commitment to comprehensive reform and innovation that the State demonstrated in its Race to the Top Phase 2 application.

(h) The State will comply with all of the accountability, transparency, and reporting requirements that apply to the Race to the Top program (*See* the notice of final priorities, requirements, definitions, and selection criteria for the Race to the Top Fund published in the **Federal Register** on November 18, 2009 (74 FR 59688)), with the exception of reporting requirements applicable solely to funds provided under the ARRA. (*Note:* The ARRA section 1512 reporting requirements do not apply to the funds we will award under the Race to the Top Phase 3 award process).

(i) A grantee must comply with the requirements of any evaluation of the program, or of specific activities pursued as part of the program, conducted and supported by the Department.

V. Proposed Budget Requirements

An eligible applicant must apply for a proportional share of the approximately $200 million available for Race to the Top Phase 3 awards based primarily on its share of the population of children ages 5 through 17 across the nine States. The proposed estimated amounts for which each

eligible State could apply are shown in the following table. The amounts proposed in this table are based on the assumption that all eligible States would apply for a share of available funding; the amounts would increase if one or more eligible States do not apply or do not meet the application requirements.

State	Amount
Colorado	$12,250,000
Louisiana	12,250,000
South Carolina	12,250,000
Kentucky	12,250,000
Arizona	17,500,000
Illinois	28,000,000
Pennsylvania	28,000,000
New Jersey	28,000,000
California	49,000,000

Once the Department notifies a qualified applicant of the final amount of funds it is eligible to receive for a Race to the Top Phase 3 award, the applicant must submit a detailed plan and budget describing the activities it has selected from its Race to the Top Phase 2 application that it proposes to implement with Race to the Top Phase 3 funding. This detailed plan must include an explanation of why the applicant has selected these activities and why the applicant believes such activities will have the greatest impact on advancing its overall statewide reform plan. The plan also must include a description of the State's process for allocating at least 50 percent of Race to the Top Phase 3 funds to participating LEAs, as required by section 14006(c) of the ARRA. Subgrants to LEAs must be based on their relative shares of funding under Title I, Part A of the ESEA, and LEAs must use these funds in a manner that is consistent with the State's updated plan and the MOU or other binding agreement between the LEA and the State. A State may establish more specific requirements for LEA use of funds provided they are consistent with the ARRA and Race to the Top requirements. (*See* the notice of final priorities, requirements, definitions, and selection criteria for the Race to the Top Fund published in the **Federal Register** on November 18, 2009 (74 FR 59688))

Final Requirements

We will announce the final requirements for the Race to the Top Phase 3 award process in a notice in the **Federal Register**. We will determine the final requirements after considering any comments submitted in response to this notice and other information available to the Department. This notice does not preclude the Department from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use one or more of these requirements we invite applications through a notice in the **Federal Register**.

Executive Orders 12866 and 13563

Under Executive Order 12866, the Secretary must determine whether a regulatory action is ''significant'' and therefore subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may (1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities in a material way (also referred to as an ''economically significant'' rule); (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impacts of entitlement grants, user fees, or local 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.

It has been determined that this regulatory action will have an annual effect on the economy of more than $100 million because the amount of government transfers through the Race to the Top Phase 3 award process exceeds that amount. Therefore, this action is economically significant and subject to OMB review under section 3(f)(1) of Executive Order 12866. Notwithstanding this determination, we have assessed the potential costs and benefits—both quantitative and qualitative—of this proposed regulatory action and have determined that the benefits justify the costs.

The Department has also reviewed these proposed requirements pursuant to Executive Order 13563, published on January 21, 2011 (76 FR 3821). Executive Order 13563 is supplemental to and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, agencies are required by Executive Order 13563 to: (1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor their regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

We emphasize as well that Executive Order 13563 requires agencies ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' In its February 2, 2011, memorandum (M–11–10) on Executive Order 13563, improving regulation and regulatory review, the Office of Information and Regulatory Affairs has emphasized that such techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing these proposed requirements only upon a reasoned determination that their benefits justify their costs and we selected, in choosing among alternative regulatory approaches, those approaches that maximize net benefits. Based on the analysis below, the Department believes that these final regulations are consistent with the principles in Executive Order 13563.

In this section we discuss the need for regulatory action, the costs and benefits, as well as regulatory alternatives we considered.

Need for Federal Regulatory Action

These proposed requirements are needed to implement the Race to the Top Phase 3 award process in the manner that the Secretary believes will best enable the program to achieve its objectives of creating the conditions for effective reform and meaningful innovation in education while helping States that were finalists, but did not receive funding under the Race to the

Top Phase 2 competition, to implement selected elements of their comprehensive reform proposals submitted as part of their Race to the Top Phase 2 applications.

Potential Costs and Benefits

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action and have determined that these proposed requirements would not impose significant additional costs to State applicants or the Federal Government. Most of the proposed requirements involve re-affirming the commitments and plans already completed as part of the 2010 Race to the Top Phase 2 competition or other Federal education programs. As an example of a requirement that would result in minimal additional burden and cost, we have proposed that States applying for Race to the Top Phase 3 funding provide an assurance that they are meeting the MOE requirements of the Education Jobs Fund program. Similarly, other proposed requirements, in particular those related to maintaining conditions for reform required under the Race to the Top Phase 2 competition, would require continuation of existing commitments and investments rather than the imposition of additional burdens and costs. For example, States would be required to continue implementation of common K–12 academic content standards. The Department believes States would incur minimal costs in developing plans and budgets for implementing selected activities from their Race to the Top Phase 2 proposals, because in most cases such planning will entail revisions to existing plans and budgets already developed as part of the Race to the Top Phase 2 application process, and not the development and implementation of entirely new plans and budgets. In all such cases, the Department believes that the benefits resulting from the proposed requirements would exceed their costs.

Regulatory Alternatives Considered

An alternative to promulgation of the types of requirements proposed in this notice would be for the Secretary to use FY 2011 Race to the Top funds to make awards to the one or two highest scoring unfunded applications from the 2010 Race to the Top Phase 2 competition. However, the Department believes that the scores of the unfunded finalists from the Race to the Top Phase 2 competition are too closely grouped to support awarding all FY 2011 Race to the Top funds to the one or two States with the highest scores. Furthermore, the Department believes that the approximately $200 million available from the FY 2011 Appropriations Act for the Race to the Top program would not support full implementation of the comprehensive reform plans submitted by unfunded finalists from the 2010 Race to the Top Phase 2 competition. The Department also believes that making available meaningful amounts of FY 2011 Race to the Top funding to all of the unfunded finalists from the 2010 Race to the Top Phase 2 competition offers the greatest promise for sustaining the nationwide reform momentum created by the Race to the Top Phase 1 and Phase 2 competitions.

Finally, the Department believes that simply funding the one or two highest scoring applicants that did not win an award in the 2010 Race to the Top Phase 2 competition would result in a missed opportunity to reward the efforts of all nine unfunded finalists from that competition and to enable them to make meaningful progress on key elements of their comprehensive statewide reform plans.

To assist the Department in complying with the requirements of Executive Order 12866, the Secretary invites comments on whether there may be further opportunities to reduce any potential costs or increase potential benefits resulting from these proposed requirements without impeding the effective and efficient administration of the Race to the Top program.

Accounting Statement

As required by OMB Circular A–4 (available at *http://www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a004/a-4.pdf*), in the following table, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this proposed regulatory action. This table provides our best estimate of the Federal payments to be made to States under this program as a result of this proposed regulatory action. Expenditures are classified as transfers to States.

ACCOUNTING STATEMENT CLASSIFICATION OF ESTIMATED EXPENDITURES

Category	Transfers
Annualized Monetized Transfers.	$200,000,000
From Whom to Whom?	Federal Government to States.

The Race to the Top Phase 3 award process would provide approximately $200 million in competitive grants to eligible States.

Paperwork Reduction Act of 1995

These proposed regulations contain information collection requirements. However, because the eligible applicants for Race to the Top Phase 3 awards are fewer than 10, these collections are not subject to approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3502(3)(A)(i)).

Regulatory Flexibility Act Certification

The Secretary certifies that this proposed regulatory action will not have a significant economic impact on a substantial number of small entities. The small entities that this proposed regulatory action will affect are small LEAs receiving funds under this program.

This proposed regulatory action will not have a significant economic impact on small LEAs because they will be able to meet the costs of compliance with this regulatory action using the funds provided under this program.

The Secretary invites comments from small LEAs as to whether they believe this proposed regulatory action would have a significant economic impact on them and, if so, requests evidence to support that belief.

Effect on Other Levels of Government

We have also determined that this regulatory action would not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

Assessment of Educational Impact

In accordance with section 411 of the General Education Provisions Act, 20 U.S.C. 1221e–4, the Department invites comment on whether these requirements do not require transmission of information that any other agency or authority of the United States gathers or makes available.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Accessible Format

Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on

request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document

The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** is available via the Federal Digital System at *http://www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *http://www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: September 6, 2011.

Arne Duncan,

Secretary of Education.

[FR Doc. 2011–23123 Filed 9–9–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Tests Determined To Be Suitable for Use in the National Reporting System for Adult Education

AGENCY: Office of Vocational and Adult Education, Department of Education.

ACTION: Notice.

SUMMARY: The Secretary annually announces tests, including test forms and delivery formats, determined to be suitable for use in the National Reporting System for Adult Education (NRS).

FOR FURTHER INFORMATION CONTACT: John LeMaster, Department of Education, 400 Maryland Avenue, SW., room 11159, Potomac Center Plaza, Washington, DC 20202–7240. Telephone: (202) 245–6218 or by e-mail: *John.Lemaster@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: On January 14, 2008, the Secretary published in the **Federal Register** final regulations for 34 CFR part 462, Measuring Educational Gain in the National Reporting System for Adult Education (NRS regulations) (73 FR 2306). The NRS regulations established the process the Secretary uses to determine the suitability of tests for use in the NRS.

On April 16, 2008, the Secretary published a notice in the **Federal Register** providing test publishers an opportunity to submit tests for review under the NRS regulations. (73 FR 20616).

On February 2, 2010, the Secretary published a notice in the **Federal Register** listing the tests and test forms he determined were suitable for use in the NRS (75 FR 5303).

Tests and test forms were determined to be suitable for a period of either seven or three years. A seven-year approval requires no additional action on the part of the publisher, unless the information the publisher submitted as a basis for the Secretary's review was inaccurate or unless the test is substantially revised. A three-year approval is issued with a set of conditions that must be met by the completion of the three-year time period. If these conditions are met, the test is approved for continued use in the NRS.

The Secretary publishes here an update to the list published on February 2, 2010, that includes delivery formats. This update clarifies that some, but not all, tests using computer-adaptive or computer-based delivery formats are suitable for use in the NRS. The staffs of adult education programs are cautioned to ensure that only approved computer delivery formats are used. If a particular computer delivery format is not explicitly specified for a test in this notice, it is not approved for use in the NRS.

Tests Determined To Be Suitable for Use in the NRS for Seven Years

(a) The following test is determined to be suitable for use at all Adult Basic Education (ABE) and Adult Secondary Education (ASE) levels and at all English-as-a-Second-Language (ESL) levels of the NRS for a period of seven years from February 2, 2010 (75 FR 5303):

Comprehensive Adult Student Assessment Systems (CASAS) Reading Assessments (Life and Work, Life Skills, Reading for Citizenship, Reading for Language Arts—Secondary Level). We are clarifying that the computer-based test (CBT) is an approved delivery format in addition to forms 27, 28, 81, 82, 81X, 82X, 83, 84, 85, 86, 185, 186, 187, 188, 310, 311, 513, 514, 951, 952, 951X, and 952X.

Publisher: CASAS, 5151 Murphy Canyon Road, Suite 220, San Diego, CA 92123–4339. Telephone: (800) 255–1036. Internet: *http://www.casas.org.*

(b) The following tests are determined to be suitable for use at all ABE and ASE levels of the NRS for a period of seven years from February 2, 2010 (75 FR 5303):

(1) *Comprehensive Adult Student Assessment Systems (CASAS) Life Skills Math Assessments—Application of Mathematics (Secondary Level).* We are clarifying that the computer-based test (CBT) is an approved delivery format in addition to forms 31, 32, 33, 34, 35, 36, 37, 38, 505, and 506. Publisher: CASAS, 5151 Murphy Canyon Road, Suite 220, San Diego, CA 92123–4339. Telephone: (800) 255–1036. Internet: *http://www.casas.org.*

(2) *Massachusetts Adult Proficiency Test (MAPT) for Math.* We are clarifying that the computer-adaptive test (CAT) is an approved delivery format. Publisher: Massachusetts Department of Elementary and Secondary Education and University of Massachusetts Amherst, School of Education, 156 Hills South, University of Massachusetts, Amherst, MA 01003. Telephone: (413) 545–0564. Internet: *http://www.sabes.org/assessment/mapt.htm.*

(3) *Massachusetts Adult Proficiency Test (MAPT) for Reading.* We are clarifying that the computer-adaptive test (CAT) is an approved delivery format. Publisher: Massachusetts Department of Elementary and Secondary Education and University of Massachusetts Amherst, School of Education, 156 Hills South, University of Massachusetts, Amherst, MA 01003. Telephone: (413) 545–0564. Internet: *http://www.sabes.org/assessment/mapt.htm.*

(4) *Tests of Adult Basic Education (TABE 9/10).* We are clarifying that the computer-based test (CBT) is an approved delivery format in addition to forms 9 and 10. Publisher: CTB/McGraw Hill, 20 Ryan Ranch Road, Monterey, CA 93940. Telephone: (800) 538–9547. Internet: *http://www.ctb.com.*

(5) *Tests of Adult Basic Education Survey (TABE Survey).* We are clarifying that the computer-based test (CBT) is an approved delivery format in addition to forms 9 and 10. Publisher: CTB/McGraw Hill, 20 Ryan Ranch Road, Monterey, CA 93940. Telephone: (800) 538–9547. Internet: *http://www.ctb.com.*

(c) The following tests are determined to be suitable for use at all ESL levels of the NRS for a period of seven years from February 2, 2010 (75 FR 5303):

(1) *BEST (Basic English Skills Test) Literacy.* Forms B, C, and D. Publisher: Center for Applied Linguistics, 4646 40th Street, NW., Washington, DC

20016–1859. Telephone: (202) 362–0700. Internet: *http://www.cal.org.*

(2) *Tests of Adult Basic Education Complete Language Assessment System—English (TABE/CLAS–E).* Forms A and B. Publisher: CTB/McGraw Hill, 20 Ryan Ranch Road, Monterey, CA 93940. Telephone: (800) 538–9547. Internet: *http://www.ctb.com.*

Tests Determined To Be Suitable for Use in the NRS for Three Years

(a) The following tests are determined to be suitable for use at all ABE and ASE levels and at all ESL levels of the NRS for a period of three years from February 2, 2010 (75 FR 5303):

(1) *Comprehensive Adult Student Assessment Systems (CASAS) Employability Competency System (ECS) Reading Assessments—Workforce Learning Systems (WLS).* We are clarifying that the computer-based test (CBT) is an approved delivery format in addition to forms 11, 12, 13, 14, 15, 16, 17, 18, 114, 116, 213, 214, 215, and 216. Publisher: CASAS, 5151 Murphy Canyon Road, Suite 220, San Diego, CA 92123–4339. Telephone: (800) 255–1036. Internet: *http://www.casas.org.*

(2) *Comprehensive Adult Student Assessment Systems (CASAS) Functional Writing Assessments.* Forms 460, 461, 462, 463, 464, 465, and 466. Publisher: CASAS, 5151 Murphy Canyon Road, Suite 220, San Diego, CA 92123–4339. Telephone: (800) 255–1036. Internet: *http://www.casas.org.*

(b) The following tests are determined to be suitable for use at all ABE and ASE levels of the NRS for a period of three years from February 2, 2010 (75 FR 5303):

(1) *Comprehensive Adult Student Assessment Systems (CASAS) Employability Competency System (ECS) Math Assessments—Workforce Learning Systems (WLS).* We are clarifying that the computer-based test (CBT) is an approved delivery format in addition to forms 11, 12, 13, 14, 15, 16, 17, 18, 213, 214, 215, and 216. Publisher: CASAS, 5151 Murphy Canyon Road, Suite 220, San Diego, CA 92123–4339. Telephone: (800) 255–1036. Internet: *http://www.casas.org.*

(2) *General Assessment of Instructional Needs (GAIN)—Test of English Skills.* We are clarifying that the computer-based test (CBT) is an approved delivery format in addition to forms A and B. Publisher: Wonderlic Inc., 1795 N. Butterfield Road, Suite 200, Libertyville, IL 60048–1212. Telephone: (888) 397–8519. Internet: *http://www.wonderlic.com.*

(3) *General Assessment of Instructional Needs (GAIN)—Test of Math Skills.* We are clarifying that the computer-based test (CBT) is an approved delivery format in addition to forms A and B. Publisher: Wonderlic Inc., 1795 N. Butterfield Road, Suite 200, Libertyville, IL 60048–1212. Telephone: (888) 397–8519. Internet: *http://www.wonderlic.com.*

(c) The following tests are determined to be suitable for use at the High Intermediate, Low Adult Secondary, and High Adult Secondary levels of the NRS for a period of three years from February 2, 2010 (75 FR 5303):

(1) *WorkKeys: Applied Mathematics.* Forms 210 and 220. Publisher: ACT, 500 ACT Drive, P.O. Box 168, Iowa City, Iowa 52243–0168. Telephone: (800) 967–5539. Internet: *http://www.act.org.*

(2) *WorkKeys: Reading for Information.* Forms 110 and 120. Publisher: ACT, 500 ACT Drive, P.O. Box 168, Iowa City, Iowa 52243–0168. Telephone: (800) 967–5539. Internet: *http://www.act.org.*

(d) The following tests are determined to be suitable for use at all ESL levels of the NRS for a period of three years from February 2, 2010 (75 FR 5303):

(1) *Basic English Skills Test (BEST) Plus.* We are clarifying that the computer-adaptive test (CAT) is an approved delivery format in addition to forms A, B, and C. Publisher: Center for Applied Linguistics, 4646 40th Street, NW., Washington, DC 20016–1859. Telephone: (202) 362–0700. Internet: *http://www.cal.org.*

(2) *Comprehensive Adult Student Assessment Systems (CASAS) Employability Competency System (ECS) Listening Assessments—Life Skills (LS).* We are clarifying that the computer-based test (CBT) is an approved delivery format in addition to forms 51, 52, 53, 54, 55, 56, 63, 64, 65, and 66. Publisher: CASAS, 5151 Murphy Canyon Road, Suite 220, San Diego, CA 92123–4339. Telephone: (800) 255–1036. Internet: *http://www.casas.org.*

Revocation of Tests

The Secretary's determination regarding the suitability of a test may be revoked under certain circumstances (see 34 CFR 462.12(e)). If the Secretary revokes the determination regarding the suitability of a test, the Secretary publishes in the **Federal Register** and posts on the Internet at *http://www.nrsweb.org* a notice of that revocation along with the date by which States and local eligible providers must stop using the revoked test.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) by contacting the contact person listed under **FOR FURTHER INFORMATION CONTACT** in this notice.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *http://www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *http://www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Program Authority: 20 U.S.C. 9212.

Dated: September 7, 2011.

Johan Uvin,

Deputy Assistant Secretary for Policy and Strategic Initiatives.

[FR Doc. 2011–23263 Filed 9–9–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12965–002]

Symbiotics, LLC; Notice of Application Accepted for Filing, Soliciting Motions to Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Preliminary Terms and Conditions, and Preliminary Fishway Prescriptions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Original Major License.

b. *Project No.:* 12965–002.

c. *Date filed:* March 25, 2011.

d. *Applicant:* Symbiotics, LLC.

e. *Name of Project:* Wickiup Dam Hydroelectric Project.

f. *Location:* The proposed project would be constructed at the existing U.S. Bureau of Reclamation (Reclamation) Wickiup dam located on the Deschutes River near LaPine in Deschutes County, Oregon. The project would occupy 1.02 acres of federal

lands jointly managed by the U.S. Forest Service and Reclamation.

g. *Filed Pursuant to:* Federal Power Act 16 USC 791 (a)—825(r).

h. *Applicant Contact:* Brent L. Smith, Chief Operating Officer, Symbiotics, LLC, 371 Upper Terrace, Suite 2, Bend, OR 97702; telephone (541) 330–8779.

i. *FERC Contact:* Matt Cutlip, (503) 552–2762 or *matt.cutlip@ferc.gov.*

j. *Deadline for filing motions to intervene and protests, comments, recommendations, preliminary terms and conditions, and preliminary prescriptions:* 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

Motions to intervene, protests, comments, recommendations, preliminary terms and conditions, and preliminary fishway prescriptions may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted for filing and is now ready for environmental analysis.

l. *Project Description:* The proposed project would consist of the following new facilities: (1) Two 8-foot-diameter, 75-foot-long steel penstocks connecting to the existing twin outlet conduits above the existing regulating tube valves combining into a 10-foot-diameter, 68-foot-long penstock delivering flow to the powerhouse; (2) two 8-foot-diameter isolation valves constructed within the 75-foot-long penstocks; (3) a 50-foot by 50-foot concrete powerhouse located on the northwest side of the existing concrete stilling basin with one generating unit with a total installed capacity of 7.15 megawatts; (4) a fish killing rotor system downstream of the powerhouse draft tube to prevent non-native fish species from surviving Kaplan turbine passage into the Deschutes River downstream of the project; (5) a tailrace picket barrier downstream of the fish killing rotor system to protect upstream migrating fish; (6) a 135-foot-long, 24.9-kilovolt buried transmission line connecting to an existing power line; and (7) appurtenant facilities.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must (1) bear in all capital letters the title ''PROTEST'', ''MOTION TO INTERVENE'', ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''PRELIMINARY TERMS AND CONDITIONS,'' or ''PRELIMINARY FISHWAY PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

o. Procedural Schedule: The application will be processed according to the following revised Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target Date
Filing of recommendations, preliminary terms and conditions, and preliminary fishway prescriptions.	November 2011
Commission issues Draft EA	May 2012
Comments on Draft EA	June 2012
Filing of modified terms and conditions.	July 2012
Commission issues Final EA	October 2012

p. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of this notice.

q. A license applicant must file no later than 60 days following the date of issuance of the notice of acceptance and ready for environmental analysis provided for in 5.22: (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

r. Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified intervention deadline date, 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 intervention deadline date. Applications for preliminary permits will not be accepted in response to this notice.

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 development application. A

notice of intent must be served on the applicant(s) named in this public notice.

Dated: September 6, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–23207 Filed 9–9–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–539–000]

Notice of Application; ANR Pipeline Company

Take notice that on August 23, 2011, ANR Pipeline Company (ANR), 717 Texas Street, Houston, Texas 77002–2761, filed in the above referenced docket, an application under section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Federal Energy Regulatory Commission's (Commission) regulations, requesting authorization to construct, own, operate, and maintain its Marshfield Reduction Project (MRP), comprised of a new 6,300 horsepower compressor station in Portage County, Wisconsin, all as more fully set forth in the application. The application 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.

Located in Portage County, Wisconsin, north of Stevens Point, Wisconsin, the MRP will eliminate the need for certain shippers to maintain 101,135 dekatherms per day (Dth/day) of primary receipt point capacity at ANR's Marshfield receipt point while meeting the aggregate of the firm service commitments of ANR's shippers in Wisconsin. ANR states that the MRP will increase the reliability and flexibility of service for existing shippers and is supported and consistent with the Commission approved 2011 Marshfield Settlement in *Wisconsin Electric Power Company, et al.* v. *ANR Pipeline Company,* 136 FERC ¶ 61,080 (2011).

Any questions regarding the application may be directed to Richard Parke, Manager, Certificates, ANR Pipeline Company, 717 Texas Street, Suite 2400, Houston, Texas, ph. (832) 320–5516, e-mail: *richard_parke@transcanada.com.*

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify Federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all Federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 7 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 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 27, 2011.

Dated: September 6, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–23205 Filed 9–9–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–2970–001.

Applicants: Peetz Logan Interconnect, LLC.

Description: Peetz Logan Interconnect, LLC submits tariff filing per 35: Peetz Logan Interconnect, LLC OATT Compliance Filing to be effective 11/1/2011.

Filed Date: 09/02/2011.

Accession Number: 20110902–5035.

Comment Date: 5 p.m. Eastern Time on Friday, September 23, 2011.

Docket Numbers: ER11–4423–000.

Applicants: Lockport Energy Associates, L.P.

Description: Lockport Energy Associates, L.P. submits tariff filing per 35.12: Lockport Energy Baseline Filing to be effective 9/2/2011.

Filed Date: 09/02/2011.

Accession Number: 20110902–5040.

Comment Date: 5 p.m. Eastern Time on Friday, September 23, 2011.

Docket Numbers: ER11–4424–000.

Applicants: PJM Interconnection, LLC.

Description: PJM Interconnection, LLC submits tariff filing per 35.13(a)(2)(iii): Original Service Agreement No. 3043 regarding the PPL Renewable ISA to be effective 8/3/2011.

Filed Date: 09/02/2011.

Accession Number: 20110902–5047.

Comment Date: 5 p.m. Eastern Time on Friday, September 23, 2011.

Docket Numbers: ER11–4425–000.

Applicants: PJM Interconnection, LLC.

Description: PJM Interconnection, LLC submits tariff filing per 35: Notice of Cancellation of Service Agreement No. 1964 in Docket No. ER08–1267–001 to be effective N/A.

Filed Date: 09/02/2011.

Accession Number: 20110902–5070.

Comment Date: 5 p.m. Eastern Time on Friday, September 23, 2011.

Docket Numbers: ER11–4426–000.

Applicants: Gulf States Energy, Inc.

Description: Gulf States Energy, Inc. Cancellation Notice.

Filed Date: 09/02/2011.

Accession Number: 20110902–5077.

Comment Date: 5 p.m. Eastern Time on Friday, September 23, 2011.

Docket Numbers: ER11–4427–000.

Applicants: Gulf States Energy Investments L.P.

Description: Gulf States Energy Investments L.P. Cancellation Notice.

Filed Date: 09/02/2011.

Accession Number: 20110902–5079.

Comment Date: 5 p.m. Eastern Time on Friday, September 23, 2011.

Docket Numbers: ER11–4428–000.

Applicants: Minco Wind II, LLC.

Description: Minco Wind II, LLC submits tariff filing per 35.12: Minco Wind II, LLC Market-Based Rate Tariff to be effective 9/30/2011.

Filed Date: 09/02/2011.

Accession Number: 20110902–5087.

Comment Date: 5 p.m. Eastern Time on Friday, September 23, 2011.

Docket Numbers: ER11–4429–000.

Applicants: Gulf States Wholesale Equity Partners, LP.

Description: Gulf States Wholesale Equity Partners, LP Cancellation Notice under ER11–4429.

Filed Date: 09/02/2011.

Accession Number: 20110902–5088.

Comment Date: 5 p.m. Eastern Time on Friday, September 23, 2011.

Docket Numbers: ER11–4430–000.

Applicants: Gulf States Wholesale Equity Partners II.

Description: Gulf States Wholesale Equity Partners II, LP Cancellation Notice.

Filed Date: 09/02/2011.

Accession Number: 20110902–5089.

Comment Date: 5 p.m. Eastern Time on Friday, September 23, 2011.

Docket Numbers: ER11–4431–000.

Applicants: Lucky Lady Oil Company.

Description: Lucky Lady Oil Company Cancellation Notice.

Filed Date: 09/02/2011.

Accession Number: 20110902–5091.

Comment Date: 5 p.m. Eastern Time on Friday, September 23, 2011.

Docket Numbers: ER11–4432–000.

Applicants: PJM Interconnection, LLC.

Description: PJM Interconnection, LLC submits tariff filing per 35: Rate Schedule 41 Baseline-Operating Protocols among PJM, NYISO, ConEd and PSE&G to be effective 9/17/2010.

Filed Date: 09/02/2011.

Accession Number: 20110902–5090.

Comment Date: 5 p.m. Eastern Time on Friday, September 23, 2011.

Docket Numbers: ER11–4433–000.

Applicants: Helios Energy LLC.

Description: Helios Energy LLC Cancellation Notice.

Filed Date: 09/02/2011.

Accession Number: 20110902–5093.

Comment Date: 5 p.m. Eastern Time on Friday, September 23, 2011.

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: September 2, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–23230 Filed 9–9–11; 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: ER11–2592–002.

Applicants: Pacific Gas and Electric Company.

Description: Joint Progress Report of PG&E and SCE and Request for Extension of Temporary Waiver of Certain CAISO Tariff Provisions. Replaces Accession No. 201108315214.

Filed Date: 09/01/2011.

Accession Number: 20110901–5129.

Comment Date: 5 p.m. Eastern Time on Thursday, September 22, 2011.

Docket Numbers: ER11–3697–001.

Applicants: Southern California Edison Company.

Description: Southern California Edison Company submits tariff filing per 35: Compliance Filing—Transmission Owner Tariff Rate Filing (TO6) to be effective 8/1/2011.

Filed Date: 09/01/2011.

Accession Number: 20110901–5111.

Comment Date: 5 p.m. Eastern Time on Thursday, September 22, 2011.

Docket Numbers: ER11–4419–000.

Applicants: ISO New England Inc.

Description: ISO New England Inc. Resource Termination Filing—United Illuminating.

Filed Date: 09/01/2011.

Accession Number: 20110901–5095.

Comment Date: 5 p.m. Eastern Time on Thursday, September 22, 2011.

Docket Numbers: ER11–4420–000.

Applicants: ISO New England Inc.

Description: ISO New England Inc. Resource Termination Filing—EnerNOC.

Filed Date: 09/01/2011.

Accession Number: 20110901–5096.

Comment Date: 5 p.m. Eastern Time on Thursday, September 22, 2011.

Docket Numbers: ER11–4421–000.

Applicants: South Carolina Electric & Gas Company.

Description: South Carolina Electric & Gas Company submits tariff filing per 35.13(a)(2)(iii): Columbia Hydro Filing to be effective 8/31/2011.

Filed Date: 09/01/2011.

Accession Number: 20110901–5145.

Comment Date: 5 p.m. Eastern Time on Thursday, September 22, 2011.

Docket Numbers: ER11–4421–000.

Applicants: South Carolina Electric & Gas Company.

Description: Supplemental Information/Request of South Carolina Electric & Gas Company.

Filed Date: 09/01/2011.

Accession Number: 20110901–5221.

Comment Date: 5 p.m. Eastern Time on Thursday, September 22, 2011.

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: September 2, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–23229 Filed 9–9–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER11–4428–000]

Supplemental Notice That Initial Market-Based Rate Filing Includes Request For Blanket Section 204 Authorization; Minco Wind II, LLC

This is a supplemental notice in the above-referenced proceeding of Minco Wind II, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is September 26, 2011.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 6, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–23206 Filed 9–9–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER11–4440–000]

KAP Analytics, LLC ; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of KAP Analytics, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is September 26, 2011.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail

FERCOnlineSupport@ferc.gov or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 6, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–23204 Filed 9–9–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR11–127–000]

CenterPoint Energy—Illinois Gas Transmission Company; Notice of Petition for Rate Approval

Take notice that on September 1, 2011, pursuant to section 284.224 of the Commission's regulations, 18 CFR 284.224, CenterPoint Energy-Illinois Gas Transmission Company (''IGTC''), an Illinois Hinshaw pipeline company, filed for approval of proposed rates and charges applicable to the firm and interruptible transportation service provided under its section 311 authorization.

Any person desiring to participate in this rate filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on Monday, September 12, 2011.

Dated: September 1, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–23183 Filed 9–9–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR11–128–000]

Pacific Gas and Electric Company; Notice of Rate Election

Take notice that on September 2, 2011, Pacific Gas and Electric Company (PG&E) filed a new Rate Election and an amended Statement of Operating Conditions pursuant to section 284.123 of the Commission's regulations. PG&E proposes to utilize rates established by the Public Utilities Commission of the State of California for interruptible parking and lending services, as more fully detailed in the petition.

Any person desiring to participate in this rate filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 14, 2011.

Dated: September 6, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–23208 Filed 9–9–11; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9462–9]

Proposed Settlement Agreement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Settlement Agreement; Request for Public Comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (''Act''), 42 U.S.C. 7413(g), notice is hereby given of a proposed settlement agreement to address a lawsuit filed by Allied Energy Company, Gladieux Trading and Marketing, Insight Equity Acquisition Partners, LP, Liquidtitan, LLC and Seaport Refining and Environmental, LLC (''Petitioners''), in the United States Court of Appeals for the District of Columbia Circuit: *Allied Energy Company, et al* v. *EPA,* No. 10–1146 (D.C. Cir.). Petitioners filed a petition for review respecting one issue in an EPA rule that, among other things, beginning in June, 2014, forbade the production of diesel fuel that contains up to 500 parts per million (ppm) sulfur for use in older technology locomotive and marine engines. Under the terms of the proposed settlement agreement, EPA anticipates that, by December 31, 2011, it will sign a notice of proposed rulemaking that includes a proposal to allow the continued production of diesel fuel that contains up to 500 parts per million (ppm) sulfur, produced from transmix, for use in older technology locomotive and marine engines outside

of the Northeast Mid-Atlantic area during and after 2014.

DATES: Written comments on the proposed settlement agreement must be received by October 12, 2011.

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OGC–2011–0756, online at *http://www.regulations.gov* (EPA's preferred method); by e-mail to *oei.docket@epa.gov;* by mail to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Michael Horowitz, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone: (202) 564–5583; fax number (202) 564–5603; e-mail address: *horowitz.michael@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information about the Proposed Settlement Agreement

This proposed settlement agreement would potentially resolve a petition for judicial review filed by Petitioners for review of a rule promulgating standards for the control of emissions from new ocean-going marine vessels (''Control of Emissions from New Marine Compression-Ignition Engines At or Above 30 Liters Per Cylinder,'' 75 FR 22896, April 30, 2010.) One of the actions taken in that rule forbade the production of diesel fuel that contains up to 500 ppm sulfur for use in older technology locomotive and marine engines, beginning June 1, 2014, because a new stream of diesel, that contained up to 1000 ppm sulfur, for use in ocean-going vessels, was being introduced at that time.

Petitioners filed petitions for review and administrative reconsideration regarding this action. Discussions with Petitioners indicates that the stream of diesel fuel available to ocean-going vessels is subject to different distribution than locomotive fuel and that it is not therefore a substitute for the stream of 500 ppm locomotive and marine fuel that was eliminated.

Under the terms of the proposed settlement agreement, EPA states that it anticipates that, by December 31, 2011, it will sign a notice of proposed rulemaking that includes a proposal to revise these provisions to allow the continued production of diesel fuel that contains up to 500 ppm sulfur from transmix for use in older technology locomotive and marine engines during and after 2014. EPA would propose to limit the use of such 500 ppm fuel to outside of the Northeast Mid-Atlantic area and would propose provisions to ensure it is segregated from the point of production to the end-user. EPA states that it further anticipates taking final action, which may include signature of a final rule by the Administrator of EPA, on the proposal by September 30, 2012. Under the proposed settlement agreement, if EPA fails to sign the proposal by March 15, 2012, or to take final action on the proposal by December 15, 2012, Petitioners may move the Court to lift the order holding the matter in abeyance and issue a briefing schedule. EPA will not oppose such a motion in such circumstances. In addition, EPA will not oppose any motion by Petitioners to expedite proceedings. Petitioners shall have no further remedy under the agreement.

Under the proposed settlement agreement, if the relevant provisions of the final rule are in substantial conformance with the revisions in the proposed agreement, then Petitioners agree to the dismissal of the petition for review.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed settlement agreement from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed settlement agreement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines, based on any comment submitted, that consent to this settlement agreement should be withdrawn, the terms of the agreement will be affirmed.

II. Additional Information About Commenting on the Proposed Settlement Agreement

A. How can I get a copy of the settlement agreement?

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC–2011–0756) contains a copy of the proposed settlement agreement. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *http://www.regulations.gov.* You may use the *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select ''search''.

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at *http://www.regulations.gov* without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and to whom do I submit comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any

disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. 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.

Use of the *http://www.regulations.gov* Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through *http://www.regulations.gov,* your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: September 6, 2011.

Kevin McLean,

Acting Associate General Counsel.

[FR Doc. 2011–23273 Filed 9–9–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

Notice of Agreement Filed

The Commission hereby gives notice of the filing of the following agreement under the Shipping Act of 1984. Interested parties may submit comments on the agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register.** A copy of the agreement is available through the Commission's Web site (*http://www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 012100–002.

Title: CMA CGM/CSAV Gulf Bridge Express Vessel Sharing Agreement.

Parties: CMA CGM, S.A. and Compania Sud Americana de Vapores S.A.

Filing Party: Draughn Arbona, Esq., Associate Counsel & Environmental Officer, CMA CGM (America) LLC, 5701 Lake Wright Drive, Norfolk, VA 23502.

Synopsis: The amendment allows the parties to increase the number and size of vessels operated under the agreement and revises the slot allocations accordingly. The parties request expedited review.

By Order of the Federal Maritime Commission.

Dated: September 7, 2011.

Karen V. Gregory,

Secretary.

[FR Doc. 2011–23265 Filed 9–9–11; 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 October 7, 2011.

A. Federal Reserve Bank of San Francisco (Kenneth Binning, Vice President, Applications and Enforcement), 101 Market Street, San Francisco, California 94105–1579:

1. *Nara Bancorp, Inc.,* Los Angeles, California; to merge with Center Financial Corporation, and thereby indirectly acquire Center Bank, both in Los Angeles, California.

Board of Governors of the Federal Reserve System, September 7, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–23210 Filed 9–9–11; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The information collection requirements described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act (PRA). The Federal Trade Commission (FTC) is seeking public comments on its proposal to extend through December 31, 2014, the current OMB clearance for items (a)–(c) below setting out the information collection requirements pertaining to the Commission's administrative activities. That clearance expires on December 31, 2011, and consists of: (a) Applications to the Commission, including applications and notices contained in the Commission's Rules of Practice (primarily Parts I, II, and IV); (b) the FTC's consumer complaint systems; (c) the FTC's program evaluation activities and (d) the FTC's Applicant Background Form. The Commission is not seeking clearance renewal relating to item (d), the Applicant Background Form.

DATES: Comments must be filed by November 14, 2011.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Administrative Activities: FTC File No. P911409'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/adminactivitiespra*, by following the instructions on the Web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex J), 600 Pennsylvania Avenue, NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be addressed to Nicholas

Mastrocinque (Nick M) and Ami Dziekan (Ami D), Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, H–228, 600 Pennsylvania Avenue, NW., Washington, DC 20580, Nick M: (202) 326–3188 and Ami D: (202) 326–2648.

SUPPLEMENTARY INFORMATION:

Proposed Information Collection Activities

Under the PRA, 44 U.S.C. 3501–3521, Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. ''Collection of information'' means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3), 5 CFR 1320.3(c). Because the number of entities affected by the Commission's requests will exceed ten, the Commission plans to seek OMB clearance under the PRA. As required by § 3506(c)(2)(A) of the PRA, the Commission is providing this opportunity for public comment before requesting that OMB extend the existing paperwork clearance for the information collection requirements pertaining to the Commission's administrative activities (OMB Control Number 3084–0047).

The Commission's Administrative Activities clearance consists of: (a) Applications to the Commission, including applications and notices contained in the Commission's Rules of Practice (primarily Parts I, II, and IV); (b) the FTC's consumer complaint systems; (c) FTC program evaluation activities; and (d) the FTC's Applicant Background Form. The FTC is not seeking clearance renewal relating to the Applicant Background Form. After the current clearance expires on December 31, 2011, the FTC plans to use a different form that the Equal Employment Opportunity Commission (EEOC) is separately seeking PRA approval for from the OMB on behalf of several agencies including the FTC.

Request for Comments

The FTC invites comments on: (1) 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) 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 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. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before November 14, 2011.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before November 14, 2011. Write ''Administrative Activities: FTC File No. P911409'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment doesn't include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment doesn't include any sensitive health information, like medical records or other individually identifiable health information. In addition, don't include any ''[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential,'' as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, don't include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[1] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/adminactivitiespra*, by following the instructions on the Web-based form. If this Notice appears at *http://www.regulations.gov,* you also may file a comment through that Web site.

If you file your comment on paper, write ''Administrative Activities: FTC File No. P911409'' on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex J), 600 Pennsylvania Avenue, NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before November 14, 2011. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Estimated annual hours burden: 187,114 hours (150 + 186,884 + 65 + 15).

(a) *Applications to the Commission, including applications and notices contained in the Commission's Rules of Practice:* 150 hours.

Most applications to the Commission generally fall within the ''law enforcement'' exception to the PRA and are mostly found in Part III (Rules of Practice for Adjudicative Proceedings) of the Commission's Rules of Practice. See 16 CFR 3.1–3.83. Nonetheless, there are various applications and notices to the Commission contained in other rules (generally in Parts I, II, and IV of the Commission's Rule of Practice). For example, staff estimates that the FTC annually receives approximately 10 requests for clearance submitted by former FTC employees in order to participate in certain matters and 5 screening affidavits submitted by partners or legal or business associates

[1] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. See FTC Rule 4.9(c), 16 CFR 4.9(c).

of former employees pursuant to Rule 4.1, 16 CFR 4.1. There are also procedures set out in Rule 4.11(e) for agency review of outside requests for Commission employee testimony, through compulsory process or otherwise, in cases or matters to which the agency is not a party. Rule 4.11(e) requires that a person who seeks such testimony submit a statement in support of the request. Staff estimates that agency personnel receive approximately 1 request per month or 12 per year. Other types of applications and notices are either infrequent or difficult to quantify. Nonetheless, in order to cover any potential ''collection of information'' for which separate clearance has not been sought, staff conservatively projects the FTC will receive 75 applications or notices per year. Staff estimates each respondent will incur, on average, approximately 2 hours of burden to submit an application or notice, resulting in a cumulative annual total of 150 burden hours (75 applications or notices x 2 burden hours).

Annual cost burden:

Using the burden hours estimated above, staff estimates that the total annual labor cost, based on a conservative estimated average of $460/hour for executives' and attorneys' wages, would be approximately $46,000 (100 hours × $460). There are no capital, start-up, operation, maintenance, or other similar costs to respondents.

(b) *Complaint Systems:* 186,884 annual hours.

Consumer Response Center

Consumers can submit complaints about fraud and other practices to the FTC's Consumer Response Center by telephone or through the FTC's Web site. Telephone complaints and inquiries to the FTC are answered both by FTC staff and contractors. These telephone counselors ask for the same information that consumers would enter on the applicable forms available on the FTC's Web site. For telephone inquiries and complaints, the FTC staff estimates that it takes 6.1 minutes per call to gather information, and an estimated 5.0 minutes for consumers to enter a complaint online. The burden estimate conservatively assumes that all of the phone call is devoted to collecting information from consumers, although frequently telephone counselors devote a small portion of the call to providing requested information to consumers.

Complaints Concerning the National Do Not Call Registry

To receive complaints from consumers of possible violations of the rules governing the National Do Not Call Registry, 16 CFR 310.4(b), the FTC maintains both an online form and a toll free hotline with automated voice response system. Consumer complainants must provide the phone number that was called, whether the call was prerecorded, and the date and time of the call. They may also provide either the name or telephone number of the company about which they are complaining, their name and address so they can be contacted for additional information, as well as for a brief comment regarding their complaint. In addition, complainants have the option of answering three yes-or-no questions to help law enforcement investigating complaints. The FTC staff estimates that the time required of consumer complainants is 3.0 minutes for phone complaints and 2.5 minutes for online complaints.

Identity Theft

To handle complaints about identity theft, the FTC must obtain more detailed information than is required of other complainants. Identity theft complaints generally require more information (such as a description of actions complainants have taken with credit bureaus, companies, and law enforcement, and the identification of multiple suspects) than general consumer complaints and fraud complaints. In addition, the FTC has expanded the information required on its online complaint form (such as collecting additional information about the fraudulent activity at affected companies and creating an attachment summarizing all of the fraudulent account activity as well as all fraudulent information on the consumer's credit report). Consumers can print out a copy of the revised form and use it to assist them in completing a police report, if appropriate, and, as also may be necessary, an identity theft report. See 16 CFR 603.3 (defining the term ''identity theft report''). FTC staff estimates that the revised online form takes consumers up to 15 minutes to complete.

The FTC also made some revisions in the information it collects from consumers who call the Consumer Response Center (''CRC'') with identity theft complaints. Staff estimates that it will take 6.2 minutes per call to obtain identity theft-related information. A substantial portion of identity theft-related calls typically consists of counseling consumers on other steps they should consider taking to obtain relief (which may include directing consumers to a revised online complaint form). The time needed for counseling is excluded from the estimate.

Surveys

Consumer customer satisfaction surveys give the agency information about the overall effectiveness and timeliness of the CRC. Subsets of consumers contacted throughout the year are questioned about specific aspects of CRC customer service. Each consumer surveyed is asked several questions chosen from a list prepared by staff. The questions are designed to elicit information from consumers about the overall effectiveness of the call center and online complaint intake. Half of the questions ask consumers to rate CRC performance on a scale or require a yes-or-no response. The second half of the survey asks more open-ended questions seeking a short written or verbal answer. In addition, the CRC may survey a sample of consumers immediately after they file their complaints regarding the services they received. Staff estimates that each respondent will require 4.3 minutes to answer the questions during the phone survey and about 2.7 minutes for the online survey (approximately 20–30 seconds per question).

What follows are staff's estimates of burden for these various collections of information, including the surveys. The figures for the online forms and consumer hotlines are *an average of annualized volume* for the respective programs including both current and projected volumes over the 3-year clearance period sought and the number of respondents for each activity has been rounded to the nearest thousand.

Activity	Number of Respondents	Number of Minutes/activity	Total hours
Misc. and fraud-related consumer complaints (phone)	262,000	6.1	26,724
Misc. and fraud-related consumer complaints (online)	281,000	5	23,323
Do-Not-Call related consumer complaints (phone)	355,000	3.0	17,750
Do-Not-Call related consumer complaints (online)	1,937,000	2.5	81,354

Activity	Number of Respondents	Number of Minutes/ activity	Total hours
Identity theft complaints (phone)	212,000	6.2	21,836
Identity theft complaints (online)	57,000	15	14,250
Customer Satisfaction Questionnaire (phone)	6,000	4.3	432
Customer Satisfaction Questionnaire (online)	27,000	2.7	1,215
Totals	3,137,000		186,884

* Annual estimate for each of the three years.
** Number of consumer calls and online submissions are calculated by projecting over the 3-year clearance period sought 5% annual growth.

Annual cost burden:

The cost per respondent should be negligible. Participation is voluntary and will not require any labor expenditures by respondents. There are no capital, start-up, operation, maintenance, or other similar costs to the respondents.

(c) *Program Evaluations:* 80 hours.

Review of Divestiture Orders—65 hours.

The Commission issues, on average, approximately 10–15 orders in merger cases per year that require divestitures. As a result of a 1999 study authorized by the OMB and conducted by the staffs of the Bureau of Competition (''BC'') and the Bureau of Economics, as well as more recent experience, BC monitors these required divestitures by interviewing representatives of the Commission-approved buyers of the divested assets within the first year after the divestiture is completed.

BC staff interviews representatives of the buyers to ask whether all assets required to be divested were, in fact, divested; whether the buyer has used the divested assets to enter the market of concern to the Commission and, if so, the extent to which the buyer is participating in the market; whether the divestiture met the buyer's expectations; and whether the buyer believes the divestiture has been successful. In a few cases, BC staff may also interview monitor trustees, if appropriate. In all these interviews, staff seeks to learn about pricing and other basic facts regarding competition in the markets of concern to the FTC.

Participation by the buyers is voluntary. Each responding company designates the company representative most likely to have the necessary information; typically, a company executive and a lawyer represent the company. Each interview takes less than one hour to complete. BC staff further estimates that it takes each participant no more than one hour to prepare for the interview. Staff conservatively estimates that, for each interview of the responding company, two individuals (a company executive and a lawyer) will devote two hours (one hour preparing and one hour participating) each to responding to questions for a total of four hours. Interviews of monitor trustees typically involve only the monitor trustee and take approximately one hour to complete with no more than one hour to prepare for the interview. Assuming that staff evaluates approximately 15 divestitures per year during the three-year clearance period, the total hours burden for the responding companies will be approximately 60 hours per year (15 divestiture reviews × 4 hours for preparing and participating). Staff may include approximately 2 monitor trustee interviews a year, which would add at most 4 hours (2 interviews × 2 hours for preparing and participating.).

Annual cost burden:

Using the burden hours estimated above, staff estimates that the total annual labor cost, based on a conservative estimated average of $460/hour for executives' and attorneys' wages, would be approximately $30,000 (64 hours × $460). There are no capital, start-up, operation, maintenance, or other similar costs to respondents.

Review of Competition Advocacy Program—15 hours.

The FTC's competition advocacy program draws on the Commission's expertise in competition and consumer protection matters to encourage state and Federal legislators, agencies and regulatory officials, and courts to consider the effects of their decisions on competition and consumer welfare. The Commission and staff send approximately 20 letters to such decision makers annually regarding the likely effects of various bills and regulations.

In the past, the Office of Policy Planning (''OPP'') has evaluated the effectiveness of these advocacy comments by surveying comment recipients and other relevant decision makers. OPP intends to continue this evaluation by sending a paper or electronic questionnaire to relevant parties within a year after sending an advocacy. Most survey questions ask the respondent to agree or disagree with a statement concerning the advocacy comment that they received. Specifically, these questions ask about the consideration, content, influence, and public effect of our comments. The questionnaire also provides respondents with an opportunity to provide additional remarks regarding the comments they received, advocacy comments in general, and the outcome of the matter.

OPP staff estimates that, on average, respondents will take 30 minutes or less to complete the questionnaire. OPP staff estimates that 15 minutes of administrative time will be necessary to prepare a survey for return via mail or e-mail. Accordingly, staff estimates that each respondent will incur 45 minutes of burden, resulting in a cumulative total of 15 burden hours per year (45 minutes of burden per respondent × 20 respondents per year). OPP staff does not intend to conduct any follow-up activities that would involve the respondents' participation.

Annual cost burden:

OPP staff estimates a conservative hourly labor cost of $100 for the time of the survey participants (primarily state representatives and senators) and an hourly labor cost of $17 for administrative support time. Thus, staff estimates a total labor cost of $54.25 for each response (30 minutes of burden at $100 per hour plus 15 minutes of burden at $17 per hour). Assuming 20 respondents will complete the questionnaire on an annual basis, staff estimates the total annual labor costs will be approximately $1,085 ($54.25 per response × 20 respondents). There are no capital, start-up, operation, maintenance, or other similar costs to respondents.

Willard K. Tom,

General Counsel.

[FR Doc. 2011–23250 Filed 9–9–11; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0646]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Tobacco Products, Exemptions From Substantial Equivalence Requirements

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Tobacco Products, Exemptions From Substantial Equivalence Requirements'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Daniel Gittleson, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–5156, *Daniel.Gittleson@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: On June 1, 2011, the Agency submitted a proposed collection of information entitled ''Tobacco Products, Exemptions From Substantial Equivalence Requirements'' to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0684. The approval expires on August 14, 2014. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: September 6, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–23184 Filed 9–9–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0002]

Circulatory System Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Circulatory System Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on October 13, 2011, from 8 a.m. to 6 p.m.

Location: Hilton Washington DC North/Gaithersburg, 620 Perry Pkwy., Gaithersburg, MD.

Contact Person: James Swink, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), and follow the prompts to the desired center or product area. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On October 13, 2011, the committee will discuss, make recommendations, and vote on information related to the premarket approval application (PMA) for the Cook, Inc., ZILVER–PTX Drug-Eluting Stent. The ZILVER–PTX Stent is a self-expanding nitinol stent coated on its outer surface with the cytotoxic drug paclitaxel without any polymer, binder, or excipient at a dose density of 3 micrograms/square millimeter. The ZILVER–PTX Stent is available in diameters ranging from 5 to 10 millimeters (mm) and lengths of 20 to 80 mm and are pre-loaded onto 6 or 7 Fr [1] (diameter of 2 or 2.3 mm) delivery systems. Upon deployment, the ZILVER–PTX Stent expands to establish and maintain patency in the stented region. The proposed indications for use are: treatment of de novo or restenotic symptomatic vascular disease of the above-the-knee femoropopliteal arteries having reference vessel diameter from 4 mm to 9 mm and total lesion lengths per patient of 280 mm.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before October 5, 2011. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. on October 13, 2011. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before September 28, 2011. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by September 30, 2011.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact AnnMarie Williams at 301–796–5966 at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on

[1] ''Fr'' stands for French. It is a term that defines the diameter of a catheter.

public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 6, 2011.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2011–23130 Filed 9–9–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0128]

Prescription Drug User Fee Act; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting to discuss proposed recommendations for the reauthorization of the Prescription Drug User Fee Act (PDUFA), which authorizes FDA to collect user fees and use them for the process for the review of human drug applications for fiscal years (FYs) 2013 through 2017. The legislative authority for PDUFA expires in September 2012. At that time, new legislation will be required for FDA to collect prescription drug user fees for future fiscal years. Following discussions with the regulated industry and periodic consultations with public stakeholders, the Federal Food, Drug, and Cosmetic Act (FD&C Act) directs FDA to publish the recommendations for the reauthorized program in the **Federal Register**, hold a meeting at which the public may present its views on such recommendations, and provide for a period of 30 days for the public to provide written comments on such recommendations. FDA will then consider such public views and comments and revise such recommendations as necessary.

DATES: The public meeting will be held on October 24, 2011, from 9 a.m. to 5 p.m. Registration to attend the meeting must be received by October 10, 2011. See section IV.B of this document for information on how to register for the meeting. Submit either electronic or written comments by October 24, 2011.

ADDRESSES: The meeting will be held at FDA's White Oak Campus, 10903 New Hampshire Ave., Bldg. 31, Rm. 1503, Silver Spring, MD, 20993.

Submit electronic comments to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

Transcripts of the meeting will be available for review at the Division of Dockets Management and on the Internet at *http://www.regulations.gov* approximately 30 days after the public meeting (see section IV.C of this document).

FOR FURTHER INFORMATION CONTACT: Sunanda Bahl, Food and Drug Administration, Center for Drug Evaluation and Research, 10903 New Hampshire Ave., Bldg. 51, Rm. 1168, Silver Spring, MD 20993, 301–796–3584, *fax:* 301–847–8443, *PDUFAReauthorization@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

FDA is announcing a public meeting to discuss proposed recommendations for the reauthorization of the Prescription Drug User Fee Act (PDUFA), which authorizes FDA to collect user fees and use them for the process of the review of human drug applications for FYs 2013 through 2017. Without new legislation, FDA will no longer be able to collect user fees for future fiscal years to fund the human drug review process. Section 736B(d)(4) (21 U.S.C. 379h–2(d)(4)) of the FD&C Act requires that after FDA holds negotiations with regulated industry and periodic consultations with stakeholders, we do the following: (1) Present recommendations to congressional committees, (2) publish recommendations in the **Federal Register**, (3) provide a period of 30 days for the public to provide written comments on the recommendations, (4) hold a meeting at which the public may present its views, and (5) after consideration of public views and comments, revise the recommendations as necessary.

This notice, the 30-day comment period, and the public meeting will satisfy some of these requirements. After the public meeting, we will revise the recommendations as necessary and present our proposed recommendations to the congressional committees.

The purpose of the meeting is to hear the public's views on the proposed recommendations for the reauthorized program (PDUFA V). The following information is provided to help potential meeting participants better understand the history and evolution of the PDUFA program and the current status of the proposed PDUFA V recommendations.

II. The PDUFA Program

A. What is PDUFA? What does it do?

FDA considers the timely review of the safety and effectiveness of new drug applications (NDAs) and biologics license applications (BLAs) to be central to the Agency's mission to protect and promote the public health. Prior to enactment of PDUFA in 1992, FDA's drug review process was not very predictable and was relatively slow compared to other countries. As a result of concerns expressed by both industry and patients, Congress enacted PDUFA, which provided the added funds through user fees that enabled FDA to hire additional reviewers and support staff and upgrade its information technology systems. At the same time, FDA committed to complete reviews in a predictable timeframe. These changes revolutionized the drug approval process in the United States and enabled FDA to speed the application review process for new drugs and biologics without compromising the Agency's high standards for demonstration of safety, efficacy, and quality of new drugs prior to approval.

B. PDUFA Achievements

PDUFA has produced significant benefits for public health, providing patients faster access to over 1,500 new drugs and biologics since enactment in 1992, including treatments for cancer, infectious diseases, neurological and psychiatric disorders, and cardiovascular diseases. The United States now leads the world in the first introduction of new active drug substances.[1] Since PDUFA was enacted, the median approval time of original NDAs and BLAs has been reduced by about 50 percent for standard applications (25.6 months in FY 1992 versus 13 months in FY 2009) and 55 percent for priority applications (19.9 months in FY 1992 versus 9 months in 2009).

Increased resources provided by user fees have also enabled FDA to provide a large body of technical guidance to industry that has clarified the drug development pathway for many diseases. These resources have also enhanced FDA's ability to meet with companies during drug development to

[1] Scrip NCE Review/Scrip Yearbook/Scrip Magazine (1982–2005), PharmaProjects R&D Annual Review (2006–2009).

provide critical advice on specific development programs. In the past 5 years alone, FDA has held over 7,000 meetings within a short time after a sponsor's request. Innovations in drug development are being advanced by many new companies as well as more established ones, and new sponsors may need, and often seek, more regulatory guidance during development. In FY 2009, more than half of the meetings FDA held with companies at the early investigational stage and midway through the clinical trial process were with companies that had no approved product on the U.S. market.

1. Application Review

PDUFA provides FDA with a source of stable, consistent funding that has made possible our efforts to focus on promoting innovative therapies and help bring to market critical products for patients. As part of the PDUFA agreement, FDA agrees to certain review performance goals, such as reviewing and acting on standard applications within 10 months and on priority applications within 6 months. Priority application reviews are for drugs that generally represent advances in public health, often targeted at severe illnesses where few or no therapeutic options exist.

PDUFA funds help support the use of existing mechanisms in place to expedite the approval of certain promising investigational drugs and also to make them available to the very ill as early in the development process as possible, without unduly jeopardizing the patients' safety.

One such program is the accelerated approval process, instituted by FDA in 1992. Accelerated approval allows earlier approval of drugs that treat serious diseases and that fill an unmet medical need. One pathway for accelerated approval is based on a surrogate endpoint—a marker used as substitute measurement to represent a clinically meaningful outcome, such as survival or symptom improvement—that is reasonably likely to predict clinical benefit; the other pathway bases approval on a clinical endpoint other than survival or irreversible morbidity. This program allows drugs to be approved before measures of effectiveness that would normally be required for approval are available. In these cases, approval is given on the condition that postmarketing clinical trials verify the anticipated clinical benefit. Over 100 critical products, including most HIV therapies and many cancer treatments, have been approved under accelerated approval since the program was established.

2. Drug Safety

In parallel with improvements in the drug review process, PDUFA funds have enabled FDA to increase its focus on drug safety, including implementing the Food and Drug Administration Amendments Act of 2007 (FDAAA). In FDAAA, Congress authorized additional user fees totaling $225 million for the 5 years of PDUFA IV reauthorization to enhance drug safety activities. FDAAA also provided FDA with important postmarket safety authorities. Under FDAAA, FDA was given the authority to require postmarketing studies and clinical trials to address important drug safety questions. Between the enactment of FDAAA on September 27, 2007, and June 1, 2011, FDA has required applicants to conduct approximately 375 postmarketing studies or trials to address important drug safety questions that could not be addressed before the drug was approved. FDAAA also gave FDA the authority to require safety labeling changes based on new safety information identified after a drug is on the market. FDA has used its new authority to require applicants to place important new safety information onto their drug labels quickly, in some cases using this authority to require changes to the labeling of all members of a class of drugs. FDAAA also provided FDA with authority to manage risks associated with marketed drug products through required risk evaluation and mitigation strategies (REMS). FDA has been using this new authority judiciously to ensure that drugs that could not otherwise be approved because the risks without a REMS would outweigh the benefits, are available to patients.

FDA has implemented other important drug safety initiatives under FDAAA including, for example, initiating systematic reviews of the safety of marketed drugs 18 months after approval; conducting regular screening of the adverse event reporting system database and posting quarterly reports of new safety information or potential signals of serious risks identified from that screening; and developing an active post-market drug safety surveillance capability under the ''Sentinel'' initiative (*http://www.fda.gov/Safety/FDAsSentinelInitiative/ucm2007250.htm*).

III. Proposed PDUFA V Recommendations

In preparing the proposed recommendations to Congress for PDUFA reauthorization, we have conducted discussions with the regulated industry, and we have consulted with stakeholders as required by the law. We began the PDUFA reauthorization process with a public meeting held on April 12, 2010 (75 FR 12555, March 16, 2010). The meeting included presentations by FDA and a series of panels representing different stakeholder groups, including patient advocates, consumer groups, regulated industry, health professionals, and academic researchers. The stakeholders were asked to respond to the following questions:

1. What is your assessment of the overall performance of the PDUFA IV program thus far?

2. What aspects of PDUFA should be retained, changed, or discontinued to further strengthen and improve the program?

Following the April 2010 public meeting, FDA conducted negotiations with regulated industry and continued monthly consultations with public stakeholders from July 2010 through May 2011. As directed by Congress, FDA posted minutes of these discussions on its Web site at *http://www.fda.gov/ForIndustry/UserFees/PrescriptionDrugUserFee/ucm117890.htm*. The proposed enhancements for PDUFA V address many of the top priorities identified by public stakeholders, the top concerns identified by regulated industry, and the most important challenges identified within FDA. These include a new review program for new molecular entity NDAs and original BLAs, proposals to enhance regulatory science and expedite drug development, enhanced benefit-risk assessment, modernization of FDA's drug safety system, requirements for electronic submissions with standardized application data, a technical correction related to discontinued products, and modifications to the PDUFA inflation adjuster with continued evaluation of the workload adjuster. The full descriptions of these proposed enhancements can be found in the draft PDUFA V commitment letter (draft commitment letter) posted on FDA's Web site at *http://www.fda.gov/ForIndustry/UserFees/PrescriptionDrugUserFee/ucm149212.htm*. Each enhancement is briefly described below with reference to the section of the draft commitment letter where more detailed information can be found.

A. A Review Program for New Drug Applications (NDA), New Molecular Entities (NME), and Original Biologics License Applications (BLA)

FDA's existing review performance goals for priority and standard

applications, 6 and 10 months respectively, were established in 1997. Since that time, additional requirements in the drug review process have made those goals increasingly challenging to meet, particularly for more complex applications like NME NDAs and original BLAs. FDA also recognizes that increasing communication between the Agency and sponsors or applicants during the application review has the potential to increase efficiency in the review process. To address the desire for increased communication and efficiency, FDA proposes a new review program for NME NDAs and original BLAs in PDUFA V that will include presubmission meetings, mid-cycle communications, and late-cycle meetings between FDA and sponsors for these applications. FDA's review clock will begin after the 60-day administrative filing review period to accommodate this increased interaction during regulatory review. The impact of these modifications on the efficiency of drug review for this subset of applications would be assessed during PDUFA V.

B. Enhancing Regulatory Science and Expediting Drug Development

The following five enhancements focus on enhancing regulatory science and expediting drug development. Regulatory science is the science of developing and applying new tools, standards, and approaches to assess the safety, effectiveness, quality, and performance of FDA-regulated products. The details of these enhancements can be found in section IX of the draft commitment letter.

1. Promoting Innovation Through Enhanced Communication Between FDA and Sponsors During Drug Development

FDA recognizes that timely interactive communication with sponsors can help foster efficient and effective drug development. In some cases, a sponsor's questions may be complex enough to require a formal meeting with FDA, but in other instances, a question may be relatively straightforward such that a response can be provided more quickly. However, our review staff's workload and other competing public health priorities can make it challenging to develop an Agency response to matters outside of the formal meeting process.

This enhancement involves a dedicated drug development communication and training staff, focused on improving communication between FDA and sponsors during development. This staff will be responsible for identifying best practices for communication between the Agency and sponsors, training review staff, and disseminating best practices through published guidance.

2. Methods for Meta-Analysis

A meta-analysis typically attempts to combine the data or findings from multiple completed studies to explore drug benefits and risks and, in some cases, uncover what might be a potential safety signal in a premarket or postmarket context. However, there is no consensus on best practices in conducting a meta-analysis. With the growing availability of clinical trial data, an increasing number of meta-analyses are being conducted based on varying sets of data and assumptions. If such studies conducted outside FDA find a potential safety signal, FDA will work to try to confirm—or correct—the information about a potential harm that will create uncertainty for patients and health professionals. To do this, FDA must work quickly to conduct its own meta-analyses of publicly available data and the raw clinical trial data submitted by drug sponsors that would typically not be available to outside researchers. This is resource-intensive work that often exceeds the Agency's current scientific and computational capacity, causing delays in FDA findings that prolong public uncertainty.

This proposed recommendation includes the development of a dedicated staff to evaluate best practices and limitations in meta-analysis methods. Through a rigorous public comment process, FDA will develop guidance on best practices and the Agency's approach to meta-analysis in regulatory review and decision-making.

3. Biomarkers and Pharmacogenomics

Pharmacogenomics and the application of qualified biomarkers have the potential to decrease drug development time by helping to demonstrate benefits, to recognize unmet medical needs, and to identify patients who are predisposed to adverse events. FDA provides regulatory advice on the use of biomarkers to facilitate the assessment of human safety in early phase clinical studies to support claims of efficacy and to establish the optimal dose selection for pivotal efficacy studies. This is an area of new science where the Agency has seen a marked increase in sponsor submissions to FDA. In the 2008 to 2010 period, the Agency experienced nearly a four-fold increase in this type of review work.

In PDUFA V, FDA will augment the Agency's clinical, clinical pharmacology, and statistical capacity to adequately address submissions that propose to utilize biomarkers or pharmacogenomic markers. The Agency will also hold a public meeting to discuss potential strategies to facilitate scientific exchanges on biomarker issues between FDA and drug manufacturers.

4. Use of Patient-Reported Outcomes (PRO)

Assessments of study endpoints known as patient-reported outcomes (PROs) are increasingly an important part of successful drug development. PROs measure treatment benefit or risk in medical product clinical trials from the patients' point of view. PROs are critical in understanding the drug benefits and harm from the patients' perspective. However, PROs require rigorous evaluation and statistical design and analysis to ensure reliability to support claims of clinical benefit. Early consultation between FDA and drug sponsors can ensure that endpoints are well-defined and reliable. However, the Agency does not have the capacity to meet the current demand from industry.

This initiative will improve FDA's clinical and statistical capacity to address submissions involving PROs and other endpoint assessment tools, including providing consultation to sponsors during the early stages of drug development. In addition, FDA will convene a public meeting to discuss standards for PRO qualification, new theories in endpoint measurement, and the implications for multinational trials.

5. Development of Drugs for Rare Diseases

FDA's oversight of rare disease drug development is complex and resource intensive. Rare diseases are a highly diverse collection of disorders, their natural histories are often not well-described, only small population sizes are often available for study, and the diseases do not usually have well-defined outcome measures. This makes the design, execution, and interpretation of clinical trials for rare diseases difficult and time consuming, requiring frequent interaction between FDA and drug sponsors. If recent trends in orphan designations are any indication, FDA can expect an increase in investigational activity and marketing applications for drug products for rare diseases in the future.

This PDUFA V enhancement includes FDA facilitation of rare disease drug development by issuing relevant guidance, increasing the Agency's outreach efforts to the rare disease patient community, and providing specialized training in rare disease drug

development for sponsors and FDA staff.

C. Enhancing Benefit-Risk Assessment

FDA has been exploring how to develop an enhanced structured approach to benefit-risk assessments that accurately and concisely describes the benefit and risk considerations in the Agency's drug regulatory decision-making. Part of FDA's decision-making lies in thinking about the context of the decision, including gaining a strong understanding of the condition treated and the nature and extent of the unmet medical need. Patients who live with a disease have a direct stake in the outcome of the drug review process. The FDA drug review process could benefit from a more systematic and expansive approach to obtaining the patient perspective on disease severity and the potential gaps or limitations in available treatments in a therapeutic area.

During PDUFA V, FDA will expand its use of a benefit-risk framework in the drug review process, including holding public workshops to discuss the application of frameworks for considering benefits and risks that are most appropriate for the regulatory setting. FDA will also conduct a series of public meetings with the relevant patient advocacy communities to review the medical products available for use in specific therapeutic areas. The therapeutic areas to be discussed will be chosen through a public process. This enhancement is discussed in section X of the draft commitment letter.

D. Enhancement and Modernization of the FDA Drug Safety System

The drug safety enhancements in PDUFA V focus on FDA's use of REMS and the Sentinel Initiative. Additional information on these proposals is found in section XI of the draft commitment letter.

1. Standardizing REMS

FDAAA gave FDA authority to require a REMS when FDA finds that a REMS is necessary to ensure that the benefits of a drug outweigh its risks. Some REMS are more restrictive types of risk management programs that include elements to assure safe use (ETASU). These programs can require such tools as prescriber training or certification, pharmacy training or certification, dispensing only in certain health care settings, documentation of safe use conditions, patient monitoring, and patient registries. ETASU REMS can be challenging to implement and evaluate, involving cooperation of all segments of the health care system. Our experience with REMS to date suggests that the development of multiple individual programs has the potential to create burdens on the health care system and, in some cases, could limit appropriate patient access to important therapies.

FDA will initiate a public process in PDUFA V to explore strategies and initiate projects to standardize REMS programs with the goal of reducing burden on practitioners, patients, and others in the health care setting. In addition, FDA will conduct public workshops and develop guidance on methods for assessing the effectiveness of REMS and the impact on patient access and burden on the health care system.

2. Using the Sentinel Initiative To Evaluate Drug Safety Issues

FDA's Sentinel Initiative is a long-term program designed to build and implement a national electronic system for monitoring the safety of FDA-approved medical products. FDAAA required FDA to collaborate with Federal, academic, and private entities to develop methods to obtain access to disparate data sources and validated means to link and analyze safety data to monitor the safety of drugs after they reach the market, an activity also known as ''active postmarket drug safety surveillance.'' FDA will conduct a series of activities during PDUFA V to determine the feasibility of using Sentinel to evaluate drug safety issues that may require regulatory action (*e.g.,* labeling changes, post-marketing requirements, or postmarketing commitments). This may shorten the time it takes to better understand new or emerging drug safety issues. By leveraging public and private health care data sources to quickly evaluate drug safety issues; this proposal may reduce the Agency's reliance on required postmarketing studies and clinical trials.

E. Required Electronic Submissions and Standardization of Electronic Application Data

The predictability of the FDA review process relies heavily on the quality of sponsor and applicant submissions. The Agency currently receives submissions of original applications and supplements in formats ranging from paper-only to electronic-only, as well as hybrids of the two media. The variability and unpredictability of submitted formats and clinical data layout present major obstacles to conducting a timely, efficient, and rigorous review within current PDUFA goal time frames. A lack of standardized data also limits FDA's ability to transition to more standardized approaches to benefit-risk assessment and impedes conduct of safety analyses that inform FDA decisions related to REMS and other postmarketing requirements. The PDUFA V enhancements in this area include a phased-in requirement for standardized, fully electronic submissions for all marketing and investigational applications. Through partnership with open standards development organizations, the Agency will also conduct a public process to develop standardized terminology for clinical and nonclinical data submitted in marketing and investigational applications. More information on this initiative can be found in section XII of the draft commitment letter.

F. Technical Change to Section 736(a)(3)(B) of the FD&C Act Related to Discontinued Products

FDA proposes to amend section 736(a)(3)(B) of the FD&C Act, which provides for an exception in assessing a product fee if the same product is approved as an NDA or ANDA. This amendment will clarify FDA's long-standing policy to use the active portion of the Prescription Drug Product List in the ''Approved Drug Products With Therapeutic Equivalence Evaluations'' (generally know as the ''Orange Book'') to identify fee-eligible prescription drug products. FDA will assess a product fee on a prescription drug product when there are no other products on the Prescription Drug Product List that are the same as that product.

G. PDUFA V Enhancements for a Modified Inflation Adjuster and Additional Evaluations of the Workload Adjuster

In calculating user fees for each new fiscal year, FDA adjusts the base revenue amount by inflation and workload as specified in the statute. PDUFA V financial enhancements include a modification to the inflation adjuster to more accurately account for changes in FDA's costs related to payroll compensation and benefits as well as changes in non-payroll costs through use of the Consumer Price Index (CPI). This new weighted composite inflation adjuster will help ensure that increases in fees more closely mirror the inflationary pressures that have an impact on FDA's costs. FDA will also continue evaluating the workload adjuster that was developed during the PDUFA IV negotiations to ensure that it continues to adequately capture changes in FDA's workload during PDUFA V. These evaluations will include options to discontinue,

modify, or retain any element of the workload adjuster.

H. Impact of PDUFA V Enhancements on User Fee Revenue

Implementing the proposed enhancements discussed in the previous sections of this document will add $40.4 million to the PDUFA user fee revenue amount in FY 2012. The fee revenue amount for FY 2012 is $652,709,000 as published by notice in the **Federal Register** of August 1, 2011 (76 FR 45831). This amount includes the additional user fee revenues for drug safety in FY 2012 totaling $65 million as specified in the statute. The additional user fee revenue for the PDUFA V enhancements translates to a 6-percent increase, and a total base of $693.1 million in FY 2013. The following table summarizes the FY 2013 baseline and added resources to support the new PDUFA V enhancements:

Financial baseline	Dollars
FY 2012 Baseline [1]	$499,412,000
Cumulative Inflation Adjustment for FY 2012	104,277,000
Cumulative Workload Adjustment for FY 2012	49,020,000
Fee Revenue Amount for FY 2012 [2]	652,709,000
PDUFA V Enhancements	
Increased Staff Capacity (129 FTE)	36,120,000
Other Direct Costs	4,270,000
Total Statutory Revenue Amount for FY 2013 [3]	693,099,000

[1] In determining the fee revenue amount for FY 2012, sections 736(b)(4)(A) and 736(b)(4)(B) of the FD&C Act direct the Secretary of Health and Human Services (Secretary) to substitute $392,783,000 plus $65,000,000 (for FY 2012) for the amount in paragraph (1)(A). Furthermore, paragraph (1)(B) directs the Secretary to add the amount of the modified workload adjustment for FY 2007 to the amount in paragraph (1)(A) to determine the total revenue amount in FY 2012. This total is $499,412,000.

[2] As published in the **Federal Register** of August 1, 2011 (76 FR 45831).

[3] Of this amount, $652,709,000 will be further adjusted according to the new statutory provisions to account for inflation and workload adjustments in determining fees for FY 2013. These adjustments must be captured in calculations of user fee revenue for FYs 2014–2017.

IV. What information should you know about the meeting?

A. When and where will the meeting occur? What format will FDA use?

We will convene a public meeting to hear the public's views on the proposed recommendations for reauthorization of PDUFA. We will conduct the meeting on October 24, 2011, at FDA's White Oak Campus (see **ADDRESSES**). The meeting will include a presentation by FDA and a series of panels representing different stakeholder groups identified in the statute (such as patient advocacy groups, consumer advocacy groups, health professionals, and regulated industry). We will also provide an opportunity for other organizations and individuals to make presentations at the meeting or to submit written comments to the docket before the meeting.

B. How do you register for the meeting or submit comments?

If you wish to attend this meeting, please register by e-mail at: *PDUFAReauthorization@fda.hhs.gov* by October 10, 2011. Your e-mail should contain complete contact information for each attendee, including: Name, title, affiliation, address, e-mail address, and phone number. Registration is free and will be on a first-come, first-served basis, with the exception below. Early registration is recommended because seating is limited. FDA may limit the number of participants from each organization based on space limitations. Registrants will receive confirmation once they have been accepted. On-site registration on the day of the meeting will be based on space availability. We will try to accommodate all persons who wish to make a presentation. If you need special accommodations because of disability, please contact Sunanda Bahl (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days before the meeting.

In addition, 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. To ensure consideration, all comments must be received by October 31, 2011.

C. Will meeting transcripts be available?

Please be advised that as soon as a transcript is available, it will be accessible at *http://www.regulations.gov* and *http://www.fda.gov*. It may be viewed at the Division of Dockets Management (see **ADDRESSES**). A transcript will also be made available in either hard copy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to Division of Freedom of Information (ELEM–1029), Food and Drug Administration, 12420 Parklawn Dr., Element Bldg., Rockville, MD 20857.

Dated: September 7, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–23251 Filed 9–9–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0002]

Request for Notification From Industry Organizations Interested in Participating in the Selection Process for Nonvoting Industry Representatives and Request for Nominations for Nonvoting Industry Representatives on the Tobacco Products Scientific Advisory Committee

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting that industry organizations interested in participating in the selection of nonvoting industry representatives to serve on its Tobacco Products Scientific Advisory Committee, notify FDA in writing. FDA is also requesting nominations for nonvoting industry representatives to serve on the Tobacco Products Scientific Advisory Committee. A nominee may either be self-nominated or nominated by an organization to serve as a nonvoting industry representative. Nominations will be accepted for upcoming vacancies effective with this notice.

DATES: Send letters stating interest in participating in the selection process to FDA by October 12, 2011 (see sections I and II of this document for details). Concurrently, nomination material for prospective candidates should be sent to FDA by October 12, 2011.

ADDRESSES: All letters of interest and nominations should be submitted in writing to *TPSAC@fda.hhs.gov,* or by mail to Caryn Cohen, Center for Tobacco Products, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850.

FOR FURTHER INFORMATION CONTACT: Caryn Cohen, Center for Tobacco Products, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 1–877–287–1373 (choose Option 4), FAX: 240–276–3761, e-mail: *TPSAC@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: The Agency requests nominations for nonvoting industry representatives on the Tobacco Products Scientific Advisory Committee.

I. Tobacco Products Scientific Advisory Committee

The Tobacco Products Scientific Advisory Committee (the Committee) advises the Commissioner of Food and Drugs (the Commissioner) or designee in discharging responsibilities as they relate to the regulation of tobacco products. The Committee reviews and evaluates safety, dependence, and health issues relating to tobacco products and provides appropriate advice, information, and recommendations to the Commissioner.

The Committee includes three nonvoting members who represent industry interests. These members include one representative of the tobacco manufacturing industry, one representative of the interests of tobacco growers, and one representative of the interests of the small business tobacco manufacturing industry. The representative of the interests of the small business tobacco manufacturing industry may be filled on a rotating, sequential basis by representatives of different small business tobacco manufacturers based on areas of expertise relevant to the topics being considered by the Committee.

With this notice, nominations are sought for the following positions: (1) One representative of the interests of tobacco growers, and an alternate to this representative; (2) a pool of individuals, with varying areas of expertise, to represent the interests of the small business tobacco manufacturing industry on a rotating, sequential basis; and (3) an individual to serve as alternate to the representative of the tobacco manufacturing industry.

II. Selection Procedure

Any industry organization interested in participating in the selection of appropriate nonvoting member(s) to represent industry interests should send a letter stating that interest to the FDA contact (see **FOR FURTHER INFORMATION CONTACT** and **DATES**). Within the subsequent 30 days, FDA will send a letter to each organization that has expressed an interest, attaching a complete list of all such organizations, and a list of all nominees along with their current resumes. The letter will also state that it is the responsibility of the interested organizations to confer with one another and to select a candidate, within 60 days after the receipt of the letter, to serve as the nonvoting member to represent industry interests on the Committee. The interested organizations are not bound by the list of nominees in selecting a candidate. However, if no individual is selected within 60 days, the Commissioner will select the nonvoting member to represent the industry interests.

III. Application Procedure

Individuals may self-nominate and/or organizations may nominate one or more individuals to serve as a nonvoting industry representative (for the roles specified in this document). Nominations must include a current resume or curriculum vitae of the nominee including current business address and/or home address, telephone number, e-mail address if available, and the role for which the individual is being nominated. Nominations must also acknowledge that the nominee is aware of the nomination unless self-nominated. FDA will forward all nominations to the organizations expressing interest in participating in the selection process for the committee. (Persons who nominate themselves as nonvoting industry representatives will not participate in the selection process.)

FDA has a special interest in ensuring that women, minority groups, and individuals with physical disabilities are adequately represented on its advisory committees and, therefore, encourages nominations for appropriately qualified candidates from these groups.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: September 7, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–23185 Filed 9–9–11; 8:45 am]

BILLING CODE 4160–01–P

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, ''NIAID Contract Review Meeting 2011''.

Date: October 3, 2011.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Brandt R. Burgess, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, DHHS/NIH/NIAID, 6700B Rockledge Drive, MSC 7616, Bethdesda, MD 20892–7616, (301) 451–2584, *bburgess@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: September 6, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–23231 Filed 9–9–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases 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 Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; The NIDDK–KUH Fellowship Review.

Date: October 6, 2011.

Time: 9 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Xiaodu Guo, MD, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 761, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–4719, *guox@extra.niddk.nih.gov*.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK DEM Fellowship Review.

Date: October 12–13, 2011.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Carol J. Goter-Robinson, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 748, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7791, *goterrobinsonc@extra.niddk.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: September 6, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–23228 Filed 9–9–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting. The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Commitee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, NIDDK Ancillary Studies.

Date: September 26, 2011.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892. (Telephone Conference Call.)

Contact Person: Thomas A. Tatham, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 760, 6707 Democracy Boulevard, Bethesda, MD 20892–5452. (301) 594–3993. *tathamt@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: September 6, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–23227 Filed 9–9–11; 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 Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Allergy, Immunology, and Transplantation Research Committee.

Date: October 18, 2011.

Time: 10 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Zhuqing Li, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, DHHS/NIH/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, 301–402–9523, *zhuqing.li@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: September 6, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–23226 Filed 9–9–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2011 Funding Opportunity

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of intent to award a Single Source Grant to Link2Health Solutions, Inc.

SUMMARY: This notice is to inform the public that the Substance Abuse and Mental Health Services Administration (SAMHSA) intends to award approximately $2,100,000 (total costs) for up to one year to Link2Health Solutions, Inc. the current grantee for the National Suicide Prevention Lifeline. This is not a formal request for applications. Assistance will be provided only to Link2Health Solutions, Inc based on the receipt of a satisfactory application that is approved by an independent review group.

Funding Opportunity Title: SM–11–015.

Catalog Of Federal Domestic Assistance (CFDA) Number: 93.243.

Authority: Section 501(d)(3) of the Public Health Service Act, as amended.

Justification: Only an application from Link2Health Solutions will be considered for funding under this announcement. One-year supplemental funding has become available to assist SAMHSA in responding to the growing and pressing need to provide a Disaster Distress Helpline for individuals stressed by the aftermath of manmade and/or natural disasters. It is considered most cost-effective and efficient to supplement the existing grantee for the National Suicide Prevention Lifeline and to build on the existing capacity and infrastructure within its network of crisis centers.

Link2Health Solutions is in the unique position to carry out the activities of this grant announcement because it is the current recipient of SAMHSA's cooperative agreement to manage the National Suicide Prevention Lifeline. As such, Link2Health Solutions has been maintaining the network communications system and has an existing relationship with the networked crisis centers.

The crisis centers that comprise the National Suicide Prevention Lifeline are a critical part of the nation's mental health safety net. Many crisis centers are experiencing significant increases in calls and the Disaster Distress Helpline would be a free, confidential 24/7 crisis support service that connects residents who are experiencing emotional distress as a result of a disaster with a local crisis center responder. The National Suicide Prevention Lifeline crisis centers require assistance to continue to play their critical role in providing support as well as emergency services to callers in distress during and after any natural or manmade disaster.

Contact: Shelly Hara, Substance Abuse and Mental Health Services Administration, 1 Choke Cherry Road, Room 8–1095, Rockville, MD 20857; telephone: (240) 276–2321; E-mail: *shelly.hara@samhsa.hhs.gov.*

Cathy J. Friedman,

Public Health Analyst, SAMHSA.

[FR Doc. 2011–23178 Filed 9–9–11; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2011–0063]

Homeland Security Advisory Council, Correction

AGENCY: The Office of Policy, DHS.

ACTION: Notice of Open Teleconference Federal Advisory Committee Meeting; correction.

SUMMARY: The Office of Policy published a notice of meeting for the Homeland Security Advisory Council in the **Federal Register** on September 6, 2011. The document contained an incorrect time.

FOR FURTHER INFORMATION CONTACT: Mike Miron, 202–447–3135.

Correction

In the **Federal Register** of September 6, 2011, in FR Doc. 2011–22618, on page 55079, in the first column, correct the **DATES** caption to read: The HSAC conference call will take place from 2 p.m. to 3 p.m. EDT on Thursday, September 22, 2011. Please be advised that the meeting is scheduled for one hour and may end early if all business is completed before 3 p.m.

Dated: September 7, 2011.

Becca Sharp,

Executive Director, Homeland Security Advisory Council, DHS.

[FR Doc. 2011–23255 Filed 9–9–11; 8:45 am]

BILLING CODE 9110–9M–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2011–0843; OMB Control Numbers: 1625–0037, 1625–0041, 1625–0042 and 1625–0044]

Information Collection Request to Office of Management and Budget

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit Information Collection Requests (ICRs) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting approval of revisions to the following collections of information: 1625–0037, Certificates of Compliance, Boiler/Pressure Vessel Repairs, Cargo Gear Records, and Shipping Papers, 1625–0041, Various International Agreement Pollution Prevention Certificates and Documents, and Equivalency Certificates, 1625–0042, Requirements for Lightering of Oil and Hazardous Material Cargoes, and l625–0044, Outer Continental Shelf Activities—Title 33 CFR Subchapter N.

Our ICRs describe the information we seek to collect from the public. Before submitting these ICRs to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before November 14, 2011.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2011–0843] to the Docket Management Facility (DMF) at the U.S. Department of Transportation (DOT). To avoid duplicate submissions, please use only one of the following means:

(1) *Online: http://www.regulations.gov.*

(2) *Mail:* DMF (M–30), DOT, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

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

(4) *Fax:* 202–493–2251. To ensure your comments are received in a timely manner, mark the fax to attention Desk Officer for the Coast Guard.

The DMF maintains the public docket for this Notice. Comments and material received from the public, as well as documents mentioned in this Notice as being available in the docket, will become part of the docket and will be available for inspection or copying at room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find the docket on the Internet at *http://www.regulations.gov.*

Copies of the ICRs are available through the docket on the Internet at *http://www.regulations.gov.* Additionally, copies are available from: COMMANDANT (CG–611), ATTN: PAPERWORK REDUCTION ACT MANAGER, U.S. COAST GUARD, 2100 2ND ST SW, STOP 7101, WASHINGTON, DC 20593–7101.

FOR FURTHER INFORMATION CONTACT: Ms. Kenlinishia Tyler, Office of Information Management, telephone 202–475–3652, or fax 202–475–3929, for questions on these documents. Contact Ms. Renee V. Wright, Program Manager, Docket Operations, 202–366–9826, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collections. There is one ICR for each Collection.

The Coast Guard invites comments on whether these ICRs should be granted based on the Collections being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (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 information subject to the Collections; and (4) ways to minimize the burden of the Collections on respondents, including the use of automated collection techniques or other forms of information technology. In response to your comments, we may revise these ICRs or decide not to seek approval for the Collections. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG–2011–0843], and must be received by November 14, 2011. We will post all comments received, without change, to *http://www.regulations.gov.* They will include any personal information you provide. We have an agreement with DOT to use their DMF. Please see the ''Privacy Act'' paragraph below.

Submitting Comments

If you submit a comment, please include the docket number [USCG–2011–0843], indicate the specific section of the document to which each comment applies, providing a reason for each comment. You may submit your comments and material online (*via http://www.regulations.gov*), by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov*, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the DMF. We recommend you include your name, mailing address, an e-mail address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission.

You may submit your comments and material by electronic means, mail, fax, or delivery to the DMF at the address under **ADDRESSES**; but please submit them by only one means. To submit your comment online, go to *http://www.regulations.gov*, and type ''USCG–2011–0843'' in the ''Keyword'' box. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½; by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and will address them accordingly.

Viewing comments and documents: To view comments, as well as documents mentioned in this Notice as being available in the docket, go to *http://www.regulations.gov*, click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2011–0843'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the DMF in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act

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

Information Collection Requests

1. *Title:* Certificates of Compliance, Boiler/Pressure Vessel Repairs, Cargo Gear Records, and Shipping Papers.

OMB Control Number: 1625–0037.

Summary: This information is needed to enable the Coast Guard to fulfill its responsibilities for maritime safety under Title 46, U.S. Code. It is solely for this purpose. The affected public includes some owners or operators of large merchant vessels and all foreign-flag tankers calling at U.S. ports.

Need: Title 46 U.S. Code 3301, 3305, 3306, 3702, 3703, 3711, and 3714 authorizes the Coast Guard to establish marine safety regulations to protect life, property, and the environment. These regulations are prescribed in Title 46 Code of Federal Regulations.

Forms: CG–3585.

Respondents: Owners and operators of vessels.

Frequency: On occasion.

Burden Estimate: The estimated burden has decreased from 17,294 hours to 14,725 hours a year.

2. *Title:* Various International Agreement Pollution Prevention Certificates and Documents, and Equivalency Certificates.

OMB Control Number: 1625–0041.

Summary: Required by the adoption of the International Convention for the Prevention of Pollution from Ships (MARPOL 73/78) and other international treaties, these certificates and documents are evidence of compliance for U.S. vessels on international voyages. Without the proper certificates or documents, a U.S. vessel could be detained in a foreign port.

Need: Compliance with treaty requirements aids in the prevention of pollution from ships.

Forms: CG–5352, CG–5352A, CG–5352B, CG–6047, CG–6047A, CG–6056, CG–6056A, CG–6056B, CG–6056C and CG–6057.

Respondents: Owners, operators, or masters of vessels.

Frequency: On occasion.

Burden Estimate: The estimated burden has increased from 2,067 hours to 2,738 hours a year.

3. *Title:* Requirements for Lightering of Oil and Hazardous Material Cargoes.

OMB Control Number: 1625–0042.

Summary: The information for this report allows the U.S. Coast Guard to provide timely response to an emergency and minimize the environmental damage from an oil or hazardous material spill. The information also allows the Coast Guard to control the location and procedures for lightering activities.

Need: Section 3715 of Title 46 U.S.C. authorizes the Coast Guard to establish lightering regulations. Title 33 CFR 156.200 to 156.330 prescribes the Coast Guard regulations for lightering, including pre-arrival notice, reporting of incidents and operating conditions.

Forms: None.

Respondents: Owners, masters and agents of lightering vessels.

Frequency: On occasion.

Burden Estimate: The estimated burden has increased from 215 hours to 217 hours a year.

4. *Title:* Outer Continental Shelf Activities–Title 33 CFR Subchapter N.

OMB Control Number: 1625–0044.

Summary: The Outer Continental Shelf Lands Act, as amended, authorizes the Coast Guard to promulgate and enforce regulations promoting the safety of life and property on OCS facilities. These regulations are located in 33 CFR chapter I subchapter N.

Need: The information is needed to ensure compliance with the safety regulations related to OCS activities. The regulations contain reporting and recordkeeping requirements for annual inspections of fixed OCS facilities, employee citizenship records, station bills, and emergency evacuation plans.

Forms: CG–5432.

Respondents: Operators of facilities and vessels engaged in activities on the OCS.

Frequency: On occasion.

Burden Estimate: The estimated burden has increased from 6,234 hours to 6,304 hours a year.

Dated: September 6, 2011.

R.E. Day,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. 2011–23176 Filed 9–9–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3324–EM; Docket ID FEMA–2011–0001]

Kansas; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of Kansas (FEMA–3324–EM), dated June 25, 2011, and related determinations.

DATES: *Effective Date:* August 1, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this emergency is closed effective August 1, 2011.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–23240 Filed 9–9–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3325–EM; Docket ID FEMA–2011–0001]

Missouri; Amendment No. 2 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for State of Missouri (FEMA–3325–EM), dated June 30, 2011, and related determinations.

DATES: *Effective Date:* August 31, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Michael L. Karl, of FEMA is appointed to act as the Federal Coordinating Officer for this emergency.

This action terminates the appointment of Elizabeth Turner as Federal Coordinating Officer for this emergency.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–23215 Filed 9–9–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3331–EM; Docket ID FEMA–2011–0001]

Connecticut; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of Connecticut (FEMA–3331–EM), dated August 27, 2011, and related determinations.

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

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of an emergency declaration for the State of Connecticut is hereby amended to include the Individuals and Households Program under Section 408 of the Stafford Act, 42 U.S.C. 5174, in the following areas among those areas determined to have been adversely affected by the event declared an emergency by the President in his declaration of August 27, 2011.

The counties of Fairfield, Hartford, Litchfield, Middlesex, New Haven, New Tolland, Tolland and Windham for the Individuals and Households Program under Section 408 of the Stafford Act, 42 U.S.C. 5174 (already designated for emergency protective measures [Category B], including direct federal assistance, under the Public Assistance program).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–23213 Filed 9–9–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3331–EM; Docket ID FEMA–2011–0001]

Connecticut; Amendment No. 2 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for State of Connecticut (FEMA–3331–EM), dated August 27, 2011, and related determinations.

DATES: *Effective Date:* September 4, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Stephen M. DeBlasio Sr., of FEMA is appointed to act as the Federal Coordinating Officer for this emergency.

This action terminates the appointment of Gary Stanley as Federal Coordinating Officer for this emergency.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–23198 Filed 9–9–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3333–EM; Docket ID FEMA–2011–0001]

New Hampshire; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for State of New Hampshire (FEMA–3333–EM), dated August 27, 2011, and related determinations.

DATES: *Effective Date:* August 30, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Albert Lewis, of FEMA is appointed to act as the Federal Coordinating Officer for this emergency.

This action terminates the appointment of Craig A. Gilbert as Federal Coordinating Officer for this emergency.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–23194 Filed 9–9–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3337–EM; Docket ID FEMA–2011–0001]

District of Columbia; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the District of Columbia (FEMA–3337–EM), dated August 28, 2011, and related determinations.

DATES: *Effective Date:* September 1, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this emergency is closed effective September 1, 2011.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–23192 Filed 9–9–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1980–DR; Docket ID FEMA–2011–0001]

Missouri; Amendment No. 9 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for State of Missouri (FEMA–1980–DR), dated May 9, 2011, and related determinations.

DATES: *Effective Date:* August 31, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Michael L. Karl, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Elizabeth Turner as Federal Coordinating Officer for this disaster.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–23220 Filed 9–9–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1984–DR; Docket ID FEMA–2011–0001]

South Dakota; Amendment No. 8 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of South Dakota (FEMA–1984–DR), dated May 13, 2011, and related determinations.

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

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of South Dakota is hereby amended to include the Individual Assistance program for the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of May 13, 2011.

Yankton County for Individual Assistance (already designated for Public Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–23218 Filed 9–9–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1990–DR; Docket ID FEMA–2011–0001]

Minnesota; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for State of Minnesota (FEMA–1990–DR), dated June 7, 2011 and related determinations.

DATES: *Effective Date:* August 30, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Lawrence Sommers, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Paul J. Ricciuti as Federal Coordinating Officer for this disaster.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–23216 Filed 9–9–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1961–DR; Docket ID FEMA–2011–0001]

Missouri; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for State of Missouri (FEMA–1961–DR), dated March 23, 2011, and related determinations.

DATES: *Effective Date:* August 31, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Michael L. Karl, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Elizabeth Turner as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–23195 Filed 9–9–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1999–DR; Docket ID FEMA–2011–0001]

Texas; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Texas (FEMA–1999–DR), dated July 1, 2011, and related determinations.

DATES: *Effective Date:* August 31, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Texas is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of July 1, 2011.

Menard County for Public Assistance.

Brewster, Crockett, Presidio, and Young Counties for Public Assistance (already designated for emergency protective measures [Category B], including direct Federal assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–23197 Filed 9–9–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1998–DR; Docket ID FEMA–2011–0001]

Iowa; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Iowa (FEMA–1998–DR), dated June 27, 2011, and related determinations.

DATES: *Effective Date:* August 1, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective August 1, 2011.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–23201 Filed 9–9–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Crew's Effects Declaration

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day Notice and request for comments; Extension of an existing collection of information.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Crew's Effects Declaration (CBP Form 1304). This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Written comments should be received on or before November 14, 2011, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 799 9th Street, NW., 5th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 799 9th Street, NW., 5th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Crew's Effects Declaration.

OMB Number: 1651–0020.

Form Number: CBP Form 1304.

Abstract: CBP Form 1304, *Crew's Effects Declaration*, was developed through an agreement by the United Nations Intergovernmental Maritime Consultative Organization (IMCO) in conjunction with the United States and various other countries. This form is used as part of the entrance and clearance of vessels pursuant to the provisions of 19 CFR 4.7, 19 U.S.C. 1431 and 19 U.S.C. 1434. CBP Form 1304 is completed by the master of the arriving carrier to record and list the crew's effects that are onboard the vessel. This form is accessible at *http://forms.cbp.gov/pdf/CBP_Form_1304.pdf.*

Current Actions: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information collected.

Type of Review: Extension (without change).

Affected Public: Businesses or other for-profit institutions.

Estimated Number of Respondents: 9,000.

Estimated Number of Responses per Respondent: 22.9.

Estimated Number of Annual Responses: 206,100.

Estimated Time per Response: 60 minutes.

Estimated Total Annual Burden Hours: 206,100.

Dated: September 6, 2011.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2011–23175 Filed 9–9–11; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

60-Day Notice of Intention To Request Clearance for Information Collection: Opportunity for Public Comment

AGENCY: Office of Youth in the Great Outdoors, Interior.

ACTION: Notice and request for comments.

SUMMARY: Under provisions of the Paperwork Reduction Act of 1995 and 5 CFR Part 1320, Reporting and Recordkeeping Requirements, the Office of Youth in the Great Outdoors invites public comments on an intended request for clearance of information collection.

DATES: Public comments will be accepted on or before November 14, 2011.

ADDRESSES: Send comments to: Maria E. Arnold, Office of the Secretary, Office of Youth in the Great Outdoors, Department of the Interior, 1849 C Street, NW., MS 3559–MIB, Washington, DC 20240; E-mail: *maria_arnold@ios.doi.gov.*

FOR FURTHER INFORMATION CONTACT: Maria E. Arnold, Office of the Secretary, Office of Youth in the Great Outdoors, Department of the Interior, 1849 C Street, NW., MS 3559–MIB, Washington, DC 20240; E-mail: *maria_arnold@ios.doi.gov,* 202–219–1664.

SUPPLEMENTARY INFORMATION:

Title: Programmatic Approval for Office of Youth in the Great Outdoors (YouthGo)-Sponsored Public Surveys.

Bureau Form Number: None.

OMB Number: 1093–new.

Type of Request: New information collection clearance.

Description of Need: The Office of Youth in the Great Outdoors needs information on youth employment and education programs provided through the Department of the Interior's (DOI's) partnership organizations. The purpose of these information collections is to measure performance of DOI's youth programs. The proposed information collection covers all of the organizational units and bureaus in DOI running youth employment and education programs through partnership organizations. Partnership organizations will voluntarily obtain information from youth program participants. Since many of the YouthGo information collections ask similar questions to similar populations, YouthGo is requesting clearance from OMB for a program of review for focus groups, interviews, youth program observations, and pre-post youth program surveys.

The information collections will address three goals to determine DOI youth program effectiveness:

(1) Building civic engagement and leadership skills.

(2) Enhancing career preparedness and workforce readiness.

(3) Developing environmental stewardship and the next generation of conservationists.

By conducting focus groups, interviews, identical pre-post youth program surveys, and youth program observations, these programs, run both directly by DOI and through DOI partner organizations, will seek feedback on how well they are meeting the three youth program goals. Any individual information collection may collect information on one, two, or all of the three topic areas above. Information collections, as needed, will be submitted individually to OMB for expedited approval. Through the feedback obtained in these information collections, DOI and its partner organizations will be able to determine whether youth program objectives are being met and document the impacts of program participation.

We invite your comments on: (1) The practical utility of the information being gathered; (2) the accuracy of the burden hour estimate; (3) ways to enhance the quality, utility, and clarify of the information to be collected; and (4) ways to minimize the burden to respondents, including use of automated information collection techniques or other forms of information technology. 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.

Automated data collection: Automated data collection methods will be used where possible, and will vary by site/location of the DOI youth partnership program. In the case of pre-post surveys, the same data collection method will be used for both the pre- and post-program surveys.

Description of respondents: For any youth program conducting pre-post program surveys, all program participants will be given the opportunity to participate in these identical surveys. Youth program participants range in age from 15 to 30 years (high school through graduate students).

Estimated average number of respondents: 7,000 for surveys and 100 for focus groups/interviews.

Estimated average burden hours per response: 15 minutes for a pre-survey; 15 minutes for a post-survey; 1 hour for a focus group or interview.

Frequency of response: Pre-post surveys will involve two identical surveys, one at the start of the youth program and one at the conclusion of the program. Focus groups and interviews may involve one or more contacts for information collection.

Estimated annual reporting burden: We estimate the requested total number of burden hours annually for all of the information collections to be 3,600 burden hours per year. The total annual burden for surveys conducted under the auspices of this program will be 3,500 hours. The total annual burden for focus groups and interviews will be 100 hours.

We will summarize responses to this notice and include them in the request to the Office of Management and Budget for approval. All comments will become a matter of public record.

Maria E. Arnold,

Youth Program Analyst.

[FR Doc. 2011–23217 Filed 9–9–11; 8:45 am]

BILLING CODE 4310–10–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–FHC–2011–N086; 94310–1124–0000–T5]

John H. Chafee Coastal Barrier Resources System; Baldwin and Mobile Counties, AL; Availability of Draft Map and Request for Comments

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 a John H. Chafee Coastal Barrier Resources System (CBRS) draft revised map, dated September 22, 2009, for four units in Baldwin and Mobile Counties, Alabama, for public review and comment.

DATES: To ensure consideration, we must receive your written comments by November 14, 2011.

ADDRESSES: Mail or hand-deliver (during normal business hours) comments to Katie Niemi, Coastal Barriers Coordinator, Division of Habitat and Resource Conservation, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 860A, Arlington, VA 22203, or send comments by electronic mail (e-mail) to *CBRAcomments@fws.gov.* For information about how to get copies of the draft map, or where to go to view it, see **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Katie Niemi, Coastal Barriers Coordinator, (703) 358–2161.

SUPPLEMENTARY INFORMATION:

Background

Coastal barriers are typically elongated, narrow landforms located at the interface of land and sea. Coastal barriers provide important habitat for fish and wildlife and serve as the mainland's first line of defense against the impacts of severe storms. With the passage of the Coastal Barrier Resources Act (CBRA) in 1982 (Pub. L. 97–348), Congress recognized that certain actions and programs of the Federal Government have historically subsidized and encouraged development on coastal barriers and have resulted in the loss of valuable natural resources; threats to human life, health, and property; and the expenditure of millions of tax dollars to build structures and infrastructure and then rebuild them again after damaging storms. The CBRA established the CBRS, a defined set of 186 geographic units, encompassing approximately 453,000 acres, of undeveloped lands and associated aquatic habitat along the Atlantic and Gulf of Mexico coasts. Most new Federal expenditures and financial assistance that have the effect of encouraging development are prohibited within the CBRS. Development can still occur within the CBRS provided that private developers or other non-Federal parties bear the full cost instead of the American taxpayers. The CBRS was expanded by the Coastal Barrier Improvement Act of 1990 (Pub. L. 101–591) to include additional areas along the Atlantic and Gulf of Mexico coasts as well as areas along the Great Lakes, Puerto Rico, and the U.S. Virgin Islands coasts. The CBRS is now comprised of 857 units encompassing approximately 3.1 million acres of coastal barrier lands and associated aquatic habitat. These areas are depicted on a series of maps entitled ''John H. Chafee Coastal Barrier Resources System.''

The CBRS includes two types of units, System units and Otherwise Protected Areas (OPAs). System units are generally comprised of private lands that were relatively undeveloped at the time of their designation within the CBRS. Most new Federal expenditures and financial assistance, including Federal flood insurance, are prohibited within System units. OPAs are generally comprised of lands held by a qualified organization primarily for wildlife refuge, sanctuary, recreational, or natural resource conservation purposes. OPAs are denoted with a ''P'' at the end of the unit number. The only Federal spending prohibition within OPAs is the prohibition on Federal flood insurance.

The Secretary of the Interior (Secretary), through the Service, is responsible for administering the CBRA, which includes maintaining the official maps of the CBRS; consulting with Federal agencies that propose to spend funds within the CBRS; preparing draft maps that update and correct existing maps; and making recommendations to Congress regarding proposed changes to the CBRS. Aside from three minor exceptions, only Congress—through new legislation—can modify the maps of the CBRS to add or remove land. These exceptions include: (1) The CBRA

5-year review requirement, which considers only changes that have occurred to the CBRS by natural forces such as erosion and accretion; (2) voluntary additions to the CBRS by property owners; and (3) additions of excess Federal property to the CBRS. The proposed changes described in this notice, including any additions to and deletions from the CBRS, would become effective only if enacted by Congress through new legislation.

Proposed Changes to the John H. Chafee Coastal Barrier Resources System in Alabama

The Service has prepared a draft revised map dated September 22, 2009, for Mobile Point Unit Q01P, Pelican Island Unit Q01A/Q01AP, and Alligator Lake Unit AL–05P, that removes approximately 13 acres from the CBRS and adds approximately 488 acres to the CBRS. The Deepwater Horizon oil spill, which occurred on April 20, 2010, became a priority for Congress and the Administration and delayed action on this map until now. The map makes progress towards fulfilling a mandate in the Coastal Barrier Resources Reauthorization Act of 2006 (Pub. L. 109–226) to modernize all CBRS maps.

Below is a summary of the proposed changes to the draft map containing CBRS Units Q01P, Q01A, AL–05P, and a proposed new OPA, Q01AP.

Unit Q01P is located on four separate map panels, but the revised area is limited to the portion of the unit that is at the tip of the Fort Morgan peninsula and depicted on the same map panel as Units AL–05P and Q01A. The eastern boundary of Unit Q01P was adjusted slightly to be coincident with Baldwin County parcel data. There is no change in acreage to Unit Q01P.

The proposed northern boundary of Unit Q01A was moved 30–50 feet seaward of the Coastal Construction Line in order to exclude all development in the Desoto Landing Subdivision from the unit. The Unit Q01A boundary was also adjusted to include within the unit a golf course and an undeveloped stretch of beach that are owned by the Dauphin Island Property Owners Association. The draft map adds approximately 384 total acres to Unit Q01A, including 101 acres of upland and 283 acres of associated aquatic habitat. The draft map removes approximately 4 upland acres from Unit Q01A.

The proposed Unit AL–05P boundary was adjusted to more precisely follow the Audubon Bird Sanctuary; remove private properties along Audubon Street and Audubon Place from the OPA; and add the Coast Guard Dauphin Island Recreation Base, Magnolia Park, and Dauphin Island Campground to the OPA. The draft map adds approximately 49 total acres to Unit AL–05P, including 48 acres of upland and 1 acre of associated aquatic habitat. The draft map removes approximately 9 acres from Unit AL–05P, including 7 acres of upland and 2 acres of associated aquatic habitat.

Unit Q01AP is a proposed new OPA. The proposed OPA contains a public beach parcel, including the Dauphin Island Fishing Pier, which is owned by the Dauphin Island Park and Beach Board and is not currently within the CBRS. The draft map adds approximately 55 total acres within Unit Q01AP to the CBRS, including 40 acres of upland and 15 acres of associated aquatic habitat.

Proposed Additions to the John H. Chafee Coastal Barrier Resources System

The draft revised map for Units Q01P, Q01A, Q01AP, and AL–05P, proposes additions to the CBRS that are consistent with a directive in Section 4 of Public Law 109–226 concerning recommendations for expansion of the CBRS. The proposed boundaries depicted on the draft map are based upon the best data available to the Service at the time the draft map was created. In general, our assessment indicated that any new areas proposed for addition to the CBRS were undeveloped at the time the draft map was created.

Section 2 of the Coastal Barrier Resources Reauthorization Act of 2000 (Pub. L. 106–514) codified the following guidelines for what the Secretary shall consider when making recommendations to the Congress regarding the addition of any area to the CBRS and in determining whether, at the time of inclusion of a System unit within the CBRS, a coastal barrier is undeveloped: (1) The density of development is less than one structure per 5 acres of land above mean high tide; and (2) there is existing infrastructure consisting of a road, with a reinforced road bed, to each lot or building site in the area; a wastewater disposal system sufficient to serve each lot or building site in the area; electric service for each lot or building site in the area; and a fresh water supply for each lot or building site in the area.

If, upon review of the draft map for Units Q01P, Q01A, Q01AP, and AL–05P, interested parties find that any areas proposed for addition to the CBRS currently exceed the development threshold established by Section 2 of Public Law 106–514, they may submit supporting documentation of such development to the Service during this public comment period. For any areas proposed for addition to the CBRS on the draft map, we will consider the density of development and level of infrastructure on the ground as of the close of the comment period on the date listed in the **DATES** section of this notice.

Request for Comments

We invite the public to review and comment on the draft revised map dated September 22, 2009, for CBRS Units Q01P, Q01A, Q01AP, and AL–05P. The Service is specifically notifying the following stakeholders concerning the availability of the draft revised map: the Chair and Ranking Member of the House of Representatives Committee on Natural Resources; the Chair and Ranking Member of the Senate Committee on Environment and Public Works; the members of the Senate and House of Representatives for the potentially affected areas; the Governor of Alabama; Federal, State, and local officials; and non-governmental organizations.

The draft map, summaries of the existing boundaries and proposed changes, and digital boundary data can be accessed and downloaded from the Service's Internet site: *http://www.fws.gov/habitatconservation/coastal_barrier.html*. The digital boundary data are available in shapefile format for reference purposes only. The Service is not responsible for any misuse or misinterpretation of the digital boundary data. Background records that contain research materials used to develop the proposed boundaries may be viewed by the public, upon request, at the Service's Washington Office.

The public may also contact the Service offices listed in Appendix A of this notice to make arrangements to view the draft revised map. Interested parties may submit written comments and accompanying data to the individual and location identified in the **ADDRESSES** section above. The Service will also accept digital Geographic Information System (GIS) data files that are accompanied by written comments. Comments regarding specific units should reference the appropriate CBRS unit number and unit name. We must receive comments on or before the date listed in the **DATES** section of this document.

Following the close of the comment period on the date listed in the **DATES** section of this document, we will review all comments received on the draft map and we will make adjustments to the draft map, as

appropriate, based on information received through public comments, updated aerial imagery, CBRA criteria, and objective mapping protocols. We will then prepare a final recommended map to be submitted to Congress. The final recommended map will become effective only if it is enacted by Congress through new legislation.

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.

Appendix A—U.S. Fish and Wildlife Service Offices Where the Draft Map May Be Viewed

Washington Office

U.S. Fish and Wildlife Service, Division of Habitat and Resource Conservation, 4401 N. Fairfax Drive, Room 860A, Arlington, VA 22203; (703) 358–2161.

Southeast Regional Office

U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 400, Atlanta, GA 30345; (404) 679–4000.

Alabama Ecological Services Field Office

U.S. Fish and Wildlife Service, 1208–B Main Street, Daphne, AL 36526; (251) 441–5181.

Dated: August 2, 2011.

Jeffrey L. Underwood,

Acting Assistant Director for Fisheries and Habitat Conservation.

[FR Doc. 2011–23174 Filed 9–9–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAZ956000.L14200000.BJ0000.241A]

Notice of filing of plats of survey; AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Filing of Plats of Survey; Arizona.

SUMMARY: The plat of survey as described below is officially filed in the Arizona State Office, Bureau of Land Management, Phoenix, Arizona.

SUPPLEMENTARY INFORMATION:

The Gila and Salt River Meridian, Arizona

The plat representing the dependent resurvey of a portion of the subdivisional lines and Mineral Survey No. 3970 and Metes-and-bounds surveys in sections 20 and 21, Townships 12½ North, Range 1 West, accepted August 30, 2011, and officially filed September 1, 2011, for Group 1085, Arizona.

This plat was prepared at the request of the Bureau of Land Management.

A person or party who wishes to protest against any of these surveys must file a written protest with the Arizona State Director, Bureau of Land Management, 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.

FOR FURTHER INFORMATION CONTACT: These plats will be available for inspection in the Arizona State Office, Bureau of Land Management, One North Central Avenue, Suite 800, Phoenix, Arizona 85004–4427. 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.

Dated: September 1, 2011.

Danny A. West,

Chief Cadastral Surveyor of Arizona.

[FR Doc. 2011–23196 Filed 9–9–11; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWY910000 L16100000 XX0000]

Notice of Public Meeting; Wyoming Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) Wyoming Resource Advisory Council (RAC) will meet as indicated below.

DATES: The meeting will be held October 12, 2011 (8 a.m.–5 p.m.) and October 13, 2011 (8 a.m.–2:30 p.m.) with a 30-minute public comment period and will adjourn at 3 p.m.

ADDRESSES: The meeting will be in the Bureau of Land Management Pinedale Field Office, 1625 West Pine Street, Pinedale, WY.

SUPPLEMENTARY INFORMATION: This 10-member council advises the Secretary of the Interior on a variety of management issues associated with public land management in Wyoming.

Planned agenda topics include discussions on mitigation, restoration, monitoring and stewardship. A field trip to look at various projects will be held on October 13, 2011. A half-hour public comment period, where the public may address the Council, is scheduled to begin at 3 p.m. All RAC meetings are open to the public. The public may present written comments to the RAC. Each formal RAC meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited.

FOR FURTHER INFORMATON CONTACT: Cindy Wertz, Wyoming Resource Advisory Council Coordinator, Wyoming State Office, 5353 Yellowstone, Cheyenne, Wyoming, 82009, telephone 307–775–6014. 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.

Donald A. Simpson,

State Director.

[FR Doc. 2011–23193 Filed 9–9–11; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–IMR–GRCA–0906–8352; 8226–2004–318]

Information Collection Sent to the Office of Management and Budget (OMB) for Approval; Grand Canyon National Park Backcountry and River Permitting

AGENCY: National Park Service (NPS), Interior.

ACTION: Notice; request for comments.

SUMMARY: We (National Park Service) will ask the Office of Management and

Budget (OMB) to approve the Information Collection (IC) described below (OMB Control No. 1024–New). As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. We 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.

DATES: Public comments must be submitted on or before November 14, 2011.

ADDRESSES: Please send your comments about the ICR to Madonna L. Baucum, Information Collection Coordinator, WASO Administrative Program Center, National Park Service, 1201 Eye Street, NW., Room 1242, Washington, DC 20005 (mail); or *Madonna_Baucum@nps.gov* (e-mail). Please reference Grand Canyon National Park Backcountry and River Permitting.

FOR FURTHER INFORMATION CONTACT: Gigi Wright, Permits Office, Grand Canyon National Park, 1824 S. Thompson Street, Suite 201, Flagstaff, AZ 86001; *gigi_wright@nps.gov* (e-mail); or 928–638–7416 (phone). You are entitled to a copy of the entire ICR package free-of-charge.

SUPPLEMENTARY INFORMATION:

OMB Number: None. This is a new collection.

Title: Grand Canyon National Park Backcountry and River Permitting.

Service Form Number: None.

Type of Request: New.

Description of Respondents: Individuals interested in river use or overnight backcountry use within Grand Canyon National Park.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Estimated Number of Annual Responses: 72,486 (as shown below).

Annual Burden Hours: 7,763 hours as follows:

Description	Avg. time/ response (min)	Annual respondents	Annual responses	Total time in hours
Backcountry Permitting	.....	.....	.....	.....
Backcountry Permit Request Form	10	14,592	25,000	4,167
Hiker Information Form	10	600	661	110
Water Report Form	5	100	250	21
Commercial Guiding—Verifiable Client List Form	10	14	529	88
River Permitting	.....	.....	.....	.....
Create Online Profile	7	4,000	4,000	467
Login Form	1	11,000	25,000	417
Forgot Username/Password Form	1	500	500	8
Lottery Application	8	4,440	8,300	1,107
Accept Trip Form	5	560	560	47
Noncommercial River Trip Application	60	510	510	510
Trip Leader Trip Participant Form	30	510	510	255
Confirm Trip Participation Form	5	6,548	6,548	546
Diamond Creek Application	10	87	118	20
	.....	43,461	72,486	7,763

Estimated Annual Nonhour Burden Cost: $0.

Purpose of Forms

Backcountry Permitting Forms

Backcountry Permit Request Form

The Backcountry Permit Request Form is required from individuals seeking a Backcountry Permit. It asks for the applicant's contact information, group size, itinerary being requested and acceptable variations, license plates of any trailhead vehicles, and payment information.

Hiker Information Form

The Hiker Information Form is required when the applicant has requested a solo hike, an itinerary considered overly ambitious for the typical hiker, or a summer hike outside the Corridor Zone. The form asks for information that has proven to be useful in finding and assisting groups who get into difficulties and need emergency assistance. This information includes description of gear, emergency contact information, description of self (if hiking solo), detailed hiking plans, and description of any significant health issues or medications for all group members.

Water Report Form

The Water Report Form is completely optional. It is used only when a hiker wishes to report their observations of where they found water while in the canyon. It includes the name of the reporting party, a description of where water was found, how much was available, and date observed.

Commercial Guiding—Verifiable Client List Form

The Verifiable Client List Form is required from a commercial guiding company each time they request a Backcountry Permit to take clients into the backcountry. It includes contact information for each client requesting participation on the trip.

River Permitting Forms

Create Online Profile Form

The Create Online Profile Form is required from individuals who wish to eventually submit an application in a lottery. This form asks for the applicant's legal name, date of birth, contact information, desired username, and desired password.

Login Form

The Login Form is required from individuals who wish to submit an application in an open lottery, obtain access to view their history of payments and applications, change contact information or preference, or accept or reject participation on others trips. The form asks for a username, password, and birthdate.

Forgot Username/Password Form

The Forgot Username/Password Form is required when a user has forgotten their username and/or password and wants either of these e-mailed to them. The user can request their username by entering their e-mail address, or they can request a new, computer generated password by entering their username.

Lottery Application Form

The Lottery Application Form is required to submit an application in a lottery. It allows the applicant to list 5 preferences for a launch date and trip size, and list Potential Alternate Trip Leaders.

Accept Trip Form

The Accept Trip Form is available only to those who win launches through the lottery and required if they wish to keep the trip. This form asks if they wish to keep the trip, and if so requires entry or verification of their mailing address. Once this form is complete, the user is given the option to go to a pay.gov form and pay a deposit.

Noncommercial River Trip Application Form

The Noncommercial River Trip Application Form is due 90 days before launch and required from those who have completed the Accept Trip Form. It asks for concurrence with the NPS requirements associated with the use of a noncommercial river permit and information about the qualified boat-operator, watercraft, safety equipment, and itinerary.

Trip Leader Trip Participant Form

The Trip Leader Trip Participant Form asks for the name, e-mail, and both the date and location when each individual participant will join or leave the river trip.

Confirm Trip Participation Form

All participants on noncommercial trips complete this form, indicating their intent to participate on the trip and recording their legal name and date of birth.

Diamond Creek Application

The Diamond Creek Application is required from individuals who wish to receive a permit to take a group down the Colorado River launching at Diamond Creek. The form asks for the applicant's contact information and proposed itinerary.

Abstract: These forms will provide public access on the Colorado River and overnight access into backcountry use areas within Grand Canyon National Park where use limits are imposed in accordance with NPS regulations. Such permitting improves the ability of the NPS to: educate users, promote public safety, encourage visitor enjoyment, enforce limits and regulations, verify technical river skills, conduct search and rescue efforts, collect fees, and promote visitation practices which preserve both the health of the environment and the quality of the overall backcountry experience. We will use collected information for recreational use planning and resource management. Some nonpersonal information will be aggregated and shared on the park's Web site with the public.

The National Park Service Organic Act of 1916, 38 Stat 535, 16 U.S.C. 1, *et seq.,* requires that the NPS preserve national parks for the use and enjoyment of present and future generations. The Organic Act and its amendments afford the NPS latitude to make resource decisions that balance visitor recreation and resource preservation. NPS regulations codified in 36 CFR parts 1 through 7, 12, and 13 are designated to implement statutory mandates that provide for resource protection and public enjoyment.

Backcountry permit information is collected via paper forms, and river permit information is collected via a combination of an online system and paper forms.

Comments: Comments are invited on: (1) The practical utility of the information being gathered; (2) the accuracy of the burden hour estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden to respondents, including use of automated information techniques or other forms of information technology.

Please note that the comments submitted in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this IC. 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 OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: September 6, 2011.

Robert M. Gordon,

Information Collection Clearance Officer, National Park Service.

[FR Doc. 2011–23161 Filed 9–9–11; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–0906–8347; 4840–0097–N81]

Proposed Information Collection; Comment Request: Shenandoah National Park Angler Survey

AGENCY: National Park Service (NPS), Interior.

ACTION: Notice; request for comments.

SUMMARY: We (National Park Service, Shenandoah National Park) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. To comply with the Paperwork Reduction Act of 1995 and as a part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to comment on this IC. We may not conduct or sponsor and a person is not required to respond to a collection unless it displays a currently valid OMB control number.

DATE: Please submit your comment on or before November 14, 2011.

ADDRESSES: Please send your comments to the IC to Phadrea Ponds, Information Collections Coordinator, National Park Service, 1201 Oakridge Drive, Fort Collins, CO 80525 (mail); or *phadrea_ponds@nps.gov* (e-mail). Please reference Information Collection 1024–NEW, SHEN–ANGLER.

FOR FURTHER INFORMATION CONTACT: Jeb Wofford by mail at Shenandoah National Park, 3655 U.S. HWY 211E, Luray, VA 22835 or *Jeb_Wofford@nps.gov* (e-mail). You are entitled to a copy of the entire IC package free-of-charge.

SUPPLEMENTARY INFORMATION:

OMB Control Number: None. This is a new collection.

Title: Shenandoah National Park Angler Survey.

Type of Request: New.

Affected Public: General public.

Respondent's Obligation: Voluntary.

Frequency of Collection: One-time (spring, summer, and fall seasons).

Estimated Annual Number of Respondents: 500.

Estimated Total Annual Burden Hours: 83 hours.

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: None

Abstract: Aquatic resources and recreational fishing played a large role in the establishment of Shenandoah National Park and fishing remains an important recreational activity. Nevertheless, relatively little is known

about the angling public that enjoys Shenandoah. The objective of this collection is to educate park managers about the park's angling population and provide information on angling's potential effects on park resources. This project will inform park managers as well as provide the public an opportunity to offer the park their opinions about park aquatic resources and aquatic resource management. The information gathered through interviews and self-surveys will be used to assess current fisheries regulations and fish management in Shenandoah. The NPS may use the information to provide qualitative, quantitative, or graphical descriptions of a variety of angling statistics, including but not limited to angler use, satisfaction, and fish harvest. We will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and implementing regulations (43 CFR part 2), and under regulations at 30 CFR 250.197, ''Data and information to be made available to the public upon request for limited inspection.'' Responses are voluntary and no questions of a ''sensitive'' nature will be asked.

Comments: We invite comments concerning this IC on: (1) Whether or not the collection of information is necessary, including whether or not the information will have practical utility; (2) the accuracy of our estimate of the burden for this collection of information; (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 respondents.

Please note that the comments submitted in response to this notice are a matter of public record. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: September 6, 2011.

Robert M. Gordon,

Information Collection Clearance Officer, National Park Service.

[FR Doc. 2011–23153 Filed 9–9–11; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–PWR–PWRO–0322–7019; 2031–A038–409]

Draft Environmental Impact Statement for General Management Plan for Golden Gate National Recreation Area and Muir Woods National Monument, Counties of Marin, San Francisco, and San Mateo, CA

AGENCY: National Park Service, Interior.

ACTION: Notice of Availability of the Draft Environmental Impact Statement/General Management Plan for Golden Gate National Recreation Area and Muir Woods National Monument.

SUMMARY: In accord with § 102(2)(C) of the National Environmental Policy Act of 1969, and pursuant to the Council on Environmental Quality's regulations (40 CFR parts 1500–08), the National Park Service has prepared a Draft Environmental Impact Statement (Draft EIS) for the updating the General Management Plan (GMP) for Golden Gate National Recreation Area and Muir Woods National Monument. The Draft EIS/GMP evaluates four alternatives for managing Golden Gate National Recreation Area and Muir Woods, and upon approval the GMP would serve as a blueprint to guide management of these units of the National Park System over the next 15–20 years.

Background: Established in 1972 to bring ''parks to the people'', until now Golden Gate National Recreation Area (GGNRA) has been operating under its first GMP, approved in 1980. During the 30 years since the GMP was approved, GGNRA has doubled in size, visitation now approaches 16 million annually. The management staff has gained a better understanding of the natural and cultural resources of the park and the many recreational uses that occur within the park areas. Muir Woods was declared a national monument in 1908 and is currently managed as part of GGNRA.

Public scoping was initiated in the spring of 2006. The Notice of Intent to prepare an EIS was published in the **Federal Register** on March 29, 2006. Five public scoping meetings were held in the area; approximately 300 participants overall provided relevant information which was duly considered in preparing preliminary alternatives. The preliminary alternatives were initially reviewed with the public at meetings held in June, 2008 (over 1,500 substantive comments were collected). Additionally, numerous coordination meetings were conducted with local agencies and partner organizations. An update on the evolving preferred alternative was provided to the public in the summer, 2009.

Proposal and Alternatives: As noted, the Draft GMP/EIS describes and analyzes four alternatives. The no-action alternative consists of the existing park management and serves as a basis for comparison in evaluating the other alternatives.

Alternative 1, ''Connecting People with the Parks,'' would further the founding idea of ''parks to the people'' and would engage the community and other visitors in the enjoyment, understanding, and stewardship of the park's resources and values. Park management would focus on ways to attract and welcome people, connect people with the resources, and promote understanding, enjoyment, preservation, and health. Alternative 1 is the ''*agency-preferred''* alternative for managing most park lands in Marin, San Francisco, and San Mateo Counties.

Alternative 2, ''Preserving and Enjoying Coastal Ecosystems,'' would place an emphasis on preserving, enhancing, and promoting the dynamic and interconnected coastal ecosystems in which marine resources are valued and prominently featured. Recreational and educational opportunities would allow visitors to learn about and enjoy the ocean and bay environments, and gain a better understanding of the region's international significance and history.

Alternative 3, ''Focusing on National Treasures,'' would place an emphasis on the park's nationally important natural and cultural resources. The fundamental resources of each showcased site would be managed at the highest level of preservation to protect the resources in perpetuity and to promote appreciation, understanding, and enjoyment of those resources. Visitors would have the opportunity to explore locally the wide variety of experiences that are associated with many different types of units of the National Park System. All other resources would be managed to complement the nationally significant resources and associated visitor experiences. Alternative 3 is the ''*agency-preferred''* alternative for Alcatraz Island and Muir Woods National Monument.

As presented in the Draft EIS/GMP, Alternative 1 is the ''*environmentally preferred''* course of action for lands in Marin, San Francisco, and San Mateo Counties. Alternative 3 is ''*environmentally preferred''* for Muir Woods NM and Alcatraz Island.

Comments: Park stakeholders, interested organizations, and the public are encouraged to provide written comments on issues and concerns addressed in the Draft EIS/GMP, suggest refinements in alternatives, and provide information about potential environmental effects and appropriate mitigation measures that would reduce potential impacts. To afford a timely opportunity to obtain information, several public meetings will be hosted (dates and locations of the meetings will be announced on the project Web site *http://parkplanning.nps.gov/goga,* via local and regional press media, and in a mailed announcement to be distributed to the GMP mailing list. All written comments must be postmarked or transmitted not later than 60 days after publication of the Environmental Protection Agency's notice of filing in the **Federal Register**—as soon as this ending date is confirmed it will be announced on the project Web site and via local and regional press media.

An electronic version of the Draft EIS/GMP will be available for public review on the project Web site, and a limited number of CDs and printed copies will be made available at park headquarters. Printed or CD copies may also be requested by contacting Golden Gate National Recreation Area, Fort Mason, Building 201, San Francisco, CA 94123; telephone (415) 561–4930.

Persons wishing to comment on the Draft GMP/EIS may respond by any one of several methods. Comments may be transmitted electronically via the project Web site; or mailed to Golden Gate National Recreation Area, Attention: DGMP/EIS, at the address listed above; or presented in person at public meetings or hand-delivered at the above address. 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.

Decision Process: Availability of the Draft EIS/GMP for a 60-day public review will be formally announced through publication of this Notice of Availability, through local and regional news media, via the project Web site, and direct mailing to the project mailing list. Following due consideration of all public and agency comments, a Final EIS/GMP will be prepared. As a delegated EIS the official responsible for approval of the GMP is the Regional Director, Pacific West Region. Subsequently the official responsible for implementing the new GMP would be the General Superintendent, Golden Gate National Recreation Area.

Dated: March 18, 2011.

Christine S. Lehnertz,

Regional Director. Pacific West Region.

Editorial Note: This document was received at the Office of the Federal Register September 6, 2011.

[FR Doc. 2011–23162 Filed 9–9–11; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–AKR–LACL–ANIA–WRST; 9924–PYS]

Notice of Public Meeting for the National Park Service (NPS) Alaska Region's Subsistence Resource Commission (SRC) Program

AGENCY: National Park Service, Interior.

SUMMARY: The Lake Clark National Park SRC, the Aniakchak National Monument SRC, and the Wrangell-St. Elias National Park SRC will meet to develop and continue work on NPS subsistence program recommendations and other related subsistence management issues. The NPS SRC program is authorized under Title VIII, Section 808 of the Alaska National Interest Lands Conservation Act, Public Law 96–487, to operate in accordance with the provisions of the Federal Advisory Committee Act. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

Public Availability of Comments: These meetings are open to the public and will have time allocated for public testimony. The public is welcome to present written or oral comments to the SRC. Each meeting will be recorded and meeting minutes will be available upon request from the park superintendent for public inspection approximately six weeks after each meeting. Before including your address, telephone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

If the meeting dates and locations are changed, a notice will be published in local newspapers and announced on local radio stations prior to the meeting date. SRC meeting locations and dates may need to be changed based on inclement weather or exceptional circumstances.

Lake Clark National Park SRC Meeting Date and Location: The Lake Clark National Park SRC will meet at the Nondalton Community Center, (907) 294–2288 in Nondalton, Alaska on Thursday, September 22, 2011, from 11 a.m. to 5 p.m. or as soon as business is completed.

For Further Information On the Lake Clark National Park SRC Meeting Contact: Mary Mc Burney, Subsistence Manager, (907) 235–7891 or Clarence Summers, Subsistence Manager, NPS Alaska Regional Office, at (907) 644–3603. If you are interested in applying for Lake Clark National Park SRC membership contact the Superintendent, 240 W. 5th Avenue, Suite 236, Anchorage, AK 99501, (907) 644–3626, or visit the park Web site at: *http://www.nps.gov/lacl/parkmgmt/index.htm.*

Aniakchak National Monument SRC Meeting Date and Location: The Aniakchak National Monument SRC will meet at the Chignik Lake Community Subsistence Hall, (907) 749–2470, in Chignik Lake, Alaska on Thursday, October 6, 2011, from 1 p.m. to 4 p.m. or as soon as business is completed.

For Further Information On The Aniakchak National Monument Src Meeting Contact: Mary Mc Burney, Subsistence Manager, (907) 235–7891, or Clarence Summers, Subsistence Manager, NPS Alaska Regional Office, at (907) 644–3603. If you are interested in applying for Aniakchak National Monument SRC membership contact the Superintendent, P.O. Box 7, King Salmon, AK 99613, (907) 246–3305, or visit the park Web site at: *http://www.nps.gov/ania/parkmgmt/index.htm.*

Wrangell-St. Elias National Park SRC Meeting Date and Location: The Wrangell-St. Elias National Park SRC will meet at the Northway Tribal Hall, (907) 778–2311, in Northway, Alaska on Thursday, October 6, 2011, from 9:30 a.m. to 5 p.m. An evening session may be held at the call of the chair. The meeting is scheduled to reconvene on Friday, October 7, 2011, at 9 a.m., at the Tanacross Community Hall, (907) 778–2311, in Tanacross, Alaska. The meeting is scheduled to end at 5 p.m. or as soon as business is completed.

For Further Information On the Wrangell-St. Elias National Park SRC Meeting Contact: Barbara Cellarius, Subsistence Manager, (907) 822–7236,

or Clarence Summers, Subsistence Manager, NPS Alaska Regional Office, at (907) 644–3603. If you are interested in applying for Wrangell-St. Elias National Park SRC membership contact the Superintendent, Wrangell-St. Elias National Park & Preserve, Mile 106.8 Richardson Highway, PO Box 439, Copper Center, AK 99573, (907) 822–5234, or fax (907) 822–7216 or visit the park Web site at: *http://www.nps.gov/wrst/contacts.htm.*

Proposed SRC Meeting Agenda

The proposed meeting agenda for each meeting includes the following:

1. Call to order
2. Welcome and Introductions
3. Administrative Announcements
4. Approve Agenda
5. Approval of Minutes
6. SRC Purpose and Membership
7. SRC Member Reports
8. National Park Service Reports
a. Subsistence Manager
b. Resource Management
c. Ranger Report
9. Federal Subsistence Board Update
a. Wildlife
b. Fisheries
10. Alaska Board of Game Update
11. Old Business
a. Subsistence Uses of Bones, Horn, Antlers and Plants Environmental Assessment Update
12. New Business
a. 2011 SRC Chairs' Workshop
13. Public and other Agency Comments
14. SRC Work Session
15. Select Time and Location for Next Meeting
16. Adjourn Meeting

Victor W. Knox,

Deputy Regional Director, Alaska.

[FR Doc. 2011–23163 Filed 9–9–11; 8:45 am]

BILLING CODE 4312–GY–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–11–025]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: September 14, 2011 at 2 p.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. 701–TA–318 and 731–TA–538 and 561 (Third Review)(Sulfanilic Acid from China and India). The Commission is currently scheduled to transmit its determinations and Commissioners' opinions to the Secretary of Commerce on or before September 26, 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.

Issued: September 7, 2011.

By order of the Commission.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–23342 Filed 9–8–11; 4:15 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1125–0003]

Agency Information Collection Activities: Proposed collection; Comments Request: Fee Waiver Request

ACTION: 30-Day Notice of Information Collection Under Review.

The Department of Justice (DOJ), Executive Office for Immigration Review (EOIR) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 76, Number 128, page 39122–39123, on July 5, 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 October 12, 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 call Robin M. Stutman at (703) 305–0470, or the DOJ Desk Officer at 202–395–3176.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Fee Waiver Request.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: Form EOIR 26A. Executive Office for Immigration Review, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: An individual submitting an appeal or motion to the Board of Immigration Appeals. Other: None. Abstract: The information on the fee waiver request form is used by the board of Immigration Appeals to determine whether the requisite fee for a motion or appeal will be waived due to an individual's financial situation.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 5,970 respondents will complete the form annually with an average of one hour per response. An estimate of the total public burden (in hours) associated with the collection: There are an estimated 5,970 total burden hours associated with this collection annually.

If additional information is required, contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street, NE., Room 2E–508, Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2011–23241 Filed 9–9–11; 8:45 am]

BILLING CODE 4410–30–P

DEPARTMENT OF JUSTICE

Notice of Lodging of a Consent Decree Under the Clean Water Act

Notice is hereby given that on September 6, 2011, a proposed Consent Decree in *United States and State of Indiana* v. *City of Elkhart, Indiana,* Civil Action No. 2:11CV328 was lodged with the United States District Court for the Northern District of Indiana.

In this case, the United States and the State of Indiana (Indiana) seek civil penalties and injunctive relief for violations of the Clean Water Act, 33 U.S.C. 1251 *et seq.,* Title 13 of the Indiana Code, Title 327 of the Indiana Administrative Code, and certain terms and conditions of National Pollution Discharge Elimination System permits that Indiana issued to the City of Elkhart (Elkhart) for the relevant time periods, related to alleged discharges of untreated sewage from Elkhart's combined sewer collection system, *i.e.* ''combined sewer overflows,'' during wet weather events, and some dry weather time periods, into ''waters of the United States'' and ''waters of the state.''

The proposed Consent Decree would require Elkhart to reduce its combined sewer overflows by comprehensively upgrading and expanding its sewage collection, storage, conveyance, and treatment system, at a cost of approximately $155.6 million in 2007 dollars. Elkhart must complete these improvements by December 31, 2029 or, if Elkhart demonstrates financial hardship, by July 1, 2033. Additionally, the proposed Decree requires Elkhart to pay a total civil penalty of $87,000 split equally between the United States and the State of Indiana.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States and State of Indiana* v. *City of Elkhart, Indiana,* D.J. Ref. 90–5–1–1–08202.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Northern District of Indiana, 5400 Federal Plaza, Suite 1500, Hammond, IN 46320 (contact Assistant United States Attorney Wayne Ault (219–937–5650)), and at U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, IL 60604–3590 (contact Associate Regional Counsel Kathleen Schnieders (312–353–8912)). During the public comment period, the proposed Consent Decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the proposed consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $20.75 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz .

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2011–23234 Filed 9–9–11; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0016]

Agency Information Collection Activities: Application for Registration of Firearms Acquired by Certain Governmental Entities

ACTION: 60-Day Notice.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. This notice requests comments from the public and affected agencies concerning the proposed information collection. Comments are encouraged and will be accepted for ''sixty days'' until November 14, 2011. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Gary Schaible, *Gary.Schaible@atf.gov,* National Firearms Act Branch, 99 New York Avenue, NE., Washington, DC 20226.

Written comments concerning this information collection should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: DOJ Desk Officer. The best way to ensure your comments are received is to e-mail them to *oira_submission@omb.eop.gov* or fax them to 202–395–7285. All comments should reference the 8 digit OMB number for the collection or the title of the collection. If you have questions concerning the collection, please call Gary Schaible at 202–648–7165 or the DOJ Desk Officer at 202–395–3176.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Summary of Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application for Registration of Firearms Acquired by Certain Governmental Entities.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 10 (5320.10). Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State, local or tribal Government. Other: None Need for Collection:

The form is required to be submitted by State and local government entities wishing to register an abandoned or seized and previously unregistered National Firearms Act weapon. The form is required whenever application for such a registration is made.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 1,500 respondents will complete a 30 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 3000 annual total burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, Room 2E–508, 145 N Street NE., Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2011–23247 Filed 9–9–11; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

[OMB Number 1140–0030]

Agency Information Collection Activities; Proposed Collection, Comments Requested: Records and Supporting Data; Importation, Receipt, Storage, and Disposition by Explosives Importers, Manufacturers, Dealers, and Users Licensed Under Title 18 U.S.C. Chapter 40 Explosives

ACTION: 30-Day Notice of Information Collection.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 76, Number 130, page 39900–39901, on July 7, 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 October 12, 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 call William Miller at 202–548–7120 or the DOJ Desk Officer at 202–395–3176.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Summary of Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Records and Supporting Data: Importation, Receipt, Storage, and Disposition By Explosives Importers, Manufacturers, Dealers, and Users Licensed Under Title 18 U.S.C. Explosives.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Recordkeeping Number: ATF REC 5400/3. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None.

Need for Collection

The records show daily activities in the importation, manufacture, receipt, storage, and disposition of all explosive materials covered under 18 U.S.C. chapter 40 Explosives. The records are used to show where and to whom explosive materials are sent, thereby ensuring that any diversions will be readily apparent and if lost or stolen, ATF will be immediately notified.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 50,519 respondents, who will take 1 hour to maintain records.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 637,570 total burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, 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. 2011–23248 Filed 9–9–11; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

[OMB Number 1110–0015]

Agency Information Collection Activities: Proposed Collection, Comments Requested: Revision of a Currently Approved Collection: Hate Crime Incident Report; Quarterly Hate Crime Report

ACTION: 30-day Notice of Information Collection under Review.

The Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division 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 129, pages 39437–39438, on July 6, 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 October 12, 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 call Mr. Gregory E. Scarbro, Unit Chief, Federal Bureau of Investigation, Criminal Justice Information Services (CJIS) Division, Module E–3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306; facsimile (304) 625–3566 or the DOJ Desk Officer at 202–395–3176.

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

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, 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:* Revision of a currently approved collection.

(2) *The title of the form/collection:* Hate Crime Incident Report and the Quarterly Hate Crime Report.

(3) *The agency form number, if any, and the applicable component of the department sponsoring the collection:* Form Number: 1–699 and 1–700; Sponsor: Criminal Justice Information Services Division, Federal Bureau of Investigation, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: City, county, state, Federal and Tribal law enforcement agencies. Brief Abstract: This collection is needed to collect information on hate crime incidents committed throughout the U.S.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are approximately 14,981 law enforcement agency respondents that submit quarterly, four times per year, for a total of 59,924 responses with an estimated response time of 9 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with this collection:* There are approximately 8,989 hours, annual burden, 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. 2011–23242 Filed 9–9–11; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Meeting of the CJIS Advisory Policy Board

AGENCY: Federal Bureau of Investigation (FBI), Justice.

ACTION: Meeting notice.

SUMMARY: The purpose of this notice is to announce the meeting of the Criminal Justice Information Services (CJIS) Advisory Policy Board (APB). The CJIS APB is a Federal advisory committee established pursuant to the Federal Advisory Committee Act (FACA). This meeting announcement is being published as required by Section 10 of the FACA.

The CJIS APB is responsible for reviewing policy issues and appropriate technical and operational issues related to the programs administered by the FBI's CJIS Division, and thereafter, making appropriate recommendations to the FBI Director. The programs administered by the CJIS Division are the Integrated Automated Fingerprint Identification System, Interstate Identification Index, Law Enforcement Online, National Crime Information Center, National Instant Criminal Background Check System, National Incident-Based Reporting System, Law Enforcement National Data Exchange, and Uniform Crime Reporting.

The meeting will be open to the public on a first-come, first-seated basis. Any member of the public wishing to file a written statement concerning the CJIS Division's programs or wishing to address this session should notify the CJIS Designated Federal Officer, R. Scott Trent at (304) 625–5263 at least 72 hours prior to the start of the session. The notification should contain the requestor's name, corporate designation, and consumer affiliation or government designation along with a short statement describing the topic to be addressed and the time needed for the presentation. A requestor will ordinarily be allowed no more than 15 minutes to present a topic.

DATES AND TIMES: The APB will meet in open session from 8:30 a.m. until 5 p.m., on December 6–7, 2011.

ADDRESSES: The meeting will take place at The Hyatt Regency Albuquerque, 330 Tijeras Ave., NW., Albuquerque, New Mexico 87102, telephone (505) 842–1234.

FOR FURTHER INFORMATION CONTACT: Inquiries may be addressed to Ms. Skeeter J. Murray; Management and Program Assistant; Training and Systems Education Unit, Resources Management Section; FBI CJIS Division,

Module C3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306–0149; telephone (304) 625–3518, facsimile (304) 625–5090.

Dated: August 29, 2011.

R. Scott Trent,

CJIS Designated Federal Officer, Criminal Justice Information Services Division, Federal Bureau of Investigation.

[FR Doc. 2011–23137 Filed 9–9–11; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (OJP) Docket No. 1568]

Meeting of the Public Safety Officer Medal of Valor Review Board

AGENCY: Office of Justice Programs (OJP), Justice.

ACTION: Notice of meeting.

SUMMARY: This is an announcement of a meeting via conference call of the Public Safety Officer Medal of Valor Review Board to vote of the position of Board Chairperson, review issues relevant to the nomination review process, discuss pending ceremonies and upcoming activities and other relevant Board issues related thereto. The meeting/conference call date and time are listed below.

DATES: September 29, 2011, from 9 a.m. to 2 p.m. ET

ADDRESSES: This meeting/conference call will take place at the Office of Justice Programs, 810 7th Street NW., Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Gregory Joy, Policy Advisor, Bureau of Justice Assistance, Office of Justice Programs, 810 7th Street, NW., Washington, DC 20531, by telephone at (202) 514–1369, toll free (866) 859–2687, or by e-mail at *gregory.joy@usdoj.gov.*

SUPPLEMENTARY INFORMATION: The Public Safety Officer Medal of Valor Review Board carries out those advisory functions specified in 42 U.S.C. 15202. Pursuant to 42 U.S.C. 15201, the President of the United States is authorized to award the Public Safety Officer Medal of Valor, the highest national award for valor by a public safety officer.

The primary purpose of this meeting/conference call is to review and vote on recommendations for the 2010–2011 Medal of Valor nominations.

This meeting/conference call is open to the public at the offices of the Bureau of Justice Assistance. For security purposes, members of the public who wish to participate must register at least seven (7) days in advance of the meeting/conference call by contacting Mr. Joy. All interested participants will be required to meet at the Bureau of Justice Assistance, Office of Justice Programs; 810 7th Street, NW., Washington, DC and will be required to sign in at the front desk. *Note:* Photo identification will be required for admission. Additional identification documents may be required.

Access to the meeting/conference call will not be allowed without prior registration. Anyone requiring special accommodations should contact Mr. Joy at least seven (7) days in advance of the meeting. Please submit any comments or written statements for consideration by the Review Board in writing at least seven (7) days in advance of the meeting/conference call date.

Gregory Joy,

Policy Advisor, Bureau of Justice Assistance.

[FR Doc. 2011–23132 Filed 9–9–11; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection; Comment Request

AGENCY: Bureau of Labor Statistics, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed extension of the ''Cognitive and Psychological Research.'' A copy of the proposed information collection request (ICR) can 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 **ADDRESSES** section of this notice on or before November 14, 2011.

ADDRESSES: Send comments to Nora Kincaid, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue, NE., Washington, DC 20212. Written comments also may be transmitted by fax to 202–691–5111 (this is not a toll free number).

FOR FURTHER INFORMATION CONTACT: Nora Kincaid, BLS Clearance Officer, telephone number 202–691–7628 (this is not a toll free number). (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The Bureau of Labor Statistics' Behavioral Science Research Laboratory (BSRL) conducts theoretical, applied, and evaluative research aimed at improving the quality of data collected and published by the Bureau. Since its creation in 1988, the BSRL has advanced the study of survey methods research, approaching issues of non-sampling error within a framework that draws heavily on the theories and methods of the cognitive, statistical, and social sciences. The BSRL research focuses primarily on the assessment of survey instrument design and survey administration, as well as on issues related to interviewer training, the interaction between interviewer and respondent in the interview process, and the usability of data-collection instruments by both interviewers and respondents. Improvements in these areas result in better accuracy and response rates of BLS surveys, frequently reduce costs in training and survey administration, and further ensure the effectiveness of the Bureau's overall mission.

II. Current Action

Office of Management and Budget clearance is being sought for ''Cognitive and Psychological Research.'' The purpose of this request for clearance by the BSRL is to conduct cognitive and psychological research designed to enhance the quality of the Bureau's data collection procedures and overall data management. The BLS is committed to producing the most accurate and complete data within the highest quality assurance guidelines. The BSRL was created to aid in this effort and over the past 20 years it has demonstrated the effectiveness and value of its approach. Over the next few years, demand for BSRL consultation is expected to remain high as approaches are explored and tested for dealing with increasing

nonresponse in key Bureau surveys. Moreover, as the use of Web-based surveys continues to grow, so too will the need for careful tests of instrument design and usability, human-computer interactions, and the impact of multiple modes on data quality. The BSRL is uniquely equipped with both the skills and facilities to accommodate these demands.

The extension of the accompanying clearance package reflects an attempt to accommodate the increasing interest by BLS program offices and other agencies in the methods used, and the results obtained, by the BSRL. This package reflects planned research and development activities for FY2012 through FY2014, and its approval will enable the continued productivity of a state-of-the-art, multi-disciplinary program of behavioral science research to improve BLS survey methodology.

III. Desired Focus of Comments

The Bureau of Labor Statistics 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.
- 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.

Type of Review: Extension of a currently approved collection.

Agency: Bureau of Labor Statistics.

Title: Cognitive and Psychological Research.

OMB Number: 1220–0141.

Affected Public: Individuals and Households, Private Sector.

Total Respondents: 1,200.

Frequency: One time.

Total Responses: 1,200.

Average Time per Response: 60 minutes.

Estimated Total Annual Burden Hours: 1,200 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC this 31st day of August 2011.

Kimberley D. Hill,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 2011–23209 Filed 9–9–11; 8:45 am]

BILLING CODE 4510–24–P

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Publication of the Office of Federal Procurement Policy (OFPP) Policy Letter 11–01, Performance of Inherently Governmental and Critical Functions

AGENCY: Office of Management and Budget, Office of Federal Procurement Policy.

ACTION: Notice of final policy letter.

SUMMARY: The Office of Federal Procurement Policy (OFPP) in the Office of Management and Budget (OMB) is issuing a policy letter to provide to Executive Departments and agencies guidance on managing the performance of inherently governmental and critical functions. The guidance addresses direction to OMB in the Presidential Memorandum on Government Contracting, issued on March 4, 2009, to clarify when governmental outsourcing of services is, and is not, appropriate, consistent with section 321 of the Duncan Hunter National Defense Authorization Act (NDAA) for Fiscal Year 2009 (Pub. L. 110–417). Section 321 requires OMB to: (i) Create a single definition for the term ''inherently governmental function'' that addresses any deficiencies in the existing definitions and reasonably applies to all agencies; (ii) establish criteria to be used by agencies to identify ''critical'' functions and positions that should only be performed by Federal employees; and (iii) provide guidance to improve internal agency management of functions that are inherently governmental or critical. The Presidential Memorandum is available at *http://www.whitehouse.gov/the_press_office/Memorandum-for-the-Heads-of-Executive-Departments-and-Agencies-Subject-Government/.* Section 321 may be found at *http://www.dod.gov/dodgc/olc/docs/2009NDAA_PL110–417.pdf.*

DATES: The effective date of OFPP Policy 11–01 is October 12, 2011.

FOR FURTHER INFORMATION CONTACT: Mathew Blum, OFPP, (202) 395–4953 or *mblum@omb.eop.gov,* or Jennifer Swartz, OFPP, (202) 395–6811 or *jswartz@omb.eop.gov.*

SUPPLEMENTARY INFORMATION:

A. Overview

OFPP is issuing a policy letter to provide guidance on managing the performance of inherently governmental and critical functions. The policy letter is intended to implement direction in the President's March 4, 2009, Memorandum on Government Contracting that requires OMB to ''clarify when governmental outsourcing for services is and is not appropriate, consistent with section 321 of Public Law 110–417 (31 U.S.C. 501 note).'' The policy letter:

- *Clarifies what functions are inherently governmental and must always be performed by Federal employees.* The policy letter provides a single definition of ''inherently governmental function'' built around the well-established statutory definition in the Federal Activities Inventory Reform Act (FAIR Act), Public Law 105–270. The FAIR Act defines an activity as inherently governmental when it is so intimately related to the public interest as to mandate performance by Federal employees. The definition provided by this policy letter will replace existing definitions in regulation and policy, including the Federal Acquisition Regulation (FAR). The policy letter provides examples and tests to help agencies identify inherently governmental functions.
- *Explains what agencies must do when work is ''closely associated'' with inherently governmental functions.* Specifically, when functions that generally are not considered to be inherently governmental approach being in that category because of the nature of the function and the risk that performance may impinge on Federal officials' performance of an inherently governmental function, agencies must give special consideration to using Federal employees to perform these functions. If contractors are used to perform such work, agencies must give special management attention to contractors' activities to guard against their expansion into inherently governmental functions. The policy letter includes examples to help agencies identify closely associated functions and a checklist of responsibilities that must be carried out

when agencies rely on contractors to perform these functions.

• *Requires agencies to identify their ''critical functions'' in order to ensure they have sufficient internal capability to maintain control over functions that are core to the agency's mission and operations.* The policy letter holds an agency responsible for making sure it has an adequate number of positions filled by Federal employees with appropriate training, experience, and expertise to understand the agency's requirements, formulate alternatives, manage work product, and monitor any contractors used to support the Federal workforce. Federal officials must evaluate, on a case-by-case basis, whether they have sufficient internal capability, taking into account factors such as the agency's mission, the complexity of the function, the need for specialized staff, and the potential impact on mission performance if contractors were to default on their obligations.

• *Outlines a series of agency management responsibilities to strengthen accountability for the effective implementation of these policies.* Agencies must take specific actions, before and after contract award, to prevent contractor performance of inherently governmental functions and overreliance on contractors in ''closely associated'' and critical functions. Agencies are also required to develop agency-level procedures, provide training, and designate senior officials to be responsible for implementation of these policies.

OFPP will work with the Federal Acquisition Regulatory Council, the Defense Acquisition Regulations Council and the Civilian Agency Acquisition Council to develop and implement appropriate changes to the FAR to implement this policy letter. In addition, OFPP will review other relevant policy documents, such as guidance in OMB Circular A–76 implementing the FAIR Act, and take appropriate action to ensure they conform to the policies in this letter. Finally, OFPP will work with the Federal Acquisition Institute and the Defense Acquisition University on appropriate training materials for the acquisition workforce and other affected stakeholders.

B. Summary of Proposed and Final Policy Letters

The Presidential Memorandum on Government Contracting required the Director of OMB to develop guidance addressing when governmental outsourcing of services is, and is not, appropriate. The Memorandum states that the line between inherently governmental activities that should not be outsourced and commercial activities that may be subject to private-sector performance has become blurred, which may have led to the performance of inherently governmental functions by contractors and, more generally, an overreliance on contractors by the government. It directs OMB to clarify when outsourcing is, and is not, appropriate, consistent with section 321 of the NDAA for Fiscal Year (FY) 2009.

Section 321 directs OMB to: (1) Create a single, consistent definition for the term ''inherently governmental function'' that addresses any deficiencies in the existing definitions and reasonably applies to all agencies; (2) develop criteria for identifying critical functions with respect to the agency's mission and operations; (3) develop criteria for determining positions dedicated to critical functions which should be reserved for Federal employees to ensure the department or agency maintains control of its mission and operations; (4) provide criteria for identifying agency personnel with responsibility for (a) maintaining sufficient expertise and technical capability within the agency, and (b) issuing guidance for internal activities associated with determining when work is to be reserved for performance by Federal employees; and (5) solicit the views of the public regarding these matters.

1. Proposed Policy Letter

OMB's OFPP issued a proposed policy letter on March 31, 2010, entitled ''Work Reserved for Performance by Federal Government Employees,'' to implement the requirements of the President's Memorandum and section 321 (75 FR 16188–97). The proposed policy letter, which was issued after OFPP reviewed current laws, regulations, policies, and reports addressing the definition of inherently governmental functions, as well as feedback from a public meeting held in the summer of 2009, proposed to consolidate in one document a number of policies, definitions, and procedures associated with identifying when work must be performed by Federal employees that are currently addressed in multiple guidance documents, including the Federal Acquisition Regulation (FAR), OMB Circular A–76, and various OMB memoranda. The document proposed the following policy actions to address inherently governmental functions, functions closely associated with inherently governmental functions, and functions that are critical to the agencies' mission and operations.

a. Proposed Steps To Address Inherently Governmental Functions

• Create a single definition for the term ''inherently governmental function'' by directing agencies to adhere to the statutory definition for this term set forth in the FAIR Act and eliminate variations of this definition found in other documents, such as the FAR and OMB Circular A–76.

• Preserve a long-standing list of examples set out in the FAR of the most common inherently governmental functions, such as the determination of agency policy, hiring of Federal employees, and awarding of Federal contracts.

• Refine existing criteria (*e.g.,* addressing the exercise of discretion) and provide new ones (*e.g.,* focused on the nature of the function), to help an agency decide if a particular function that is not identified on the list of examples is, nonetheless, inherently governmental.

b. Proposed Steps To Address Functions Closely Associated With Inherently Governmental Functions

• Reiterate requirements in the Omnibus Appropriations Act, 2009 (Pub. L. 111–8) to give special consideration to Federal employee performance of functions closely associated with inherently governmental ones.

• Reinforce and refine guidance in the FAR and Attachment A of OMB Circular A–76 requiring special management attention when contractors perform functions closely associated with inherently governmental functions to guard against their expansion into inherently governmental functions. Steps might entail providing clearer prescriptions in the statement of work of what the contractor may and may not do, and ensuring adequate and adequately trained personnel to oversee the contractor's work.

• Preserve a long-standing list of examples set out in the FAR of the most common functions closely associated with inherently governmental functions, such as support for policy development or support for the selection of contractors.

c. Proposed Steps To Address Critical Functions

• Recognize a new category of work, ''critical functions,'' which must be evaluated to determine the extent to which performance by Federal employees is required. Define the term as a function that is ''necessary to the

agency being able to effectively perform and maintain control of its mission and operations.''

• Hold an agency responsible for making sure that, for critical functions, it has an adequate number of positions filled by Federal employees with appropriate training, experience, and expertise to understand the agency's requirements, formulate alternatives, manage work product, and monitor any contractors used to support the Federal workforce. To meet this responsibility, require Federal officials to evaluate, on a case-by-case basis, whether they have sufficient internal capability, taking into account factors such as the agency's mission, the complexity of the function, the need for specialized staff, and the potential impact on mission performance if contractors were to default on their obligations.

• Make clear that, so long as agencies have the internal capacity needed to maintain control over their operations, they are permitted to allow contractor performance of positions within critical functions (subject to any other applicable legal or regulatory requirements).

Finally, the proposed policy letter would require agencies to take specific actions, before and after contract award, to prevent contractor performance of inherently governmental functions and overreliance on contractors in the performance of ''closely associated'' and critical functions. Agencies would also be required to develop agency-level procedures, provide training, and designate senior officials to be responsible for implementation of these policies. The proposed policy letter emphasized the need for a shared responsibility between the acquisition, program and human capital offices within the agency to effectively implement its provisions.

The proposed policy letter was published in the **Federal Register** on March 31, 2010 (75 FR 16188–97) for public comment. OFPP encouraged respondents to offer their views on a series of questions to elicit feedback on some of the more difficult or pressing policy challenges, such as whether and how best to use the ''discretion'' test to identify inherently governmental functions, how best to explain the difference between critical functions and functions that are closely associated with the performance of inherently governmental functions, and how to properly classify certain functions related to acquisition support and security.

For additional background on the proposed policy letter, see discussion in the preamble at 75 FR16188–94.

2. Final Policy Letter

Based on public comments received in response to the proposed policy letter (which are discussed in greater detail below), and additional deliberations within the Executive Branch, OFPP has refined the proposed policy letter to:

• Rename the policy letter ''Performance and Management of Inherently Governmental and Critical Functions'' to more accurately capture its scope and purpose;

• Add to the illustrative list of inherently governmental functions the following: (i) All combat, (ii) security operations in certain situations connected with combat or potential combat, (iii) determination of an offer's price reasonableness, (iv) final determinations about a contractor's performance, including approving award fee determinations or past performance evaluations and taking action based on those evaluations, and (v) selection of grant and cooperative agreement recipients;

• Clarify the illustrative list of functions closely associated with the performance of inherently governmental functions to expressly recognize a variety of work to support Federal acquisitions that includes conducting market research, developing inputs for independent government cost estimates, drafting the price negotiations memorandum and collecting information, performing an analysis or making a recommendation for a proposed performance rating to assist the agency in determining its evaluation of a contractor's performance;

• Establish a comprehensive responsibilities checklist for functions closely associated with inherently governmental functions;

• Caution that, in many cases, functions include multiple activities that may be of a different nature—some activities within a function may be inherently governmental, some may be closely associated, and some may be neither—and by evaluating work at the activity level, an agency may be able to more easily differentiate tasks within a function that may be performed only by Federal employees from those tasks that can be performed by either Federal employees or contractors;

• Clarify that determining the criticality of a function depends on the mission and operations, which will differ between agencies and within agencies over time;

• Establish that if an agency makes a decision to insource some portion of a function that is currently being performed for the agency by a combination of small and large businesses, the ''rule of two'' should be applied to determine who will perform the work that remains in the private sector (the ''rule of two'' requires that acquisitions be reserved for award to small businesses, or certain subsets of small businesses, if there are two or more responsible small businesses capable of performing the work at fair market prices); and

• Reorganize and consolidate the discussion of management associated with inherently governmental, closely associated, and critical functions to more clearly recognize that oversight responsibilities for these functions are interrelated and should not be stove-piped.

C. Public Comments

OFPP received public comments from more than 30,350 respondents on the proposed policy letter. All but approximately 110 comments were submitted in the format of a form letter. Respondents were divided in their reaction to the proposed guidance. One form letter, submitted by approximately 30,000 respondents, expressed concern about excessive outsourcing and recommended expanding the definition of an inherently governmental function to encompass critical functions and functions closely associated with inherently governmental functions. The letter also proposed augmenting the list of inherently governmental functions to include all security functions and intelligence activities, training for interrogation, military and police, and maintenance and repair of weapons systems. A second form letter, submitted by approximately 240 respondents, raised significantly different concerns, cautioning that the policy letter and the increased attention on having non-inherently governmental functions performed by Federal employees will inappropriately discourage Federal managers and agencies from taking full and effective advantage of the private sector and the benefits of contracting. The roughly 110 responses that were not form letters were generally supportive of OFPP's efforts to clarify policies and management responsibilities, though respondents were divided over whether too much or not enough work would be reserved for Federal employees if policies were implemented as proposed.

Copies of the public comments received are available for review at *http://www.regulations.gov* (Docket ID OFPP–2010–0001). A short summary description of the comments and OFPP's responses and changes adopted in the final policy letter are set forth below.

1. Scope of the Policy Letter

A number of respondents offered views on the general focus of the policy letter. Several respondents stated that the policy letter was too narrowly focused and cautioned that the overall tone of the policy letter, as set by the title and purpose section, could be construed as being concerned only about ensuring that work is properly reserved for Federal employees—as opposed to also needing to strike the right balance between work that may be contracted out and work that must be reserved. Some respondents recommended that the scope of the policy letter be broadened to more expressly address the performance of commercial activities and advisory and assistance services.

Response: OFPP concurs that the overall purpose of the policy letter should be clarified. While a key goal of the policy letter is to ensure that inherently governmental work is reserved for Federal employees, agencies have an equally important responsibility, in cases where work is not inherently governmental, to evaluate how to strike the best balance in the mix of work performed by Federal employees and contractors to both protect the public's interest and serve the American people in a cost-effective manner. The policy letter's title and purpose statement have been revised accordingly. In particular, rather than focusing the title on work reserved for Federal employees, it now focuses on performance of inherently governmental and critical functions, which expressly acknowledges that functions closely associated with inherently governmental functions and critical functions are often performed by both Federal employees and contractors, and states that reliance on contractors is not, by itself, a cause for concern, provided that the work that they perform is not work that should be reserved for Federal employees and that Federal officials are appropriately managing contractor performance.

OFPP does not believe the scope of the policy letter should be broadened to include an extended discussion of contractor performance of commercial activities and instead prefers to keep the main focus on inherently governmental functions, functions closely associated with them, and critical functions. Recent studies of the role of employees and contractors, and the overall increase in reliance on contractors over the past decade, do not suggest a general difficulty or hesitation in taking advantage of contractors to provide expertise, innovation, and cost-effective support to Federal agencies. By contrast, these studies and general contracting trends, as well as the President's Memorandum on Government Contracting in March 2009, point to a need for guidance to clarify when work must be performed by Federal employees and the steps agencies need to take to ensure they maintain control of their mission and operations, when extensive work is performed by contractors. OFPP believes any questions regarding the intended use of contractors will largely be addressed by clarifying the overall scope of the policy letter, as described above, and reinforcing that an agency may frequently be able to address overreliance on contractors by allocating additional resources to contract management while continuing to use contractors for support.

OFPP carefully considered the merits of adding discussion on advisory and assistance services and other professional and technical services. These functions are likely to be commonly found among those considered to be either critical or closely associated with inherently governmental functions and spending in this area has grown disproportionately over the past few years. In November 2010, OFPP identified these functions for special management consideration based on concern of increased risk of losing control of mission and operations as identified through a review of reports issued in recent years, such as by the Government Accountability Office, the Commission on Wartime Contracting, agency Inspectors General, Congressional Committees, and the Acquisition Advisory Panel. Agencies were instructed to consider if contractor support for these ''special interest functions'' is being used in an appropriate and effective manner and if the mix of Federal employees and contractors in the agency is appropriately balanced. See OFPP Memorandum, *Service Contract Inventories,* Memorandum to Chief Acquisition Officers and Senior Procurement Executives (November 5, 2010), available at *http://www.whitehouse.gov/sites/default/files/omb/procurement/memo/service-contract-inventories-guidance-11052010.pdf.* OFPP will work with agencies as they review their use of support contractors in these areas and consider the need for additional guidance in conjunction with these efforts.

2. Inherently Governmental Functions

Respondents offered a number of comments regarding the scope of the definition of ''inherently governmental function,'' the tests proposed to determine whether or not a function is inherently governmental, and the illustrative list of examples.

a. *Definition.* Many respondents stated that use of the FAIR Act definition of an inherently governmental function is reasonable. Some respondents, including those offered through one of the two form letters, urged that the definition be expanded to include functions closely associated with inherently governmental functions and critical functions, in order to effectively prevent the inappropriate outsourcing of work that should be reserved for performance by Federal employees. A number of respondents inquired as to OMB's plans for ensuring that, going forward, the definition set forth in the policy letter is recognized as the single authorized definition for the term.

Response: Based on its review of public comments, prior feedback (including that provided at a public meeting held in the summer of 2009, in connection with the President's Memorandum on Government Contracting) and its review of relevant reports (such as the report of the Congressionally-chartered Acquisition Advisory Panel), OFPP believes the FAIR Act definition is reasonable. OFPP does not believe it is appropriate to expand the definition to encompass closely associated or critical functions. Agencies must give special attention to functions falling into those categories to ensure that the government does not lose control of either inherently governmental functions (in the case of closely associated functions) or activities that are core to the agency's mission or operations (in the case of critical functions), but such functions can, in appropriate circumstances, be performed by contractors.

To ensure that the definition in the FAIR Act is recognized as the single authorized definition for the term, OFPP intends to work with the Federal Acquisition Regulatory Council, the Defense Acquisition Regulations Council and the Civilian Agency Acquisition Council to develop and implement appropriate changes to the FAR to implement this policy letter. In addition, OFPP will review other relevant policy documents, such as OMB Circular A–76, and take appropriate action to ensure they conform to the policies in this letter.

b. *Tests.* Respondents generally did not raise concerns regarding the continued use of tests to help agencies determine if functions are inherently governmental, but a number cautioned

of potential pitfalls, and others offered suggestions for how application of the tests could be improved. A number of recommendations, mostly clarifications, were offered to help improve the ''discretion'' test, which asks agencies to evaluate if the discretion associated with the function, when exercised by a contractor, would have the effect of committing the government to a course of action. Recommendations included: (i) Emphasizing that the evaluation should generally focus on how much discretion is left to government employees as opposed to how much discretion has been given to contractors, and (ii) distinguishing between fact-finding and making decisions based on the fact-finding. A number of comments questioned the likely effectiveness of the proposed ''nature of the function test,'' which would ask agencies to consider if the direct exercise of sovereign power is involved. Some respondents suggested that the term ''sovereign'' be explained while others concluded that the manner in which sovereign authority is exercised is so varied that it is better explained by example than further definition. A few respondents recommended that the final policy letter adopt a new ''principal-agent'' test that would require agencies to identify functions as inherently governmental where serious risks could be created by the performance of these functions by those outside government, because of the difficulty of ensuring sufficient control over such performance.

Response: OFPP has made refinements to the ''discretion'' test. First, it has more fully distinguished the type of discretion that may be appropriately exercised by a contractor from that which would not be appropriately exercised by a contractor. Second, it has clarified that inappropriate delegations of discretion can be avoided by: (i) Carefully delineating in the statement of work contractor responsibilities and types of decisions expected to be made in carrying out these responsibilities and effectively overseeing them and (ii) subjecting the contractor's discretionary decisions and conduct to meaningful oversight and, whenever necessary, to final approval by an agency official. OFPP agrees that it is appropriate to consider how much discretion is left to government employees but, at the same time, also believes there is merit in considering the nature of the discretion given to contractors, as well as whether circumstances, such as time constraints, may limit the ability to effectively manage the contractor's actions or inappropriately restrict government employees' final approval authority. It also concluded that the proposed language was sufficiently clear to help agency officials differentiate between fact-finding that could appropriately be performed by contractors from binding decision-making based on fact-finding that needed to be performed by Federal employees.

Only minimal changes were made to the ''nature of the function test.'' OFPP appreciates that the value of this test may be limited, but believes it still can contribute to an agency's overall understanding and analysis in differentiating between functions that are inherently governmental and those that are not. OFPP considered, but did not adopt, the ''principal-agent'' test. While recognizing that risk is an underlying factor in reserving work for Federal employees and the definition of inherently governmental function, OFPP concluded that the test would not likely lead to identification of significantly different functions as inherently governmental and was concerned that application of the test could lead to greater confusion about what may be performed by contractors and what must be performed by Federal employees.

c. *Examples.* While most respondents did not object to retaining a list with illustrative examples, they offered mixed reactions to the specific examples given. A number of respondents felt the proposed list is too narrow and should be modified to add additional functions while at least one respondent thought the list was too broad. Many of those who believed the list was too narrow suggested the addition of functions involving private security contractors, especially when performed in hostile environments or involving intelligence. Some acquisition functions were also recommended for the list, such as developing independent government cost estimates, and preparing documentation in support of a price negotiation memorandum and price reasonableness determination. One respondent who thought the list was too broad recommended refinements to more precisely identify the inherently governmental characteristic of the action, such as ''a judge exercising the authority of the Federal government'' rather than ''the performance of adjudicatory functions.'' The respondent explained that deciding a dispute is not, *per se,* inherently governmental since arbitration and alternative dispute resolution processes can be performed by non-Federal employees, even when one of the parties is a Federal agency.

Response: Based on public comment and additional deliberations, OFPP has added to the list of inherently governmental functions: (i) All combat and (ii) security operations in certain situations connected with combat or potential combat. OFPP concluded these were clear examples of functions so intimately related to public interest as to require performance by Federal Government employees; hence, the addition of these activities to the list of inherently governmental functions would contribute to clarifying the line between what work must be reserved for Federal employees and what work may be performed by contractors. OFPP also clarified that making final determinations about a contractor's performance (including approving award fee determinations or past performance evaluations) and taking action based on these assessments are also inherently governmental because such actions involve the exercise of substantial discretion. In addition, OFPP added selection of grant and cooperative agreement recipients to the list of examples of inherently governmental functions because such actions bind the government.

With respect to contract pricing, the list identifies price reasonableness determinations as inherently governmental. This includes approval of any evaluation relied upon to support a price reasonableness determination, such as a price negotiation memorandum or approval of documentation cited as the government's independent cost estimate, which, by definition, must be the government's own final analysis. That said, an agency is not precluded from using the services of a contractor to develop inputs for government cost estimates or to draft a price negotiation memorandum as long as whatever the government relies upon to determine price reasonableness has been reviewed and approved by a government employee. As in other situations where a Federal official must review and approve documents prepared by a contractor, the Federal official's review and approval must be meaningful; that is to say, it cannot be a ''rubber stamp'' where the government is completely dependent on the contractor's superior knowledge and is unable to independently evaluate the merits of the contractor's draft or to consider alternatives to that draft. For that reason, while an agency may appropriately choose to have Federal employees prepare documentation in support of a price negotiation memorandum and price reasonableness

determination, OFPP does not view this work as inherently governmental, but rather closely associated with an inherently governmental function—and has added this work to the list of closely associated functions. If this work is performed by contractors, the agency must apply special management attention to ensure the work does not expand to include decision-making (which is inherently governmental) or otherwise interfere with the government's ability to exercise independent judgment, in this case, to determine that offered prices are fair and reasonable.

Regarding the performance of adjudicatory functions, OFPP retained the language on the proposed list, without change, and notes that the language currently in the FAR and the proposed policy letter already provides a carve-out for certain types of adjudicatory functions that are not inherently governmental, such as those relating to arbitration or other methods of alternative dispute resolution.

Similar to the list appearing in the FAR today, the list in the final policy letter is illustrative and not exhaustive. In addressing security operations, for example, the list identifies where security operations would be inherently governmental in connection with combat. This should not be read as a determination that all security performed in any hostile situation other than actual combat may be performed by contractors. Rather it means that those situations should be evaluated on a case-by-case basis to determine what security functions and activities are inherently governmental and what can be performed by contractors with appropriate management and oversight.

Finally, OFPP has added a caveat to recognize that many functions include multiple activities, some of which may not be inherently governmental. These other activities performed in conjunction with the function may be closely associated or neither inherently governmental nor closely associated. This caveat helps to clarify that the identification of a function on the list does not mean every action associated with the function is inherently governmental. For additional discussion, see response to comment no. 5, below.

3. Functions Closely Associated With Inherently Governmental Functions

Respondents offered a range of comments. Some call into question the purpose of this category; others raise concerns about the extent to which contractors should perform these functions; still others offer refinements to the proposed list of examples.

a. *Purpose.* A number of respondents recommended that the guidance on closely associated functions be clarified. Many of them pointed out that discussion of this concept appears to overlap with the new concept of critical function in that both appear to address the same risk, namely of the government losing control of its operations. Some thought this confusion might be avoided by defining the term ''closely associated'' so that its scope as a functional category can be more clearly understood. Others favored adding an explanation of the different purposes served by the two concepts. Some proposed doing away with the category, pointing out that the ''closely associated'' concept is more appropriately viewed as a management practice rather than as a separate functional category.

Response: OFPP does not agree that the concept of ''closely associated'' should be eliminated, as it serves an important management purpose in helping agencies guard against losing control of inherently governmental functions. However, OFPP agrees that the concept is more relevant to management practices, or internal control mechanisms, as opposed to serving as a stand-alone functional category. For this reason, the discussion of this concept in the policy letter has been reorganized so that it is now addressed as part of the discussion on identifying inherently governmental functions. This reorganization should also help to clarify the different reasons for tracking contractors who are performing closely associated functions and those who are performing critical functions. In the case of closely associated functions, the agency is trying to prevent contractor performance from interfering with Federal employees' ability to perform inherently governmental functions. In the case of critical functions, the agency is looking to determine if the agency is at risk of losing control of its ability to perform its mission and operations. OFPP does not believe a definition will necessarily provide greater clarity, but has created a new checklist to summarize in one place the various actions that must be taken if the agency determines that contractor performance of a function closely associated with an inherently governmental function is appropriate.

b. *Performance.* A number of respondents (including those using one of the two form letters) stated that *only* Federal employees should be allowed to perform functions closely associated with inherently governmental functions (with contractor performance allowed only in limited or exceptional circumstances). These respondents generally recommended that the concept of ''closely associated'' be incorporated into the definition of inherently governmental function to effectively protect the government against improper reliance on contractors.

Response: Agencies must carefully guard against contractor performance of inherently governmental functions, but managing this risk does not require that performance of closely associated functions be reserved exclusively for Federal employees. Such a bar would inappropriately limit an agency's ability to take advantage of a contractor's expertise and skills to support the agency in carrying out its mission. For example, limiting performance of functions closely associated with inherently governmental functions could inappropriately limit an agency's ability to take advantage of a Federally Funded Research Development Center (FFRDC) or University Affiliated Research Center that provides essential engineering, research, development, and analysis capabilities to support agencies in the performance of their responsibilities and mission. As explained in FAR 35.017: ''An FFRDC meets some special long-term research or development need which cannot be met as effectively by existing in-house or contractor resources. FFRDCs enable agencies to use private sector resources to accomplish tasks that are integral to the mission and operation of the sponsoring agency.''

Effective risk management can be achieved if agencies are mindful of their responsibility to give special consideration to Federal employee performance and effectively apply special management attention when contractor performance is determined to be appropriate. With respect to special consideration, the policy letter reminds agencies of their responsibilities under the law and OMB's management guidance on this issue. (These responsibilities are also reiterated in guidance OFPP issued last fall to help agencies in evaluating the activities of their service contractors in accordance with section 743 of Division C of the Consolidated Appropriations Act, 2010 (Pub. L. 111–117). See OFPP Memorandum *Service Contract Inventories* (refer to response to comment no. 1, above, for cite).

With respect to contractor performance of closely associated functions, the final policy letter includes a new checklist that summarizes the various contract

management actions that agencies must take to ensure contractors are not performing, interfering with, or undermining the agency's decision-making responsibilities. The checklist, which is largely taken from existing guidance in the FAR and other documents, identifies steps such as: (i) Establishing specified ranges of acceptable decisions and/or conduct in the contract, (ii) assigning a sufficient number of qualified government employees to perform contract management, (iii) ensuring reasonable identification of contractors and contractor work products if there is a risk that the public will confuse contractor personnel or work products with government officials or work products, and (iv) avoiding or mitigating conflicts of interest.

In the case of an FFRDC, the FAR has long required that such organizations conduct their business in a manner befitting their special relationship with the government—which includes access, beyond that which is common to the normal contractual relationship, to government and supplier data, including sensitive and proprietary data, and to employees and installations equipment and real property. As stated in FAR 35.017, FFRDCs must operate in the public interest with objectivity and independence, be free from organizational conflicts of interest, and have full disclosure of their affairs to the sponsoring agency.

c. *Examples.* Respondents offered varied reactions to maintaining a list of examples of ''closely associated'' functions. Several felt a list should not be included in the final policy letter because it introduces unnecessary ambiguity and allows for unnecessarily broad interpretation that could include either an inappropriate presumption in favor of insourcing or an inappropriate presumption that the work is appropriately performed by a contractor. Of those who favored (or did not oppose) the continued use of a list, some felt the list was too broad, either because it included functions where the potential for encroaching on inherently governmental responsibilities should not be viewed as a significant concern in need of heightened scrutiny or because the function as described was indistinguishable from those identified as inherently governmental.

Response: OFPP believes the list, which is currently set forth in the FAR, continues to serve as a useful tool to assist agencies in identifying functions where they must give special consideration to performance by Federal employees or special contract management attention if performed by contractors. The reorganized discussion of this issue (as described above) in combination with the checklist should help to avoid inappropriate presumptions regarding the performance of these functions.

With respect to the substance of the list, OFPP has made three types of modifications. First, as was done with the list of inherently governmental functions, OFPP has added a caveat that many functions include multiple activities, only some of which are closely associated with inherently governmental. Other activities performed in conjunction may be inherently governmental or not closely associated. This caveat helps to clarify that the identification of a function on the list does not mean every action associated with the function is closely associated with an inherently governmental function. (See comment no. 5, below for additional discussion.) Second, the list more carefully delineates activities that are performed in direct support of inherently governmental functions (*e.g.,* analyses and feasibility studies to support the development of policy), which are closely associated activities, from those that involve making binding decisions (*e.g.,* the final shape of a policy), which are inherently governmental. Third, OFPP has added additional examples to further describe the types of acquisition support that are closely associated functions. These added functions include: Conducting market research, developing inputs for independent government cost estimates, assisting in the development of a price negotiation memorandum, and supporting agency personnel in evaluating a contractor's performance, such as by collecting information or conducting an analysis that can be used by a Federal employee to make a determination about the quality of the contractor's performance.

4. Critical Functions

A number of respondents recognized that the creation of ''critical function'' as a new category helps to fill a void in current policy, but sought clarification and recommended refinements to ensure agencies properly identify and address functions that are at the core of an agency's mission and operations. Some confusion was voiced, as noted above, regarding the difference between critical functions and closely associated with inherently governmental functions. Some respondents suggested that a list providing examples of critical functions be developed, similar to that developed for inherently governmental and closely associated functions, but others advised against developing a list, noting that the criticality of a function depends on an agency's mission and current capabilities. A number of respondents addressed how an agency might go about differentiating between a critical and a non-critical function. Some suggested that agencies be authorized, if not encouraged, to identify categories of service contracts that may be presumed to be non-critical in order to avoid unnecessary analyses. Others expressed concern that a list will lead to inappropriate generalizations that will hinder, rather than facilitate, meaningful rebalancing.

Response: OFPP intends to work with FAI and DAU to develop appropriate training to support the successful implementation of the policy letter. However, OFPP does not support the creation of a list of critical functions. A function's criticality is dependent on an agency's mission and operations. The policy letter has been clarified to emphasize that the criticality of a function depends on mission and operations, which will differ between agencies and potentially within agencies over time. Whether an agency is over reliant on a contractor to perform a critical function also will vary from agency to agency depending on its current internal capabilities compared to those needed to maintain control of its mission and operations. Similarly, OFPP does not support the creation of a government-wide list of non-critical functions, as this may also differ between agencies based on their mission and operations.

5. Terminology

Several respondents raised concerns regarding how the policy letter uses the terms ''function,'' ''activity,'' and ''position.'' These respondents state that the terms are used interchangeably to cover different concepts, namely: (1) A process, (2) tasks undertaken in conjunction with the process, and (3) billets filled by individuals to perform tasks. They recommend that clarification be provided, perhaps with the addition of definitions.

Response: OFPP recognizes that the terms have different meanings and agrees that more careful use of these terms may help to avoid inappropriately broad generalizations regarding the characterization of work. A function, for example, often includes multiple activities, or tasks, some of which may be inherently governmental, some of which may be closely associated with inherently governmental work, and some may be neither. By identifying work at the activity level, an agency can more easily differentiate tasks within a function that may be performed only by

Federal employees from those tasks that can be performed by either Federal employees or contractors without blurring the line between the role of Federal employees and contractors. The chart below provides several examples. For instance, within the function of source selection, the tasks of determining price reasonableness and awarding a contract are inherently governmental, the task of preparing a technical evaluation and price negotiation memorandum are closely associated (provided the government has sufficient time and knowledge to independently evaluate alternative recommendations and decide which is in the government's best interest) and (although not shown on the table), the task of ensuring the documents are in the contract file is neither inherently governmental nor closely associated.

Function	Work that is inherently governmental and therefore must be performed by Federal employees	Work that is closely associated with inherently governmental functions and that may be performed by either Federal employees or contractors
Budget development	The determination of budget policy, guidance, and strategy, and the determination of Federal program priorities or budget requests.	Support for budget preparation, such as workforce modeling, fact finding, efficiency studies, and should-cost analyses.
Policy and regulatory development.	The determination of the content and application of policies and regulations.	Support for policy development, such as drafting policy documents and regulations, performing analyses, feasibility studies, and strategy options.
Human resources management.	The selection of individuals for Federal Government employment, including the interviewing of individuals for employment, and the direction and control of Federal employees.	Support for human resources management, such as screening resumes in accordance with agency guidelines.
Acquisition planning, execution, and management.	*During acquisition planning:* (1) Determination of requirements, (2) approval of a contract strategy, statement of work, incentive plans, and evaluation criteria, (3) independent determination of estimated cost based on input from either in-house or contractor sources or both. *During source selection:* (1) Determination of price reasonableness of offers, (2) participation as a voting member on a source selection board, and (3) awarding of contracts. *During contract management:* (1) Ordering of any changes required in contract performance or contract qualities, (2) determination of whether costs are reasonable, allocable, and allowable, (3) participation as a voting member on performance evaluation boards, (4) approval of award fee determinations or past performance evaluations, and (5) termination of contracts.	*Support acquisition planning by:* (1) Conducting market research, (2) developing inputs for government cost estimates, and (3) drafting statements of work and other pre-award documents. *Support source selection by:* (1) Preparing a technical evaluation and associated documentation; (2) participating as a technical advisor to a source selection board or as a nonvoting member of a source evaluation board; and (3) drafting the price negotiation memorandum. *Support contract management by:* (1) Assisting in the evaluation of a contractor's performance (*e.g.,* by collecting information, performing an analysis, or making a recommendation for a proposed performance rating); and (2) providing support for assessing contract claims and preparing termination settlement documents.

Further analyzing work from the perspective of the number of positions required to perform an activity enables an agency to differentiate those tasks that may require rebalancing from those that do not. The fact that contractors are performing some portion of a particular activity is not an automatic signal that rebalancing is required, except where work is inherently governmental. In other cases, the number of positions, or slots, that should be held by government employees versus contractor personnel to perform a particular activity will depend on a number of considerations, such as whether the work is critical or closely associated with inherently governmental functions, the particular mission of the agency, the current capability of government employees to understand the mission and manage contractors, and how the function will be delivered to the agency by the contractor.

A number of clarifications have been made throughout the document to capture these differences, such as in connection with the lists of inherently governmental and closely associated functions in Appendix A and Appendix B. OFPP does not believe definitions need to be added to the policy letter at this time, but will review with the FAR Council if further clarification is required as regulatory changes are develop to implement the policy letter.

6. Small Business Contracting

Many respondents expressed concern that the rebalancing called for in the policy letter could harm small businesses. These respondents offered a number of recommendations to mitigate this impact, such as excluding all contracts that were awarded under set-asides from insourcing without a formal justification and approval, and having the Small Business Administration review proposed insourcing actions.

Response: OFPP does not anticipate a widespread shift away from contractors as a result of the requirements in the policy letter. As the policy letter explains, insourcing is intended to be a management tool—not an end in itself—to address certain types of overreliance on contractors. In many cases, overreliance may be corrected by allocating additional resources to contract management—*i.e.,* an agency does not necessarily need to take work away from contractors and have it performed by Federal employees. However, some insourcing is taking place and will be undertaken in the future in some situations, such as where an agency determines that outsourced work is inherently governmental or

where the agency is at risk of losing control of its operations regarding work of a critical nature. To minimize the negative impact of these actions on small businesses, the final policy letter requires agencies to take two actions. First, when prioritizing what contracted work should be reviewed for potential insourcing, agencies are instructed to generally place a lower priority on reviewing work performed by small businesses where the work is not inherently governmental and where continued contractor performance does not put the agency at risk of losing control of its mission and operations. Second, agencies are instructed to apply the ''rule of two'' to work that will continue to be performed by contractors following the insourcing of part of the work (the rule of two calls for a contract to be set aside for small businesses when at least two small businesses can do the work for a fair market price). Application of this rule should increase the amount of residual work remaining in the hands of small businesses that can perform the work cost effectively.

7. Human Capital Planning

A number of respondents acknowledged the connection that exists between human capital planning, clear guidance on the performance of inherently governmental, closely associated, and critical functions, and the ability to effectively evaluate the need for rebalancing. However, reactions were mixed regarding the value of addressing hiring ceilings and funding constraints. Some thought these were appropriate considerations for assessing the current and desired mix of Federal employees and contractors in an organization. Others felt that the assessment should remain focused exclusively on the nature of the function.

Response: Striking the right balance of work performed by Federal employees and contractors is a shared responsibility between human capital, acquisition, program, and financial management offices. Issues such as hiring ceilings and funding constraints were referenced in the guidance document because these issues are part of the challenges that agency officials must address in executing their responsibilities and determining the best mix of labor resources. OFPP and other organizations within OMB are working with the Chief Human Capital Officers (CHCO) Council to ensure agency human capital officers understand their role and responsibilities. OMB will work with the CHCO Council to determine the appropriate type of supplementary materials that might be needed when the policy letter is finalized.

8. Other Issues

a. *The role of cost in rebalancing decisions.* Several respondents raised concern that the policy letter provides insufficient guidance on the parameters for insourcing when based on a determination that public sector performance is more cost effective than private sector performance. They suggested that the policy letter lay out the steps for performing a cost comparison and define key terms such as ''cost effective,'' ''fully loaded cost'' and ''indirect cost.''

Response: The proposed policy letter's discussion of insourcing focuses primarily on situations where an agency identifies improper reliance on contractors, namely, where the outsourced work is inherently governmental, or where the agency is at risk of losing control of its mission and operations. These circumstances, in particular, were highlighted in section 321 of the FY 2009 NDAA and the President's Memorandum on Government Contracting and have been the subject of reports issued in recent years addressing the use of contractors. The policy letter acknowledges that cost may also be a basis for insourcing, and requires in such situations that agency officials ensure that the agency's analysis fairly takes into account the full cost of performance by both sectors to support a determination that insourcing will save money. OFPP agrees that additional guidance in this area may be beneficial, and is reviewing the need for such guidance, but believes that additional coverage of the type described by the respondents, if appropriate, is better addressed as a supplement to existing guidance on insourcing, such as that in Appendix 3 of OMB Memorandum M–09–26, *Managing the Multi-Sector Workforce* (July 29, 2009), which implements section 736 of Division D of the Omnibus Appropriations Act, 2009 (Pub. L. 111–8), or Circular A–76, which addresses the use of public-private competition to outsource or insource work that may appropriately be performed by either sector.

b. *Management responsibilities.* Some respondents recommended that the contents of the policy letter be reorganized, such as by consolidating the discussion of management responsibilities, rather than addressing these responsibilities separately for inherently governmental, closely associated and critical functions. A few respondents also recommended listing, either in the text or an additional appendix, all laws that require work to be performed by Federal employees.

Response: OFPP has reorganized the policy letter to create a comprehensive and consolidated discussion of management responsibilities that agencies must undertake before and after awarding a contract to ensure proper and effective implementation of policies associated with the performance of inherently governmental, closely associated, and critical functions. This consolidated discussion of pre-award and post-award responsibilities more clearly recognizes that oversight responsibilities for each of these functional categories are interrelated. The policy letter includes citations to relevant laws with government-wide or broad applicability but does not include a list of all laws requiring reservation, a number of which are agency-specific and best addressed individually by affected agencies.

c. *Tribal organizations.* Representatives of Tribal organizations requested that language be added to the policy letter exempting Federal government agreements with Tribal government organizations under the Indian Self-Determination and Education Assistance Act (ISDEAA), as amended, 25 U.S.C. 450 *et seq.* They provided a number of statutory and policy reasons for differentiating these agreements, which address a government-to-government relationship, from government procurement contracts, the principal purpose of which is to acquire products and services for the direct benefit or use of the United States Government. They stated that the ISDEAA, at 25 U.S.C. 458aaa–9, expressly exempts the former agreements from the application of Federal acquisition regulations.

Response: The policy letter is issued pursuant to section 6(a) of the Office of Federal Procurement Policy Act, which charges the Administrator for Federal Procurement Policy with providing overall policy direction for agencies' acquisition of products and services. In accordance with the OFPP Act, the policy letter focuses on the relationship between the Federal government and its contractors—that is, entities who are providing a product or service for the direct benefit of an agency under a Federal procurement contract. The policy letter is not intended to modify or otherwise affect any rights or limitations set forth under the Act, including either the right of Tribal governments to assume and carry out functions under the ISDEAA or limitations imposed by the ISDEAA on a Tribal government's ability to assume

responsibility for an inherently Federal function as that term is used under the Act.

d. *Foreign indirect hire employees working with U.S. Forces.* During the disposition of comments, a question was raised regarding the applicability of this guidance to foreign indirect hire employees, as that term is defined in Defense Department (DoD) guidance.

Response: DoD guidance defines indirect hire employees as ''local national personnel assigned by the host government to work with U.S. Forces.'' This guidance goes on to state that such personnel are not employees of the United States and cannot perform inherently governmental functions.'' See DOD Financial Management Regulation, Volume 5, Chapter 33, ¶ 330204 (August 2010). Nothing in this policy letter is intended to modify the Department's guidance. Thus, restrictions on the use of contractors to perform inherently governmental functions would also apply to foreign indirect hire employees working with U.S. Forces.

Daniel I. Gordon,

Administrator.

POLICY LETTER 11–01

TO THE HEADS OF CIVILIAN EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Performance of Inherently Governmental and Critical Functions

1. Purpose. This guidance establishes Executive Branch policy addressing the performance of inherently governmental functions and critical functions. The policy is intended to assist agency officers and employees in ensuring that only Federal employees perform work that is inherently governmental or otherwise needs to be reserved to the public sector. The policy is further intended to help agencies manage functions that are closely associated with inherently governmental functions and critical functions, which are often performed by both Federal employees and contractors.

Nothing in this guidance is intended to discourage the appropriate use of contractors. Contractors can provide expertise, innovation, and cost-effective support to Federal agencies for a wide range of services. Reliance on contractors is not, by itself, a cause for concern, provided that the work that they perform is not work that should be reserved for Federal employees and that Federal officials are appropriately managing and overseeing contractor performance.

2. Authority. This policy letter is issued pursuant to section 6(a) of the Office of Federal Procurement Policy Act, 41 U.S.C. 405(a), the President's March 4, 2009, Memorandum on Government Contracting, and section 321 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009, Public Law 110–417.

3. Definitions.

''Inherently governmental function,'' as defined in section 5 of the Federal Activities Inventory Reform Act, Public Law 105–270, means a function that is so intimately related to the public interest as to require performance by Federal Government employees.

(a) The term includes functions that require either the exercise of discretion in applying Federal Government authority or the making of value judgments in making decisions for the Federal Government, including judgments relating to monetary transactions and entitlements. An inherently governmental function involves, among other things, the interpretation and execution of the laws of the United States so as —

(1) to bind the United States to take or not to take some action by contract, policy, regulation, authorization, order, or otherwise;

(2) to determine, protect, and advance United States economic, political, territorial, property, or other interests by military or diplomatic action, civil or criminal judicial proceedings, contract management, or otherwise;

(3) to significantly affect the life, liberty, or property of private persons;

(4) to commission, appoint, direct, or control officers or employees of the United States; or

(5) to exert ultimate control over the acquisition, use, or disposition of the property, real or personal, tangible or intangible, of the United States, including the collection, control, or disbursement of appropriations and other Federal funds.

(b) The term does not normally include—

(1) gathering information for or providing advice, opinions, recommendations, or ideas to Federal Government officials; or

(2) any function that is primarily ministerial and internal in nature (such as building security, mail operations, operation of cafeterias, housekeeping, facilities operations and maintenance, warehouse operations, motor vehicle fleet management operations, or other routine electrical or mechanical services).

''*Critical function*'' means a function that is necessary to the agency being able to effectively perform and maintain control of its mission and operations. Typically, critical functions are recurring and long-term in duration.

4. Policy. It is the policy of the Executive Branch to ensure that government action is taken as a result of informed, independent judgments made by government officials. Adherence to this policy will ensure that the act of governance is performed, and decisions of significant public interest are made, by officials who are ultimately accountable to the President and bound by laws controlling the conduct and performance of Federal employees that are intended to protect or benefit the public and ensure the proper use of funds appropriated by Congress. To implement this policy, agencies must reserve certain work for performance by Federal employees and take special care to retain sufficient management oversight over how contractors are used to support government operations and ensure that Federal employees have the technical skills and expertise needed to maintain control of the agency mission and operations.

(a) *Performance of work by Federal employees.* To ensure that work that should be performed by Federal employees is properly reserved for government performance, agencies shall:

(1) ensure that contractors do not perform inherently governmental functions (see section 5–1);

(2) give special consideration to Federal employee performance of functions closely associated with inherently governmental functions and, when such work is performed by contractors, provide greater attention and an enhanced degree of management oversight of the contractors' activities to ensure that contractors' duties do not expand to include performance of inherently governmental functions (see sections 5–1(a) and 5–2(a) and Appendices B and C); and

(3) ensure that Federal employees perform and/or manage critical functions to the extent necessary for the agency to operate effectively and maintain control of its mission and operations (see sections 5–1(b) and 5–2b).

(b) *Management and oversight of Federal contractors.* When work need not be reserved for Federal performance and contractor performance is appropriate, agencies shall take steps to employ and train an adequate number of government personnel to administer contracts and protect the public interest through the active and informed management and oversight of contractor performance, especially where contracts have been awarded for the performance of critical functions, functions closely

associated with the performance of inherently governmental functions, or where, due to the nature of the contract services provided, there is a potential for confusion as to whether work is being performed by government employees or contractors. Contract management should be appropriate to the nature of the contract, ensure that government officials are performing oversight at all times, and make clear to other government organizations or to the public when citizens are receiving service from contractors.

(c) *Strategic human capital planning.*

(1) As part of strategic human capital planning, agencies shall—

(i) dedicate a sufficient amount of work to performance by Federal employees in order to build competencies (both knowledge and skills), provide for continuity of operations, and retain institutional knowledge of operations;

(ii) ensure that sufficient personnel with appropriate training, experience, and expertise are available, and will remain available for the duration of the contract, to manage and oversee every contractor's performance and evaluate and approve or disapprove the contractor's work products and services, recruiting and retaining the necessary Federal talent where it is lacking; and

(iii) consider the impact of decisions to establish a specified level of government employee authorizations (or military end strength) or available funding on the ability to use Federal employees to perform work that should be reserved for performance by such employees and take appropriate action if there is a shortfall.

(2) Agencies' annual Human Capital Plan for Acquisition shall identify specific strategies and goals for addressing both the size and capability of the acquisition workforce, including program managers and contracting officer's representatives. The number of personnel required to administer a particular contract is a management decision to be made after analysis of a number of factors. These include, among others:

(i) scope of the activity in question;

(ii) technical complexity of the project or its components;

(iii) technical capability, numbers, and workload of Federal management officials;

(iv) inspection techniques available;

(v) proven adequacy and reliability of contractor project management;

(vi) sophistication and track record of contract administration organizations within the agency;

(vii) importance and criticality of the function; and

(viii) the level of risk associated with performance of the function and its performance by a contractor.

5. Implementation guidelines and responsibilities. Agencies shall use the guidelines below to determine: (1) whether their requirements involve the performance of inherently governmental functions, functions closely associated with inherently governmental functions, or critical functions; and (2) the type and level of management attention necessary to ensure that functions that should be reserved for Federal performance are not materially limited by or effectively transferred to contractors and that functions that are suitable for contractor performance are properly managed. Determining the type and level of management required typically requires agencies to consider the totality of circumstances surrounding how, where, and when work is to be performed. Special exceptions to these guidelines may exist, such as for statutorily authorized personal services contracting.

5–1. Guidelines for identifying inherently governmental functions and critical functions. Agencies must ensure that inherently governmental functions are reserved exclusively for performance by Federal employees. Agencies must further ensure that a sufficient number of Federal employees are dedicated to the performance and/or management of critical functions so that Federal employees can provide for the accomplishment of, and maintain control over, their mission and operations. Proper identification of inherently governmental and critical functions is the first step for meeting these requirements.

(a) *Determining whether a function is inherently governmental.* Every Federal Government organization performs some work that is so intimately related to the public interest as to require performance by Federal Government employees. Agencies should review the definition of inherently governmental functions in section 3, any other statutory provisions that identify a function as inherently governmental, and the illustrative list of inherently governmental functions in Appendix A. In no case should any function described in the definition, identified in statute as inherently governmental, or appearing on the list be considered for contract performance. If a function is not listed in Appendix A or identified in a statutory provision as inherently governmental, agencies should determine whether the function otherwise falls within the definition in section 3 by evaluating, on a case-by-case basis, the nature of the work and the level of discretion associated with performance of the work using the tests below.

(1) *Tests for identifying inherently governmental functions.* A function meeting either of the following tests should be considered inherently governmental.

(i) *The nature of the function.* Functions which involve the exercise of sovereign powers of the United States are governmental by their very nature. Examples of functions that, by their nature, are inherently governmental are officially representing the United States in an inter-governmental forum or body, arresting a person, and sentencing a person convicted of a crime to prison. A function may be classified as inherently governmental based strictly on its uniquely governmental nature and without regard to the type or level of discretion associated with the function.

(ii) *The exercise of discretion.*

(A) A function requiring the exercise of discretion shall be deemed inherently governmental if the exercise of that discretion commits the government to a course of action where two or more alternative courses of action exist and decision making is not already limited or guided by existing policies, procedures, directions, orders, and other guidance that:

(I) identify specified ranges of acceptable decisions or conduct concerning the overall policy or direction of the action; and

(II) subject the discretionary decisions or conduct to meaningful oversight and, whenever necessary, final approval by agency officials.

(B) A function may be appropriately performed by a contractor consistent with the restrictions in this section—including those involving the exercise of discretion that has the potential for influencing the authority, accountability, and responsibilities of government officials—where the contractor does not have the authority to decide on the overall course of action, but is tasked to develop options or implement a course of action, and the agency official has the ability to override the contractor's action. The fact that decisions are made, and discretion exercised, by a contractor in performing its duties under the contract is not, by itself, determinative of whether the contractor is performing an inherently governmental function. For instance, contractors routinely, and properly, exercise discretion in performing functions for the Federal Government when, providing advice, opinions, or recommended actions, emphasizing certain conclusions, and, unless

specified in the contract, deciding what techniques and procedures to employ, whether and whom to consult, what research alternatives to explore given the scope of the contract, or how frequently to test.

(C) A function is not appropriately performed by a contractor where the contractor's involvement is or would be so extensive, or the contractor's work product so close to a final agency product, as to effectively preempt the Federal officials' decision-making process, discretion or authority. Such circumstances may be avoided by: (i) carefully delineating in the statement of work the contractor's responsibilities and types of decisions expected to be made in carrying out these responsibilities and (ii) having Federal employees oversee and, as necessary, give final approval of contractor conduct and decisions. This requires that a sufficient number of in-house personnel with the appropriate training and expertise be available and remain available through the course of the contract to make independent and informed evaluations of the contractor's work, approve or disapprove that work, perform all inherently governmental functions, and preclude the transfer of inherently governmental responsibilities to the contractor. Agencies should consider whether time constraints, the operational environment, or other conditions may limit their ability to effectively manage the contractor's actions or inappropriately restrict their final approval authority. If this is the case, government performance may be the only way that Federal officials can retain control of their inherently governmental responsibilities. For example, providing security in a volatile, high-risk environment may be inherently governmental if the responsible Federal official cannot anticipate the circumstances and challenges that may arise, and cannot specify the range of acceptable conduct (as required by paragraph 5–1(a)(1)(ii)). Agencies should also consider if the level of management and oversight that would be needed to retain government control of the operation and preclude the transfer of inherently governmental responsibilities to the contractor would result in unauthorized personal services. In such cases, the function should not be contracted out.

(2) *Functions closely associated with inherently governmental functions.* As agencies identify inherently governmental functions, they should bear in mind that certain services and actions that generally are not considered to be inherently governmental functions may approach being in that category because of the nature of the function and the risk that performance may impinge on Federal officials' performance of an inherently governmental function. See Appendix B for list of examples. Although closely associated functions are not reserved exclusively for performance by Federal employees, section 736 of Division D of the Omnibus Appropriations Act, 2009, Public Law 111–8, requires civilian agencies subject to the FAIR Act to give special consideration to using Federal employees to perform these functions. Similarly, the Department of Defense is required to ensure special consideration is given to Federal employee performance consistent with the requirements of 10 U.S.C. 2463. The Department is further required, to the maximum extent practicable, to minimize reliance on contractors performing functions closely associated with inherently governmental functions consistent with 10 U.S.C. 2330a. Civilian agencies shall refer to OMB Memorandum M–09–26, *Managing the Multi-Sector Workforce* (July 29, 2009), Attachment 3 for criteria addressing the in-sourcing of work under Public Law 111–8. The OMB Memorandum is available at http://www.whitehouse.gov/sites/default/files/omb/assets/memoranda_fy2009/m-09-26.pdf.

(b) *Determining whether a function is critical.* Determining the criticality of a function requires the exercise of informed judgment by agency officials. The criticality of the function depends on the mission and operations, which will differ between agencies and within agencies over time. In making that determination, the officials shall consider the importance that a function holds for the agency and its mission and operations. The more important the function, the more important that the agency have internal capability to maintain control of its mission and operations. Examples of critical functions might include: analyzing areas of tax law that impose significant compliance burdens on taxpayers for the Internal Revenue Service's Office of the Taxpayer Advocate and performing mediation services for the Federal Mediation and Conciliation Service. Where a critical function is not inherently governmental, the agency may appropriately consider filling positions dedicated to the function with both Federal employees and contractors. However, to meet its fiduciary responsibility to the taxpayers, the agency must have sufficient internal capability to control its mission and operations and must ensure it is cost effective to contract for the services.

(1) Sufficient internal capability—

(i) generally requires that an agency have an adequate number of positions filled by Federal employees with appropriate training, experience, and expertise to understand the agency's requirements, formulate alternatives, take other appropriate actions to properly manage and be accountable for the work product, and continue critical operations with in-house resources, another contractor, or a combination of the two, in the event of contractor default; and

(ii) further requires that an agency have the ability and internal expertise to oversee and manage any contractors used to support the Federal workforce.

(2) Determinations concerning what constitutes sufficient internal capability must be made on a case-by-case basis taking into account, among other things the:

(i) agency's mission;

(ii) complexity of the function and the need for specialized skill;

(iii) current strength of the agency's in-house expertise;

(iv) current size and capability of the agency's acquisition workforce; and

(v) effect of contractor default on mission performance.

(c) *Handling of work performed by Federally Funded Research and Development Centers (FFRDCs) and University Affiliated Research Centers (UARCs).* In some circumstances, work that is closely associated with the performance of inherently governmental functions, or work that is critical to maintaining control of an agency's mission and operations, may be performed by FFRDCs or UARCs (with appropriate oversight by Federal officials and pursuant to properly executed contracts). These contractors provide essential engineering, research, development, and analysis capabilities to support agencies in the performance of their responsibilities and mission. FFRDCs and UARCs and their employees are not allowed to perform inherently governmental functions. Agencies shall also refer to the requirements in FAR Part 37 regarding requirements pertaining to the conduct of FFRDCs.

5–2. Management responsibilities in connection with the planning and awarding of contracts.

(a) *Pre-award.* As part of acquisition planning, agencies shall confirm that the services to be procured do not include work that must be reserved for performance by Federal employees and that the agency will be able to manage the contractor consistent with its

responsibility to perform all inherently governmental functions and maintain control of its mission and operations. For the procurement of services above the simplified acquisition threshold, the contract file shall include documentation of this confirmation from the agency head or designated requirements official to the contracting officer. The contract file should include analysis that establishes, at a minimum, that:

(1) the function to be contracted does not appear on the list of inherently governmental functions in Appendix A and does not otherwise qualify as an inherently governmental function, taking into consideration, as necessary, the tests in subsection 5–1(a);

(2) a statute, such as an annual appropriations act, does not identify the function as inherently governmental or otherwise require it to be performed by Federal employees;

(3) the proposed role for the contractor is not so extensive that the ability of senior agency management to develop and consider options or take an alternative course of action is or would be preempted or inappropriately restricted;

(4) if the function is closely associated with an inherently governmental one—

(i) special consideration has been given to using Federal employees to perform the function in accordance with applicable law and implementing guidance;

(ii) the agency has sufficient capacity and capability to give special management attention to contractor performance, limit or guide the contractor's exercise of discretion, ensure reasonable identification of contractors and contractor work products, avoid or mitigate conflicts of interest, and preclude unauthorized personal services;

(iii) the agency will comply with the checklist of responsibilities in Appendix C; and

(5) if the function is a critical function, the agency has sufficient internal capability to control its mission and operations as provided at subsection 5–1(b).

(b) *Post-award.* Agencies should review, on an ongoing basis, the functions being performed by their contractors, paying particular attention to the way in which contractors are performing, and agency personnel are managing, contracts involving functions that are closely associated with inherently governmental functions (see subsection 5–1(a) and Appendix B) and contracts involving critical functions (see subsection 5–1(b)). These reviews should be conducted in connection with the development and analysis of inventories of service contracts. Through the use of an inventory, an agency manager can gain insight into where, and the extent to which, contractors are being used to perform activities by analyzing how contracted resources are distributed by function and location across the agency and within its components. Civilian agencies should refer to section 743 of Division C of the Consolidated Appropriations Act, 2010 (Public Law 111–117) and OFPP Memorandum to Chief Acquisition Officers and Senior Procurement Executives, *Service Contract Inventories,* November 5, 2010. Department of Defense services and agencies should refer to section 2330a of Title 10 of the United States Code.

(1) Contractor performance of inherently governmental functions. If a determination is made that a contractor is performing work that is inherently governmental (or involves unauthorized personal services), but the contract, properly defined, does not entail performance of inherently governmental functions or unauthorized personal services, the agency shall take prompt corrective actions. In some cases, government control over, and performance of, inherently governmental responsibilities can be reestablished by strengthening contract oversight using government employees with appropriate subject matter expertise and following the protocols identified in FAR 37.114 (see also Appendix C). However, agencies must ensure that increasing the level of government oversight and control does not result in unauthorized personal services as provided by FAR 37.104 If government control of inherently governmental functions cannot be reestablished, agencies will need to in-source work on an accelerated basis through the timely development and execution of a hiring plan timed, if possible, to permit the non-exercise of an option or the termination of that portion of the contract being used to fulfill inherently governmental responsibilities.

(2) Overreliance on contractors to perform critical functions. While contractor performance of critical functions is common, if the agency determines that internal control of its mission and operations is at risk due to overreliance on contractors to perform critical functions, requiring activities should work with their human capital office to develop and execute a hiring and/or development plan. Requiring activities should also work with the acquisition office to address the handling of ongoing contracts and the budget and finance offices to secure the necessary funding to support the needed in-house capacity. Agencies should also consider application of the responsibilities outlined in Appendix C, as appropriate.

If an agency has sufficient internal capability to control its mission and operations, the extent to which additional work is performed by Federal employees should be based on cost considerations. Supporting cost analysis should address the full costs of government and private sector performance and provide like comparisons of costs that are of a sufficient magnitude to influence the final decision on the most cost effective source of support for the organization.

(c) *Analyzing functions.* A function often includes multiple activities, or tasks, some of which may be inherently governmental, some of which may be closely associated with inherently governmental work, and some may be neither. By evaluating work at the activity level, an agency may be able to more easily differentiate tasks within a function that may be performed only by Federal employees from those tasks that can be performed by either Federal employees or contractors without blurring the line between the role of Federal employees and contractors.

5–3. Management responsibilities in connection with small business contracting.

(a) *Lower prioritization for review.* When prioritizing what outsourced work should be reviewed for potential insourcing, agencies generally should place a lower priority on reviewing work performed by small businesses when the work is not inherently governmental and where continued contractor performance does not put the agency at risk of losing control of its mission or operations, especially if the agency has not recently met, or currently is having difficulty meeting, its small business goals, including any of its socioeconomic goals. The agency should involve its small business advocate if considering the insourcing of work currently being performed by small businesses.

(b) *Considerations when contracted work is identified for insourcing.* If part of a contracted function to be insourced is currently being performed by both small and large businesses, the ''rule of two'' should be applied in deciding between small and large businesses that will perform the contracted work that remains in the private sector. The ''rule of two'' set out in FAR subpart 19.5 requires that acquisitions be reserved for award to small businesses, or certain subsets of small businesses, if there are

two or more responsible small businesses capable of performing the work at fair market prices. The agency should involve its small business representative in the same manner as it would in working with the acquisition and program office in evaluating opportunities for small businesses for new work. In addition, if contracted work not currently being performed by small businesses is reduced as part of an insourcing, the agency should carefully consider during recompetition whether it can be totally or partially set-aside for small businesses.

5–4. Additional agency management responsibilities.

(a) *Duty of Federal employees.* Every Federal manager and their employees have an obligation to help avoid performance by contractors of responsibilities that should be reserved for Federal employees. Although contractors provide important support to the agency, they may not be motivated solely by the public interest, and may be beyond the reach of management controls applicable to Federal employees. As part of this obligation, Federal managers and employees who rely on contractors or their work product must take appropriate steps, in accordance with agency procedures, to ensure that any final agency action complies with the laws and policies of the United States and reflects the independent conclusions of agency officials and not those of contractors. These steps shall include increased attention and examination where contractor work product involves advice, opinions, recommendations, reports, analyses, and similar deliverables that are to be considered in the course of a Federal employee's official duties and may have the potential to influence the authority, accountability, and responsibilities of the employee.

(b) *Development of agency procedures.* Agencies shall develop and maintain internal procedures to address the requirements of this guidance. Those procedures shall be reviewed by agency management no less than every two years.

(c) *Training.* Agencies shall take appropriate steps to help their employees understand and meet their responsibilities under this guidance. Steps should include training, no less than every two years, to improve employee awareness of their responsibilities.

(d) *Review of internal management controls.* Agencies should periodically evaluate the effectiveness of their internal management controls for reserving work for Federal employees and identify any material weaknesses in accordance with OMB Circular A–123, *Management's Responsibility for Internal Control,* and OFPP's *Guidelines for Assessing the Acquisition Function,* available at http://www.whitehouse.gov/omb/circulars_a123/.

(e) *Designation of responsible management official(s).* Each Federal agency with 100 or more full-time employees in the prior fiscal year shall identify one or more senior officials to be accountable for the development and implementation of agency policies, procedures, and training to ensure the appropriate reservation of work for Federal employees in accordance with this guidance. Each such agency shall submit the names and titles of the designated officials, along with contact information, by June 30 annually to OMB on the following MAX Web site: https://max.omb.gov/community/x/VwkQIg.

6. Judicial review. This policy letter is not intended to provide a constitutional or statutory interpretation of any kind and it is not intended, and should not be construed, to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person. It is intended only to provide policy guidance to agencies in the exercise of their discretion concerning Federal contracting. Thus, this policy letter is not intended, and should not be construed, to create any substantive or procedural basis on which to challenge any agency action or inaction on the ground that such action or inaction was not in accordance with this policy letter.

7. Effective date. This policy letter is effective October 12, 2011.

Daniel I. Gordon,

Administrator.

Appendix A. Examples of inherently governmental functions

The following is an illustrative list of functions considered to be inherently governmental. This list should be reviewed in conjunction with the list of functions closely associated with inherently governmental functions found in Appendix B to better understand the differences between the actions identified on each list.

Note: For most functions, the list also identifies activities performed in connection with the stated function. In many cases, a function will include multiple activities, some of which may not be inherently governmental.

1. The direct conduct of criminal investigation.

2. The control of prosecutions and performance of adjudicatory functions (other than those relating to arbitration or other methods of alternative dispute resolution).

3. The command of military forces, especially the leadership of military personnel who are performing a combat, combat support or combat service support role.

4. Combat.

5. Security provided under any of the circumstances set out below. This provision should not be interpreted to preclude contractors taking action in self-defense or defense of others against the imminent threat of death or serious injury.

(a) Security operations performed in direct support of combat as part of a larger integrated armed force.

(b) Security operations performed in environments where, in the judgment of the responsible Federal official, there is significant potential for the security operations to evolve into combat. Where the U.S. military is present, the judgment of the military commander should be sought regarding the potential for the operations to evolve into combat.

(c) Security that entails augmenting or reinforcing others (whether private security contractors, civilians, or military units) that have become engaged in combat.

6. The conduct of foreign relations and the determination of foreign policy.

7. The determination of agency policy, such as determining the content and application of regulations.

8. The determination of budget policy, guidance, and strategy.

9. The determination of Federal program priorities or budget requests.

10. The selection or non-selection of individuals for Federal Government employment, including the interviewing of individuals for employment.

11. The direction and control of Federal employees.

12. The direction and control of intelligence and counter-intelligence operations.

13. The approval of position descriptions and performance standards for Federal employees.

14. The determination of what government property is to be disposed of and on what terms (although an agency may give contractors authority to dispose of property at prices with specified ranges and subject to other reasonable conditions deemed appropriate by the agency).

15. In Federal procurement activities with respect to prime contracts:

(a) determining what supplies or services are to be acquired by the government (although an agency may

give contractors authority to acquire supplies at prices within specified ranges and subject to other reasonable conditions deemed appropriate by the agency);

(b) participating as a voting member on any source selection boards;

(c) approving of any contractual documents, including documents defining requirements, incentive plans, and evaluation criteria;

(d) determining that prices are fair and reasonable;

(e) awarding contracts;

(f) administering contracts (including ordering changes in contract performance or contract quantities, making final determinations about a contractor's performance, including approving award fee determinations or past performance evaluations and taking action based on those evaluations, and accepting or rejecting contractor products or services);

(g) terminating contracts;

(h) determining whether contract costs are reasonable, allocable, and allowable; and

(i) participating as a voting member on performance evaluation boards.

16. The selection of grant and cooperative agreement recipients including: (a) approval of agreement activities, (b) negotiating the scope of work to be conducted under grants/cooperative agreements, (c) approval of modifications to grant/cooperative agreement budgets and activities, and (d) performance monitoring.

17. The approval of agency responses to Freedom of Information Act requests (other than routine responses that, because of statute, regulation, or agency policy, do not require the exercise of judgment in determining whether documents are to be released or withheld), and the approval of agency responses to the administrative appeals of denials of Freedom of Information Act requests.

18. The conduct of administrative hearings to determine the eligibility of any person for a security clearance, or involving actions that affect matters of personal reputation or eligibility to participate in government programs.

19. The approval of Federal licensing actions and inspections.

20. The collection, control, and disbursement of fees, royalties, duties, fines, taxes and other public funds, unless authorized by statute, such as title 31 U.S.C. 952 (relating to private collection contractors) and title 31 U.S.C. 3718 (relating to private attorney collection services), but not including:

(a) collection of fees, fines, penalties, costs or other charges from visitors to or patrons of mess halls, post or base exchange concessions, national parks, and similar entities or activities, or from other persons, where the amount to be collected is predetermined or can be readily calculated and the funds collected can be readily controlled using standard cash management techniques, and

(b) routine voucher and invoice examination.

21. The control of the Treasury accounts.

22. The administration of public trusts.

23. The drafting of official agency proposals for legislation, Congressional testimony, responses to Congressional correspondence, or responses to audit reports from an inspector general, the Government Accountability Office, or other Federal audit entity.

24. Representation of the government before administrative and judicial tribunals, unless a statute expressly authorizes the use of attorneys whose services are procured through contract.

Appendix B. Examples Of Functions Closely Associated With The Performance Of Inherently Governmental Functions

The following is an illustrative list of functions that are generally not considered to be inherently governmental but are closely associated with the performance of inherently governmental functions. This list should be reviewed in conjunction with the list of inherently governmental functions in Appendix A to better understand the differences between the actions identified on each list.

Note: For most functions, the list also identifies activities performed in connection with the stated function. In many cases, a function will include multiple activities, some of which may not be closely associated with performance of inherently governmental functions.

1. Services in support of inherently governmental functions, including, but not limited to the following:

(a) performing budget preparation activities, such as workload modeling, fact finding, efficiency studies, and should-cost analyses.

(b) undertaking activities to support agency planning and reorganization.

(c) providing support for developing policies, including drafting documents, and conducting analyses, feasibility studies, and strategy options.

(d) providing services to support the development of regulations and legislative proposals pursuant to specific policy direction.

(e) supporting acquisition, including in the areas of:

i) acquisition planning, such as by—

I) conducting market research,

II) developing inputs for government cost estimates, and

III) drafting statements of work and other pre-award documents;

ii) source selection, such as by—

I) preparing a technical evaluation and associated documentation;

II) participating as a technical advisor to a source selection board or as a nonvoting member of a source selection evaluation board; and

III) drafting the price negotiations memorandum; and

iii) contract management, such as by—

I) assisting in the evaluation of a contractor's performance (e.g., by collecting information performing an analysis, or making a recommendation for a proposed performance rating), and

II) providing support for assessing contract claims and preparing termination settlement documents.

(f) Preparation of responses to Freedom of Information Act requests.

2. Work in a situation that permits or might permit access to confidential business information or other sensitive information (other than situations covered by the National Industrial Security Program described in FAR 4.402(b)).

3. Dissemination of information regarding agency policies or regulations, such as conducting community relations campaigns, or conducting agency training courses.

4. Participation in a situation where it might be assumed that participants are agency employees or representatives, such as attending conferences on behalf of an agency.

5. Service as arbitrators or provision of alternative dispute resolution (ADR) services.

6. Construction of buildings or structures intended to be secure from electronic eavesdropping or other penetration by foreign governments.

7. Provision of inspection services.

8. Provision of legal advice and interpretations of regulations and statutes to government officials.

9. Provision of non-law-enforcement security activities that do not directly involve criminal investigations, such as prisoner detention or transport and non-military national security details.

Appendix C. Responsibilities Checklist For Functions Closely Associated With Inherently Governmental Functions

If the agency determines that contractor performance of a function closely associated with an inherently governmental function is appropriate, the agency shall—

(1) limit or guide a contractor's exercise of discretion and retain control of government operations by both—

(i) establishing in the contract specified ranges of acceptable decisions and/or conduct; and

(ii) establishing in advance a process for subjecting the contractor's discretionary decisions and conduct to meaningful oversight and, whenever necessary, final approval by an agency official;

(2) assign a sufficient number of qualified government employees, with expertise to administer or perform the work, to give special management attention to the contractor's activities, in particular, to ensure that they do not expand to include inherently governmental functions, are not performed in ways not contemplated by the contract so as to become inherently governmental, do not undermine the integrity of the government's decision-making process as provided by subsections 5–1(a)(1)(ii)(b) and (c), and do not interfere with Federal employees' performance of the closely-associated inherently governmental functions (see subsection 5–2(b)(2) for guidance on steps to take where a determination is made that the contract is being used to fulfill responsibilities that are inherently governmental);

(3) ensure that the level of oversight and management that would be needed to retain government control of contractor performance and preclude the transfer of inherently governmental responsibilities to the contractor would not result in unauthorized personal services as provided by FAR 37.104;

(4) ensure that a reasonable identification of contractors and contractor work products is made whenever there is a risk that Congress, the public, or other persons outside of the government might confuse contractor personnel or work products with government officials or work products, respectively; and

(5) take appropriate steps to avoid or mitigate conflicts of interest, such as by conducting pre-award conflict of interest reviews, to ensure contract performance is in accordance with objective standards and contract specifications, and developing a conflict of interest mitigation plan, if needed, that identifies the conflict and specific actions that will be taken to lessen the potential for conflict of interest or reduce the risk involved with a potential conflict of interest.

[FR Doc. 2011–23165 Filed 9–9–11; 8:45 am]

BILLING CODE P

THE NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities, The National Foundation on the Arts and the Humanities.

ACTION: Cancellation of panel meeting.

Notice is hereby given of the cancellation of the following meeting of the Humanities Panel at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 which was published in the **Federal Register** on August 23, 2011, 76 FR 52698.

Dates: September 27, 2011.

Time: 9 a.m. to 5 p.m.

Room: 315.

Program: This meeting will review applications for Request for Proposals for A Cooperative Agreement with NEH to Support Bridging Cultures at Community Colleges, submitted to the Division Education Programs at the August 23, 2011 deadline.

Michael P. McDonald,

Advisory Committee, Management Officer.

[FR Doc. 2011–23264 Filed 9–9–11; 8:45 am]

BILLING CODE 7536–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–397–LR; ASLBP No. 11–912–03–LR–BD01]

Energy Northwest; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28,710 (1972), and the Commission's regulations, *see, e.g.,* 10 CFR 2.104, 2.105, 2.300, 2.309, 2.313, 2.318, and 2.321, notice is hereby given that an Atomic Safety and Licensing Board (Board) is being established to preside over the following proceeding:

Energy Northwest (Columbia Generating Station)

This proceeding involves an application by Energy Northwest to renew for twenty years its operating license for Columbia Generating Station, which is located near Richland, Washington. The current operating license expires on December 20, 2023. In response to a Notice of Opportunity for Hearing, published in the **Federal Register** on March 11, 2010 (75 FR 11,572), a request for hearing was submitted by Nina Bell, Executive Director, Northwest Environmental Advocates. The request, entitled ''Petition for Hearing and Leave to Intervene in Operating License Renewal for Energy Northwest's Columbia Generating Station,'' was received via E-Filing on August 22, 2011.[1]

The Board is comprised of the following administrative judges:

Alan S. Rosenthal, Chair, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Dr. Gary S. Arnold, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Dr. William H. Reed, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

All correspondence, documents, and other materials shall be filed in accordance with the NRC E-Filing rule, which the NRC promulgated in August 2007 (72 FR 49,139).

Issued at Rockville, Maryland this 6th day of September 2011.

E. Roy Hawkens,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 2011–23199 Filed 9–9–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–018–COL, 52–019–COL, 52–025–COL, 52–026–COL; ASLBP No. 11–913–01–COL–BD01]

Duke Energy Carolinas, LLC; Southern Nuclear Operating Company; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28,710 (1972), and the Commission's regulations, *see, e.g.,* 10 CFR 2.104, 2.105, 2.300, 2.309, 2.313, 2.318, and 2.321, notice is hereby given that an Atomic Safety and Licensing Board (Board) is being established to preside over this proceeding, which involves the following captioned cases:

Duke Energy Carolinas, LLC, (William States Lee III Nuclear Station, Units 1 and 2), Docket Nos. 52–018–COL & 52–019–COL;

Southern Nuclear Operating Company, (Vogtle Electric Generating Plant,

[1] On August 22, 2011, petitioner, Ms. Bell, also filed a petition for rulemaking, coupled with a request to suspend licensing decision. Those requests are under review by Commission advisers as a separate action.

Units 3 and 4), Docket Nos. 52–025–COL & 52–026–COL.

This proceeding was triggered by August 11, 2011 motions filed by the Blue Ridge Environmental Defense League (BREDL) seeking to reopen the record and/or admit a new contention in the two above-captioned cases based on the Fukushima Task Force Report. The contested proceedings in both cases had been terminated at the Atomic Safety and Licensing Board Panel (ASLBP) level, and jurisdiction over BREDL's filings initially lay with the Commission. By Order dated August 18, 2011, the Commission, acting through the Office of the Secretary, referred the pleadings to the ASLBP for appropriate action consistent with 10 CFR 2.309 and 2.326.

The Board is comprised of the following administrative judges:

Alan S. Rosenthal, Chair, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001;

Dr. Gary S. Arnold, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001;

Dr. William H. Reed, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

All correspondence, documents, and other materials shall be filed in accordance with the NRC E-Filing rule, which the NRC promulgated in August 2007 (72 FR 49,139).

Dated: Issued at Rockville, Maryland, this 6th day of September 2011.

E. Roy Hawkens,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 2011–23214 Filed 9–9–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–025–COL, 52–026–COL; 52–039–COL; 52–034–COL, 52–035–COL; ASLBP No. 11–914–02–COL–BD01]

Southern Nuclear Operating Co., PPL Bell Bend, L.L.C., Luminant Generation Company LLC; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28,710 (1972), and the Commission's regulations, *see, e.g.,* 10 CFR 2.104, 2.105, 2.300, 2.309, 2.313, 2.318, and 2.321, notice is hereby given that an Atomic Safety and Licensing Board (Board) is being established to preside over this proceeding, which involves the following captioned cases:

Southern Nuclear Operating Co., (Vogtle Electric Generating Plant, Units 3 and 4), Docket Nos. 52–025–COL & 52–026–COL.

PPL Bell Bend, L.L.C., (Bell Bend Nuclear Power Plant), Docket No. 52–039–COL.

Luminant Generation Company LLC, (Comanche Peak Nuclear Power Plant, Units 3 and 4), Docket Nos. 52–034–COL & 52–035–COL.

This proceeding was triggered by the following recent filings that were based on the Fukushima Task Force Report: (1) The Center for a Sustainable Coast, Georgia Women's Action for New Directions, and Southern Alliance for Clean Energy filed a motion to reopen the record and admit a new contention in the above-captioned *Vogtle* case; (2) Gene Stilp filed a motion to reopen the record and admit a new contention in the above-captioned *Bell Bend* case; and (3) Public Citizen, the Sustainable Energy and Economic Development Coalition, and Lon Burnam filed a motion to reopen the record and admit a new contention in the above-captioned *Comanche Peak* case. The contested proceedings in these cases had been terminated at the Atomic Safety and Licensing Board Panel (ASLBP) level, and jurisdiction over these filings initially lay with the Commission. By order dated August 30, 2011, the Commission, acting through the Office of the Secretary, referred the pleadings to the ASLBP for appropriate action consistent with 10 CFR 2.309 and 2.326.

The Board is comprised of the following administrative judges:

Alan S. Rosenthal, Chair, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Dr. Gary S. Arnold, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Dr. William H. Reed, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

All correspondence, documents, and other materials shall be filed in accordance with the NRC E–Filing rule, which the NRC promulgated in August 2007 (72 FR 49,139).

Issued at Rockville, Maryland this 6th day of September 2011.

E. Roy Hawkens,

Chief Administrative Judge, Atomic Safety and Licensing Board anel.

[FR Doc. 2011–23221 Filed 9–9–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on the Medical Uses of Isotopes; Meeting Notice

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: NRC will convene a meeting of the Advisory Committee on the Medical Uses of Isotopes (ACMUI) on September 22–23, 2011. A sample of agenda items to be discussed during the public session includes: (1) A discussion on the reporting structure and methods of ACMUI and Advisory Committee on Reactor Safeguards best practices; (2) an update on the status of a Commission paper on data collection regarding patient release; (3) a discussion on electronic signatures for documents that are required to be signed in accordance with U.S. Nuclear Regulatory Commission (NRC) regulations; (4) a discussion on strontium breakthrough with rubidium-82 generators from a U.S. Food and Drug Administration perspective; (5) a discussion on strontium breakthrough with rubidium-82 generators from an NRC perspective; (6) a discussion on ACMUI's 2008 recommended revisions to the medical event abnormal occurrence language; (7) a discussion on medical-related events; (8) a summary from the outcomes of the NRC Medical Related Rulemaking Workshops; (9) a discussion on possible changes to the permanent implant brachytherapy subcommittee report; (10) and the status of 10 CFR part 35 rulemaking. A copy of the agenda will be available at *http://www.nrc.gov/reading-rm/doc-collections/acmui/agenda* or by e-mailing Ms. Sophie Holiday at the contact information below.

Purpose: Discuss issues related to 10 CFR part 35 Medical Use of Byproduct Material.

Date and Time for Closed Session: September 22, 2011, from 8 a.m. to 12 p.m. This session will be closed so that ACMUI members can enroll for and activate new badges and undergo NRC training.

Date and Time for Open Sessions: September 22, 2011, from 1:30 p.m. to 5 p.m. and September 23, 2011, from 8 a.m. to 4 p.m.

Address for Public Meeting: U.S. Nuclear Regulatory Commission, Two White Flint North Building, Room T2–B3, 11545 Rockville Pike, Rockville, Maryland 20852.

Public Participation: Any member of the public who wishes to participate in the meeting in person or via phone

should contact Ms. Holiday using the information below. The meeting will also be webcast live: *http://www.nrc.gov/public-involve/public-meetings/webcast-live.html.*

Contact Information: Sophie J. Holiday, *e-mail: sophie.holiday@nrc.gov, telephone:* (301) 415–7865.

Conduct of the Meeting

Leon S. Malmud, M.D., will chair the meeting. Dr. Malmud will conduct the meeting in a manner that will facilitate the orderly conduct of business. The following procedures apply to public participation in the meeting:

1. Persons who wish to provide a written statement should submit an electronic copy to Ms. Holiday at the contact information listed above. All submittals must be received by September 16, 2011, and must pertain to the topic on the agenda for the meeting.

2. Questions and comments from members of the public will be permitted during the meeting, at the discretion of the Chairman.

3. The draft transcript will be available on ACMUI's Web site (*http://www.nrc.gov/reading-rm/doc-collections/acmui/tr/)* on or about October 25, 2011. A meeting summary will be available on ACMUI's Web site (*http://www.nrc.gov/reading-rm/doc-collections/acmui/meeting-summaries/*) on or about November 4, 2011.

4. Persons who require special services, such as those for the hearing impaired, should notify Ms. Holiday of their planned attendance.

This meeting will be held in accordance with the Atomic Energy Act of 1954, as amended (primarily Section 161a); the Federal Advisory Committee Act (5 U.S.C. App); and the Commission's regulations in Title 10, U.S. Code of Federal Regulations, part 7.

Dated: September 6, 2011.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 2011–23211 Filed 9–9–11; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, September 15, 2011 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Paredes, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Thursday, September 15, 2011 will be:

Institution and settlement of injunctive actions;
Institution and settlement of administrative proceedings;
Adjudicatory matters; and
Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: September 8, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–23319 Filed 9–8–11; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Dialpoint Communications Corp., Pacel Corp., Quantum Group, Inc. (The), and Tradequest International, Inc.; Order of Suspension of Trading

September 8, 2011.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Dialpoint Communications Corp. because it has not filed any periodic reports since the period ended September 30, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Pacel Corp. because it has not filed any periodic reports since the period ended September 30, 2006.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Quantum Group, Inc. (The) because it has not filed any periodic reports since the period ended July 31, 2009.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Tradequest International, Inc. because it has not filed any periodic reports since the period ended September 30, 2007.

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 September 8, 2011, through 11:59 p.m. EDT on September 21, 2011.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2011–23307 Filed 9–8–11; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65264; File No. SR–NYSE–2011–44]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Section 501.00 of the Listed Company Manual To Expand the Waiver Provision To Apply to Foreign Issuers

September 6, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on August 22, 2011, New York Stock Exchange LLC (''NYSE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I and II below, which items have been prepared primarily by NYSE.[2] NYSE filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) and Rule 19b–4(f)(6) thereunder so that the proposed rule change was effective upon filing with the Commission.[3] The Commission is publishing this notice to solicit

[1] 15 U.S.C. 78s(b)(1).

[2] The text of the proposed rule change is attached as Exhibit 5 to NYSE's filing, which is available at *http://www.nyse.com.*

[3] 15 U.S.C. 78s(b)(3)(A)(iii) and 17 CFR 240.19b–4(f)(6).

comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NYSE proposes to amend Section 501.00 of the NYSE's Listed Company Manual (''Manual'') to expand the waiver provision so that it applies to all ''foreign issuers'' that otherwise qualify for the waiver rather than just to ''foreign private issuers.''

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NYSE 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. NYSE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[4]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Section 501.00 of the Manual provides that all securities listed on NYSE (with the exception of securities which are specifically permitted to be book-entry only) must be eligible for a direct registration system (''DRS'') operated by a securities depository.[5] When Section 501.00 was initially adopted, NYSE recognized that the laws or regulations of certain foreign countries might make it impossible for companies or listing applicants incorporated in those countries to comply with the DRS eligibility requirement of Section 501.00. Consequently, the current rule contains a provision providing that NYSE would waive the application of Section 501.00 to any listed company that is a ''foreign private issuer'' [6] that submits to NYSE a letter from an independent home country counsel certifying that a home country law or regulation prohibits such compliance. NYSE now proposes to amend the waiver provision to extend its application to all ''foreign issuers'' as that term is used in Securities Exchange Act Rule 3b–4,[7] rather than only to ''foreign private issuers.'' NYSE believes this amendment is necessary because the same legal or regulatory impediments to DRS eligibility exist for a ''foreign issuer'' that is incorporated in a foreign jurisdiction but that does not qualify for ''foreign private issuer'' status exists for a ''foreign private issuer'' incorporated in the same jurisdiction that is currently eligible to use the waiver provision in Section 501.00. Absent this extension of the scope of the waiver provision, the DRS eligibility requirement would render it impossible for a ''foreign issuer'' to list if it was not a ''foreign private issuer'' but was incorporated in a foreign jurisdiction whose law or regulation made compliance with Section 501.00 impossible.

NYSE rules provide limited exemptions with respect to corporate governance practices and interim earnings reporting for ''foreign private issuers.'' [8] NYSE does not intend to expand the scope of such relief to ''foreign issuers'' that do not qualify for ''foreign private issuer'' status. However, NYSE believes that the proposed amendment to Section 501.00 is appropriate in light of the specific and discrete problem faced by ''foreign issuers'' that are not ''foreign private issuers'' but that are prohibited by home country law or regulation from becoming DRS eligible.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) [9] of the Act of 1934, in general, and furthers the objectives of Section 6(b)(5) of the Act,[10] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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. NYSE believes that the proposed amendment is also consistent with the investor protection objectives of the Act in that it will provide a very limited exception to the DRS eligibility requirement of Section 501.00 that will be available only to ''foreign issuers'' that provide a letter from home country counsel certifying that compliance with that requirement is prohibited by home country law or regulation.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NYSE 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 relating to the proposed rule change have been solicited or received. NYSE will notify the Commission of any written comments received by NYSE.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

NYSE has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [11] and Rule 19b–4(f)(6) thereunder.[12] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [13] and Rule 19b–4(f)(6) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [14] normally does not

[4] The Commission has modified the text of the summaries prepared by NYSE.

[5] Section 501.01 of the Manual provides that a ''securities depository'' means a clearing agency, as defined in Section 3(a)(23) of the Securities Exchange Act of 1934, that is registered with the Securities and Exchange Commission pursuant to Section 17A(b)(2) of that Act.

[6] The term ''foreign private issuer'' as used in Section 501.00 has the meaning set forth in Securities Exchange Act Rule 3b–4. Under Rule 3b–4, the term ''foreign private issuer'' means any foreign issuer other than a foreign government except for an issuer meeting the following conditions as of the last business day of its most recently completed second fiscal quarter: (a) More than 50 percent of the issuer's outstanding voting securities are directly or indirectly held of record by residents of the United States and (b) Any of the following: (i) the majority of the executive officers or directors are United States citizens or residents; (ii) more than 50 percent of the assets of the issuer are located in the United States; or (iii) the business of the issuer is administered principally in the United States.

[7] For purposes of Securities Exchange Act Rule 3b–4, the term ''foreign issuer'' means any issuer which is a foreign government, a national of any foreign country, or a corporation or other organization incorporated or organized under the laws of any foreign country.

[8] Section 103.00 of the Manual.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(6).

[13] 15 U.S.C. 78(b)(3)(A)(iii).

[14] 17 CFR 240.19b–4(f)(6).

become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[15] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. NYSE has requested that the Commission waive the 30-day delayed operative date so that the proposed rule change may take effect upon filing with the Commission pursuant to Section 19(b)(3)(A) and Rule 19b–4(f)(6) thereunder and also become operative on the same date. NYSE believes that the waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed change is of a limited scope consistent with relief currently applicable to foreign private issuers and because it would facilitate a prompt listing of securities on NYSE that may otherwise be subject to conflicts based on the listing company's home country law or regulation.[16]

The Commission has determined that waiving the 30-day operative delay of NYSE's proposal is consistent with the protection of investors and the public interest because we concur with NYSE's assessment that the amendment is of a limited scope consistent with relief currently applicable to foreign private issuers and that it would facilitate a prompt listing of securities on NYSE that may otherwise be subject to conflicts based on the listing company's home country law or regulation.[17] Accordingly, the Commission waives the 30-day operative delay requirement and designates the proposed rule change to be operative upon filing with the Commission.

At any time within sixty days of the filing of such 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–2011–44 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–2011–44. 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 Section, 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 filings also will be available for inspection and copying at the principal office of NYSE and on NYSE's Web site, *http://www.nyse.com*. 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–NYSE–2011–44 and should be submitted on or before October 3, 2011.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[18]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–23169 Filed 9–9–11; 8:45 am]

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[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] NYSE's justification for the waiver of the 30-day operative delay was modified in part based on a telephone call with John Carey, Chief Counsel, NYSE, and Susan Petersen, Special Counsel, Commission (September 2, 2011).

[17] 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).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65268; File No. SR–CHX–2011–25]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Alter Cancellation Fee

September 6, 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 25, 2011, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. CHX has filed the proposal pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX proposes to amend its Schedule of Fees and Assessments (the ''Fee Schedule''), effective September 1, 2011, relating to its order cancellation fee for Participants entering and subsequently cancelling orders under certain circumstances. The text of this proposed rule change is available on the Exchange's Web site at *http://www.chx.com/rules/proposed_rules.htm* and in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CHX included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Through this filing, the Exchange proposes to amend its Fee Schedule, effective September 1, 2011, to make changes to its existing order cancellation fee. This fee change is being proposed to recoup some of the costs of administering and processing large numbers of cancelled orders while fairly allocating costs among Participants according to system use.

Beginning in January 2010, the Exchange's Fee Schedule imposed a charge for order cancellations submitted by Participants whose orders rarely are at or near the National Best Bid or Offering (''NBBO'').[5] The purpose of the order cancellation fee was to incent Participants to submit orders which are close to the NBBO (and are therefore more likely to be executed) or compensate the Exchange for the systems and operational costs and burdens associated with handling and recording orders which rarely execute. After the imposition of the order cancellation fee, however, the Exchange observed that the number of unexecuted and displayed orders had actually increased for certain Participants. In order to avoid application of the cancellation fee, certain Participants were submitting Quotable orders (*i.e.*, those within 2 cents of the NBBO) to the CHX's Matching System, but for an extremely short duration (*e.g.*, 20 milliseconds). The Exchange observed that those firms entering the limited durational orders conducted much of their business on our trading facilities in Exchange Traded Funds (''ETFs''), Exchange Traded Notes (''ETNs'') or Exchange Traded Vehicles (''ETVs''), collectively referred to as Exchange Traded Products (''ETPs''). Therefore, in August, 2010 the Exchange amended its order cancellation fee to exempt ETPs.[6]

Since the imposition of the order cancellation fee, and subsequent exemption of ETPs, the Exchange has observed that certain Participants have found a number of methods for avoiding the application of the order cancellation fee. For example, certain Participants submit Quotable orders to the CHX's Matching System in non-ETPs, but for an extremely short duration. In other cases, Participants submit a large number of Quotable orders in very thinly traded securities prior to the end of the month. These and other methods utilized affect the calculated ratio for a given Participant and therefore the applicability of the order cancellation fee but rarely result in executions.

In order to recoup some of the costs of administering and processing large numbers of cancelled orders, the Exchange is proposing to alter the methodology it uses in determining whether the order cancellation fee would be imposed upon a given Participant.

In determining whether the order cancellation fee would be imposed upon a given Participant, the Exchange would utilize a formula, calculated on a daily basis, that divides the Participant's total cancelled volume in a given issue (''cvissue'') by the Participant's total executed volume in that issue (''exvissue''). In those instances where a Participant's daily statistic in a given issue exceeds 30, the Exchange would impose an order cancellation fee of $.30 on each cancellation in that issue for that day. The Exchange proposes to calculate and impose order cancellation fees by Participant, by issue, by day, and bill such fees on a monthly basis. The Exchange believes that this methodology is less subject to manipulation and will allow the Exchange to recoup some of the costs of administering and processing large numbers of cancelled orders while fairly allocating costs among Participants according to system use.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[7] in general, and furthers the objectives of Section 6(b)(4) of the Act[8] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls. The Exchange believes that amendments to the order cancellation fee described herein should help to recoup some of the costs of administering and processing large numbers of cancelled orders while fairly allocating costs among Participants according to system use. Furthermore, these changes to the Fee Schedule would equitably allocate reasonable fees among Participants in a non-discriminatory manner by properly imposing fees on those Participants which excessively enter and subsequently cancel orders while not imposing fees on Participants that do not engage in this resource draining behavior.

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.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is to take effect pursuant to Section 19(b)(3)(A)(ii) of the Act[9] and subparagraph (f)(2) of Rule 19b–4 thereunder[10] because it establishes or changes a due, fee or other charge applicable to the Exchange's members and non-members, which renders the proposed rule change effective upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is 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–CHX–2011–25 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CHX–2011–25. This file

[5] *See*, SR–CHX–2010–02, Exchange Act. Rel. No. 34–61392 (January 21, 2010), 75 FR 4436 (Jan. 27, 2010).

[6] *See*, SR–CHX–2010–19, Exchange Act. Rel. No. 34–62642 (August 4, 2010), 75 FR 48404 (August 10, 2010).

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

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 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–CHX–2011–25 and should be submitted on or before October 3, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–23171 Filed 9–9–11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65269; File No. SR–CHX–2011–26]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Remove its Tiered Schedule of Fees and Rebates and To Lower or Remove Certain Rebates

September 6, 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 25, 2011, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. CHX has filed the proposal pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX proposes to amend its Schedule of Fees and Assessments (the ''Fee Schedule''), effective September 1, 2011, to remove its tiered schedule of fees and rebates and lower or remove certain rebates. The text of this proposed rule change is available on the Exchange's website at *http://www.chx.com/rules/proposed_rules.htm* and in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CHX included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Through this filing, the Exchange proposes to amend its Schedule of Fees and Assessments (the ''Fee Schedule''), effective September 1, 2011, to remove its tiered fee and rebate structure for Participants for trade executions of single-sided orders in securities priced over one dollar during the regular trading session and to lower or remove certain rebates. These fee changes are being proposed to simplify the Exchange's Fee Schedule and increase revenue to the Exchange.

In January, 2010, the Exchange introduced a tiered schedule of fees and rebates according to which the fee imposed on Participants for removing liquidity from the Matching System (the ''take fee'') or credit given to Participants which display orders in the Matching System which result in trade executions (the ''provide credit'') varied depending on the executing Participant's Average Daily Volume (''ADV'').[5] A Participant's ADV is determined by the number of shares it has executed as a liquidity provider in any and all trading sessions on average per trading day (excluding partial trading days) across all tapes on the trading facilities of the CHX (excluding all cross transactions) for the calendar month in which the executions occurred. Under this tiered schedule, there were three volume-based Tiers and the rate of applicable take fees and provide credits varied based upon the Tier into which a Participant falls.

In August, 2010, the Exchange altered its tiered Fee Schedule to delete those provisions which varied the take fee based upon the Participant's ADV and imposed a flat take fee of $0.003/share across all Tapes.[6] The Exchange also reduced the provide credit for executions in Tape A & C securities from $0.0026/share to $0.0025/share for the lowest Tier of activity, from $0.0028/share to $0.0027/share in the middle Tier and from $0.003/share to $0.0029/share in the highest Tier. For Tape B securities, the provide credit was reduced from $0.0028/share to $0.0026/share in the lowest Tier, from $0.003/share to $0.0028/share in the middle Tier and from $0.0032/share to $0.0031/share in the highest Tier. The flat provide credit paid to CHX-registered Institutional Brokers when they represent agency orders which execute in the CHX Matching System in Tape B securities was also reduced from $0.0032 to $0.0031/share.

According to this proposal, the Exchange would delete those provisions of the Fee Schedule which vary the provide credit based upon the Participant's ADV. In its place, the Exchange proposes to remove the provide credit for executions in Tape A & C securities during the regular trading session and, for Tape B securities, the provide credit would be reduced to $0.0022/share. The flat provide credit

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

[5] Through its filing on January 4, 2010, the Exchange instituted a tiered fee and rebate structure based on a Participant's ADV. *See,* SR–CHX–2010–01, Exchange Act. Rel. No. 34–61322 (January 11, 2010), 75 FR 2914 (Jan. 19, 2010).

[6] *See,* SR–CHX–2010–18, Exchange Act. Rel. No. 34–62650 (August 4, 2010), 75 FR 48397 (August 10, 2010).

paid to CHX-registered Institutional Brokers when they represent agency orders which execute in the CHX Matching System would also be removed for Tape A & C securities and the credit in Tape B securities would be reduced from $0.0027 to $0.0022/share. The Exchange believes that this proposal will simplify its Fee Schedule and will result in increased revenue.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [7] in general, and furthers the objectives of Section 6(b)(4) of the Act [8] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls. Among other things, the removal of the Exchange's tiered fee and rebate structure will simplify the Fee Schedule by instituting reasonable rates that do not vary based upon a Participant's ADV and thereby equitably allocate fees among all Participants in a non-discriminatory manner. Additionally, the removal of the provide credit for executions in Tape A & C securities and the lowering of the provide credit in Tape B securities during the regular trading session, as well as for institutional broker transactions, will equitably allocate the same reasonable rebate rates among all Participants.

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.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is to take effect pursuant to Section 19(b)(3)(A)(ii) of the Act [9] and subparagraph (f)(2) of Rule 19b–4 thereunder [10] because it establishes or changes a due, fee or other charge applicable to the Exchange's members and non-members, which renders the proposed rule change effective upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is 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–CHX–2011–26 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CHX–2011–26. 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 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–CHX–2011–26 and should be submitted on or before October 3, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–23172 Filed 9–9–11; 8:45 am]

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[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65266; File No. SR–BATS–2011–032]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing of Proposed Rule Change by BATS Exchange, Inc. To Adopt Rules Applicable to Auctions Conducted by the Exchange for Exchange-Listed Securities

September 6, 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 22, 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 proposes to adopt rules governing auctions conducted on the Exchange for securities listed on the Exchange.[3]

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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission notes that the Exchange separately proposed, and the Commission approved, rules for the qualification, listing and delisting of companies on the Exchange. *See* Securities Exchange Act Release No. 34–65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR–BATS–2011–018).

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 is proposing to adopt rules to govern auctions conducted on the Exchange for securities listed on the Exchange (''Exchange Auctions'').

Organization

The Exchange proposes adoption of definitions to govern Exchange Auctions in paragraph (a) of new Rule 11.23. Proposed paragraph (b) of Rule 11.23 sets forth the process for conducting an opening auction on the Exchange (''Opening Auction'') and determining an official opening price for dissemination to the consolidated tape (''BATS Official Opening Price''). Proposed paragraph (c) applies to the process for conducting a closing auction on the Exchange (''Closing Auction'') and determining an official closing price for dissemination to the consolidated tape (''BATS Official Closing Price''). Finally, proposed paragraph (d) describes the Exchange's process for conducting an auction in the event of an initial public offering (''IPO'') or a halt of trading in the security (''IPO Auction'' or ''Halt Auction'', respectively). Each of the Opening Auction, Closing Auction, IPO Auction and Halt Auction operated by BATS will be a single-price Dutch auction to match buy and sell orders at the price at which the most shares would execute.

BATS Auction Feed

In addition to the adoption of Rule 11.23, described in greater detail below, the Exchange proposes to add new paragraph (i) to Rule 11.22 to describe a new data feed that will be offered by the Exchange in connection with auctions conducted by the Exchange, the ''BATS Auction Feed.'' The BATS Auction Feed will be available to Exchange data recipients [4] without charge.

The BATS Auction Feed will be available to all Exchange data recipients equally, and will offer all firms with uncompressed real-time data regarding the current status of price and size information related to auctions conducted by the Exchange. The Exchange will make the BATS Auction Feed available to all market participants via subscription through an established connection to the Exchange through extranets, direct connection, and Internet-based virtual private networks.

The BATS Auction Feed will contain the following data elements:

- *Time stamp.* The time of the message.
- *Reference Price.* The Reference Price will be the price within the Reference Price Range that maximizes the number of Eligible Auction Order (as defined below) shares associated with the lesser of the Reference Buy Shares and the Reference Sell Shares as determined at each price level within the Reference Price Range, that minimizes the absolute difference between Reference Buy Shares and Reference Sell Shares, and minimizes the distance from the Volume Based Tie Breaker (as defined below).
- *Reference Price Range.* The Reference Price Range will be the range from the best bid on the BATS Book (the ''ZBB'') to the best offer on the BATS Book (the ''ZBO'') for a particular security. In the event that there is either no ZBB or ZBO for the security, the national best bid or offer (''NBBO'') will be used if there is at least one limit order on either the Continuous Book or the Auction Book. In the event that there is also either no national best bid (''NBB'') or national best offer (''NBO'') for the security or no limit orders on the Continuous Book and Auction Book, the price of the ''Final Last Sale Eligible Trade'' (as defined below) will be used.
- *Indicative Price.* The Indicative Price will be the price at which the most shares from the Auction Book [5] and the Continuous Book [6] would match.
- *Auction Only Price.* The Auction Only Price will be the price at which the most shares from the Auction Book would match. In the event of a volume based tie at multiple price levels, the Opening Auction price will be the price closest to the Volume Based Tie Breaker.
- *Reference Buy Shares.* Reference Buy Shares will be the total number of shares associated with buy-side Eligible Auction Orders that are priced equal to or greater than the Reference Price.
- *Reference Sell Shares.* Reference Sell Shares will be the total number of shares associated with sell-side Eligible Auction Orders that are priced equal to or less than the Reference Price.

For purposes of the BATS Auction Feed, and the auction processes of the Exchange generally, the term ''Final Last Sale Eligible Trade'' shall mean the last trade occurring during Regular Trading Hours on the Exchange if the trade was executed within the last one second prior to either the Closing Auction or, for Halt Auctions, trading in the security being halted. Where the trade was not executed within the last one second, the last trade reported to the consolidated tape received by BATS during Regular Trading Hours and, where applicable, prior to trading in the security being halted will be used. If there is no qualifying trade for the current day, the BATS Official Closing Price (as defined below) from the previous trading day will be used.

By making the BATS Pricing Feed data available, the Exchange enhances market transparency and fosters competition among orders and markets. At this time, the Exchange does not have plans to charge any fee associated with the receipt of the BATS Auction Feed.[7] Should the Exchange determine to charge fees associated with the BATS Auction Feed, the Exchange will submit a proposed rule change to the Commission in order to implement those fees.

Order Types To Participate in Auctions

The Exchange proposes to offer the following order types in connection with BATS Opening Auctions:

[4] Exchange data recipients include Members of the Exchange as well as non-Members that have entered into an agreement with the Exchange that permits them to receive Exchange data.

[5] The term ''Auction Book'' refers to the book of Eligible Auction Orders available on the BATS Book.

[6] The term ''Continuous Book'' refers to all orders available on the Exchange that are not Eligible Auction Orders.

[7] The Exchange does not charge directly for the majority of the data feeds that it offers, nor will the Exchange charge for the BATS Auction Feed. The Exchange notes that it does charge for ports used for receipt of data from the Exchange in order to offset certain infrastructure costs. These fees apply to ports associated with receipt of all of the Data Feeds except for Multicast PITCH, recipients of which are provided with 12 pairs of the requisite ports free of charge. *See* Securities Exchange Act Release No. 60586 (August 28, 2009), 74 FR 46256 (September 8, 2009) (SR–BATS–2009–026) (order approving proposal to impose fees for ports used for order entry and receipt of market data); *see also* Securities Exchange Act Release No. 63857 (February 7, 2011), 76 FR 7891 (February 11, 2011) (SR–BATS–2011–004) (notice of filing and immediate effectiveness of proposed rule change related to BATS Exchange fees, including modification of port fees).

• A ''Market-On-Open'' or ''MOO'' order, which will be a BATS market order that is designated for execution only in the Opening Auction;

• A ''Limit-On-Open'' or ''LOO'' order, which will be a BATS limit order that is designated for execution only in the Opening Auction; and

• A ''Late-Limit-On-Open'' or ''LLOO'' order, which will be a BATS limit order that is designated for execution only in the Opening Auction. To the extent a LLOO bid or offer received by the Exchange has a limit price that is more aggressive than the ZBB or ZBO, the price of such bid or offer is adjusted to be equal to the ZBB or ZBO, respectively, at the time of receipt by the Exchange. Where the ZBB or ZBO becomes more aggressive, the limit price of the LLOO bid or offer will be adjusted to the more aggressive price, only to the extent that the more aggressive price is not more aggressive than the original User [8] entered limit price. The limit price will never be adjusted to a less aggressive price. In the event that there is no best bid or offer on the Exchange (''ZBBO''), the NBBO will be used to constrain the limit price. If there is also no NBBO, the LLOO will assume its entered limit price.

The Exchange proposes to offer the following order types in connection with BATS Closing Auctions, each of which mirrors an order type available for the Opening Auction:

• A ''Market-On-Close'' or ''MOC'' order, which will be a BATS market order that is designated for execution only in the Closing Auction;

• A ''Limit-On-Close'' or ''LOC'' order, which will be a BATS limit order that is designated for execution only in the Closing Auction;

• A ''Late-Limit-On-Close'' or ''LLOC'', which will be a BATS limit order that is designated for execution only in the Closing Auction. To the extent a LLOC bid or offer received by the Exchange has a limit price that is more aggressive than the ZBB or ZBO, the price of such bid or offer is adjusted to be equal to the ZBB or ZBO, respectively, at the time of receipt by the Exchange. Where the ZBB or ZBO becomes more aggressive, the limit price of the LLOC bid or offer will be adjusted to the more aggressive price, only to the extent that the more aggressive price is not more aggressive than the original User entered limit price. The limit price will never be adjusted to a less aggressive price. In the event that there is no ZBBO, the NBBO will be used to constrain the limit price. If there is also no NBBO, the LLOC will assume its entered limit price.

In addition to the order types described above, the Exchange proposes to offer a ''Regular Hours Only'' or ''RHO'' order, which will be a BATS order that is designated for execution only during Regular Trading Hours,[9] which includes the Opening Auction, the Closing Auction, and IPO/Halt Auctions. A RHO order, if not executed in an applicable auction can be executed within a BATS Auction or on the Exchange's book outside of a BATS Auction but will not be subject to execution outside of Regular Trading Hours.

Opening Auction

Order Entry and Cancellation Before Opening Auction

As proposed, the Exchange will allow Users to submit orders to the Exchange starting at 8 a.m., the beginning of the Pre-Opening Session.[10] Any Eligible Auction Orders (as defined below) designated for the Opening Auction will be queued until 9:30 a.m. at which time they will be eligible to be executed in the Opening Auction. An Eligible Auction Order, as proposed, would include any MOO, LOO, LLOO, MOC, LOC, or LLOC order that is entered in compliance with its respective cutoff for an Opening or Closing Auction, any RHO order prior to the Opening Auction, and any limit or market order not designated to exclusively participate in the Opening or Closing Auction entered during the Quote-Only Period of an IPO or Halt Auction.

Users will also be allowed to submit LOO and MOO orders until 9:28 a.m., at which point any additional LOO and MOO orders submitted to the Exchange will be rejected. RHO market orders will also be rejected between 9:28 a.m. and 9:30 a.m. Users may submit LLOO orders between 9:28 a.m. and 9:30 a.m. Any LLOO orders submitted before 9:28 a.m. or after 9:30 a.m. will be rejected. RHO limit orders submitted between 9:28 a.m. and 9:30 a.m. will be treated as LLOO orders until the Opening Auction has concluded. Eligible Auction Orders designated for the Opening Auction may not be cancelled or modified between 9:28 a.m. and 9:30 a.m. Orders eligible for execution in the Pre-Opening Session may be cancelled or modified at any time prior to execution.

Opening Auction Process for BATS Listed Securities

The Exchange will conduct an Opening Auction for all BATS listed securities. Beginning at 9:28 a.m. and updated every five seconds thereafter, the Reference Price, Indicative Price, Auction Only Price, Reference Buy Shares, and Reference Sell Shares associated with the Opening Auction will be disseminated via electronic means.

Auctions operated by the Exchange will utilize both a Collar Price Range and a Volume Based Tie Breaker in certain situations. The Collar Price Range will be the range from 10% of the Volume Based Tie Breaker below the ZBB to 10% of the Volume Based Tie Breaker above the ZBO. In the event that there is either no ZBB or ZBO for the security, the Collar Price Range will be the range from 10% of the Volume Based Tie Breaker below the NBB to 10% of the Volume Based Tie Breaker above the NBO if there is at least one limit order on either the Continuous Book or the Auction Book. In the event that there is also either no NBB or NBO for the security or no limit orders on the Continuous Book and the Auction Book, the range from 10% above and below the price of the Final Last Sale Eligible Trade will be used. The term Volume Based Tie Breaker will mean the midpoint of the ZBBO for a particular security. In the event that there is either no ZBB or ZBO for the security, the NBBO will be used if there is at least one limit order on either the Continuous Book or the Auction Book. In the event that there is also either no NBB or NBO for the security or no limit orders on the Continuous Book and the Auction Book, the price of the Final Last Sale Eligible Trade will be used.

The Opening Auction price will be established by determining the price level within the Collar Price Range that maximizes the number of shares executed between the Continuous Book and Auction Book in the Opening Auction. In the event of a volume based tie at multiple price levels, the Opening Auction price will be the price closest to the Volume Based Tie Breaker. In the event that at the time of the Opening Auction there are no limit orders on both the Continuous Book and the Auction Book, the Opening Auction will occur at the price of the Final Last Sale Eligible Trade. The Opening Auction price will be the BATS Official Opening Price. In the event that there is no Opening Auction for an issue, the BATS Official Opening Price will be the price

[8] A ''User'' is defined in BATS Rule 1.5(cc) as any member or sponsored participant of the Exchange who is authorized to obtain access to the System.

[9] As defined in Rule 1.5(w), ''Regular Trading Hours'' is the time between 9:30 a.m. and 4 p.m. Eastern Time.

[10] As defined in Rule 1.5(r), the ''Pre-Opening Session'' is the time between 8 a.m. and 9:30 a.m. Eastern Time.

of the Final Last Sale Eligible Trade, which will be the previous BATS Official Closing Price.

MOO and market RHO orders have priority over all other Opening Auction Eligible Orders. To the extent there is executable contra side interest, such MOO and market RHO orders will execute at the BATS Official Opening Price in accordance with time priority. After the execution of all MOO and market RHO orders, the remaining orders priced at or more aggressively than the BATS Official Opening Price on the Auction Book and the Continuous Book will be executed on the basis of price priority. Equally priced trading interest shall execute in time priority in the following order: (i) The displayed portion of limit orders, LOO orders, LLOO orders, and limit RHO orders (all such orders to have equal priority after execution of all MOO and market RHO orders); (ii) non-displayed orders; and (iii) the reserve portion of Limit Orders.

Transition to Regular Trading Hours

Limit order shares on the Continuous Book that are not executed in the Opening Auction will remain on the Continuous Book during Regular Trading Hours, subject to the User's instructions. RHO order shares that are not executed in the Opening Auction will be added to the Continuous Book at the conclusion of the Opening Auction, subject to the User's instructions. LOO, LLOO, and MOO orders that are not executed in the Opening Auction will be cancelled immediately at the conclusion of the Opening Auction.

Closing Auction

Order Entry and Cancellation Before Closing Auction

As proposed, Users may submit orders to the Exchange starting at 8 a.m., the beginning of the Pre-Opening Session. Any Eligible Auction Orders designated for the Closing Auction will be queued until 4 p.m. at which time they will be eligible to be executed in the Closing Auction. Users may submit LOC and MOC orders until 3:55 p.m., at which point any additional LOC and MOC orders submitted will be rejected. Unlike in the Opening Auction, User submitted Market RHO orders will be accepted immediately prior to the Closing Auction. Users may submit LLOC orders between 3:55 p.m. and 4 p.m. Any LLOC orders submitted before 3:55 p.m. or after 4 p.m. will be rejected.

Eligible Auction Orders designated for the Closing Auction may not be cancelled between 3:55 p.m. and 4 p.m. Orders eligible for execution during Regular Trading Hours may be cancelled at any time prior to execution.

Closing Auction Process for BATS Listed Securities

The Exchange will conduct a Closing Auction for all BATS listed securities. Beginning at 3:55 p.m. and updated every five seconds thereafter, the Reference Price, Indicative Price, Auction Only Price, Reference Buy Shares, and Reference Sell Shares associated with the Closing Auction will be disseminated via electronic means. The Closing Auction price will be established by determining the price level within the Collar Price Range that maximizes the number of shares executed between the Continuous Book and Auction Book in the Closing Auction. In the event of a volume based tie at multiple price levels, the Closing Auction price will be the price closest to the Volume Based Tie Breaker. In the event that at the time of the Closing Auction there are no limit orders on both the Continuous Book and the Auction Book, the Closing Auction will occur at the price of the Final Last Sale Eligible Trade. The Closing Auction price will be the BATS Official Closing Price. In the event that there is no Closing Auction for an issue, the BATS Official Closing Price will be the price of the Final Last Sale Eligible Trade.

MOC orders have priority over all other Closing Auction Eligible Orders. To the extent there is executable contra side interest, such MOC orders will be executed at the BATS Official Closing Price according to time priority. After the execution of all MOC orders, the remaining orders priced at or more aggressively than the BATS Official Closing Price on the Auction Book and the Continuous Book will be executed on the basis of price priority. Equally priced trading interest shall execute in time priority in the following order: (i) The displayed portion of limit orders, LOC orders, LLOC orders, and limit RHO orders (all such orders to have equal priority after execution of all MOC orders); (ii) non-displayed orders; and (iii) the reserve portion of Limit Orders.

Transition to After Hours Trading Session

Limit Order shares on the Continuous Book that are not executed in the Closing Auction will remain on the Continuous Book during the After Hours Trading Session, subject to the User's instructions. RHO order shares not executed in the Closing Auction will be cancelled at the conclusion of the Closing Auction. LOC, LLOC, and MOC orders that are not executed in the Closing Auction will be cancelled immediately at the conclusion of the Closing Auction.

IPO and Halt Auctions

For trading in a BATS listed security in an IPO or following a trading halt in that security, the Exchange will conduct an IPO or Halt Auction, as described below.

Order Entry and Cancellation Before an IPO or Halt Auction

The Quote-Only Period is a period of time prior to an IPO or Halt Auction during which the Exchange will permit Users to submit orders but the Exchange will not execute any transactions in the applicable security (*i.e.,* there are no Continuous Book executions occurring while orders are collected). The Quote-Only Period with respect to a Halt Auction shall commence five (5) minutes prior to such Halt Auction. The Quote-Only Period with respect to an IPO Auction shall commence fifteen (15) minutes plus a short random period prior to such IPO Auction. The Exchange has proposed a short random period of time prior to an IPO Auction to provide a protective mechanism against potential manipulation of the IPO price through orders entered for participation in the IPO Auction but then withdrawn immediately prior to the commencement of the auction process. There are no IPO or Halt Auction specific order types. Any Eligible Auction Orders associated with an IPO or Halt Auction will be queued until the end of the Quote-Only Period at which time they will be eligible to be executed in the associated auction. All orders associated with IPO or Halt Auctions must be received prior to the end of the Quote-Only Period in order to participate in the auction.

Eligible Auction Orders associated with an IPO or Halt Auction may be cancelled at any time prior to execution.

IPO and Halt Auction Process

Coinciding with the beginning of the quotation only period for a security and updated every five seconds thereafter, the Reference Price, Indicative Price, Auction Only Price, Reference Buy Shares, and Reference Sell Shares associated with the Halt Auction will be disseminated via electronic means.

The Quote-Only Period may be extended where: (i) There are unmatched market orders on the Auction Book associated with the auction; (ii) in an IPO Auction, the underwriter requests an extension; or (iii) where the Indicative Price moves the greater of 10% or fifty (50) cents in the fifteen (15) seconds prior to the

auction. The Exchange will typically extend the Quote-Only Period in five minute intervals, however, reserves the right to vary this interval and/or continue to extend the Quote-Only Period depending on the nature and magnitude of the reason for the extension.

Orders will be executed at the price that maximizes the number of shares executed in the auction. In the event of a volume based tie at multiple price levels, the price level closest to the issuing price will be used for IPO Auctions and the price level closest to the Final Last Sale Eligible Trade will be used for Halt Auctions. In the event that there are no limit orders among the Eligible Auction Orders for a Halt Auction, the Halt Auction will occur at the price of the Final Last Sale Eligible Trade. In the event that there are no limit orders among the Eligible Auction Orders for an IPO Auction, the IPO Auction will occur at the issuing price. The IPO Auction price will be BATS Official IPO Opening Price.

If any orders are not executed in their entirety during the IPO or Halt Auction, then the remaining shares from such orders shall be executed in accordance with BATS Rule 11.13 after the completion of the Halt Auction. After the completion of the IPO or Halt Auction, the Exchange will open for trading in the security in accordance with Chapter 11 of BATS Rules.

Whenever, in the judgment of the Exchange, the interests of a fair and orderly market so require, the Exchange may adjust the timing of or suspend the auctions set forth in this Rule with prior notice to Members. For purposes of Rule 611(b)(3) of Regulation NMS, orders executed pursuant to the Opening Auction, Closing Auction, and Halt Auction may trade-through any other Trading Center's Manual or Protected Quotations if the transaction that constituted the trade-through was a single-priced opening, reopening, or closing transaction by the trading center.

The Exchange also proposes language for Rule 11.23 to make clear that all references including a.m. and p.m. times shall refer to times in Eastern Time.

2. Statutory Basis

Approval of the rule changes proposed in this submission is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[11] In particular, the proposed change is consistent with Section 6(b)(5) of the Act,[12] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest. The Exchange believes that operation of an Exchange Auction for securities listed on the Exchange will assist in the price discovery process and help to ensure a fair and orderly market for securities listed on the Exchange.

For the reasons described above, the Exchange's proposal is also integral to its adoption of rules applicable to the qualification, listing and delisting of companies on the Exchange.[13] The Exchange's proposal to operate as a primary listings market, including the adoption of rules to conduct Exchange Auctions, comes at a time when there are two dominant primary listing venues, the New York Stock Exchange LLC (''NYSE'') and the NASDAQ Stock Market LLC (''Nasdaq''). The Exchange believes that the proposed change would increase competition by providing an alternative to Nasdaq and NYSE for a company seeking to list its securities and for such securities to be traded in an orderly fashion at the open and close of trading, as well as in the context of an IPO or halted trading in the security. Accordingly, the Exchange believes that the proposal will allow the Exchange to provide companies with another option for raising capital in the public markets, thereby promoting the aforementioned principles discussed in Section 6(b)(5) of the Act.[14] For the reasons described above, the proposed rule change is also designed to support the principles of Section 11A(a)(1)[15] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets.

(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.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] *See supra* note 3.

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78k–1(a)(1).

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (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 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–2011–032 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–2011–032. 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 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–2011–032 and should be submitted on or before October 3, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–23170 Filed 9–9–11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65282; File No. SR–MSRB–2011–14]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule G–36, on Fiduciary Duty of Municipal Advisors, and a Proposed Interpretive Notice Concerning the Application of Proposed Rule G–36 to Municipal Advisors

September 7, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 23, 2011, the Municipal Securities Rulemaking Board (''Board'' or ''MSRB'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. 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 MSRB is filing with the SEC a proposed rule change consisting of proposed Rule G–36 (on fiduciary duty of municipal advisors) and a proposed interpretive notice (the ''Notice'') concerning the application of proposed Rule G–36 to municipal advisors. The MSRB requests that the proposed rule change be made effective on the date that rules defining the term ''municipal advisor'' under the Exchange Act are first made effective by the Commission or such later date as the proposed rule change is approved by the Commission.

The text of the proposed rule change is available on the MSRB's Web site at *http://www.msrb.org/Rules-and-Interpretations/SEC-Filings/2011-Filings.aspx,* at the MSRB's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB 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 Board 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

With the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act''),[3] the MSRB was expressly directed by Congress to protect municipal entities. Accordingly, the MSRB is proposing Rule G–36 and an interpretive notice thereunder to address the fiduciary duty of municipal advisors to their municipal entity clients.

A more-detailed description of the provisions of the Notice follows:

Duty of Loyalty. The Notice would provide that the Rule G–36 duty of loyalty would require the municipal advisor to deal honestly and in good faith with the municipal entity and to act in the municipal entity's best interests without regard to financial or other interests of the municipal advisor. It would require a municipal advisor to make clear, written disclosure of all material conflicts of interest, such as those that might impair its ability to satisfy the duty of loyalty, and to receive the written, informed consent of officials of the municipal entity the municipal advisor reasonably believes have the authority to bind the municipal entity by contract with the municipal advisor. Such disclosure would be required to be made before the municipal advisor could provide municipal advisory services to the municipal entity or, in the case of conflicts discovered or arising after the municipal advisory relationship has commenced, before the municipal advisor could continue to provide such services.

The Notice would provide that a municipal advisor may not undertake an engagement if certain unmanageable conflicts exist, including (i) kickbacks and certain fee-splitting arrangements with the providers of investments or services to municipal entities, (ii) payments by municipal advisors made for the purpose of obtaining or retaining municipal advisory business other than reasonable fees paid to a municipal advisor for solicitation activities regulated by the MSRB, and (iii) acting as a principal in matters concerning the municipal advisory engagement (except when providing investments to the municipal entity on a temporary basis to ensure timely delivery for closing; when engaging in activities permitted under Rule G–23; when it is a municipal advisor solely because it recommends investments or municipal financial products provided or offered by it to a municipal entity as a counterparty (other than a swap or security-based swap counterparty); or when acting as a swap or security-based counterparty to a municipal entity represented by an ''independent representative,'' as defined in the Commodity Exchange Act or the Exchange Act, respectively.

The Notice would provide that, in certain cases, the compensation received by a municipal advisor could be so disproportionate to the nature of the municipal advisory services performed that it would be inconsistent with the proposed Rule G–36 duty of loyalty and would represent an unmanageable conflict. The Notice would also provide that a municipal advisor would be required to disclose conflicts associated with various forms of compensation (except where the form of compensation has been required by the municipal entity client), in which case the disclosure need only address that form of compensation. The Notice would also include a form of disclosure of conflicts relating to the forms of compensation to aid advisors in preparing their disclosure. Use of the form would not be required.

Duty of Care. The Notice would provide that the proposed Rule G–36 duty of care would require that a municipal advisor act competently and provide advice to the municipal entity after inquiry into reasonably feasible alternatives to the financings or products proposed (unless the engagement is of a limited nature). The

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Public Law 111–203, 124 Stat. 1376 (2010).

Notice would also require the advisor to make reasonable inquiries into facts necessary to determine the basis for the municipal entity's chosen course of action, as well facts necessary to prepare certificates and to help ensure appropriate disclosures for official statements. The Notice would also permit the municipal advisor to limit the scope of its engagement.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2) of the Exchange Act, which provides, in pertinent part, that:

> The Board shall propose and adopt rules to effect the purposes of this title with respect to transactions in municipal securities effected by brokers, dealers, and municipal securities dealers and advice provided to or on behalf of municipal entities or obligated persons by brokers, dealers, municipal securities dealers, and municipal advisors with respect to municipal financial products, the issuance of municipal securities, and solicitations of municipal entities or obligated persons undertaken by brokers, dealers, municipal securities dealers, and municipal advisors.
>
> Section 15B(c)(1) of the Exchange Act also provides, in pertinent part, that:
>
> A municipal advisor and any person associated with such municipal advisor shall be deemed to have a fiduciary duty to any municipal entity for whom such municipal advisor acts as a municipal advisor, and no municipal advisor may engage in any act, practice, or course of business which is not consistent with a municipal advisor's fiduciary duty or that is in contravention of any rule of the Board.
>
> Section 15B(b)(2)(L) of the Exchange Act provides, in pertinent part, that:
>
> [The rules of the Board, at a minimum, shall,] with respect to municipal advisors—(i) prescribe means reasonably designed to prevent acts, practices, and courses of business as are not consistent with a municipal advisor's fiduciary duty to its clients.

The proposed rule change is consistent with Section 15B(c)(1) of the Exchange Act and Section 15B(b)(2)(L) of the Exchange Act because it incorporates the fiduciary duty, imposed by the Exchange Act, into a proposed rule that would articulate the principal duties that comprise a municipal advisor's fiduciary duty to a municipal entity client (a duty of loyalty and a duty of care), although such duties would not be exclusive. The proposed rule change also would provide guidance on what conduct would be inconsistent with a duty of loyalty (principally failing to deal honestly and in good faith with the municipal entity and failing to act in the municipal entity's best interests without regard to financial or other interests of the municipal advisor) and the conflicts of interest that would be inconsistent with a duty of loyalty (including certain third-party payments and receipts and, in general, acting as a principal in matters concerning the municipal advisory engagement). It would also provide guidance on what conduct would be inconsistent with a duty of care (principally failing to act competently and to provide advice to the municipal entity after making reasonable inquiry into the representations of the municipal entity's counterparties, as well as then reasonably feasible alternatives to the financings or products proposed that might better serve the interests of the municipal entity).

Section 15B(b)(2)(L)(iv) of the Exchange Act requires that rules adopted by the Board:

> not impose a regulatory burden on small municipal advisors that is not necessary or appropriate in the public interest and for the protection of investors, municipal entities, and obligated persons, provided that there is robust protection of investors against fraud.

All municipal advisors, regardless of their size, have a fiduciary duty to their municipal entity clients. Because the protection of their clients is paramount, in this context, the MSRB has concluded that it is appropriate to impose the same rules on small municipal advisors as it imposes on larger municipal advisors. However, the MSRB recognizes that there are costs of compliance. That is the reason the MSRB has included Appendix A to the Notice. By using Appendix A to provide disclosure concerning compensation conflicts, small municipal advisors will satisfy the compensation disclosure requirement of the Notice without having to retain legal counsel to assist them in the preparation of such disclosure.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, since it would apply equally to all municipal advisors with municipal entity clients.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

On February 14, 2011, the MSRB requested comment on a draft of Rule G–36 (''draft Rule G–36'') and a draft of the Notice (the ''draft Notice'').[4] The MSRB received comment letters from: the American Bankers Association (''ABA''); the American Council of Engineering Companies (''ACEC''); the American Federation of State, County and Municipal Employees (''AFSCME''); American Governmental Financial Services (''AGFS''); B–Payne Group (''B–Payne Group''); the Education Finance Council (''EFC''); Fi360; Lewis Young Robertson & Burningham, Inc. (''Lewis Young''); the Michigan Bankers Association (''Michigan Bankers''); Municipal Regulatory Consulting LLC (''MRC''); the National Association of Independent Public Finance Advisors (''NAIPFA''); Not for Profit Capital Strategies (''Capital Strategies''); Phoenix Advisors, LLC (''Phoenix Advisors''); Public Financial Management (''PFM''); the Securities Industry and Financial Markets Association (''SIFMA''); and the Wisconsin Bankers Association (''Wisconsin Bankers'').

Scope of the Rule

- *Comment: Delay Interpretive Notice until SEC Rule on Municipal Advisors Finalized.* Many commenters[5] requested that the MSRB withdraw or delay some or all of the provisions of the Notice until the SEC has defined ''municipal advisor,'' after which time they asked that the MSRB afford commenters an additional opportunity to comment on the Notice. Other comments were outside the scope of the request for comment on draft Rule G–36 (*e.g.,* suggested modifications to the definition of ''municipal advisor'') and are not summarized here.
- *MSRB Response:* Because the fiduciary duty applicable to municipal advisors was effective as of October 1, 2010, the MSRB feels it is important to provide guidance on basic fiduciary duties applicable to municipal advisors. The MSRB has requested that the proposed rule change be made effective on the date that rules defining the term ''municipal advisor'' under the Exchange Act are first made effective by the SEC or such later date as the proposed rule change is approved by the SEC. At that time, the MSRB may propose additional guidance, if necessary.
- *Comment: References to Duty of Loyalty and Duty of Care Too Limiting.* Lewis Young suggested said that the MSRB should delete the clause ''which shall include a duty of loyalty and a duty of care'' from the text of draft Rule G–36 on the theory that it is too limiting

[4] *See* MSRB Notice 2011–14 (February 14, 2011).

[5] ABA; SIFMA; Wisconsin Bankers; Michigan Bankers; NAIPFA; MRC; AFSCME; EFC; Phoenix Advisors; and ACEC.

and that there is a substantial body of state and Federal law governing fiduciary duty that includes more than these two duties.

• *MSRB Response:* The MSRB has determined not to make this change to these provisions in proposed Rule G–36. Proposed Rule G–36 would provide that a municipal advisor's fiduciary duty to its municipal entity client includes a duty of loyalty and a duty of care. While the duties of loyalty and care are generally recognized as the principal components of a fiduciary duty, the MSRB recognizes that certain state fiduciary duty laws address other duties. The use of the word ''includes'' permits the MSRB to articulate other duties in the future. Therefore the MSRB has determined not to make this change.

• *Comment: Clarification of Relationship to Duty of Fair Dealing.* NAIPFA requested that the MSRB clarify its statement that the duties of fair dealing under Rule G–17 are subsumed within the municipal advisor's fiduciary duty, and that the fair dealing duties under Rule G–17 are applicable to municipal advisors when advising municipal entities.

• *MSRB Response:* The Notice would provide that, ''The Rule G–36 fiduciary duty to municipal entity clients goes beyond and encompasses the obligation under MSRB Rule G–17 for municipal advisors, in the conduct of their municipal advisory activities, to deal fairly with all persons and not engage in any deceptive, dishonest, or unfair practice. A violation of Rule G–17 with respect to a municipal entity client, therefore, would necessarily be a violation of Rule G–36.'' Endnote 3 to the Notice provides examples of conduct by financial advisors with respect to issuers of municipal securities that has been found to violate Rule G–17. The MSRB would consider such conduct to also be a violation of proposed Rule G–36.

• *Comment: Application of Draft Rule G–36 to Broker-Dealers.* PFM suggested that the MSRB clarify that draft Rule G–36 applies to broker-dealers who engage in municipal advisory activities (except in the course of underwriting under Section 2(a)(11) of the Securities Act).

• *MSRB Response:* The Notice would provide that: ''The term ''municipal advisory activities'' is defined by MSRB Rule D–13 to mean the activities described in Section 15B(e)(4)(A)(i) and (ii) of the Exchange Act, whether conducted by a broker, dealer, or municipal securities dealer (''dealer'') that is a municipal advisor within the meaning of Section 15B(e)(4) of the Exchange Act or by a municipal advisor that is not a dealer.''

• *Comment: Duty When Advising Obligated Person.* Capital Strategies requested that the MSRB clarify the municipal advisor's duty when a financing alternative for a municipal advisor's obligated person client is not in the best interests of a municipal entity.

• *MSRB Response:* The Exchange Act does not impose a fiduciary duty on municipal advisors with obligated person clients. Accordingly, the MSRB has determined not to make this change in the Notice relating to proposed Rule G–36. The obligations of a municipal advisor to an obligated person client would be set forth in a companion MSRB notice relating to Rule G–17. That notice would provide (in endnote 7): ''Although a municipal advisor advising an obligated person does not have a fiduciary duty to the municipal entity that is the conduit issuer for the obligated person, it still has a fair dealing duty to the municipal entity.'' Thus, when a municipal advisor is advising an obligated person, its primary obligation of fair dealing is to its client. The municipal advisor would not required to act in the best interest of the municipal entity acting as a conduit issuer, although the advisor would be prohibited from acting in a deceptive, dishonest or unfair manner.

• *Comment: Limitations on Fiduciary Duty.* SIFMA requested that the MSRB clarify that a municipal advisor's fiduciary duty only applies in connection with a specific transaction or during the course of a specific engagement and does not apply to solicitation activities of a municipal advisor, to activities concerning obligated persons, or when a municipal advisor solicits a municipal entity on its own behalf. SIFMA requested that the MSRB clarify that the municipal advisor's fiduciary duty will not apply to those entities exempt from the definition of municipal advisor (*i.e.,* underwriters, investment advisors providing investment services, *etc.*).

• *MSRB Response:* Proposed Rule G–36 would provide that a municipal advisor's fiduciary duty applies when the advisor has a municipal entity client. A companion MSRB notice relating to Rule G–17 would specifically provide that a municipal advisor does not have a fiduciary duty under proposed Rule G–36 to an obligated person client or a municipal entity it solicits on behalf of a third-party client. The MSRB also determined to clarify when a municipal entity is determined to be a client and has revised the Notice so that it would provide: ''A municipal entity will be considered to be a client of the municipal advisor from the time that the advisor has been engaged to provide municipal advisory services (either pursuant to a written agreement or by informal arrangement) until the time that the agreed upon engagement ends.''

Duty of Loyalty

Conflicts of Interest; Disclosure.

• *Comment: Certain Conflicts Not Waiveable.* Lewis Young suggested removing the examples of the types of conflicts that must be disclosed because this is not necessary and because certain of the conflicts concerning third-party payments should be considered not to be waiveable.

• *MSRB Response:* The MSRB has determined not to revise the Notice to remove the examples of conflicts, because it is important to provide this guidance to municipal advisors. However, the revised Notice would clarify that disclosures of conflicts and consent by the recipient would not suffice to allow a municipal advisor to undertake a municipal advisory engagement if the conflicts are so significant that they are unmanageable.

• *Comment: Substitute Term ''Engagement'' for ''Relationships.''* Lewis Young suggested that, because the term ''relationships'' was vague and overbroad, the term ''engagement'' should be used instead, because such term was clear and measurable. It said that this substitution would also avoid the suggestion that municipal advisors were subject to a higher standard than that applicable to attorneys. It also said that only those relationships that the advisor reasonably feels will cloud its judgment should be required to be disclosed; otherwise, it said, important relationships may get lost in the disclosure of a long list of items.

• *MSRB Response:* The MSRB does not agree with this comment and therefore has determined not to make the changes suggested. The cases cited in the endnotes to the Notice include examples of informal relationships of which issuers should have been made aware. Furthermore, if a relationship is so significant that it would materially impair an advisor's duty to act in the best interests of its client, the municipal advisor would be precluded from entering into the engagement. Disclosure and informed consent would not suffice.

• *Comment: Disclosure of Conflicts of Interest.* SIFMA said that disclosure of conflicts should be based on reasonableness and upon actual knowledge of personnel who are specifically involved in municipal

advisory activities. It said that requiring large organizations to centralize and maintain information would be costly and could also risk compromising confidentiality barriers.

• *MSRB Response:* The MSRB has addressed these concerns and has revised the Notice so that it would provide that the advisor must disclose all material conflicts ''of which it is aware after reasonable inquiry.'' The MSRB has also determined to apply this standard to conflicts ''existing at the time the engagement is entered into, as well those discovered or arising during the course of the engagement.''

The MSRB recognizes the issues concerning compromising confidentiality barriers when making inquiries about other relationships with municipal entities. Nevertheless, the MSRB believes that actual knowledge of only those persons involved in the municipal advisory activity is not sufficient. Section 15B(e)(4) of the Exchange Act does not limit the term ''municipal advisor'' to natural persons. A municipal entity client retains a municipal advisor firm, not an individual that works for the firm. Accordingly, it is the conflicts of the firm that must be disclosed. The revised Notice would clarify that persons preparing the conflicts disclosure must make a reasonable inquiry into the activities of their firm to determine what conflicts may exist. This may include inquiry of persons in addition to those specifically engaged in the municipal advisory activity. In addition, the revised Notice would provide that reasonable inquiry will continue to apply during the course of the engagement to address conflicts discovered or arising after the engagement has been entered into.

• *Comment: Disclose Only General Conflicts of Interest.* SIFMA said that generalized disclosure of conflicts, rather than disclosure tailored to the individual client, should be permitted, allowing the municipal entity to request additional disclosure. SIFMA argued that requiring a municipal advisor to undertake an individualized investigation relating to conflicts applicable to the specific municipal entity, or analyzing the exact implications of the conflict applicable to the municipal entity client, would be time consuming and expensive. It said that the municipal entity could request more information and decide if the expense was worth it.

SIFMA also said that a municipal advisor should be required to disclose the applicable conflicts only once, in a brochure disclosing material conflicts, and not be required to re-disclose or reconfirm on a transaction by transaction basis unless new material conflicts were discovered. SIFMA said that the municipal advisor should not be required to re-disclose conflicts previously disclosed in a request for proposal (''RFP'').

• *MSRB Response:* The MSRB has determined not to make the suggested changes in the Notice. Generalized disclosure, without a discussion of the specific conflicts that may relate to the municipal entity client, is not sufficient to alert a municipal entity client to specific conflicts and is an insufficient basis for informed consent. The Notice would not require disclosures to be made more than once per issue. An RFP response may be an appropriate place to make required disclosures as long as the proposed structure of the financing is adequately developed at that point to permit the specific disclosures required by the Notice.

• *Comment: Conflicts of Interest Should be Addressed in Rule G–23.* MRC suggested that the requirements to disclose conflicts and to obtain informed consent would be more appropriately addressed in MSRB Rule G–23, and that the requirements should be removed from the Notice.

• *MSRB Response:* The MSRB disagrees with this comment and has therefore determined not to make the suggested changes. Rule G–23 only concerns financial advisory activities of dealers. It also does not impose a fiduciary duty.

• *Comment: Rule Recognizes Essential Duties of Loyalty and Due Care.* Fi360 applauded the MSRB for recognizing the duties of loyalty and due care as essential obligations under the fiduciary standard of care. It also said the Notice amply captured key principles that underlie the duties of loyalty and care. AFSCME also applauded the efforts of the MSRB to protect municipal entities from self-dealing and other deceptive practices, and said that strong protections were required for municipal entities.

• *MSRB Response.* The MSRB appreciates these comments.

• *Comment: Due Diligence To Determine Authority of Municipal Official.* SIFMA requested that the MSRB clarify the level of due diligence required to determine if an official has the authority to bind the municipal entity by contract, and suggested that a representation by the official that it had the requisite authority to execute should be sufficient, absent actual knowledge by the municipal advisor that such representation was false.

• *MSRB Response:* The MSRB has revised the Notice so that it would provide that a municipal advisor is only required to have a reasonable belief that it is making required disclosures to officials with the authority to bind the issuer. This change would also be made to the informed consent provisions of the Notice.

Conflicts of Interest; Unmanageable Conflicts

• *Comment: Principal Transactions.* ABA and SIFMA suggested that principal transactions should not be prohibited as unmanageable conflicts because other Federal and state laws permit entities subject to a fiduciary duty to effect principal transactions with clients after disclosure and informed consent. They said that traditional banking activities, including accepting deposits and foreign exchange transactions, should be permitted, arguing that not permitting municipal advisors to engage in these transactions would create an unfair advantage for investment advisors and swap dealers, among others, that have the ability to effect these types of transactions. They said that such a ban would also effectively limit municipal entities' access to critical products and services. SIFMA also proposed that the prohibition on principal transactions not prohibit a municipal advisor or affiliate from serving as a trustee and that the prohibition should not apply to advisory transactions if the principal transactions were effected by ''distant cousin'' affiliates of a municipal advisor. ABA suggested that the MSRB propose exceptions for associated persons, similar to the exception provided in a 1978 interpretation [6] of MSRB Rule D–11, which excludes, solely for purposes of the fair practice rules, persons who are associated ''solely by reason of a control relationship,'' unless the affiliate is otherwise engaged in municipal advisory activities.

• *MSRB Response:* The revised Notice would provide that a municipal advisor will not be considered to have an unmanageable conflict as a result of acting as principal when: (i) Providing investments to the municipal entity on a temporary basis to ensure timely delivery for closing; (ii) engaging in activities permitted under Rule G–23; (iii) it is a municipal advisor solely because it recommends investments or municipal financial products provided or offered by it to a municipal entity as a counterparty, but is not described in (iv); or (iv) acting as a swap or security-

[6] The ABA's citation is actually to the SEC's order approving Rule D–11, a portion of which is reprinted in the MSRB Rule Book.

based counterparty to a municipal entity represented by an ''independent representative,'' as defined in the Commodity Exchange Act or the Exchange Act, respectively. Once the SEC has completed its rulemaking on the definition of ''municipal advisor,'' the MSRB will consider whether additional exceptions are appropriate.

• *Comment: Engineers as Municipal Advisors.* ACEC said that, under certain circumstances, some engineers, if subject to a fiduciary duty by reason of being included in the definition of ''municipal advisor,'' may have direct conflicts with their municipal entity clients because of the engineers' professional and ethical duties. It said that an engineer's ethical duties require it to hold the safety, health, and welfare of the public paramount and that an engineer's duty to render independent judgments might in some cases conflict with its duty of loyalty to its municipal entity client, particularly if the expectations of its client differed from the engineer's independent judgment.

• *MSRB Response:* The MSRB has determined not to make any changes to the Notice with respect to this comment. The MSRB recognizes that members of other professions that also serve as municipal advisors may have concurrent professional duties and standards and the MSRB agrees that an advisor is required to exercise its independent professional skill and judgment in performing its role. The rule does not require that the advisor abandon its professional standards in order to render opinions consistent with the client's expectations.

Fee Splitting; Prohibited Payments

• *Comment: Compensation for Related Services.* SIFMA and ABA requested further clarification about fee-splitting and related compensation arrangements, and suggested that compensation for certain traditional banking services (relating to corporate trust and mutual funds), such as shareholder servicing fees and 12b–1 fees, be permitted with full disclosure and informed consent.

• *MSRB Response.* Endnote 6 to the Notice provides examples of fee-splitting arrangements. The Notice also provides exceptions to the general rule that a municipal advisor that serves as a principal has an unmanageable conflict. Depending upon the SEC's definition of ''municipal advisor,'' the MSRB may propose additional exceptions, but the MSRB is unwilling to do so at this time.

• *Comment: Prohibited Payments to Affiliated Solicitors.* SIFMA also requested further guidance on prohibited payments by municipal advisors to solicitors and argued that payments to affiliated solicitors should not be prohibited because the definition of municipal advisor adopted by the Dodd Frank Act only restricts payments to independent solicitors.

• *MSRB Response:* The MSRB has determined not to make the suggested changes. The cases cited in the endnotes to the Notice demonstrate the inappropriate role that third-party payments have played in many municipal securities financings. The exceptions made by the Notice would only concern issuer-permitted payments and payments to parties that are themselves regulated by the MSRB.

Compensation; Excessive Compensation

• *Comment: Definition of Excessive Compensation.* NAIPFA, SIFMA, and B-Payne Group requested further clarification on the definition of ''excessive compensation.'' NAIPFA suggested certain criteria, including, among other things, the time and labor required, the novelty and difficulty of the issue involved, and the skill requisite to perform the municipal advisory services properly; the fee customarily charged in the locality for similar municipal advisory services; the amount involved and the results obtained; the nature and length of the professional relationship with the client; the experience, reputation, and ability of the municipal advisor or municipal advisors performing the services; and whether the fee is fixed or contingent. B–Payne Group objected to any evaluation of whether its fees were excessive, arguing that no regulator was in a position to evaluate the reasonableness of the municipal advisor's fee. SIFMA suggested that a fully disclosed and negotiated agreement, absent fraud, was sufficient to guard against excessive compensation.

• *MSRB Response:* The MSRB has revised the Notice so that it would incorporate some of the factors noted in the comment letters. The revised Notice would describe excessive compensation as compensation that is so disproportionate to the nature of the municipal advisory services performed as to indicate that the municipal advisor is not acting in the best interests of its municipal advisory client. Further, the revised Notice would provide that ''the MSRB recognizes that what is considered reasonable compensation for a municipal advisor will vary according to the municipal advisor's expertise, the complexity of the financing, and the length of time spent on the engagement, among other factors.'' As this language recognizes, many factors may appropriately affect the amount of the fee, and the specific factors listed in the Notice would not be exclusive. Thus, it may be that the various other factors noted by commenters could have an impact on the compensation paid to a municipal advisor. In all cases, the municipal advisor must be able to support the legitimacy of its fees.

Compensation; Forms of Compensation

• *Comment: Disclosure of Conflicts Confusing and Unnecessary.* Several commenters[7] suggested that the MSRB delete Appendix A to the Notice (Disclosure of Conflicts with Various Forms of Compensation) and the requirement of the Notice that municipal advisors disclose the conflicts with various forms of compensation. Commenters argued that: (i) Such disclosure was unnecessary and that including it would detract from the importance of the rest of the rule; (ii) statements about imbedded conflicts in compensation would be confusing to municipal entities because underwriters (who, they said, have inherent conflicts as both purchasers and distributors of the municipal entity's securities) are not required to disclose this information, whereas municipal advisors, who do not have these inherent conflicts, are nevertheless required to disclose such possible conflicts; and (iii) contingent fees do not affect professional performance. Other commenters argued that the fiduciary duty applicable to municipal advisors was sufficient to guard against excessive compensation. NAIPFA requested that, if this requirement were retained, a similar requirement be applicable to underwriters. B-Payne Group agreed that fees of all participants, including bond lawyers, should be disclosed. MRC suggested that any disclosure requirements were more appropriately addressed in Rule G–23.

AGFS said that, among other things, the proposal to require that firms clarify for clients the advantages and disadvantages of various forms of advisor compensation was excellent. It said that too many municipal issuers are gullible regarding the use of contingent compensation payable only after transactions are completed and that they do not think through the long-term costs and other relevant implications of contingent compensation that can place advisors, upon whom the issuers rely heavily, in the unfortunate position of sacrificing months of work without compensation when it becomes

[7] B-Payne Group, Lewis Young, MRC, NAIPFA, PFM, and SIFMA.

apparent (or should be apparent to a market financial professional) that a transaction is not in the issuers' best interests. AGS said that, unfortunately, there are advisors who would plow ahead in order to avoid substantial financial loss, rather than informing the issuer clients either (1) not to proceed or (2) to alter the structure or approach.

• *MSRB Response:* The MSRB has determined not to eliminate Appendix A from the Notice. Because municipal advisors are fiduciaries with respect to their municipal entity clients, the MSRB considers it essential that they disclose all material conflicts to their clients. Appendix A was included in the Notice for the benefit of small municipal advisors to help them avoid the need to hire an attorney to prepare such compensation conflicts disclosure. Use of Appendix A would not be mandatory and municipal advisors would be free to draft their own disclosure addressing these conflicts.

Pursuant to Section 15B(e)(4)(C) of the Exchange Act, dealers are not municipal advisors when they are serving as underwriters. Even so, MSRB Rule G–17 (on fair dealing) would apply to them when they engage in municipal securities activities with issuers of municipal securities. The MSRB recognizes that underwriters would not be subject to the same requirement to disclose conflicts associated with various forms of compensation under Rule G–17. It is appropriate to interpret Rule G–17 differently for arm's-length counterparty relationships on the one hand (such as underwriters appropriately maintain with issuers) and advisory relationships on the other.

The MSRB notes that it does not have jurisdiction over bond lawyers, unless they are functioning as municipal advisors, and, therefore, in most cases, may not require them to disclose compensation conflicts.

• *Comment: Limit Disclosure of Conflicts to Form of Compensation Mandated by Issuer.* NAIPFA suggested that disclosure of conflicts be limited to the conflicts applicable to the form of compensation methodology at the time the compensation methodology was proposed. NAIPFA also suggested that ''pitches'' or other discussions of ideas with municipal entities prior to engagement should not require delivery of the disclosure. NAIPFA suggested that the disclosures should not be required when the municipal entity dictated the form of compensation, arguing that discussion of conflicts in this instance would not advance the duty of loyalty to the municipal entity client.

• *MSRB Response:* The MSRB has determined to revise the Notice so that it would require that conflicts disclosures, including those regarding compensation, need only be delivered before the engagement of the municipal advisor, unless a conflict is discovered or arises later. Furthermore, the revised Notice would provide that ''if the municipal entity client has required that a particular form of compensation be used, the compensation conflicts disclosure provided by the municipal advisor need only address that particular form of compensation.'' If the form of compensation is not required by the municipal entity, however, the municipal advisor would be required to disclose and discuss the conflicts associated with various forms of compensation.

• *Comment: Authority of Municipal Entity Officials to Consent to Disclosures.* Several commenters suggested that, in determining the authority of a municipal entity official to enter into a contract, to receive various disclosures, and to deliver informed consent, a municipal advisor should be permitted to rely on the apparent authority of an official to acknowledge the conflicts disclosure. NAIPFA suggested that the municipal advisor be able to rely on the designation by the municipal entity of the primary contact for the engagement as evidence of its authority unless the municipal advisor has reason to believe that the official does not have the requisite authority. SIFMA suggested that the municipal advisor be able to rely on a representation of the official as to its apparent authority.

• *MSRB Response:* As noted above under ''Conflicts of Interest; Disclosure,'' the MSRB determined to revise the Notice so that it would provide that a municipal advisor is only required to have a reasonable belief that it is making required disclosures to, and receiving informed consent from, officials with the authority to bind the issuer.

• *Comment: Consent Presumed With Receipt of Written Agreement.* NAIPFA suggested that a municipal advisor be permitted to presume consent to compensation conflicts disclosure if it receives an executed contract, or verbal agreement that a written engagement letter (or similar document) has been accepted, or written or verbal acknowledgement that the advisor has been selected following an RFP process in which the form of compensation was appropriately disclosed.

• *MSRB Response:* The MSRB had determined not to make changes to the Notice in response to this comment because the following provisions of the Notice would address this comment: ''The disclosures described in this paragraph must be provided as described above under ''Duty of Loyalty/Conflicts of Interest/Disclosure Obligations.'' That section of the Notice would provide: ''For purposes of proposed Rule G–36, a municipal entity will be deemed to have consented to conflicts that are clearly described in its engagement letter or other written contract with the municipal advisor, if the municipal entity expressly acknowledges the existence of such conflicts. If the officials of the municipal entity agree to proceed with the municipal advisory engagement after receipt of the conflicts disclosure but will not provide written acknowledgement of such conflicts, the municipal advisor may proceed with the engagement after documenting with specificity why it was unable to obtain their written acknowledgement.''

Duty of Care

Necessary Qualifications.

• *Comment: Restrictions on Undertaking Engagements Are Unnecessary.* Lewis Young suggested that the requirement that the ''municipal advisor should not undertake a municipal advisory engagement for which the advisor does not possess the degree of knowledge and expertise needed to provide the municipal entity with informed advice'' be removed, arguing that it was unnecessary and it left out many other aspects of the general fiduciary duty of care and ''unbalanced'' the implications of the general duty.

• *MSRB Response:* The MSRB has determined not to make any changes to the Notice in response to this comment. The MSRB disagrees with this comment because it considers the requisite knowledge and expertise to be an essential element of the duty of care. The cases cited in endnote 20 to the Notice provide examples of instances in which financial advisors violated this duty.

Consideration of Alternatives

• *Comment: Requirement Unnecessary.* Lewis Young suggested that this requirement should be removed as it was unnecessary.

• *MSRB Response:* The MSRB disagrees with this comment and considers this requirement to be a fundamental distinction between a fiduciary and an arm's length counterparty, such as an underwriter.

• *Comment: Limit Obligations to Terms of Contract.* SIFMA argued that a municipal advisor should be required to

do only what the municipal entity contracts for and that imposing other duties will impose additional costs and will cause extensive negotiation on the limitations clauses in contracts. Further, SIFMA argued that an implied duty to review alternatives should not apply where the form of engagement letter is non-negotiable because the inability to negotiate a limited engagement clause will reduce the number of municipal advisors who offer services.

• *MSRB Response:* The MSRB has determined not to make any changes to the Notice in response to this comment. The MSRB expects that municipal advisors that wish to limit their engagements with municipal entities will do so in writings (whether as part of engagement letters or separately) that limit the scope of their engagements to particularly enumerated items or which state that any services not specified in the writing will not be provided by the advisor. This should impose no measurable additional cost on the advisor or the municipal entity.

Duty of Inquiry

• *Comment: Scope of Inquiry.* Lewis Young said that the requirement to conduct reasonable inquiry regarding representations set forth in a certificate should be governed by the terms of the certificate, which should show the scope of inquiry. SIFMA requested more guidance on the required scope of a factual investigation and on the nature and scope of any permitted qualifications, and whether a municipal advisor could disclaim the duty altogether in its engagement letter or later, noting that it would be impossible to anticipate all limitations on this duty at outset of engagement. NAIPFA suggested that the MSRB clarify its statements about a municipal advisor's duty of inquiry under G–36 and G–17 to form a reasonable basis for its recommendations.

• *MSRB Response:* The MSRB has determined not to make the suggested changes. The Notice would not permit the waiver of duties imposed by proposed Rule G–36, as interpreted by the Notice, if they are within the scope of the municipal advisor's engagement. If it is within the scope of the municipal advisor's engagement to prepare a certificate that will be relied upon by the issuer, the municipal advisor would be required to conduct a reasonable inquiry into the facts that underlie the certificate. For example, review of the official books of the issuer and other factual information within the municipal advisor's control might assist the municipal advisor in forming a reasonable basis for its certificate. However, if the certificate relies on the representations of others or facts not within the municipal advisor's control, additional inquiry on the part of the municipal advisor might be required.

The MSRB notes that some certificates that municipal advisors provide already have the potential to subject the advisor to penalties under Section 6700 of the Internal Revenue Code. An Internal Revenue Service publication on Section 6700 [8] provides: ''Participants [in a bond financing] can rely on matters of fact or material provided by other participants necessary to make their own statements or draw their own conclusions, unless they have actual knowledge or a reason to know of its inaccuracy or the statement is not credible or reasonable on its face.'' The Internal Revenue Service summarized the legislative history of Section 6700. *See* H. Conf. Rep. No. 101–247, 101st Cong., 1st Sess. 1397.

With respect to clarifying the statements in the Notice concerning the municipal advisor's duty to form a reasonable basis for any recommendation, the MSRB has determined not to make any changes to the Notice other than those directed to specific circumstances in the Notice (*e.g.* Duty of Inquiry, Consideration of Alternatives, *etc.*). The MSRB notes that each recommendation, and the basis for such recommendation, will be dependent on facts and circumstances and that the statements in the Notice are intended as general guidelines.

• *Comment: Due Diligence.* Lewis Young and SIFMA said that the requirement for a municipal advisor to use due diligence when preparing an official statement suggested that the municipal advisor (whose duties are to an issuer) had the duties of an underwriter (whose duties are to investors). Lewis Young said that this requirement is inconsistent with an advisor's obligation, which is to advise ''in a secondary role to the issuer as principal as to disclosure duties, as well as duplicating the duties of an underwriter.'' Lewis Young also noted that a municipal advisor owes a duty to the municipal entity, not to investors, and the municipal advisor's obligations in respect of the disclosure process are to explain the process to the issuer, to make recommendations on the structure and content of the disclosure document, and to recommend competent counsel to prepare.

[8] *See* Office of Chief Counsel, Internal Revenue Service, Memorandum No. 200610018, Application of Section 6700 Penalty with Respect to Various Participants in Tax-Exempt Bond Issuance (Feb. 3, 2006).

• *MSRB Response:* The MSRB has determined to revise the Notice so that it would address these concerns. The language in the Notice upon which this comment is based covers the situation in which the municipal advisor prepares all, or substantially all, of the official statement, exercising discretion as to the content of disclosures. This is often true in the case of competitive underwritings. Under these circumstances, the advisor owes a duty to the municipal entity to make reasonable inquiries in order to help ensure the appropriate disclosures are made in the official statement. The revised Notice would no longer require that the advisor exercise due diligence, and would further provide that the municipal advisor ''owes a duty to the municipal entity to make reasonable inquiries in order to help ensure the appropriate disclosures are made in the official statement.''

Permissible Limitations On Scope of Engagement

Limitations.

• *Comment: Outline Scope of Duties in Engagement.* Both SIFMA and NAIPFA suggested that municipal advisors should be permitted to outline the scope of their duties in an engagement, rather than outlining the exclusions and limitations. NAIPFA noted that it would be unreasonable to subject a municipal advisor to a fiduciary duty with respect to services that were beyond the scope of the parties' agreement. Further, it said that an issuer had no reason to assume that services not specified in writing would be performed. The municipal advisor should be held to the duties it had agreed to undertake, and be able to include a blanket statement relating to the matters excluded from the engagement.

• *MSRB Response:* The MSRB has determined not to make any changes to the Notice in response to this comment. The MSRB expects that municipal advisors that wish to limit their engagements with municipal entities will do so in writings (whether as part of engagement letters or separately) that limit the scope of their engagements to particularly enumerated items or which state that any services not specified in the writing will not be provided by the advisor. This should impose no measurable additional cost on the advisor or the municipal entity.

Disclosure of Pre-Formed Judgment on Appropriateness of Transaction or Product

• *Comment: Remove Requirement to Disclose Advisor's Pre-Formed Opinion.*

SIFMA suggested that the MSRB reconsider its position on permitting the municipal advisor to limit the scope of its engagement while requiring it to disclose any pre-formed opinion it has on matters not within the scope of the engagement. SIFMA said that this was burdensome, detracted from the scope of the limitations, and would effectively require the municipal advisor to consider the appropriateness of the financing or product (which it had excluded from its engagement) to counter any hindsight judgment.

• *MSRB Response:* The MSRB has determined to revise the Notice so that it would no longer include this requirement. While the Notice would not require the municipal advisor to conduct reasonable inquiry to form such an opinion, the MSRB realizes that some municipal advisors might feel obliged to do so to avoid being questioned in hindsight about whether they had, in fact, formed an opinion on appropriateness before being retained.

Scope of Engagement

• *Comment: Define Term of Engagement.* SIFMA suggested that the Notice include a definition of ''engagement,'' and define when the municipal advisor's obligation will commence and terminate pursuant to a written engagement letter. Absent a written engagement letter, SIFMA suggested that an engagement should terminate on the reasonable expectations of the parties, or when the related transaction has been concluded.

• *MSRB Response:* By the use of the word ''engagement,'' the MSRB means the municipal advisory assignment or other scope of work for which the municipal entity has retained the municipal advisor. When a municipal advisor is engaged or retained by the municipal entity, the municipal entity would become the client of the municipal advisor and the fiduciary duty under proposed Rule G–36 would begin to apply. It would continue to apply until the engagement is complete.

• *Comment: Incorporate Requirements of Advisory Contracts in Rule G–23.* MRC suggested that any requirements relating to the content of advisory contracts be incorporated into existing rules such as Rule G–23, rather than by interpretation. MRC also suggested clarification of the various statements relating to appropriateness and incorporation of such statements in MSRB Rule G–19 (on suitability).

• *MSRB Response:* The MSRB disagrees with this comment and has therefore determined not to make the suggested changes. As noted above, Rule G–23 only concerns financial advisory activities of broker-dealers. It also does not impose a fiduciary duty. Rule G–19 only imposes a duty of suitability upon dealers and, even then, only in connection with transactions in municipal securities recommended to customers.[9] The MSRB has determined not to amend that rule at this time.

Other Comments

• *Comment: Other Rules May Impose Conflicting Standards.* Various commenters [10] noted that several regulatory agencies either have in place or are currently promulgating rules that concern parties that might be subject to draft Rule G–36 and that lack of coordination with these agencies could lead to conflicting standards applicable to such parties. They said that the MSRB and other regulatory agencies need to coordinate their respective guidance and AFSCME suggested that these agencies offer informal guidance such as webinars to aid market participants.

• *MSRB Response:* The MSRB has been coordinating with other regulators in areas of overlap. For example, the provisions of the Notice concerning the provision of swap advice use the same language as found in Title VII of Dodd-Frank and the proposed Commodity Trading Futures Commission (''CFTC'') business conduct rule for swap dealers and major swap participants.[11] Further, the MSRB has conducted and will continue to conduct webinars and various outreach events to explain its rulemaking efforts.

• *Comment: Manner of Regulation and Cost of Compliance.* B–Payne Group expressed the view that the MSRB should regulate municipal advisors by getting ''experienced personnel on the ground in regional markets and charge them with staying on top of situations,'' rather than regulating municipal advisors as the MSRB regulates dealers. It argued for exemptions from MSRB rules for small municipal advisors and said the cost of compliance for such advisors would outweigh the regulatory benefit. Other parts of the comment letter addressed matters that were outside the scope of the request for comment on draft Rule G–36 (*e.g.,* professional qualifications testing, training for local finance officials) and are not summarized here.

• *MSRB Response:* For regulation of municipal advisors to be fair, all municipal advisors must know what rules apply to them. The Exchange Act itself imposes a fiduciary duty on municipal advisors and the proposed rule change provides guidance to municipal advisors on what it means to have a fiduciary duty so they can tailor their conduct accordingly. Without such guidance, ''experienced personnel on the ground'' would likely enforce the Exchange Act in an inconsistent manner, which the MSRB doubts that B–Payne Group would consider fair.

As stated above, all municipal advisors, regardless of their size, have a fiduciary duty to their municipal entity clients. Because the protection of their clients is paramount, in this context, the MSRB has concluded that it is appropriate to impose the same rules on small municipal advisors as it imposes on larger municipal advisors. However, the MSRB recognizes that there are costs of compliance. That is the reason the MSRB has included Appendix A to the Notice. By using Appendix A to provide disclosure concerning compensation conflicts, small municipal advisors would be able to satisfy the compensation disclosure requirement of the Notice without having to retain legal counsel to assist them in the preparation of such disclosure.

• *Comment: Implementation Period.* SIFMA suggested that because Rule G–36 would subject municipal advisors to rules they are not currently subject to, the MSRB should consider providing for an implementation period of no less than one year.

• *MSRB Response.* The MSRB recognizes that some municipal advisors may be subject to rules that are not currently applicable. However, the appropriate implementation period will depend upon the provisions of the SEC's rule relating to municipal advisors.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

[9] Under MSRB Rule D–9: Except as otherwise specifically provided by rule of the Board, the term ''customer'' shall mean any person other than a broker, dealer, or municipal securities dealer acting in its capacity as such or an issuer in transactions involving the sale by the issuer of a new issue of its securities.

[10] ABA; AFSCME; Michigan Bankers; SIFMA; and EFC.

[11] *See* **Federal Register** Vol. 75, No. 245 (December 22, 2010).

(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 Exchange Act. Interested persons are also invited to submit views and arguments as to whether they can effectively comment on the proposed rule change prior to the date of final adoption of the Commission's permanent rules for the registration of municipal advisors. 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–MSRB–2011–14 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–MSRB–2011–14. 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 MSRB's offices. 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–MSRB–2011–14 and should be submitted on or before October 3, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–23259 Filed 9–9–11; 8:45 am]

BILLING CODE 8011–01–P

[12] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Docket No. SBA 2011–0003]

Community Advantage Pilot Program

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Notice of change to Community Advantage Pilot Program.

SUMMARY: On February 18, 2011, SBA published a notice and request for comments introducing the Community Advantage Pilot Program. In that notice, SBA modified or waived as appropriate certain regulations which otherwise apply to the 7(a) loan program for the Community Advantage Pilot Program. To support SBA's commitment to expanding access to capital for small businesses and entrepreneurs in underserved markets, SBA is issuing this notice to revise certain of these regulatory waivers.

DATES: This notice is effective September 12, 2011.

FOR FURTHER INFORMATION CONTACT: Grady B. Hedgespeth, Director, Office of Financial Assistance, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416; (202) 205–7562; *grady.hedgespeth@sba.gov.*

SUPPLEMENTARY INFORMATION: On February 18, 2011, SBA issued a notice and request for comments introducing the Community Advantage Pilot Program (''CA Pilot Program'') (76 FR 9626). Pursuant to the authority provided to SBA under 13 CFR 120.3 to suspend, modify or waive certain regulations in establishing and testing pilot loan initiatives, SBA temporarily waived certain regulations, which otherwise apply to 7(a) loans, for the CA Pilot Program. Specifically, SBA waived 13 CFR 120.420 through 120.435 because CA Lenders were prohibited from including CA loans in participant lender financings and other conveyances, including securitizations, participations and pledges. This prohibition, however, may restrict the ability of CA Lenders to obtain access to capital from commercial banks and warehouse lenders. Therefore, SBA is revising the February 18, 2011 notice to allow CA Lenders participating in the CA Pilot Program to pledge CA loans as collateral for certain lender financings that are approved by SBA, provided the CA Lender complies with all applicable SBA regulations. To accomplish this, SBA is no longer waiving the regulations at 13 CFR 120.420, 120.430 –120.431 (only with respect to pledges), and 120.434. While SBA is permitting CA Lenders to pledge CA loans as collateral for certain lender financings in accordance with the aforementioned regulations, SBA will not permit CA Lenders to include CA loans in securitizations, any loan sales or participations. Therefore, SBA continues to waive the regulations at 13 CFR 120.421 through 120.428, 120.432, 120.433 and 120.435, as stated in the February 18, 2011 notice. This notice does not affect a CA Lender's ability to sell the guaranteed portions of CA loans in the secondary market, as further described in the February 18, 2011 notice.

In addition to issuing this notice, SBA will modify the Community Advantage Pilot Program Loan Guaranty Agreement (SBA Form 750CA) to allow lenders to pledge CA loans as collateral for certain lender financings. SBA will make the revised SBA Form 750CA available to CA Lenders. All participants in the CA Pilot Program must execute the revised SBA Form 750CA and return it to SBA prior to pledging any CA loans.

All other SBA guidelines and regulatory waivers related to the CA Pilot Program remained unchanged.

SBA has provided more detailed guidance in the form of a participant guide which is available on SBA's Web site, *http://www.sba.gov.* SBA may also provide additional guidance, if needed, through SBA notices, which will also be published on SBA's Web site, *http://www.sba.gov.*

Questions on the CA Pilot Program may be directed to the Lender Relations Specialist in the local SBA district office. The local SBA district office may be found at *http://www.sba.gov/about-offices-list/2.*

Authority: 15 U.S.C. 636(a)(25) and 13 CFR 120.3.

Karen G. Mills,

Administrator.

[FR Doc. 2011–23244 Filed 9–9–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12780 and #12781]

New Jersey Disaster #NJ–00023

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of New Jersey (FEMA–4021–DR), dated 08/31/2011.

Incident: Hurricane Irene.

Incident Period: 08/27/2011 and continuing.

Effective Date: 08/31/2011.

Physical Loan Application Deadline Date: 10/31/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 05/31/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 08/31/2011, 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 (Physical Damage and Economic Injury Loans): Bergen, Essex, Morris, Passaic, Somerset.

Contiguous Counties (Economic Injury Loans Only):

New Jersey: Hudson, Hunterdon, Mercer, Middlesex, Sussex, Union, Warren.

New York: Bronx, New York, Orange, Rockland, Westchester.

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 127808 and for economic injury is 127810.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–23246 Filed 9–9–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Disaster Declaration #12782 and #12783; New Jersey Disaster #NJ–00024

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of New Jersey (FEMA–4021–DR), dated 08/31/2011.

Incident: Hurricane Irene.

Incident Period: 08/27/2011 and continuing.

Effective Date: 08/31/2011.

Physical Loan Application Deadline Date: 10/31/2011.

Economic Injury (Eidl) Loan Application Deadline Date: 05/31/2012.

Addresses: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 08/31/2011, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Atlantic, Cape May, Cumberland, Salem.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-profit organizations with credit available elsewhere	3.250
Non-profit organizations without credit available elsewhere	3.000
For Economic Injury:	
Non-profit organizations without credit available elsewhere	3.000

The number assigned to this disaster for physical damage is 127828 and for economic injury is 127838.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–23252 Filed 9–9–11; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

[Social Security Ruling, SSR 11–2p; Docket No. SSA–2010–0079]

Titles II and XVI: Documenting and Evaluating Disability in Young Adults

AGENCY: Social Security Administration.

ACTION: Notice of Social Security Ruling (SSR).

SUMMARY: In accordance with 20 CFR 402.35(b)(1), the Commissioner of Social Security gives notice of Social Security Ruling, SSR–11–2p. This Ruling explains our policy on documenting and evaluating disability in young adults.

DATES: *Effective Date:* September 12, 2011.

FOR FURTHER INFORMATION CONTACT: Cheryl A. Williams, Office of Disability Programs, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–1020.

SUPPLEMENTARY INFORMATION: Although we are not required to do so pursuant to 5 U.S.C. 552(a)(1) and (a)(2), we are publishing this SSR in accordance with 20 CFR 402.35(b)(1).

Through SSRs, we make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, special veterans benefits, and black lung benefits programs. We may base SSRs on determinations or decisions made at all levels of administrative adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, or other interpretations of the law and regulations.

Although SSRs do not have the same force and effect as statutes or regulations, they are binding on all of our components. 20 CFR 402.35(b)(1).

This SSR will be in effect until we publish a notice in the **Federal Register** that rescinds it, or publish a new SSR that replaces or modifies it.

(Catalog of Federal Domestic Assistance, Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004—Social Security—Survivors Insurance; 96.006—Supplemental Security Income)

Dated: September 6, 2011.

Michael J. Astrue,

Commissioner of Social Security.

Policy Interpretation Ruling

Titles II and XVI: Documenting and Evaluating Disability in Young Adults

Purpose: This SSR consolidates information from our regulations on documenting and evaluating disability in young adults. We also provide guidance on how we apply our policies when we determine whether a young adult is disabled under our rules.

Citations (Authority): Sections 216(i), 222(c), 223(a), 223(c), 223(d), 223(f), 225(b), 1614(a)(3), 1614(a)(4), 1619, and 1631(a) of the Social Security Act, as amended; Regulations No. 4, subpart B, section 404.130; subpart D, sections 404.316, 404.327–404.330, 404.339–404.340, 404.348, 404.350, 404.352, and 404.354; subpart P, sections 404.1505, 404.1509–404.1510, 404.1513, 404.1520–404.1521, 404.1525–404.1527, 404.1545–404.1546, 404.1560–404.1569a, 404.1571–404.1576, 404.1584, 404.1590, 404.1594, appendix 1 and appendix 2; and Regulations No. 16, subpart I, sections 416.902, 416.905, 416.909–416.910, 416.913, 416.920–416.921, 416.924a, 416.925–416.927, 416.945–416.946, 416.960–416.969a, 416.971–416.976, 416.987, 416.990, and 416.994, and subpart M, sections 416.1320, 416.1331, and 416.1338.

Introduction

We consider people between the ages of 18 to approximately 25 to be young adults. When we make disability determinations or decisions for young adults, we use the same definition for disability as we do for other adults.[1] We also use adult rules to make disability determinations or decisions in several other situations:

- When a young adult files a claim for child[2] benefits on a parent's record based on a disability that began before he or she attained age 22;
- When a child[3] who is receiving title XVI childhood disability benefits attains age 18 and must undergo a disability redetermination;[4] and
- When a young adult receiving disability benefits under title II or XVI undergoes a continuing disability review (CDR) to determine whether he or she is still disabled.[5]

Like other adults, a young adult who applies for disability benefits under title II or XVI[6] is ''disabled'' if he or she has a medically determinable physical or mental impairment(s)[7] that results in ''an inability to do any substantial gainful activity.''[8]

We use a five-step sequential evaluation process to determine disability:

1. Is the person engaging in substantial gainful activity (SGA)?[9] If yes, the person is not disabled.

2. Does the person have a medically determinable physical or mental impairment(s) that is severe?[10] If no, the person is not disabled.

3. Does the person have an impairment(s) that meets or medically equals a listing in the Listing of Impairments (listings)?[11] If yes and the impairment(s) meets the duration requirement, the person is disabled.

4. Does the person have the residual functional capacity (RFC)[12] to do past relevant work? If yes, the person is not disabled.

5. Does the person have the RFC to adjust to other work that exists in significant numbers in the national economy, considering his or her age, education, and previous work experience?[13] If no, the person is disabled. If yes, the person is not disabled.[14]

This SSR explains the evidence we need to document a young adult's impairment-related limitations, other considerations for evaluating limitations, disability insured status, issues related to the sequential evaluation process, and resolving inconsistencies in the evidence. We also discuss continued payments for young adults participating in vocational rehabilitation plans.

Policy Interpretation

The abilities, skills, and behaviors that young adults use to do basic work activities are essentially the same as those that older adolescents[15] use for age-appropriate activities.[16] Thus, the evidence we consider when we make disability determinations for young adults is generally the same as, or similar to, the evidence we consider for making disability determinations for older adolescents under title XVI. Because the abilities, skills, and behaviors are essentially the same, the same considerations for evaluating

[1] Under title II, we sometimes use the adult definition of disability to make disability determinations or decisions for people under age 18. In these situations, we will use the guidance in this SSR when we make our determination or decision.

[2] For purposes of title II entitlement, a ''child'' is a person who has the required relationship to the insured worker. See 20 CFR 404.330, 404.339–404.340, 404.348, 404.350, and 404.354.

[3] For purposes of determining disability under title XVI, a ''child'' is ''a person who has not attained age 18.'' See 20 CFR 416.902.

[4] See 20 CFR 416.987.

[5] See 20 CFR 404.1590 and 416.990.

[6] For simplicity, we refer in this SSR only to initial claims for benefits. However, the policy interpretations in this SSR also apply, with some exceptions, to age-18 redeterminations under section 1614(a)(3)(H)(iii) of the Act and 20 CFR 416.987 and to CDRs under sections 223(f) and 1614(a)(4) of the Act and 20 CFR 404.1594 and 416.994. When there is a difference in how the policy applies to age-18 redeterminations or to CDRs, we explain how the policy differs.

[7] We use the term ''impairment(s)'' in this SSR to refer to an ''impairment or a combination of impairments.''

[8] The impairment(s) must also satisfy the duration requirement in sections 216(i)(1), 223(d)(1)(A), and 1614(a)(3)(A) of the Act; that is, it must be expected to result in death or must have lasted or be expected to last for a continuous period of not less than 12 months. See also 20 CFR 404.1505, 404.1509, 416.905, and 416.909.

[9] For the definition of SGA and the rules for how we determine whether work shows that a person has the ability to do SGA, see 20 CFR 404.1510, 404.1571–404.1576, 404.1584, and 416.910, and 416.971–416.976.

[10] An impairment(s) is not severe if it does not significantly limit the person's physical or mental ability to do basic work activities. 20 CFR 404.1521 and 416.921.

[11] The rules for how we determine whether an impairment(s) meets or medically equals a listing are in 20 CFR 404.1525, 404.1526, 416.925, and 416.926. The listings are at 20 CFR part 404, subpart P, appendix 1.

[12] The basic rules for RFC are in 20 CFR 404.1545–404.1546, 404.1569a, 416.945–416.946, and 416.969a. See also SSR 96–8p, 61 FR 34474 (1996), available at: *http://www.socialsecurity.gov/OP_Home/rulings/di/01/SSR96-08-di-01.html.* (For the complete titles of all SSRs cited in this footnote and those following, see the CROSS–REFERENCES section at the end of this SSR).

[13] The rules for determining whether a person can adjust to other work are in 20 CFR 404.1560–404.1569a, 20 CFR part 404, subpart P, appendix 2, and 20 CFR 416.960–416.969a.

[14] See 20 CFR 404.1520 and 416.920. The sequential evaluation process for age-18 redeterminations follows the process we use for initial claims, except that we do not consider whether the person is engaging in SGA (step 1). See 20 CFR 416.987. Unlike the sequential evaluation process for initial claims, the sequential evaluation process for CDRs first considers whether there has been medical improvement related to the ability to work. See 20 CFR 404.1594 and 416.994.

[15] An adolescent is a child ''age 12 to the attainment of age 18.'' See 20 CFR 416.926a. An older adolescent is a child approximately age 16 to the attainment of age 18.

[16] See, for example, 20 CFR 416.926a(g)–(k). We include examples of work and work-related activities in the sections describing the domains for adolescents.

limitations in an older adolescent also apply to young adults.

I. Sources of Evidence About a Young Adult's Ability To Work

Once we have evidence from an acceptable medical source [17] that establishes the existence of at least one medically determinable impairment (MDI), we consider all relevant evidence in the case record to determine whether a young adult is disabled. This evidence may come from acceptable medical sources and from a wide variety of ''other sources.'' [18] Although we always need evidence from an acceptable medical source, we will determine what other evidence we need based on the facts of the case.

A. Medical Sources

1. In addition to providing evidence establishing an MDI, acceptable medical sources can provide information about how an impairment(s) affects a young adult's ability to do work-related activities. For example, a physician might discuss the impact of asthma on a young adult's participation in physical activities, or a speech-language pathologist might discuss how a language disorder contributes to limited attention and problems on a job.

2. We may receive evidence from other medical sources who are not ''acceptable medical sources,'' such as nurse-practitioners, physicians' assistants, naturopaths, chiropractors, audiologists, occupational therapists (OTs), physical therapists (PTs), and psychiatric social workers (PSWs). We cannot use evidence from these sources to establish that a young adult has an MDI. However, we can use evidence from these sources to determine the severity of the impairment(s) and how it affects the young adult's ability to do work-related activities. This evidence can be very helpful, especially if a source sees the young adult regularly. For example:

- A PSW might comment on the young adult's ability to deal with changes in a routine work setting.
- An OT or PT might evaluate the impact of a neurological disorder on the young adult's activities and comment on muscle tone and strength and how it affects his or her ability to stand and walk.
- An OT might comment on the young adult's ability to use fine motor skills to use a computer.

B. Non-Medical Sources

Evidence from other sources who are not medical sources, but who know and have contact with the young adult, can also help us evaluate the severity and impact of a young adult's impairment(s). These sources include family members, educational personnel (for example, teachers and counselors), public and private social welfare agency personnel, and others (for example, friends, neighbors, and clergy). Therefore, we consider evidence in the case record from non-medical sources when we determine the severity of the young adult's impairment(s) and how the young adult is able to function.

C. School Programs

Evidence from school programs, including secondary and post-secondary schools, can also help us evaluate the severity and impact of a young adult's impairment(s).

1. Many young adults who received special education (including transition services) or related services [19] before they attained age 18 continue to receive these services until they are age 22. Other young adults may participate in postsecondary programs, including college or vocational training.[20]

2. Young adults who receive special education services after age 17 will have an Individualized Education Program (IEP),[21] including an IEP transition plan. The IEP transition plan describes a student's levels of functioning based on reasonable estimates by both the student and the special education team. It also identifies the kinds of vocational and living skills the young adult needs to develop in order to function independently as an adult.

3. The IEP transition goals may range from the development of skills appropriate to supervised and supported work and living settings to those needed in independent work and living situations. For example, an IEP transition goal for an 18-year-old might be, ''The student will independently use public transportation,'' while specific objectives would identify the skills to be developed (for example, reading a bus schedule) and the particular instruction methods to be used to develop the skills (for example, one-to-one tutoring with practice reading a bus schedule).

4. The goals in an IEP may be set at a level that the young adult can readily achieve to foster a sense of accomplishment and may be lower than what would be expected of a young adult without impairments. In this regard:

- A young adult who *achieves* a goal may or may not have limitations. The young adult may be developing or acquiring skills at a slower rate than young adults without impairments and may have achieved the goal simply because it was set low.
- A young adult who *does not achieve* a goal likely has an impairment-related limitation(s). A young adult's failure to achieve a goal, however, does not, by itself, establish that the impairment(s) is *disabling.*

II. Considerations Related To Evaluating a Young Adult's Impairment-Related Limitations

We evaluate a young adult's impairment-related limitations when we:

- Determine whether his or her MDI(s) is ''severe''—that is, significantly limits his or her physical or mental ability to do basic work activities;
- Determine whether his or her MDI(s) meets or medically equals a listed impairment; and
- Assess his or her RFC.

The examples in the sections below do not necessarily establish that a young

[17] See 20 CFR 404.1513(a) and 416.913(a).

[18] See 20 CFR 404.1513(d) and 416.913(d). For more information about how we consider opinion evidence from ''other sources,'' including opinions about functional limitations, see SSR 06–03p, 71 FR 45593 (2006), available at: *http://www.socialsecurity.gov/OP_Home/rulings/di/01/SSR2006-03-di-01.html.* For information about how we consider opinion evidence from acceptable medical sources, see generally 20 CFR 404.1527 and 416.927.

[19] In this context, *special education* refers to instructional services provided to students through age 21 in primary and secondary education under the Individuals with Disabilities Education Improvement Act of 2004 (commonly referred to as ''IDEA'').

Transition services means a coordinated set of special education services that is designed to facilitate the student's movement from school to post-school activities, including postsecondary education, vocational education, integrated employment, independent living, or community participation. Such services include instruction, related services, community services, the development of employment and other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.

Related services include transportation and developmental, corrective, and other supportive services (for example, occupational therapy) as are required to assist a student with a disability to benefit from special education. A student who does not qualify for special education may qualify for related services under section 504 of the Rehabilitation Act of 1973 to ensure a free, appropriate public education.

[20] The Higher Education Opportunity Act of 2008 authorizes postsecondary educational services for students with disabilities.

[21] We provide an extensive discussion of IEPs in SSR 09–2p, 74 FR 7625 (2009), available at: *http://www.socialsecurity.gov/OP_Home/rulings/ssi/02/SSR2009-02-ssi-02.html.* The information about IEPs applies equally to people age 18–22 who are still in special education. We may also consider IEPs from a period before the person attained age 18 (for example, senior year of high school) if they are relevant to the period we are considering in connection with an application, age-18 redetermination, or CDR. Recent IEPs will frequently be relevant in age-18 redeterminations.

adult is disabled, only that the person may have limitations that affect what work he or she may be able to do.

A. Evidence Regarding Functioning From Educational Programs

As we discussed in section I.C above, we may have evidence about a young adult's functioning from school programs, including IEPs. This evidence may indicate how well a young adult can use his or her physical or mental abilities to perform work activities. The following examples of school-reported difficulties might indicate difficulty with work activities:

- Difficulty in understanding, remembering, and carrying out simple instructions and work procedures during a school-sponsored work experience;
- Difficulty communicating spontaneously and appropriately in the classroom;
- Difficulty with maintaining attention for extended periods in a classroom;
- Difficulty relating to authority figures and responding appropriately to correction or criticism during school or a work-study experience;
- Difficulty using motor skills to move from one classroom to another.

B. Community Experiences, Including Job Placements

1. A young adult may receive services in a community setting(s) through a school or a community agency, such as a mental health center or vocational rehabilitation agency. These services may include:

- *Community-based instruction (CBI),* or instruction in a natural, age-appropriate setting (for example, trips to the grocery store to develop math, sequencing, travel, and social skills).
- *On-the-job training (OJT),* or placement in various work sites in the community for vocational training and experience, frequently in an ''enclave'' (small group) of students with a job coach (for example, placement in an enclave in a motel to learn housekeeping tasks such as bed-making and vacuuming).
- *Work experience,* or supervised part-time or full-time employment to assist a young adult in acquiring job skills and good work attitudes and habits.

2. A young adult may participate in several—or even many—OJT or work experience placements that are unpaid, paid at SGA levels, or paid at less than SGA levels. Some young adults have multiple placements as part of a transition plan that expose them to a variety of work settings. Other young adults have multiple placements because of unsatisfactory performance.

Regardless of whether the work was SGA, information about how well a young adult performed in these placements can help us assess how the young adult functions. For example, a young adult who was unable to sustain OJT placements may have limitations in the ability to understand and remember instructions or to persist at work-related tasks. In contrast, a young adult who performed OJT placements successfully may have a good ability to respond appropriately to supervision. In addition, information about the degree to which a young adult needs special supports in order to work (such as in supported or transitional employment programs) may also help us assess the young adult's functioning.

C. Psychosocial Supports and Highly Structured or Supportive Settings

As for all adults, psychosocial supports and highly structured or supportive settings may reduce the demands on a young adult and help him or her function. However, the young adult's ability to function in settings that are less demanding, more structured, or more supportive than those in which people typically work does not necessarily show how the young adult will be able to function in a work setting. We will consider the kind and extent of support or assistance and the characteristics of any structured setting in which the young adult spends his or her time when we evaluate the effects of his or her impairment(s) on functioning.

D. Extra Help and Accommodations

Working requires a person to be able to do the tasks of a job independently, appropriately, effectively, and on a sustained basis. In this regard, the analysis for adult disability determination purposes is similar to our ''extra help'' rules for children.[22] If an adult with an impairment(s) needs or would need greater supervision or assistance, or some other type of accommodation, because of the impairment(s) than an employee who does not have an impairment, the adult has a work-related limitation.

We consider how independently a young adult is able to function, including whether the young adult needs help from other people or special equipment, devices, or medications to perform day-to-day activities. If a young adult can function only if he or she receives more help than would generally be provided to people without medical impairments, we consider how well the young adult would function without the extra help. The more extra help or support of any kind that a young adult receives because of his or her impairment(s), the less independent he or she is in functioning, and the more severe we will find the limitation to be.

1. Accommodations

a. *Accommodations* are practices and procedures that allow a person to complete the same activity or task as other people. Accommodations can include a change in setting, timing, or scheduling, or an assistive or adaptive device.

b. Some young adults with impairments need accommodations in their educational program in order to participate in the general curriculum or in a transitional program.[23] The fact that a young adult receives or has received accommodations as a part of his or her IEP or Section 504 plan,[24] may be an indication that he or she has a work-related limitation. For example, evidence showing that a student requires an audiotape recording of oral directions for replay at school because he cannot remember more than a one-step instruction might indicate that the student will have the same inability to remember more than a one-step instruction without special assistance in a work setting.

c. Some accommodations may indicate an impairment(s) that meets or medically equals a listing. For example, the need for an augmentative or alternative communication or AAC device (for example, an electronic picture board or an electrolarynx) might indicate a speech impairment that meets listing 2.09 or an impairment that meets one of the neurological listings in section 11.00 of the listings.

d. When we determine whether a person can perform his or her past relevant work, we do not consider potential accommodations unless his or her employer actually made the accommodation. This means that we cannot find that a young adult can do past relevant work with accommodations unless the young adult

[22] See, 20 CFR 416.924a(b)(5)(ii).

[23] We provide more detail about accommodations in IEPs in SSR 09–2p.

[24] Section 504 of the Rehabilitation Act of 1973 prohibits discrimination on the basis of disability in programs and activities that receive Federal financial assistance. P.L. 93–112, section 504; 29 U.S.C. 794(a), as amended. Under this section, schools must provide a free, appropriate public education to each student with a disability. See 34 CFR 104.33(a). When a student has a disability that limits his or her access to the educational setting, the school will conduct an evaluation of specific areas of educational need and, if necessary, have a written plan for the aids and services that will be provided.

actually performed that work with those same accommodations and is still able to do so now.

e. When we determine whether a person can do other work that exists in significant numbers in the national economy, we do not consider whether he or she could do so with accommodations, even if an employer would be required to provide reasonable accommodations under the Americans with Disabilities Act of 1990.[25]

2. Effects of Treatment, Including Medications

Treatment, including medications, can have a positive effect on a person's ability to function in a work setting. For example, a young adult who takes an antidepressant medication may be able to interact appropriately with supervisors and co-workers. Treatment, however, may not resolve all of the functional limitations that result from an impairment(s). Medications or other treatment may cause side effects that affect the mental or physical ability to work. For example, an anti-epileptic medication may cause drowsiness that affects the ability to concentrate; daily chest percussion therapy for cystic fibrosis may cause fatigue because of the physical effort involved in the therapy. The frequency of a young adult's treatment may preclude him or her from maintaining a full-time work schedule; that is, 8 hours a day, 5 days a week on a sustained basis.

E. Work-Related Stress

1. Working involves many factors and demands that can be stressful. For example, some people may experience stress related to the demands of getting to work regularly, having work performance supervised, or remaining in the workplace for a full day, 5 days a week on a sustained basis. Moreover, one person's reaction to stress associated with the demands of work may be different from another's, even among people with the same impairments.

2. Sources familiar with the young adult may provide insight about the effect of stress on his or her physical or mental functioning and what, if any, psychosocial supports or structure he or she would need when experiencing work-related stress.[26] We consider impairment-related limitations created by a person's response to the demands of work when we assess RFC.

III. Insured Status for Young Adults

A. When a young adult has worked, we consider whether he or she is insured for purposes of establishing a period of disability or becoming entitled to disability insurance benefits. While the Social Security Act provides the standard for determining insured status for young adults aged 21 up to age 24, there is no similar statutory standard for young adults under the age of 21. We use the same rule for both groups—a young adult meets the disability insured status requirements if he or she has 6 quarters of coverage in the 12-quarter period ending with the quarter in which the disability began.[27]

B. When our records do not establish disability insured status but the claimant alleges sufficient work and earnings for that purpose, we will look to see if there are any covered earnings that are not yet shown in our records. Covered earnings from an unsuccessful work attempt may also provide work credits that can establish disability insured status.

IV. Determining Disability

A. Determining Whether a Young Adult's Work Activity is SGA[28]

When we determine a young adult's earnings for SGA purposes, we count only those earnings that are attributable to his or her own productivity. We assume that a young adult's reported earnings are attributable to his or her own productivity unless there is evidence indicating that those earnings are greater than would be attributable to his or her productivity.

1. Work Activity

Many young adults with disabilities have worked. The work experience may have been (or may be, if the person is still working) subsidized, in a sheltered setting, or performed under special conditions. As for any adult, we exclude subsidized earnings.[29] In addition:

- Some young adults whose impairments arose during military service continue on active duty and receive full pay while they are in treatment for their impairments. They may also receive payments while working in a designated therapy program or on limited duty. Active duty status or receipt of pay (for example, sick pay) by a member of the military *does not* indicate by itself that the service person has demonstrated the ability to do SGA. We will consider the actual work activity, not the amount of pay the service person receives or the duty status of the service person, when we determine whether the work is SGA.[30]
- Young adults may have impairment-related work expenses; that is, expenses for an item or service that directly enables a person to work and that the person necessarily incurs because of an impairment(s). We deduct impairment-related work expenses from a person's wages or self-employment income before we determine whether the wages or self-employment income constitute SGA.[31]

2. Volunteer Service

Young adults with disabilities may participate in government-sponsored programs for volunteer activity, such as AmeriCorps VISTA. We do not count as earnings payments a person receives from some of these programs.[32]

3. Unsuccessful Work Attempts

Some people have brief periods of work with earnings at the SGA level. We will consider the possibility that a brief period of work was an unsuccessful work attempt when we are determining whether the work was SGA. If a period

[25] The Americans with Disabilities Act of 1990 requires an employer to provide ''reasonable accommodations'' to a qualified person with a disability. See § 101, 104 Stat. 331, 42 U.S.C. 12111(9); and SSR 00–1c, 65 FR 1215 (2000), available at: *http://www.socialsecurity.gov/OP_Home/rulings/di/01/SSR2000-01-di-01.html.*

[26] See SSR 85–15 for further discussion of mental disorders and stress. SSR 85–15 is available at: *http://www.socialsecurity.gov/OP_Home/rulings/di/02/SSR85-15-di-02.html.*

[27] Claimants age 24 to the attainment of age 31 meet the disability insured status requirement when they have quarters of coverage in at least one-half of the quarters beginning with the quarter after the quarter they attained age 21 and ending with the quarter in which disability began. For example, a claimant who becomes disabled in the quarter in which he or she attains age 25 needs 8 quarters of coverage during the 16 quarters ending in the quarter in which he or she became disabled. If the number of quarters in the period we are considering is an odd number, we reduce it by one to determine how many quarters of coverage the young adult needs. See 20 CFR 404.130(c).

[28] The SGA step of the sequential evaluation process applies only to applications under titles II and XVI and to CDRs under title II. We do not consider the SGA step in age-18 redeterminations or in title XVI CDRs. See 20 CFR 416.987(b) for the rules on determining disability in age-18 redeterminations. See 20 CFR 416.994(b)(5) for the sequential evaluation process for title XVI CDRs for adults.

[29] See 20 CFR 404.1574 and 416.974 for evaluating work as an employee and 20 CFR 404.1575 and 416.975 for work in self-employment. See also SSR 83–33, and SSR 83–34. SSR 83–33 is available at: *http://www.ssa.gov/OP_Home/rulings/di/03/SSR83-33-di-03.html;* SSR 83-34 is available at: *http://www.ssa.gov/OP_Home/rulings/di/03/SSR83-34-di-03.html.*

[30] See 20 CFR 404.1574(a)(3) and 416.974(a)(3) and SSR 84–24: Titles II and XVI. SSR 84–24 is available at: *http://www.ssa.gov/OP_Home/rulings/di/03/SSR84-24-di-03.html.*

[31] See 20 CFR 404.1576 and 416.976 and SSR 84–26. SSR 84–26 is available at: *http://www.ssa.gov/OP_Home/rulings/di/03/SSR84-26-di-03.html.*

[32] See 20 CFR 404.1574(d), 416.974(d), and SSR 84–24.

of work is an unsuccessful work attempt, we will not consider that work to be SGA when we determine if the young adult is under a disability.[33] However, as we noted in section III.A, covered wages or self-employment income from an unsuccessful work attempt may provide work credits that establish disability insured status under title II.

B. Determining Whether the Young Adult Has an MDI(s)

Young adults often have the same kinds of impairments as children; for example, attention deficit/hyperactivity disorder, language disorders, or learning disorders. Sometimes, the impairment may be evident before age 18; at other times, the impairment may not be identified until later. We will consider all MDIs the young adult has, including MDIs that are usually found in children.

C. Determining Whether a Young Adult Can Do Past Relevant Work

Many young adults have performed work that was SGA for at least brief periods. This work will usually meet the 15-year recency test for past relevant work. If the work also lasted long enough for the young adult to learn to do it, it will be past relevant work.[34] We do not consider work done during a period of entitlement to disability benefits under title II or title XVI to be past relevant work;[35] however, we may consider the young adult's job performance when we assess his or her RFC.

D. Determining Whether a Young Adult Can Adjust to Other Work

1. As for any adult, we consider a young adult's RFC, age, education, and work experience to determine if he or she can make an adjustment to other work. A young adult does not need to have an impairment(s) that meets or medically equals a listing to qualify for disability benefits. We may find that a young adult is disabled because of an inability to adjust to other work.

2. When a young adult has only exertional (strength) limitations and has an RFC and vocational factors that match the criteria of a rule in the Medical-Vocational Guidelines in appendix 2 of subpart P of the Regulations No. 4 (grid rules), the grid rules always direct a decision of ''not disabled'' for young adults.

3. In many young adult cases, however, the grid rules will not direct a conclusion of ''disabled'' or ''not disabled.'' For example, many young adults who qualify for disability benefits have impairments (such as mental and neurological disorders) that cause non-exertional limitations. These limitations may erode the occupational base at some, or even all, levels of exertion.[36] Other young adults have solely exertional limitations but are unable to do a full range of work in one of the exertional categories in appendix 2. Some young adults have limitations that prevent them from performing even the full range of sedentary work. In these cases, we consider the type and extent of the young adult's limitations and the extent of the erosion of the occupational base and other relevant factors. The following guidelines apply:

a. If the young adult has solely exertional limitations but is able to do somewhat more than the full range of sedentary work, the young adult will not be disabled based on a framework of a grid rule. In this case, the exertional capacity will always fall between two rules (that is, a sedentary and a light rule) that direct a conclusion of ''not disabled.''[37]

b. If a young adult has solely nonexertional limitations or both exertional and nonexertional limitations, we follow the guidance in the regulations and the relevant SSRs to determine any erosion of the occupational base.[38] If the occupational base is significantly eroded, we will find the young adult disabled despite his or her young age.[39]

c. If a young adult has a substantial loss of one or more of the basic mental demands of competitive, remunerative, unskilled work, the occupational base will be significantly eroded, despite vocational factors that we would ordinarily consider favorable (for example, young age, college education, and skilled work experience).[40] The basic mental demands of competitive, remunerative, unskilled work include the abilities to:

- Understand, remember, and carry out instructions;
- Make simple work-related judgments typically required for unskilled work;
- Respond appropriately to supervision, coworkers, and work situations; and
- Deal with changes in a routine work setting.

d. Adjudicators must remember that young adults are more likely to have recent educational experience that provides for direct entry into skilled work; some will also have vocational experiences (see section C. above) that provide them with skills they can use in skilled or semiskilled work.

4. A young adult needs only basic communication abilities to do unskilled work.[41] Basic communication abilities include the ability to hear and understand simple oral messages, including instructions, and to communicate simple messages orally. If the person has these basic communication abilities, there will not be a significant impact on the unskilled occupational base.

a. Nevertheless, when a person has a physical or mental impairment(s) that affects communication, it is important to consider the nature of the impairment and whether the person has other associated limitations. Many disorders that cause limitations in basic communication may cause other limitations as well. For example, a physical disorder like cerebral palsy that can affect a person's facial muscles and limit the ability to communicate simple messages orally may also affect the arm muscles and limit the ability to lift and carry. Language disorders, as well as mental and neurological impairments commonly found in young adults who allege disability, may also cause limitations in abilities such as the ability to concentrate, persist, or maintain pace in job tasks, and the ability to adapt to changes in a work setting.

b. Language disorders are not the only kinds of impairments that can affect communication. Some physical impairments may also affect communication, particularly speech. For example, congenital or acquired facial deformities may affect speech because a person cannot use his or her facial muscles for articulation; cerebral palsy may affect speech because of muscle spasms that make it difficult to speak clearly.

[33] See 20 CFR 404.1574(c) and 416.974(c) for employees and 404.1575(d) and 416.975(d) for self-employed; see also SSR 84–25 and SSR 05–2, 70 FR 9692 (2005). SSR 84–25 is available at: *http://www.ssa.gov/OP_Home/rulings/di/03/SSR84-25-di-03.html;* SSR 05–02 is at: *http://www.ssa.gov/OP_Home/rulings/di/03/SSR2005-02-di-03.html.*

[34] 20 CFR 404.1560 and 416.960; see also SSR 82–61 and SSR 82–62. SSR 82–61 is available at: *http://www.socialsecurity.gov/OP_Home/rulings/di/02/SSR82-61-di-02.html;* SSR 82–62, at: *http://www.socialsecurity.gov/OP_Home/rulings/di/02/SSR82-62-di-02.html.*

[35] 20 CFR 404.1594(i) and 416.994(b)(8)

[36] See 20 CFR 404.1545(c) and 416.945(c).

[37] See 20 CFR 404.1569 and 416.969 and SSR 83–14. SSR 83–14 is available at: *http://www.ssa.gov/OP_Home/rulings/di/02/SSR83-14-di-02.html.*

[38] See, for example, SSRs 83–12; 83–14; 85–15; and 96–9p, 61 FR 34478 (1996). SSR 83–12 is available at: *http://www.socialsecurity.gov/OP_Home/rulings/di/02/SSR83-12-di-02.html;* SSR 96–9p, at: *http://www.socialsecurity.gov/OP_Home/rulings/di/01/SSR96-09-di-01.html.*

[39] See 20 CFR part 404, subpart P, appendix 2, § 201.00(h)(3) and SSR 96–9p.

[40] See SSR 85–15 and SSR 96–9p.

[41] See SSR 96–9p.

5. Under the grid rules, we find younger individuals not disabled even if we determine that their vocational factor of education is ''illiterate.''

a. However, a young adult's educational level can be an indication of an underlying impairment(s) that affects our assessment of RFC.[42] For example, if a young adult, despite having attended high school, is illiterate or has a limited reading ability, he or she may have an MDI, such as a learning disability or language disorder. Any such underlying MDI may affect a young adult's RFC. As we noted in Section III.F.4.b, these types of disorders can cause limitations in many areas.

b. When illiteracy or limited reading ability is related to an MDI, we consider how the underlying MDI affects the person's ability to meet the requirements of work when we assess RFC. For example, a person who has borderline intellectual functioning (BIF) may be limited in her ability to understand and remember instructions, which results in an inability to read and write. The BIF also affects her ability to maintain attention on tasks that she has difficulty remembering. When we assess her RFC, we assess limitations in maintaining attention as well as in understanding and remembering instructions. When we determine whether she can do other work, we consider the vocational factor of illiteracy.[43]

E. Additional considerations for age-18 redeterminations

1. Young Adult Previously Found Disabled as a Child Under a Listing[44]

a. Although our rules use different words to describe the concept, ''listing-level severity'' is generally the same for both parts A and B of the listings. Most of the part B listings have an equivalent listing in part A, and many contain identical criteria. Listings that include functioning among their criteria are generally based on a standard of ''extreme'' limitation in a specific function (such as walking) or in a broad area (domain) of functioning (such as concentration, persistence, or pace), or on ''marked'' limitations in two areas of functioning.

b. While the areas of functioning may differ between analogous listings in parts A and B, we intend for these criteria to be equally severe. Therefore, a child's impairment(s) that met or medically equaled a part B listing will often meet or medically equal a part A listing at age 18 unless the impairment(s) has medically improved. Note though that we do not use the medical improvement review standard for CDRs in age-18 redeterminations.[45]

2. Young Adult Previously Found Disabled as a Child Based on Functional Equivalence

a. To functionally equal the listings under title XVI, a child's impairment(s) must result in ''marked'' limitations in two of the childhood domains or an ''extreme'' limitation in one.[46] Although we do not use these domains for adults, they describe aspects of functioning that are relevant to our evaluation of a young adult's work-related limitations. We use similar domains when we evaluate a child's mental impairments and some physical impairments, such as immune disorders. We may find that the young adult has the same severity rating for a domain under a part A listing as he or she had as a child under a similar functional equivalence domain. For example, absent medical improvement or new evidence demonstrating that the prior finding was in error, a young adult who had an extreme limitation in the ability to interact and relate with others as a child will probably have extreme limitation in social functioning as an adult. Similarly, unless the impairment(s) has improved or there is new evidence indicating that the prior finding was in error, a finding of marked limitation in the ability to attend and complete tasks as a child is likely to translate to a marked limitation in the ability to concentrate, persist, or maintain pace in work-related task completion as an adult.

b. The broad domains of functioning we used to evaluate a child's impairment-related limitations may also provide guidance for findings about a young adult's RFC on redetermination. Accordingly, it is important to remember that the descriptions of the childhood functional equivalence domains in the regulations include work-related functions for adolescents, defined as children age 12–18.[47]

V. Continued Payments for Young Adults Participating in a Vocational Rehabilitation or Similar Program[48] (''Section 301'')[49]

A. When we determine that a young adult is no longer disabled due to medical improvement, we will continue payments if:

(1) He or she is participating in the Ticket to Work and Self-Sufficiency program or another appropriate program of vocational rehabilitation (VR), employment, or other support services[50]; and

(2) Completion of the program or continued participation for a specified period will increase the likelihood that he or she will not return to the disability or blindness benefit rolls.[51]

The title XVI provision for Section 301 payments also applies to a person age 18 or older whose disability has ended as a result of a title XVI age-18 redetermination.[52]

B. Likelihood Determination

1. When a young adult is a student age 18 through 21 participating in an IEP under the provisions of the IDEA, we will find that completion of or continuation in the IEP will increase the likelihood that he or she will not return to the disability or blindness benefit rolls.[53] In this circumstance, we will continue benefit payments until the IEP is completed or the person stops participating in the IEP for any reason.

2. When a young adult is participating in another appropriate program, we will find that completion of or continuation in that program will increase the likelihood that the person will not return to the disability or blindness benefit rolls if the program provides the person with:

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[42]

[43] The impairment need not be mental. The same principles apply to adults as in the 2009 SSRs for children. Those SSRs provide examples of how physical impairments, especially neurological impairments and their associated medical treatments, can affect various functional abilities.

[44] See 20 CFR 404.1525(b) and 416.925(b). When we are making a disability determination or decision under title II for a person under age 18, we consider part B of the listings until the person attains age 18. We may also consider part A for the period before the person attains age 18 if there is no appropriate part B listing and the disease processes have a similar effect on adults and children. As for all adults, we use only part A of the Listing of Impairments when we determine whether a young adult's impairment(s) meets or medically equals a listing. We never use part B listings for people who are at least 18 years old.

[45] A young adult who was eligible for disability benefits under title XVI may also file an application under title II; for example, for Child's Insurance Benefits based on disability. The same principle applies in such claims.

[46] See 20 CFR 416.926a for the rules on functional equivalence, including a description of the six domains we use.

[47] See generally 20 CFR 416.926a(g)–(l). See also the examples of typical functioning and limitations in SSRs 09–3 through 09–7 and the examples of limitations in SSR 09–8 (citations at the end of this SSR). These rulings are available at: *http://www.ssa.gov/OP_Home/rulings/rulfind1.html#YRT2009.*

[48] See 20 CFR 404.316(c), 404.352(d), 416.1320(d), and 416.1331(a)–(b).

[49] We commonly refer to this provision as ''Section 301'' because the initial legislative authority for continued payment of benefits was provided in Section 301 of the Social Security Disability Amendments of 1980 (Pub. L. 96–265).

[50] See 20 CFR 404.327(a) and 416.1338(c).

[51] See 20 CFR 404.328 and 416.1338(e).

[52] See 20 CFR 416.1338(a).

[53] See 20 CFR 404.328(b) and 416.1338(e)(2).

a. Work experience that will increase the likelihood of doing past relevant work; or,

b. Education or skilled or semi-skilled work experience that will increase the likelihood of adjusting to other work.[54]

For example, the young adult is in a VR-sponsored training program to become a certified computer technician. She is acquiring computer skills that will permit direct entry into semiskilled or skilled occupations, thus increasing her overall ability to adjust to other work. We would determine that the training program would increase the likelihood that she will not return to the disability or blindness benefit rolls.

VI. Resolving Inconsistencies in the Evidence

We evaluate relevant evidence for consistency and resolve any inconsistencies that need to be resolved.

1. After reviewing all of the relevant evidence, we determine whether there is sufficient evidence to make a finding about disability. ''All of the relevant evidence'' means:

- The relevant objective medical evidence and other relevant evidence from medical sources;
- Relevant information from other sources, such as school teachers, family members, or friends;
- The claimant's statements (including statements from the young adult's roommates or family members); and
- Any other relevant evidence in the case record, including how the young adult functions over time and across settings.

2. If there is sufficient evidence and there are no inconsistencies in the case record, we will make a determination or decision. If there are inconsistencies in the record, we may be able to make a determination or decision if the majority of the evidence or the most probative evidence outweighs the inconsistent evidence, and additional information would not change the determination or decision.

3. An inconsistency is not ''material'' if it would not affect the outcome of the case or any of the major findings. If we can make a fully favorable decision despite the inconsistent evidence, that inconsistency would be immaterial. For example, if a young adult has a digestive disorder that causes weight loss, and one piece of evidence shows a Body Mass Index (BMI) of 16.75 and another a BMI of 17.00, the inconsistency is not material because we would find that the young adult's impairment(s) meets listing 5.08 based on either BMI.

4. An inconsistency could also be immaterial in an unfavorable determination or decision when resolution of the inconsistency would not affect the outcome. This could occur, for example, if there is inconsistent evidence about a limitation in a specific work-related activity; for example, whether the person is able to climb ladders. If the person's overall exertional level was consistent with sedentary work, the ability (or inability) to climb a ladder would not reduce the number of sedentary occupations he or she could do.

5. An apparent inconsistency is not always a true inconsistency. For example, the record for a young adult with attention-deficit/hyperactivity disorder may include good, longitudinal evidence of hyperactivity at home, in the classroom, and on work experience placements in the classroom, but show a lack of hyperactivity during a consultative examination (CE). The observations during the CE may represent a ''good'' day, rather than the overall level of functioning or the effect of an unusual setting.[55] In this case, there would be only a normal variation in functioning at the time of the CE.

6. In all other cases in which the evidence is insufficient, including when a material inconsistency exists that we cannot resolve based on an evaluation of all of the relevant evidence in the case record, we will try to complete the record by requesting additional or clarifying information.[56]

Effective Date: This SSR is effective on September 12, 2011.

Cross-References: SSR 82–61: Title II and XVI: Past Relevant Work—The Particular Job or The Occupation As Generally Performed; SSR 82–62: Titles II and XVI: A Disability Claimant's Capacity To Do Past Relevant Work, In General; SSR 83–12: Titles II and XVI: Capability To Do Other Work—The Medical-Vocational Rules as a Framework for Evaluating Exertional Limitations Within a Range of Work or Between Ranges of Work; SSR 83–14: Titles II and XVI: Capability To Do Other Work—The Medical-Vocational Rules as a Framework for Evaluating a Combination of Exertional and Nonexertional Impairments; SSR 83–33: Titles II and XVI: Determining Whether Work is Substantial Gainful Activity—Employees; SSR 83–34: Titles II and XVI: Determining Whether Work Is Substantial Gainful Activity—Self-Employed Persons; SSR 84–24: Titles II and XVI: Determination of Substantial Gainful Activity for Persons Working in Special Circumstances—Work Therapy Programs in Military Service—Work Activity in Certain Government-Sponsored Programs; SSR 84–25: Titles II and XVI: Determination of Substantial Gainful Activity If Substantial Work Activity Is Discontinued or Reduced—Unsuccessful Work Attempt; SSR 84–26: Titles II and XVI: Deducting Impairment-Related Work Expenses from Earnings in Determinations as to Substantial Gainful Activity Under Titles II and XVI and as to Countable Earned Income Under Title XVI; SSR 85–15: Titles II and XVI: Capability To Do Other Work—The Medical-Vocational Rules as a Framework for Evaluating Solely Nonexertional Impairments; SSR 96–8p: Titles II and XVI: Assessing Residual Functional Capacity in Initial Claims; SSR 96–9p: Titles II and XVI: Determining Capability To Do Other Work—Implications of a Residual Functional Capacity for Less Than a Full Range of Sedentary Work; SSR 00–1c: Sections 222(c) and 223(a), (d)(2)(a), and (e)(1) of the Social Security Act (42 U.S.C. 422(c) and 423(a), (d)(2)(A), and (e)(1)) Disability Insurance Benefits—Claims Filed Under Both the Social Security Act and the Americans with the Disabilities Act; SSR 05–2: Titles II and XVI: Determination of Substantial Gainful Activity if Substantial Work Activity is Discontinued or Reduced—Unsuccessful Work Attempt; SSR 06–03p: Titles II and XVI: Considering Opinions and Other Evidence from Sources Who Are Not ''Acceptable Medical Sources'' in Disability Claims; Considering Decisions on Disability by Other Governmental and Nongovernmental Agencies; SSR 09–2p: Title XVI: Determining Childhood Disability—Documenting a Child's Impairment-Related Limitations; SSR 09–3p: Title XVI: Determining Childhood Disability—The Functional Equivalence Domain of ''Acquiring and Using Information''; SSR 09–4p: Title XVI: Determining Childhood Disability—The Functional Equivalence Domain of ''Attending and Completing Tasks''; SSR 09–5p: Title XVI: Determining Childhood Disability—The Functional Equivalence Domain of ''Interacting and Relating with Others''; SSR 09–6p: Title XVI: Determining Childhood Disability—The Functional Equivalence Domain of ''Moving About and Manipulating Objects''; SSR 09–7p: Title XVI: Determining Childhood Disability—The Functional Equivalence

[54] See 20 CFR 404.328(a) and 416.1338(e)(1).

[55] See section 12.00C.3 of the listings. Accepting the observation of the young adult's behavior or performance in an unusual setting, like a CE, without considering the rest of the evidence could lead to an erroneous conclusion about the young adult's overall functioning.

[56] See 20 CFR 404.1527(c) and 416.927(c).

Domain of ''Caring for Yourself''; SSR 09–8p: Title XVI: Determining Childhood Disability—The Functional Equivalence Domain of ''Health and Physical Well-Being''; Program Operations Manual System (POMS) RS 00301.120, RS 00301.140, DI 10501.055, DI 10505.00 ff., DI 10510.000 ff., DI 10520.000 ff., DI 11070.001—DI 11070.010, DI 11070.030, DI 14510.000 ff., DI 22001.001—DI 22001.035, DI 23570.010, DI 23570.020, DI 24510.000 ff., DI 25015.000 ff., DI 25020.000 ff., and DI 28005.001—DI 28005.017.

[FR Doc. 2011–23239 Filed 9–9–11; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice: 7578]

30-Day Notice of Proposed Information Collection: Forms DS–1622, DS–1843, DS–1622P and DS–1843P: Medical History and Examination for Foreign Service

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Medical History and Examination for Foreign Service.
- *OMB Control Number:* 1405–0068.
- *Type of Request:* Revision of Currently Approved Collection.
- *Originating Office:* Office of Medical Services, M/MED/C/MC.
- *Form Number:* DS–1622, DS–1843, DS–1622P, and DS–1843P.
- *Respondents:* Foreign Service Officers, State Department Employees, Other Government. Employees and Family Members of Foreign Affairs Agencies.
- *Estimated Number of Respondents:* 8,000 per year.
- *Estimated Number of Responses* 8,000 per year.
- *Average Hours per Response:* 1.0 hours per response.
- *Total Estimated Burden:* 8,000 hours.
- *Frequency:* On occasion.
- *Obligation to Respond:* Mandatory.

DATES: The Department will accept comments 30 days from date of in the **Federal Register.**

ADDRESSES: Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by any of the following methods:

- *E-mail: oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and OMB control number in the subject line of your message.
- *Fax:* 202–395–5806

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Department of State, Office of Medical Clearances, SA 15 A 1800 North Kent St. Rosslyn, Virginia 22209 (ATTN: Barbara Mahoney), who may be reached at 703–875–5413 or *mahoneybj@state.gov*.

SUPPLEMENTARY INFORMATION:

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of Proposed Collection

Form DS–1622(P) and DS–1843(P) are designed to collect medical information to provide medical providers with current and adequate information to base decisions on medical suitability of a Foreign Service Officer or other federal employee and family members for assignment abroad. All forms will allow medical personnel to verify that there are sufficient medical resources at a diplomatic mission abroad to maintain the health and fitness of the individual and family members within the Department of State medical program.

Methodology

The information collected will be collected through the use of an electronic forms engine or by hand written submission using a pre-printed form.

Dated: August 3, 2011.

Joseph A. Kennedy,

Executive Director, Office of Medical Services, Department of State.

[FR Doc. 2011–23254 Filed 9–9–11; 8:45 am]

BILLING CODE 4710–36–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Release From Federal Grant Assurance Obligations for Livermore Municipal Airport, Livermore, CA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of request to release airport land.

SUMMARY: The Federal Aviation Administration (FAA) proposes to rule and invites public comment on the application for a release of approximately 4.5 acres of airport property at the Livermore Municipal Airport, Livermore, California. The City of Livermore proposes to release 4.5 acres of airport land in order to acquire a parcel of equal size that is currently privately-owned. This exchange is necessary in order to commence development of flood control improvements designed to remove the airport's property from the 100-year floodplain.

DATES: Comments must be received on or before October 11, 2011.

FOR FURTHER INFORMATION CONTACT: Comments on the request may be mailed or delivered to the FAA at the following address: Robert Y. Lee, Airports Compliance Specialist, Federal Aviation Administration, Airports Division, **Federal Register** Comment, 831 Mitten Road, Room 210, Burlingame, CA 94010. In addition, one copy of the comment submitted to the FAA must be mailed or delivered to Ms. Linda Barton, City Manager, City of Livermore, 1052 South Livermore Avenue, Livermore, CA 94550.

SUPPLEMENTARY INFORMATION: In accordance with the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21), Public Law 10–181 (Apr. 5, 2000; 114 Stat. 61), this notice must be published in the **Federal Register** 30 days before the Secretary may waive any condition imposed on a Federally obligated airport by surplus property conveyance deeds or grant agreements.

The following is a brief overview of the request:

The City of Livermore, California requested a release from grant assurance

obligations for 4.5 acres of airport land north of the Arroyo Las Positas so that it can be exchanged for a portion of a privately-owned land adjacent to El Charro Road and north of the Arroyo Las Positas. Both parcels of land are currently vacant and used for dry farming. The privately owned parcel to be acquired is located about 5,400-linear feet west of the airport's Runway 7L/25R centerline. The airport parcel to be released will be utilized for planned commercial development. The acquired parcel will be redeveloped with a hydromodification basin for flood control and to reduce water ponding on airport and adjacent land.

The airport parcel was acquired with Airport Improvement Program funds to protect the airport's approach surfaces and currently serves this purpose. After release, the airport parcel will be redeveloped for commercial purposes, which will be compatible with the airport. The property to be acquired lies within airport's approach surfaces and will provide approach protection to the airport.

The selling price is based on the appraised fair market value of both parcels. The value of the airport's parcel exceeds the value of the privately-owned parcel. So the airport will also receive a cash payment of $1,260,000.

The land exchange will provide benefits to the airport and serve the interest of civil aviation. The airport will be fully compensated, protected by 100-year floodplain enhancements, and provided continued protection of its approach surfaces. The reuse of the released parcel for commercial purposes represents a compatible land use that will not interfere with the airport or its operation.

Issued in Burlingame, California, on August 31, 2011.

Arlene B. Draper,

Acting Manager, San Francisco Airports District Office, Western-Pacific Region.

[FR Doc. 2011–23190 Filed 9–9–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2011–0097]

Pilot Project on NAFTA Trucking Provisions

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice; request for public comment.

SUMMARY: FMCSA announces and requests public comment on data and information concerning the Pre-Authorization Safety Audits (PASAs) for motor carriers that have applied to participate in the Agency's long-haul pilot program to test and demonstrate the ability of Mexico-domiciled motor carriers to operate safely in the United States beyond the municipalities in the United States on the United States-Mexico international border or the commercial zones of such municipalities. This action is required by the ''U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007'' and all subsequent appropriations.

DATES: Comments must be received on or before September 22, 2011.

ADDRESSES: You may submit comments identified by FDMS Docket Number FMCSA–2011–0097 using any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility, (M–30), U.S. Department of Transportation (DOT), 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room 12–140, Washington, DC 20590–0001.
- *Hand Delivery:* Same as mail address above, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. All submissions must include the Agency name and docket number for this notice. See the ''Public Participation'' heading below for instructions on submitting comments and additional information.

Note that all comments received, including any personal information provided, will be posted without change to *http://www.regulations.gov.* Please see the ''Privacy Act'' heading below.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to Room W12–140 on the ground floor of the DOT Headquarters Building at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's Privacy Act System of Records Notice for the DOT Federal Docket Management System published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf.*

Public Participation: The *http://www.regulations.gov* Web site is generally available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help and guidelines under the ''help'' section of the *http://www.regulations.gov* Web site. Comments received after the comment closing date will be included in the docket, and will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Marcelo Perez, FMCSA, North American Borders Division, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001. Telephone (512) 916–5440 Ext. 228; e-mail *marcelo.perez@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

On May 25, 2007, the President signed into law the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (the Act), [Pub. L. 110–28, 121 Stat. 112, 183, May 25, 2007]. Section 6901 of the Act requires that certain actions be taken by the Department of Transportation (the Department) as a condition of obligating or expending appropriated funds to grant authority to Mexico-domiciled motor carriers to operate beyond the municipalities in the United States on the United States-Mexico international border or the commercial zones of such municipalities (border commercial zones).

On July 8, 2011, FMCSA announced in the **Federal Register** [76 FR 40420] its intent to proceed with the initiation of a U.S.-Mexico cross-border long-haul trucking pilot program to test and demonstrate the ability of Mexico-domiciled motor carriers to operate safely in the United States beyond the border commercial zones as detailed in the Agency's April 13, 2011, **Federal Register** notice [76 FR 20807]. The pilot program is a part of FMCSA's implementation of the North American Free Trade Agreement (NAFTA) cross-border long-haul trucking provisions in compliance with section 6901(b)(2)(B) of the Act. FMCSA reviewed, assessed, and evaluated the required safety measures as noted in the July 8, 2011, notice and considered all comments received on or before May 13, 2011, in

response to the April 13, 2011, notice. Additionally, to the extent practicable, FMCSA considered comments received after May 13, 2011.

In accordance with section 6901(b)(2)(B)(i) of the Act, FMCSA is required to publish in the **Federal Register**, and provide sufficient opportunity for public notice and comment comprehensive data and information on the PASAs conducted of motor carriers domiciled in Mexico that are granted authority to operate beyond the border commercial zones. This notice serves to fulfill this requirement.

FMCSA is publishing for public comment the data and information relating to one PASA that was completed on August 26, 2011. FMCSA announces that the Mexico-domiciled motor carrier in Table 1 successfully completed its PASA. Notice of this completion was also published in the FMCSA Register.

Tables 2, 3 and 4 ''Successful Pre-Authorization Safety Audit (PASA) Information'' set out additional information on the carrier noted in Table 1. A narrative description of each column in the tables is provided as follows:

A. *Row Number in the Appendix for the Specific Carrier:* The row number for each line in the tables.

B. *Name of Carrier:* The legal name of the Mexico-domiciled motor carrier that applied for authority to operate in the United States (U.S.) beyond the border commercial zones and was considered for participation in the long-haul pilot program.

C. *U.S. DOT Number:* The identification number assigned to the Mexico-domiciled motor carrier and required to be displayed on each side of the motor carrier's power units. If granted provisional operating authority, the Mexico-domiciled motor carrier will be required to add the suffix ''X'' to the ending of its assigned U.S. DOT Number for those vehicles approved to participate in the pilot program.

D. *PASA Initiated:* The date the PASA was initiated.

E. *PASA Completed:* The date the PASA was completed.

F. *PASA Results:* The results upon completion of the PASA. The PASA receives a quality assurance review before approval. The quality assurance process involves a dual review by the FMCSA Division Office supervisor of the auditor assigned to conduct the PASA and by the FMCSA Service Center New Entrant Specialist designated for the specific FMCSA Division Office. This dual review ensures the successfully completed PASA was conducted in accordance with FMCSA policy, procedures and guidance. Upon approval, the PASA results are uploaded into the FMCSA's Motor Carrier Management Information System (MCMIS). The PASA information and results are then recorded in the Mexico-domiciled motor carrier's safety performance record in MCMIS.

G. *FMCSA Register:* The date FMCSA published notice of a successfully completed PASA in the FMCSA Register. The FMCSA Register notice advises interested parties that the application has been preliminarily granted and that protests to the application must be filed within 10 days of the publication date. Protests are filed with FMCSA Headquarters in Washington, DC. The notice in the FMCSA Register lists the following information:

a. Current registration number (*e.g.,* MX–123456);

b. Date the notice was published in the FMCSA Register;

c. The applicant's name and address; and

d. Representative or contact information for the applicant.

H. *U.S. Drivers:* The total number of the motor carrier's drivers approved for long-haul transportation in the United States beyond the border commercial zones.

I. *U.S. Vehicles:* The total number of the motor carrier's power units approved for long-haul transportation in the United States beyond the border commercial zones.

J. *Passed Verification 5 Elements (Yes/No):* A Mexico-domiciled motor carrier will not be granted provisional operating authority if FMCSA cannot verify all of the following five mandatory elements. FMCSA must:

a. Verify a controlled substances and alcohol testing program consistent with 49 CFR part 40.

b. Verify a system of compliance with hours-of-service rules of 49 CFR part 395, including recordkeeping and retention;

c. Verify the ability to obtain financial responsibility as required by 49 CFR part 387, including the ability to obtain insurance in the United States;

d. Verify records of periodic vehicle inspections; and

e. Verify the qualifications of each driver the carrier intends to use under such authority, as required by 49 CFR parts 383 and 391, including confirming the validity of each driver's Licencia Federal de Conductor and English language proficiency.

K. *If No, Which Element Failed:* If FMCSA cannot verify one or more of the five mandatory elements outlined in 49 CFR part 365, Appendix A, Section III, this column will specify which mandatory element(s) cannot be verified.

Please note that for items L through P below, during the PASA, after verifying the five mandatory elements discussed in item J above, FMCSA will gather information by reviewing a motor carrier's compliance with ''acute and critical'' regulations of the Federal Motor Carrier Safety Regulations (FMCSRs) and Hazardous Materials Regulations (HMRs). Acute regulations are those where noncompliance is so severe as to require immediate corrective actions by a motor carrier regardless of the overall basic safety management controls of the motor carrier. Critical regulations are those where noncompliance relates to management and/or operational controls. These regulations are indicative of breakdowns in a carrier's management controls. A list of acute and critical regulations is included in 49 CFR part 385, Appendix B, Section VII.

Parts of the FMCSRs and HMRs having similar characteristics are combined together into six regulatory areas called ''factors.'' The regulatory factors are intended to evaluate the adequacy of a carrier's management controls.

L. *Passed Phase 1, Factor 1:* A ''yes'' in this column indicates the carrier has successfully met Factor 1 (listed in part 365, Subpart E, Appendix A, Section IV(f)). Factor 1 includes the General Requirements outlined in parts 387 (Minimum Levels of Financial Responsibility for Motor Carriers) and 390 (Federal Motor Carrier Safety Regulations—General).

M. *Passed Phase 1, Factor 2:* A ''yes'' in this column indicates the carrier has successfully met Factor 2, which includes the Driver Requirements outlined in parts 382 (Controlled Substances and Alcohol Use and Testing), 383 (Commercial Driver's License Standards; Requirements and Penalties) and 391 (Qualifications of Drivers and Longer Combination Vehicle (LCV) Driver Instructors).

N. *Passed Phase 1, Factor 3:* A ''yes'' in this column indicates the carrier has successfully met Factor 3, which includes the Operational Requirements outlined in parts 392 (Driving of Commercial Motor Vehicles) and 395 (Hours of Service of Drivers).

O. *Passed Phase 1, Factor 4:* A ''yes'' in this column indicates the carrier has successfully met Factor 4, which includes the Vehicle Requirements outlined in parts 393 (Parts and Accessories Necessary for Safe Operation) and 396 (Inspection, Repair

and Maintenance) and vehicle inspection and out-of-service data for the last 12 months.

P. *Passed Phase 1, Factor 5:* A ''yes'' in this column indicates the carrier has successfully met Factor 5, which includes the hazardous material requirements outlined in parts 171 (General Information, Regulations, and Definitions), 177 (Carriage by Public Highway), 180 (Continuing Qualification and Maintenance of Packagings) and 397 (Transportation of Hazardous Materials; driving and parking rules).

Q. *Passed Phase 1, Factor 6:* A ''yes'' in this column indicates the carrier has successfully met Factor 6, which includes Accident History. This factor is the recordable accident rate during the past 12 months. A recordable ''accident'' is defined in 49 CFR 390.5, and means an accident involving a commercial motor vehicle operating on a public road in interstate or intrastate commerce which results in: A fatality; a bodily injury to a person who, as a result of the injury, immediately received medical treatment away from the scene of the accident; or one or more motor vehicles incurring disabling damage as a result of the accident requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

R. *Number U.S. Vehicles Inspected:* The total number of vehicles (power units) the motor carrier is approved to operate in the United States beyond the border commercial zones and that received a vehicle inspection during the PASA. During a PASA, FMCSA inspected all power units to be used by the motor carrier in the pilot program and applied a current Commercial Vehicle Safety Alliance (CVSA) inspection decal. This number reflects the vehicles that were inspected, irrespective of whether the vehicle received a CVSA inspection decal as a result of a passed inspection.

S. *Number U.S. Vehicles Issued CVSA Decal:* The total number of inspected vehicles (power units) the motor carrier is approved to operate in the United States beyond the border commercial zones that received a CVSA inspection decal as a result of an inspection during the PASA.

T. *Controlled Substances Collection:* Refers to the applicability and/or country of origin of the controlled substance and alcohol collection facility that will be used by a motor carrier that has successfully completed the PASA.

a. ''US'' means the controlled substance and alcohol collection facility is based in the United States.

b. ''MX'' means the controlled substance and alcohol collection facility is based in Mexico.

c. ''Non-CDL'' means that during the PASA, FMCSA verified that the motor carrier is not utilizing commercial motor vehicles subject to the commercial driver's license requirements as defined in 49 CFR 383.5 (Definition of Commercial Motor Vehicle). Any motor carrier that does not operate commercial motor vehicles as defined in § 383.5 is not subject to DOT controlled substance and alcohol testing requirements.

U. *Name of Controlled Substances and Alcohol Collection Facility:* Shows the name and location of the controlled substances and alcohol collection facility that will be used by a Mexico-domiciled motor carrier who has successfully completed the PASA.

TABLE 1

Row number in Tables 2, 3 and 4 of the appendix to today's notice	Name of carrier	USDOT No.
1	GRUPO BEHR DE BAJA CALIFORNIA SA DE CV	861744

To date, no carriers have failed the PASA. Although failure to successfully complete the PASA precludes the carrier from being granted authority to participate in the long-haul pilot program, and the Act only requires publication of data for carriers receiving operating authority, FMCSA will publish this information to show motor carriers that failed to meet U.S. safety standards.

Request for Comments

In accordance with the Act, FMCSA requests public comment from all interested persons on the PASA information presented in this notice. All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable. In addition to late comments, the FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Issued on: September 8, 2011.

Anne S. Ferro,

Administrator.

APPENDIX

Table 2: Successful Pre-Authorization Safety Audit (PASA) Information as of September 7, 2011 (see also Tables 3 and 4)

Column A - Row Number	Column B - Name of Carrier	Column C - US DOT Number	Column D - PASA Initiated	Column E - PASA Completed	Column F - PASA Results	Column G - FMCSA Register	Column H - US Drivers	Column I - US Vehicles
1	Grupo Behr de Baja California SA de CV	861744	8/25/2011	8/26/2011	Pass	9/6/2011	3	5

Table 3: Successful Pre-Authorization Safety Audit (PASA) Information as of September 7, 2011 (see also Tables 2 and 4)

Column A - Row Number	Column B - Name of Carrier	Column C - US DOT Number	Column J - Passed Verification 5 Elements (Yes/No)	Column K - If No, Which Element Failied	Column L - Passed Phase 1 Factor 1	Column M - Passed Phase I Factor 2	Column N - Passed Phase I Factor 3	Column O - Passed Phase I Factor 4	Column P - Passed Phase 1 Factor 5
1	Grupo Behr de Baja California SA de CV	861744	Yes		Pass	Pass	Pass	Pass	N/A

Table 4: Successful Pre-Authorization Safety Audit (PASA) Information as of September 7, 2011 (see also Tables 2 and 3)

Column A - Row Number	Column B - Name of Carrier	Column C - US DOT Number	Column Q - Passed Phase I Factor 6	Column R - Number US Vehicles Inspected	Column S - Number US Vehicles issued CVSA Decal	Column T - Controlled Substance Collection	Column U - Name of Controlled Substances and Alcohol Collection Facility
1	Grupo Behr de Baja California SA de CV	861744	Pass	5	5	U.S.	Motor Carrier Safety Solutions

[FR Doc. 2011–23337 Filed 9–9–11; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

September 7, 2011.

The Department of Treasury will submit the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the publication date of this notice. A copy of the submission may be obtained by calling the Bureau Information Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury PRA Clearance Officer, Department of the Treasury, 1750 Pennsylvania Avenue, NW., Suite 11010, Washington, DC 20220.

Dates: Written comments should be received on or before November 14, 2011 to be assured of consideration.

Office of Financial Education and Financial Access

OMB Number: 1505–NEW.

Type of Review: New collection.

Title: Assessing Financial Capability Outcomes.

Abstract: Pursuant to the Title XII of the Dodd-Frank Wall Street Reform and Financial Protection Act (Pub. L. 111–203), the Department of the Treasury is implementing an Assessing Financial Capability Outcomes pilot to determine whether the close integration of financial access (access to an account at a financial institution) and financial education delivered in a timely, relevant, and actionable manner, will create significant impact on the financial behaviors and/or outcomes of participants. The information collected will be used for research, to promote the Treasury's understanding of likely outcomes of financial capability interventions.

Respondents: Individuals or households, non-profit organizations, state, tribal or local government entities, businesses or other for-profit entities.

Estimated Total Annual Burden Hours: 4,400.

Treasury Clearance Officer: Louisa M. Quittman, Director, Community Programs, Office of Financial Education and Financial Access, U.S. Department of the Treasury, 1500 Pennsylvania Ave., NW., Washington, DC 20220. (202) 622–5770.

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. 2011–23200 Filed 9–9–11; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

September 7, 2011.

The Department of Treasury will submit the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the publication date of this notice. A copy of the submission may be obtained by calling the Bureau Information Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury PRA Clearance Officer, Department of the Treasury, 1750 Pennsylvania Avenue, NW., Suite 11010, Washington, DC 20220.

Dates: Written comments should be received on or before November 14, 2011 to be assured of consideration.

Office of Financial Education and Financial Access

OMB Number: 1505–NEW.

Type of Review: New collection.

Title: Financial Capability Community Challenge.

Abstract: Pursuant to the America Competes Act, as amended (15 U.S.C. 3701), the Department of the Treasury seeks to implement a Financial Capability Community Challenge to recognize and encourage innovation and effective practices of community-based approaches to enhance the financial capability of un- and underbanked American households. The information collected will be used to select finalists and awardees in the prize challenge. The requested information is necessary to evaluate applicants and judge the submissions for prizes.

Respondents: Non-profit organizations, state, Tribal or local government entities, businesses or other for-profit entities.

Estimated Total Annual Burden Hours: 7,250.

Treasury Clearance Officer: Louisa M. Quittman, Director, Community Programs, Office of Financial Education and Financial Access, U.S. Department of the Treasury, 1500 Pennsylvania Ave., NW., Washington, DC 20220. (202) 622–5770.

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. 2011–23202 Filed 9–9–11; 8:45 am]

BILLING CODE 4810–70–P

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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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