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A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register

Vol. 76, No. 250

Thursday, December 29, 2011

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. DHS–2011–0100]

Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security/ALL–030 Use of the Terrorist Screening Database System of Records

AGENCY: Privacy Office, DHS.

ACTION: Final rule.

SUMMARY: The Department of Homeland Security is issuing a final rule to amend its regulations to exempt portions of a newly established system of records titled, ''Department of Homeland Security/ALL–030 Use of the Terrorist Screening Database System of Records'' from certain provisions of the Privacy Act. Specifically, the Department exempts portions of the ''Department of Homeland Security/ALL–030 Use of the Terrorist Screening Database System of Records'' from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: *Effective Date:* This final rule is effective December 29, 2011.

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

SUPPLEMENTARY INFORMATION:

Background

The Department of Homeland Security (DHS) published a notice of proposed rulemaking (NPRM) in the **Federal Register,** July 6, 2011, 76 FR 39315, proposing to exempt portions of the system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements. The system of records is titled, ''DHS/ALL–030 Use of the Terrorist Screening Database System of Records.'' The DHS/ALL–030 Use of the Terrorist Screening Database system of records notice (SORN) was published concurrently in the **Federal Register,** July 6, 2011, 76 FR 39408, and comments were invited on both the NPRM and SORN.

Public Comments

DHS received a total of two comments, one on the NPRM and one that addressed both the NPRM and the SORN.

Comments on the NPRM

DHS received two comments on the NPRM. One of the comments on the NPRM also included comments on the SORN. That comment will be addressed in its entirety under SORN below. The one comment exclusively on the NPRM was from a private individual. The individual raised a series of philosophical questions regarding the policy behind homeland security issues that were unrelated to this proposed rulemaking. The individual also mentioned several times that this is a ''new database.'' This is not a new database. The system of records addressed by this NPRM and the accompanying SORN represents a mirror copy of the Department of Justice (DOJ)/Federal Bureau of Investigation (FBI)–019 Terrorist Screening Records System of Records (August 22, 2007, 72 FR 47073). The same rules outlined in the DOJ/FBI–019 Terrorist Screening Records System of Records (August 22, 2007, 72 FR 47073) transfer and apply. The individual goes on to discuss the historical relevance of the Terrorist Screening Database and outlines the positives and negatives of the system. The individual also raises concerns about the security of the system. The DHS mirrored copy of the system will receive the same security and protection as it does at the FBI and Terrorist Screening Center (TSC). The individual also speculates that, as a matter of fiscal priority, the system could be subject to less funding over time based on priorities. The system will meet the same requirements at DHS as it does at FBI/TSC. The individual concludes the general comments by saying the benefits outweigh the risks. On Privacy Act exemptions, the individual states that the proposed rule was nicely drafted. The individual asks the question of who will make the determination on when an exemption will be applied. In response to that question, that determination will be made by DHS privacy or disclosure staff in consultation with counsel. If the exemption is applied and an appeal is necessary, individuals may appeal the decision. That process can be found at *www.dhs.gov/foia.* The individual expresses appreciation for the Department's decision to consider requests on a case-by-case basis when applying exemptions. The individual states that the system should be implemented and that it be a model for other agencies.

Comment on the SORN

DHS received one comment on the SORN from a public interest research center that was joined in filing its comments by seventeen other privacy, consumer rights, and civil rights organizations. The comment addressed both the NPRM and SORN jointly and is addressed in this section. The authors start by stating that DHS should ''suspend the proposal pending a full review of the privacy, security, and legal implications of the program, including compliance with the Federal Privacy Act.'' The NPRM and SORN received internal coordination and clearance by program and compliance officials, including, but not limited to, the Office of General Counsel and the Chief Privacy Officer. The organizations further stated that ''if the agency (DHS) proceeds with the Watch List System (WLS) program, the system must, at a minimum: (1) Adhere to Congress's intent to maintain transparent and secure government recordkeeping systems; (2) provide individuals judicially enforceable rights of notice, access, and correction; (3) conform to a revised SORN and NPRM that includes requirements for the agency (DHS) to respect individuals' rights to control their information in possession of Federal agencies, as the Privacy Act requires; and (4) premise its technological and security approach on decentralization.'' With respect to these points, the Department follows the complete privacy legal framework as well as additional privacy policy it has

put in place. The organizations go on to state that the Department is intentionally circumventing a number of provisions under the Privacy Act as well as the intent of the Privacy Act. As noted above, the NPRM and SORN received internal coordination and clearance by program and compliance officials, including, but not limited to, the Office of General Counsel and the Chief Privacy Officer. This addresses the author's points covering ''meaningful privacy protections Congress established in the Privacy Act.'' The fact that Privacy Act exemptions are taken within this system of records, and explained within the NPRM, does not mean that the act is illegal or outside of the intent of Congress. The exemptions are contemplated by the Privacy Act and the Department implemented them consistent with that statute. The Department maintains that, for a variety of national security and law enforcement purposes, the exemptions taken within the system of records, and outlined in the NRPM, are necessary and are unchanged. The organizations go on to refute the Privacy Act exemptions claimed and recommend changing the way the Department does business including the way it conducts investigations. The organizations recommend that the Department void the claimed exemptions. The Department maintains that, for national security and law enforcement purposes, the exemptions taken within the system of records, and outlined in the NRPM, are necessary and remain in place. The organizations also go on to cite concerns regarding privacy risks contemplated in previously published Privacy Impact Assessments (PIAs) where the Terrorist Screening Database (TSDB) is used. In response, the Department emphasizes that this is not a new database. This NPRM and SORN represent a mirror copy of the DOJ/FBI–019 Terrorist Screening Records System of Records (August 22, 2007, 72 FR 47073). The same rules outlined in the FBI SORN transfer and apply. The Department has taken additional steps to further ensure privacy protections by conducting appropriate privacy analysis through a published PIA as well as SORN. Doing so provides additional transparency on the risks, mitigations, and privacy rules associated with maintaining a mirror copy of the TSDB.

After consideration of public comments and reviewing the NPRM, the Department determined it did not require exemptions to subsections (e)(12) or (h) of the Privacy Act. Thus, the Department has removed proposed paragraphs (i) and (k) from the Final Rule. No additional changes were made.

List of Subjects in 6 CFR Part 5

Freedom of information, Privacy.

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

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

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

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

■ 2. Add at the end of Appendix C to Part 5, the following new paragraph ''66'':

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

* * * * *

66. The DHS/ALL–030 Use of Terrorist Screening Database System of Records consists of electronic and paper records and will be used by DHS and its components. The DHS/ALL–030 Use of Terrorist Screening Database System of Records is a repository of information held by DHS in connection with its several and varied missions and functions, including, but not limited to the enforcement of civil and criminal laws; investigations, inquiries, and proceedings there under; national security and intelligence activities; and protection of the President of the U.S. or other individuals pursuant to Section 3056 and 3056A of Title 18. The DHS/ALL–030 Use of Terrorist Screening Database System of Records contains information that is collected by, on behalf of, in support of, or in cooperation with DHS and its components and may contain personally identifiable information collected by other Federal, state, local, tribal, foreign, or international government agencies. Pursuant to 5 U.S.C. 552a(j)(2), the Secretary of Homeland Security has exempted this system from the following provisions of the Privacy Act, subject to the limitations set forth in 5 U.S.C. 552a(c)(3) and (c)(4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8); (f); and (g)(1). Additionally, pursuant to 5 U.S.C. 552a(k)(1) and (k)(2), the Secretary of Homeland Security has exempted this system from the following provisions of the Privacy Act, subject to the limitation set forth in 5 U.S.C. 552a(c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I); and (f). Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons:

(a) From subsection (c)(3) and (c)(4) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DHS as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative process.

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

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

(d) From subsection (e)(2) (Collection of Information from Individuals) because requiring that information be collected from the subject of an investigation would alert the subject to the nature or existence of the investigation, thereby interfering with

that investigation and related law enforcement activities.

(e) From subsection (e)(3) (Notice to Subjects) because providing such detailed information could impede law enforcement by compromising the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

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

(g) From subsection (e)(5) (Collection of Information) because with the collection of information for law enforcement purposes, it is impossible to determine in advance what information is accurate, relevant, timely, and complete. Compliance with subsection (e)(5) would preclude DHS agents from using their investigative training and exercise of good judgment to both conduct and report on investigations.

(h) From subsection (e)(8) (Notice on Individuals) because compliance would interfere with DHS's ability to obtain, serve, and issue subpoenas, warrants, and other law enforcement mechanisms that may be filed under seal and could result in disclosure of investigative techniques, procedures, and evidence.

(i) From subsection (g)(1) (Civil Remedies) to the extent that the system is exempt from other specific subsections of the Privacy Act.

Dated: November 23, 2011.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2011–33428 Filed 12–28–11; 8:45 am]

BILLING CODE 9110–9M–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

7 CFR Part 4274

Direct and Insured Loanmaking

CFR Correction

In Title 7 of the Code of Federal Regulations, Part 2000 to End, revised as of January 1, 2011, on page 746, in § 4274.338, paragraph (b)(4)(ii)(D) is added to read as follows:

§ 4274.338 Loan agreements between the Agency and the intermediary.

* * * * *

(b) * * *

(4) * * *

(ii) * * *

(D) An annual report on the extent to which increased employment, income and ownership opportunities are provided to low-income persons, farm families, and displaced farm families for each loan made by such intermediary.

* * * * *

[FR Doc. 2011–33527 Filed 12–28–11; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

8 CFR Part 1292

Professional Conduct for Practitioners—Representation and Appearances

CFR Correction

In Title 8 of the Code of Federal Regulations, revised as of January 1, 2011, on page 1142, in § 1292.1, paragraph (a)(2) introductory text is corrected to read as follows:

§ 1292.1 Representation of others.

(a) * * *

(2) *Law students and law graduates not yet admitted to the bar.* A law student who is enrolled in an accredited U.S. law school, or a graduate of an accredited U.S. law school who is not yet admitted to the bar, provided that:

* * * * *

[FR Doc. 2011–33530 Filed 12–28–11; 8:45 am]

BILLING CODE 1505–01–D

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 345

Community Reinvestment

CFR Correction

In Title 12 of the Code of Federal Regulations, Parts 300 to 499, revised as of January 1, 2011, on page 457, in § 345.12, paragraph (u)(1) is revised to read as follows:

§ 345.12 Definitions.

* * * * *

(u) * * *

(1) *Definition.* Small bank means a bank that, as of December 31 of either of the prior two calendar years, had assets of less than $1.122 billion. Intermediate small bank means a small bank with assets of at least $280 million as of December 31 of both of the prior two calendar years and less than $1.122 billion as of December 31 of either of the prior two calendar years.

* * * * *

[FR Doc. 2011–33529 Filed 12–28–11; 8:45 am]

BILLING CODE 1505–01–D

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1013

[Docket No. CFPB–2011–0026]

RIN 3170–AA06

Consumer Leasing (Regulation M); Correction

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Interim final rule; correction.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is correcting an interim final rule that appeared in the **Federal Register** of December 19, 2011 (76 FR 78500). The interim final rule established a new Regulation M (Consumer Leasing) in accordance with the transfer of rulemaking authority for the Consumer Leasing Act of 1976 (CLA) from the Board of Governors of the Federal Reserve System to the Bureau under Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act.[1]

DATES: Effective December 30, 2011.

FOR FURTHER INFORMATION CONTACT: Courtney Jean or Priscilla Walton-Fein, Office of Regulations, at (202) 435–7700.

[1] Section 1066 of the Dodd-Frank Act grants the Secretary of the Treasury interim authority to perform certain functions of the Bureau. Pursuant to that authority, Treasury is publishing this interim final rule on behalf of the Bureau.

SUPPLEMENTARY INFORMATION: In the interim final rule (FR Doc. 2011–31723) appearing on page 78500 in the **Federal Register** of Monday, December 19, 2011, the following correction is made:

Supplement I to Part 1013 [Corrected]

■ 1. On page 78514, in the first column, after the sixth full paragraph, insert the following: ''iii. From January 1, 2012 through December 31, 2012, the threshold amount is $51,800.''

Heidi Cohen,

Senior Counsel for Regulatory Affairs, Department of the Treasury.

[FR Doc. 2011–33354 Filed 12–28–11; 8:45 am]

BILLING CODE 4810–AM–P

FEDERAL AVIATION ADMINISTRATION

14 CFR Part 23

Airworthiness Standards: Normal, Utility, Acrobatic, and Commuter Category Airplanes

CFR Correction

In Title 14 of the Code of Federal Regulations, Parts 1 to 59, revised as of January 1, 2011, on page 351, in Appendix C to Part 23, Note (4) to the table is corrected to read as follows:

APPENDIX C TO PART 23—BASIC LANDING CONDITIONS

* * * * *

■ Note (4). *L* is defined in § 23.725(b).

* * * * *

[FR Doc. 2011–33531 Filed 12–28–11; 8:45 am]

BILLING CODE 1505–01–D

FEDERAL AVIATION ADMINISTRATION

14 CFR Part 25

Airworthiness Standards: Transport Category Airplanes

CFR Correction

In Title 14 of the Code of Federal Regulations, Parts 1 to 59, revised as of January 1, 2011, on page 413, in § 25.509, in paragraph (a)(3)(ii), the expression ''$(6W_T + 450{,}000)/7$'' is corrected to read ''$(6W_T + 450{,}000)/70$''.

[FR Doc. 2011–33532 Filed 12–28–11; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–1420; Directorate Identifier 2011–CE–035–AD; Amendment 39–16905; AD 2011–27–04]

RIN 2120–AA64

Airworthiness Directives; Hawker Beechcraft Corporation Airplanes Equipped With a Certain Supplemental Type Certificate (STC)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Hawker Beechcraft Corporation Models 95–C55, D55, E55, 58, and 58A airplanes equipped with a certain STC. This AD requires assuring the airspeed indicator(s) and/or airspeed limitations placard(s) have the correct minimum control speed (V_{MC}) markings for the STCs installed. This AD was prompted by information that suggests the affected airplane models with a certain STC installed may not have the appropriate V_{MC} markings on the airspeed indicator(s). We are issuing this AD to correct the unsafe condition on these products.

DATES: This AD is effective December 29, 2011.

We must receive comments on this AD by February 13, 2012.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Eric B. Potter, Aerospace Engineer, Atlanta Aircraft Certification Office, FAA, 1701 Columbia Avenue, College Park, Georgia 30337; phone: (404) 474–5583; fax: (404) 474–5606; email: *eric.potter@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

On a Hawker Beechcraft Corporation Model 58 airplane, we found that STC SA1762SO (installation of vortex generators) and STC SA4016NM (Foxstar Baron modification that included installation of winglets and different engines and propellers) were installed. The airplane flight manual (AFM) supplements for both STCs contained different V_{MC} limitations. The airspeed indicator was marked in accordance with STC SA4016NM when it should have been marked with the higher V_{MC} specified for STC SA1762SO.

Other affected Hawker Beechcraft Corporation airplanes with STC SA1762SO installed may have other STCs or modifications installed that affect V_{MC}. Those modified airplanes may not have V_{MC} accurately marked on the airspeed indicator(s). Whenever an STC is installed, the relationship between the STC being installed and other STCs already installed on the airplane should be properly analyzed to assure there are no adverse effects on the airworthiness of the modified airplane.

The installation of multiple STCs affecting V_{MC} on the same airplane could result in conflicting operating limitations. The airspeed limitations placard(s) and the airspeed indicator(s) must be correctly marked with the highest V_{MC} limitation stated in the AFM, AFM supplements, and pilot operating handbooks (POHs), unless FAA-approved testing has been done to determine the correct V_{MC} and a new AFM supplement has replaced the conflicting supplements. Therefore, the V_{MC} limitation stated in the AFM, AFM supplements, and POHs must be reviewed for each airplane to assure the highest V_{MC} limitation is identified.

Hawker Beechcraft Corporation Models 95–C55, D55, E55, 58, and 58A airplanes may also have STC SA1762SO installed and be subject to this unsafe condition. This condition, if not

corrected, could result in sudden and unexpected loss of aircraft control during single engine operation.

FAA's Determination

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

The FAA is still evaluating the subject matter presented in this AD. While the unsafe condition identified in this AD is addressed on the airplanes affected by this AD, our evaluation may lead us to consider additional rulemaking on this subject on these and/or other aircraft.

AD Requirements

On all Hawker Beechcraft Corporation Models 95–C55, D55, E55, 58, and 58A airplanes equipped with STC SA1762SO, this AD requires inspecting all installed placards, POHs, and airplane flight manual supplements to identify other modifications that may affect V_{MC} and accurately marking the V_{MC} on the airspeed indicator(s) or installing a placard(s) specifying the correct V_{MC}. This AD may also require establishing a new one-engine-inoperative speed (V_{SSE}) if the existing V_{SSE} is inaccurate.

FAA's Justification and Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because incorrect V_{MC} markings on the airspeed indicator(s) could result in sudden and unexpected loss of aircraft control in the event of an actual engine failure or simulated engine failure during a training flight. Therefore, we find that notice and opportunity for prior public comment are impracticable and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2011–1420 and Directorate Identifier 2011–CE–035–AD at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this AD.

Costs of Compliance

We estimate that this AD affects 400 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection of AFM supplements for installation of other STCs that may affect V_{MC}.	1 work-hour × $85 per hour = $85	Not applicable	$85	$34,000

We estimate the following costs to do any necessary placards and/or airspeed indicator remarking that will be required based on the results of the inspection. We have no way of determining the number of aircraft that might need these actions:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Installation of placard(s) for appropriate V_{MC}	1 work-hour × $85 per hour = $85	$10	$95
Remarking of the airspeed indicator(s) and/or airspeed limitations placard(s).	$2 work-hours × $85 per hour = $170	200	370

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

(4) Will not have a significant economic impact, positive or negative,

on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2011–27–04 Hawker Beechcraft Corporation: Amendment 39–16905; Docket No. FAA–2011–1420; Directorate Identifier 2011–CE–035–AD.

(a) Effective Date

This AD is effective December 29, 2011.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Hawker Beechcraft Corporation Models 95–C55, D55, E55, 58, and 58A airplanes, all serial numbers that are:

(1) equipped with Supplemental Type Certificate (STC) SA1762SO; and

(2) certificated in any category.

Note 1: STC SA1762SO is sometimes referred to as the ''Foxstar modification.'' This modification includes new Continental IO–550 engines, new Hartzell 4-bladed propellers, and the addition of winglets.

(d) Subject

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 34; Airspeed Indicator.

(e) Unsafe Condition

This AD was prompted by information that suggests the affected airplane models with STC SA1762SO installed may not have the correct minimum control speed (V_{MC}) markings on the airspeed indicator(s). We are issuing this AD to correct the unsafe condition on these products.

(f) Compliance

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

(g) V_{MC} Markings

Within the next 10 hours time-in-service (TIS) after December 29, 2011 (the effective date of this AD) or within the next 30 days after December 29, 2011 (the effective date of this AD), whichever occurs first, inspect all added placards, pilot operating handbooks (POHs), and airplane flight manual (AFM) supplements to identify modifications other than STC SA1762SO that state a V_{MC} limitation.

Note 2: The abbreviation V_{MC} for minimum control speed used in this AD may be identified in the AFM and AFM supplements as V_{MCA}.

(1) If no modifications that state a V_{MC} limitation are identified, other than STC SA1762SO, within the compliance time specified in paragraph (g) of this AD, inspect the V_{MC} marking on the airspeed indicator(s) and airspeed limitations placard(s) to assure they are marked accurately to match the V_{MC} specified in the AFM supplement associated with STC SA1762SO.

(i) If the V_{MC} marking on both the airspeed indicator(s) and the airspeed limitations placard(s) do match the V_{MC} specified in the AFM supplement associated with STC SA1762SO, paragraph (g)(1)(iii) is the only other action required by this AD.

(ii) If either the V_{MC} marking on the airspeed indicator(s) or the airspeed limitations placard(s) do not match the V_{MC} specified in the AFM supplement associated with STC SA1762SO, before further flight after the inspection required in paragraph (g)(1) of this AD, install a temporary placard(s) for the airspeed indicator(s) and/ or install a temporary placard(s) over the V_{MC} marked on the airspeed limitations placard(s), as applicable.

(A) The V_{MC} as specified on both the airspeed indicator(s) or temporary placard(s) and the airspeed limitations placard(s) must match the V_{MC} specified in the AFM supplement associated with STC SA1762SO, following the instructions in paragraph (h) of this AD.

(B) Before further flight after the inspection required in paragraph (g)(1) of this AD, you may have the airspeed indicator(s) permanently remarked and/or permanently remark the airspeed limitations placard(s) as required in paragraph (i), Remarking the Airspeed Indicator(s) and the Airspeed Limitations Placard(s), of this AD in lieu of installing the temporary placard(s) for the airspeed indicator(s) and/or installing the temporary placard(s) for the V_{MC} on the airspeed limitations placard(s).

(iii) If the AFM lists an intentional one-engine-inoperative speed (V_{SSE}), you must use the formula below in paragraph (g)(1)(iii)(A) of this AD and establish a new V_{SSE}, unless the existing V_{SSE} is equal to or greater than the V_{SSE} determined by the formula. If the AFM does not state a V_{SSE}, skip forward to the actions required in paragraph (h) of this AD, Temporary Airspeed Indicator(s) and Temporary Airspeed Limitations Placard(s) Installation.

(A) New V_{SSE} = ((V_{SSE} from the AFM)/(V_{MC} from the AFM)) × (V_{MC} from the AFM supplement associated with STC SA1762SO).

(B) If necessary, insert the following language for the new V_{SSE} into the AFM in all areas that refer to V_{SSE}: ''The revised V_{SSE} is _____ in accordance with AD 2011–27–04.''

(2) If modifications that state a V_{MC} limitation are identified, in addition to STC SA1762SO, within the compliance time specified in paragraph (g) of this AD, inspect the V_{MC} marking on the airspeed indicator(s) and the airspeed limitations placard(s) to assure they match and are marked accurately with the highest V_{MC} specified in either the AFM or any placards and/or AFM supplements associated with any modifications that state a V_{MC} limitation.

(i) If the V_{MC} marking on the airspeed indicator(s) and the airspeed limitations placard(s) match and are marked with the highest V_{MC} specified in either the AFM or any placards and/or AFM supplements associated with any modifications that affect V_{MC}, skip forward to the actions required in paragraph (g)(2)(iii) of this AD.

(ii) If the V_{MC} marking on the airspeed indicator(s) and the airspeed limitations placard(s) do not match and/or are not marked with the highest V_{MC} specified in either the AFM or any placards and/or AFM supplements associated with any modifications that affect V_{MC}, before further flight after the inspection required in paragraph (g)(2), install a temporary placard(s) for the airspeed indicator(s) and/ or install a temporary placard(s) over the V_{MC} marked on the airspeed limitations placard(s), as applicable.

(A) The V_{MC} on both the airspeed indicator(s) and the airspeed limitations placard(s) must match the highest V_{MC} specified in either the AFM or any placards and/or AFM supplements associated with any modifications that affect V_{MC}, following the instructions in paragraph (h) of this AD, Temporary Airspeed Indicator(s) and Temporary Airspeed Limitations Placard(s) Installation.

(B) Before further flight after the inspection required in paragraph (g)(2), you may have the airspeed indicator(s) permanently remarked and/or permanently remark the airspeed limitations placard(s) as required in paragraph (i), Remarking the Airspeed Indicator(s) and the Airspeed Limitations Placard(s), of this AD in lieu of installing the temporary placard(s) for the airspeed indicator(s) and/or installing the temporary placard(s) for the V_{MC} on the airspeed limitations placard(s).

(iii) If the AFM or any of the AFM supplements that state a V_{MC} limitation also list a V_{SSE}, you must use the formula below in paragraph (g)(2)(iii)(A) of this AD and establish a new V_{SSE}, unless the existing V_{SSE} is equal to or greater than the V_{SSE} determined by the formula. If the AFM or any of the AFM supplements do not list a V_{SSE}, skip forward to the actions required in paragraph (h) of this AD, Temporary Airspeed Indicator(s) and Temporary Airspeed Limitations Placard(s) Installation.

(A) New V_{SSE} = ((V_{SSE} from the AFM)/(V_{MC} from the AFM)) × (V_{MC} as determined by paragraph (g)(2) of this AD).

(B) If the V_{SSE} listed in the AFM or any AFM supplements that state a V_{MC} limitation is higher than the V_{SSE} determined by paragraph (g)(2)(iii)(A) of this AD above, then the highest of all these values shall be the new V_{SSE}.

(C) If necessary, insert the following language for the new V_{SSE} into the AFM in all areas that refer to V_{SSE}, including AFM

supplements: ''The revised V_{SSE} is _____ in accordance with AD 2011–27–04.''

(h) Temporary Airspeed Indicator(s) and Temporary Airspeed Limitations Placard(s) Installation

(1) If required by the actions in paragraph (g)(1)(ii) or (g)(2)(ii) of this AD, fabricate a temporary placard(s) (using at least ⅛-inch black letters on a white background) with the following words and install the placard(s) on the instrument panel in the nearest practical location to the airspeed indicator(s) within the pilot's clear view: ''V_{MC} = _____ .'' Insert in the blank space the V_{MC} as determined by the actions required in either paragraph (g)(1)(ii) or (g)(2)(ii) of this AD.

(2) If the V_{MC} on the existing airspeed limitations placard is different than determined in either paragraph (g)(1)(ii) or (g)(2)(ii) of this AD, fabricate a temporary placard(s) (using letter sizes similar to those on the existing airspeed limitations placard(s) with black letters on a white background) with the V_{MC} as determined by the actions required in either paragraph (g)(1)(ii) or (g)(2)(ii) of this AD and install the placard(s) over the V_{MC} listed on the existing airspeed limitations placard(s).

Note 3: You may use FAA Advisory Circular 43.13–2B for additional guidance on installing placards. You can find Advisory Circular 43.13–2B at *http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgAdvisoryCircular.nsf.*

(i) Remarking the Airspeed Indicator(s) and the Airspeed Limitations Placard(s)

(1) If during either of the inspections required in paragraphs (g)(1) or (g)(2) of this AD, the V_{MC} marking on the airspeed indicator(s) was not marked accurately and required immediate temporary corrective action (placard), within the next 12 months after December 29, 2011 (the effective date of this AD), permanently remark the airspeed indicator(s) with the correct V_{MC} marking. This instrument modification must be done by an appropriately rated repair facility.

(i) After the airspeed indicator(s) has been remarked, mark the airspeed indicator(s) instrument casing to clearly indicate that the markings comply with this AD stating ''Modified in compliance with AD 2011–27–04, refer to AD 2011–27–04 for replacement part criteria.''

(ii) Any replacement airspeed indicator must also meet the V_{MC} marking requirements in paragraphs (i)(1) and (i)(1)(i) of this AD.

(iii) After the V_{MC} has been remarked as required in this paragraph, you may remove the temporary placard(s) installed as required in paragraph (g)(1)(ii) and (g)(2)(ii) of this AD.

(iv) Instead of installing the temporary placard(s) after either of the inspections when it is determined the V_{MC} marking on the airspeed indicator(s) is not marked accurately, you may permanently remark the airspeed indicator(s) as required in paragraph (i), Remarking the Airspeed Indicator(s) and the Airspeed Limitations Placard(s), of this AD provided it is done before further flight.

(2) If during either of the inspections required in paragraphs (g)(1) or (g)(2) of this AD, the V_{MC} marking on the airspeed limitations placard(s) was not marked accurately and required immediate temporary corrective action (placard), within the next 12 months after December 29, 2011 (the effective date of this AD), permanently remark or remake the airspeed limitations placard(s) with the correct V_{MC} marking.

(j) Alternative Methods of Compliance (AMOC)

(1) The Manager, Atlanta Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD.

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

(k) Related Information

For more information about this AD, contact Eric B. Potter, Aerospace Engineer, Atlanta ACO, FAA, 1701 Columbia Avenue, College Park, Georgia 30337; phone: (404) 474–5583; fax: (404) 474–5606; email: *eric.potter@faa.gov.*

Issued in Kansas City, Missouri, on December 21, 2011.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–33344 Filed 12–28–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 774

The Commerce Control List

CFR Correction

In Title 15 of the Code of Federal Regulations, Parts 300 to 799, revised as of Jan. 1, 2011, in Supplement No. 1 of Part 774, make the following corrections:

1. On page 847, in ECCN 9D004, remove the following paragraphs from the end of the entry:

■ 79. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 9 Aerospace and Propulsion, Product Group E is amended by revising the Note located at the beginning to read as follows:

E. Technology

Note: ''Development'' or ''production'' ''technology'' controlled by 9E001 to 9E003 for gas turbine engines remains controlled when used as ''use'' ''technology'' for repair, rebuild and overhaul. Excluded from 9E001 to 9E003 control are: technical data, drawings or documentation for maintenance activities directly associated with calibration, removal or replacement of damaged or unserviceable line replaceable units, including replacement of whole engines or engine modules.

2. On page 848, revise the note under the heading ''**E. Technology**'' to read as follows:

Note: ''Development'' or ''production'' ''technology'' controlled by 9E001 to 9E003 for gas turbine engines remains controlled when used as ''use'' ''technology'' for repair, rebuild and overhaul. Excluded from 9E001 to 9E003 control are: technical data, drawings or documentation for maintenance activities directly associated with calibration, removal or replacement of damaged or unserviceable line replaceable units, including replacement of whole engines or engine modules.

[FR Doc. 2011–33619 Filed 12–28–11; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230, 239, 270, and 275

[Release Nos. 33–9287; IA–3341; IC–29891; File No. S7–04–11]

RIN 3235–AK90

Net Worth Standard for Accredited Investors

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: We are adopting amendments to the accredited investor standards in our rules under the Securities Act of 1933 to implement the requirements of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The Act requires the definitions of ''accredited investor'' in our Securities Act rules to exclude the value of a person's primary residence for purposes of determining whether the person qualifies as an ''accredited investor'' on the basis of having a net worth in excess of $1 million. This change to the net worth standard was effective upon enactment by operation of the Dodd-Frank Act, but it also requires us to revise our current Securities Act rules to conform to the new standard. We also are adopting technical amendments to Form D and a number of our rules to conform them to

the requirements of the Act and to correct cross-references to former Section 4(6) of the Securities Act, which was renumbered Section 4(5) by Section 944 of the Dodd-Frank Act.

DATES: *Effective date:* February 27, 2012.

FOR FURTHER INFORMATION CONTACT: Anthony G. Barone, Special Counsel; Karen C. Wiedemann, Attorney Fellow; or Gerald J. Laporte, Chief; Office of Small Business Policy, Division of Corporation Finance, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–3628, (202) 551–3460.

SUPPLEMENTARY INFORMATION: We are adopting amendments to Rule 144(a)(3)(viii),[1] Rule 155(a),[2] Rule 215,[3] and Rule 501(a)(5)[4] and 501(e)(1)(i) of Regulation D[5] of our general rules under the Securities Act of 1933 (''Securities Act'')[6]; Rule 500(a)(1)[7] of our Securities Act form rules; Form D[8] under the Securities Act; Rule 17j–1(a)(8)[9] under the Investment Company Act of 1940;[10] and Rule 204A–1(e)(7)[11] under the Investment Advisers Act of 1940.[12]

Table of Contents

I. Background and Summary

On January 25, 2011, we proposed amendments to the accredited investor standards in our rules under the Securities Act of 1933[13] to implement the requirements of Section 413(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act'').[14] The accredited investor standards, which are set forth in Rules 215 and 501 under the Securities Act, are used in determining the availability of certain exemptions from Securities Act registration for private and other limited offerings. Section 4(5) of the Securities Act exempts transactions involving offers or sales by an issuer solely to one or more accredited investors, if the aggregate offering price does not exceed $5,000,000, there is no advertising or public solicitation in connection with the transaction, and the issuer files a notice with the Commission. Pursuant to Regulation D under the Securities Act, an issuer conducting a limited offering of securities pursuant to the safe harbor of Rule 505 or 506 does not have to comply with the information requirements of Rule 502(b) if sales are made only to accredited investors; and sales to accredited investors do not count towards the 35-purchaser limits under Rules 505 and 506.[15] Moreover, accredited investor status obviates the sophistication requirement that Rule 506 imposes on non-accredited investors.[16] One purpose of the accredited investor concept is to identify persons who can bear the economic risk of an investment in unregistered securities, including the ability to hold unregistered (and therefore less liquid) securities for an indefinite period and, if necessary, to afford a complete loss of such investment.[17]

Section 413(a) of the Dodd-Frank Act requires us to adjust the accredited investor net worth standard that applies to natural persons individually, or jointly with their spouse, to ''more than $1,000,000 * * * excluding the value of the primary residence.''[18] Previously, this standard required a minimum net worth of more than $1,000,000, but permitted the primary residence to be included in calculating net worth.[19] Under Section 413(a), the change to remove the value of the primary residence from the net worth calculation became effective upon enactment of the Dodd-Frank Act. As discussed in detail below, we are adopting amendments to our rules to conform them to the new standard.

In the Proposing Release, we requested comment in nine specific areas. We received 43 comment letters in response.[20] In addition, we received 15 letters commenting on Section 413(a) of the Dodd-Frank Act before the publication of the Proposing Release.[21] These two sets of letters came from a variety of groups and constituencies, including state regulators, professional and trade associations, individual investors, broker-dealers and investment advisers, fund managers, consultants, academics and lawyers. Most comment letters expressed general support for the proposed amendments and the objectives that we articulated in the Proposing Release but suggested modifications to the proposals. The final rules reflect changes made in response to these comments, as well as other clarifying changes. As described in detail in the release, the most significant revisions from the proposal include the addition of (1) a grandfathering provision that permits the application of the former accredited investor net worth test in certain limited circumstances and (2) a provision addressing the treatment of incremental debt secured

[1] 17 CFR 230.144(a)(3)(viii).

[2] 17 CFR 230.155(a).

[3] 17 CFR 230.215.

[4] 17 CFR 230.501(a)(5).

[5] 17 CFR 230.501 through 230.508.

[6] 15 U.S.C. 77a *et seq.*

[7] 17 CFR 239.500(a)(1).

[8] 17 CFR 239.500.

[9] 17 CFR 270.17j–1(a)(8).

[10] 15 U.S.C. 80a–1 *et seq.*

[11] 17 CFR 275.204A–1(e)(7).

[12] 15 U.S.C. 80b–1 *et seq.*

[13] *See Net Worth Standard for Accredited Investors,* Release No. 33–9177 (Jan. 25, 2011) [76 FR 5307] (the ''Proposing Release'').

[14] Public Law 111–203, 124 Stat. 1376 (July 21, 2010).

[15] *See* note 26 below.

[16] Under Rule 506, each purchaser who is not an accredited investor must, either alone or with a purchaser representative, have such knowledge and experience in financial and business matters that he or she is capable of evaluating the merits and risks of the prospective investment. 17 CFR 230.506(b)(2)(ii).

[17] *See,* Release No. 33–5487 [39 FR 15261] (1974), at 15264 (discussing the previous safe harbor for private placements under Rule 146), and Release No. 33–6339 [46 FR 41791] (1981), at 41793 (noting that the accredited investor concept was intended to ''eliminat[e] the need for subjective judgments by the issuer about * * * suitability'', because investors that met the definition of accredited investor would be ''presumed to meet the purchase qualifications'').

[18] The text of Section 413(a) states that: ''The Commission shall adjust any net worth standard for an accredited investor, as set forth in the rules of the Commission under the Securities Act of 1933, so that the individual net worth of any natural person, or joint net worth with the spouse of that person, at the time of purchase, is more than $1,000,000 (as such amount is adjusted periodically by rule of the Commission), excluding the value of the primary residence of such natural person, except that during the 4-year period that begins on the date of enactment of this Act, any net worth standard shall be $1,000,000, excluding the value of the primary residence of such natural person.'' *Id.*

[19] *See* 17 CFR 230.215(e) and 230.501(a)(5) (2010).

[20] The comment letters we received on the Proposing Release are available on our Web site at *http://www.sec.gov/comments/s7-04-11/s70411.shtml.* In this release, we refer to these letters as the ''comment letters'' to differentiate them from the ''advance comment letters'' described in footnote 21.

[21] To facilitate public input on its Dodd-Frank Act rulemaking before issuance of rule proposals, the Commission provided a series of email links, organized by topic, on its Web site at *http://www.sec.gov/spotlight/regreformcomments.shtml.* In this release, we refer to letters we received in response to this invitation as ''advance comment letters.'' The advance comment letters we received in anticipation of this rule proposal are available at *http://www.sec.gov/comments/df-title-iv/accredited-investor/accredited-investor.shtml.*

by the primary residence that is incurred in the 60 days before the sale of securities to the individual. Finally, the language of the proposed rules has been revised to make them clearer and easier to apply.

Section 413(b) specifically authorizes us to undertake a review of the definition of the term ''accredited investor'' as it applies to natural persons, and requires us to undertake a review of the definition in its entirety every four years, beginning four years after enactment of the Dodd-Frank Act. We are also authorized to engage in rulemaking to make adjustments to the definition after each such review. Section 415 of the Dodd-Frank Act requires the Comptroller General of the United States to conduct a ''Study and Report on Accredited Investors'' examining ''the appropriate criteria for determining the financial thresholds or other criteria needed to qualify for accredited investor status and eligibility to invest in private funds.'' [22] The study is due three years after enactment of the legislation. We expect that the results of this study will be taken into account in any rulemaking that takes place in this area after the study is completed. Accordingly, we did not propose, and we are not adopting, any amendments to the definitions of ''accredited investor'' that are not related to Section 413(a) of the Dodd-Frank Act at this time.

In addition to the changes to the definition of ''accredited investor'' to implement the requirements of Section 413(a), we are also adopting today technical amendments to update cross-references that have changed as a result of the deletion of former Section 4(5) of the Securities Act and the renumbering of former Section 4(6) as Section 4(5).[23]

II. Discussion

A. Net Worth Standard for Accredited Investors

(1) Overview of the Amended Rules

As discussed above, Section 413(a) of the Dodd-Frank Act requires us to adjust the accredited investor net worth standard [24] that applies under our Securities Act rules to natural persons individually, or jointly with their spouse, to ''more than $1,000,000 * * * excluding the value of the primary residence.'' Previously, the standard required a minimum net worth of more than $1,000,000, but permitted the primary residence to be included in calculating net worth.

The relevant rules are Securities Act Rules 501 and 215.[25] Rule 501 defines the term ''accredited investor'' for purposes of non-public and limited offerings under Rules 504(b)(1)(iii), 505 and 506 of Regulation D.[26] The definition of ''accredited investor'' includes persons who come within any of eight listed categories, or whom the issuer reasonably believes come within one of those categories, at the time of the sale of securities to that person.[27] The $1 million individual net worth standard is one such category.[28]

Rule 215 defines the term ''accredited investor'' under Section 2(a)(15) of the Securities Act.[29] Section 2(a)(15) and Rule 215 set the standards for accredited investor status under Section 4(5) of the Securities Act, formerly Section 4(6), which permits offerings solely to accredited investors of up to $5 million, subject to certain conditions.[30] While Regulation D is frequently relied upon,[31] exclusive reliance on Section 4(5) is rare.[32]

Historically, the accredited investor standards under Rule 215 and Rule 501 have been identical. We are adopting identical language in the amendments to Rule 501 and Rule 215, so the two rules will implement Section 413(a) of the Dodd-Frank Act in the same way. As amended, the new individual net worth standard in the accredited investor definition is:

> Any natural person whose individual net worth, or joint net worth with that person's spouse, exceeds $1,000,000.
>
> (1) Except as provided in paragraph (2) of this section, for purposes of calculating net worth under this paragraph:
>
> (i) The person's primary residence shall not be included as an asset;
>
> (ii) Indebtedness that is secured by the person's primary residence, up to the estimated fair market value of the primary residence at the time of the sale of securities, shall not be included as a liability (except that if the amount of such indebtedness outstanding at the time of the sale of securities exceeds the amount outstanding 60 days before such time, other than as a result of the acquisition of the primary residence, the amount of such excess shall be included as a liability); and
>
> (iii) Indebtedness that is secured by the person's primary residence in excess of the estimated fair market value of the primary residence at the time of the sale of securities shall be included as a liability.
>
> (2) Paragraph (1) of this section will not apply to any calculation of a person's net worth made in connection with a purchase of securities in accordance with a right to purchase such securities, provided that:
>
> (i) Such right was held by the person on July 20, 2010;
>
> (ii) The person qualified as an accredited investor on the basis of net worth at the time the person acquired such right; and
>
> (iii) The person held securities of the same issuer, other than such right, on July 20, 2010.

The final accredited investor definition is consistent with the approach taken in the Proposing Release with respect to the basic treatment of the primary residence and indebtedness

[22] Public Law 111–203, § 415, 124 Stat. 1376, 1578 (to be codified at 15 U.S.C. 80b–18c).

[23] Public Law 111–203, § 944, 124 Stat. 1376, 1897 (renumbering Securities Act Section 4(6), 15 U.S.C. 77d(6) (2006), as Section 4(5), 15 U.S.C. 77d(5)). Former Section 4(5) exempted transactions involving mortgages with a minimum aggregate sales price per purchaser of $250,000, as well as the resales of those securities. 15 U.S.C. 77d(6) (2006).

[24] Neither the Securities Act nor our rules promulgated under the Securities Act define the term ''net worth.'' The commonly understood, or basic, meaning of the term is the difference between the value of a person's assets and the value of the person's liabilities. See, *e.g., Barron's Financial Guides,* Dictionary of Finance and Investment Terms, at 457 (7th ed. 2006).

[25] 17 CFR 230.501(a)(5) and 230.215(e).

[26] Under Regulation D, issuers are subject to fewer regulatory requirements when the purchasers of their securities are accredited investors. Both Rule 505 and Rule 506 require that there be no more than, or the issuer reasonably believe there are no more than, 35 purchasers of securities in the offering. 17 CFR 230.505(b)(2)(ii) and 230.506(b)(2)(i). However, Rule 501(e) provides that accredited investors are not counted as purchasers for that purpose, with the result that an unlimited number of accredited investors may participate in an offering under Rule 505 or 506, provided that the other requirements of the rules are satisfied. Further, specific information requirements apply to issuers in Rule 505 and Rule 506 transactions if they sell to non-accredited investors, but not if they sell only to accredited investors. 17 CFR 230.502(b)(1). Thus, issuers in offerings under Rule 505 or 506 generally seek to establish that potential purchasers in the offering are accredited investors. In addition, Rule 504(b)(1)(iii) exempts offerings from the manner of offering and resale restrictions that generally apply under Rule 504, if they are made in accordance with certain state law exemptions from registration that limit sales to accredited investors. 17 CFR 230.504(b)(1)(iii).

[27] 17 CFR 230.501(a).

[28] Other categories include certain regulated financial institutions; certain entities with total assets in excess of $5 million; directors, executive officers and general partners of the issuer or its general partner; and natural persons who had an income of at least $200,000 in each of the two most recent years (or $300,000 together with their spouse) and have a reasonable expectation of reaching the same income level in the current year. *Id.*

[29] 15 U.S.C. 77b(a)(15).

[30] 15 U.S.C. 77d(5). As discussed above, former Section 4(6) of the Securities Act was renumbered Section 4(5) by Section 944 of the Dodd-Frank Act.

[31] In fiscal year 2010, we received 16,856 initial filings on Form D notifying us of claims of exemption under Rules 504(b)(1)(iii), 505 and 506, 17 CFR 230.504(b)(1)(iii), 230.505 and 230.506, the three exemptive provisions in Regulation D where accredited investor status affects the availability of an exemption. This represented 96% of the 17,593 initial Form D filings we received for that year.

[32] In fiscal year 2010, we received 900 initial filings on Form D notifying us of a claim of exemption under Section 4(5), formerly Section 4(6), representing 5% of the 17,593 initial Form D filings we received for that year. Only 66 of those filings, or less than 0.4% of total initial Form D filings, claimed the Section 4(5) exemption exclusively. The other 834 of these Form D filings indicated that both Section 4(5) and a Regulation D exemption were being relied upon.

secured by the primary residence.[33] We have revised the language of this provision to make it easier for issuers, investors and other market participants to apply the new net worth standard.[34] We have also included a provision addressing the treatment of incremental debt secured by the primary residence that is incurred in the 60 days before the sale of securities to the individual, and have revised the proposal so that that the prior accredited investor net worth test will apply in connection with the exercise of rights to acquire securities, so long as the rights were in existence on July 20, 2010, the day before enactment of the Dodd-Frank Act, the investor qualified as an accredited investor on the basis of net worth at the time the rights were acquired, and the investor held securities of the same issuer, other than the rights, on July 20, 2010.

(2) Treatment of Mortgage Debt

Under the final rules, as in the Proposing Release, individuals' net worth will be calculated excluding any positive equity they may have in their primary residence.[35] As we discussed in the Proposing Release, we believe this approach is the most appropriate way to conform our rules to Section 413(a). It reduces the net worth measure by the net amount that the primary residence contributed to net worth before enactment of Section 413(a), which we believe is what is commonly meant by ''the value of a person's primary residence.'' Most comment letters supported defining ''excluding the value of the primary residence'' in this way.[36]

Three letters supported excluding the fair market value of the primary residence from net worth without excluding any associated debt.[37] This group of letters argued that our proposal to ''net out'' any associated debt from the fair market value of the primary residence misinterprets the plain language of Section 413(a), and incentivizes investors to increase the amount of debt secured by their primary residence to acquire other assets for the purpose of inflating their net worth as calculated under our rules. As we stated in the Proposing Release, we believe that reducing an investor's net worth by the value of the primary residence without also excluding associated indebtedness would not accord with the manner in which net worth reflected home equity before enactment of Section 413(a); excluding the residence alone would reduce net worth by more than the amount the residence contributes. We believe the approach in the final rule is the most appropriate approach and is consistent with Section 413(a).[38]

Five comment letters advocated excluding from the net worth calculation both the fair market value of the primary residence and all indebtedness secured by the primary residence, regardless of whether such indebtedness exceeds the fair market value of the primary residence.[39] Several of these commentators disagreed with our proposal on the basis that the proposal would require an estimate of the fair market value of the primary residence which, in their view, would make the net worth calculation problematic and uncertain and would force investors to incur additional expense to obtain a third party appraisal of their residence. These commentators argued that excluding both the value of the primary residence and all indebtedness secured by the primary residence would simplify and provide greater certainty regarding the net worth calculation.

We disagree with this view, as did many commentators.[40] In the first instance, estimating the value of the primary residence did not appear to cause problems before the Dodd-Frank Act, when that value was included in net worth for purposes of the definition of accredited investor. The rules did not then, and the rules we adopt today do not now, require a third party opinion on valuation, either for the primary residence or for any other assets or liabilities. All that is required is an estimate of fair market value.[41] Further, as we explained in the Proposing Release, if the amount of mortgage debt exceeds the value of the primary residence (*i.e.,* an underwater mortgage), excluding the entire debt from net worth for purposes of the accredited investor definition would result in a higher net worth than under a basic net worth calculation that takes into account all assets and all liabilities. Net worth would be effectively increased by the amount by which the mortgage exceeds the value of the primary residence, because that excess amount is treated as a liability in a basic net worth calculation but would be excluded under the standard proposed by these commentators. We do not believe it would be appropriate for us to implement Section 413(a) in a way that results in increased net worth compared to a basic calculation for individuals with underwater mortgages.[42]

[33] It is also consistent with the staff's initial analysis of Section 413(a). *See* Securities Act Rules Compliance & Disclosure Interpretation, Question No. 255.47 (July 23, 2010) (available at *http://www.sec.gov/divisions/corpfin/guidance/securitiesactrules-interps.htm#255.47*).

[34] We have also deleted a reference to measuring net worth at the time of the investor's purchase, as all standards under the accredited investor definition are measured ''at the time of the sale of securities to that person.'' 17 CFR 230.501(a).

[35] Thus, for example, if an investor with a net worth of $2 million (calculated in the conventional manner before the enactment of Section 413(a)—that is, by subtracting from the investor's total assets, including primary residence, the investor's total liabilities, including indebtedness secured by the residence) has a primary residence with an estimated fair market value of $1.2 million and a mortgage loan of $800,000, the investor's net worth for purposes of the new accredited investor standard is $1.6 million. Before enactment of Section 413(a), the primary residence would have contributed a net amount of $400,000 to the investor's net worth for purposes of the accredited investor net worth standard—the value of the primary residence ($1.2 million) less the mortgage loan ($800,000). Under the amendments, exclusion of the value of the primary residence would reduce the investor's net worth by the same $400,000 amount.

[36] *See, e.g.,* comment letters from Business Law Section of the American Bar Association (''ABA''), Cornell Securities Law Clinic (''Cornell''), Investment Adviser Association (''IAA''), Managed Funds Association, North American Securities Administrators Association (''NASAA''), Public Investors Arbitration Bar Association and Sullivan & Cromwell LLP (''S&C'').

[37] *See* comment letters from Secretary of the Commonwealth of Massachusetts (''Massachusetts Securities Division''), Professors Manning G. Warren and Marc I. Steinberg; and David A. Marion.

[38] New paragraph (ii) of the final rule, discussed in Part I.A.2 below, prohibits excluding incremental indebtedness secured by the primary residence that is incurred in the 60 days before the sale of securities. We believe this provision will mitigate incentives to increase debt secured against the residence solely for purposes of qualifying as an accredited investor.

[39] *See* comment letters from Welton E. Blount, Investment Program Association (''IPA''), Real Estate Investment Securities Association (''REISA''), Steven J. Thayer and Georg Merkl. *See also* advance comment letters from April Hamlin and Michael Scillia.

[40] *See, e.g.,* letters from Massachusetts Securities Division, Cornell, International Association of Small Broker Dealers and Advisors, NASAA and the Public Investors Arbitration Association.

[41] *See, e.g.,* Release No. 33–6455 (Mar. 3, 1983) at Question 21 (confirming that, under the net worth standard in effect at the time, ''the estimated fair market value'' of a primary residence could be considered as an asset) and Question 45 (individual statement of net worth reflects estimated value of assets and liabilities).

[42] Where the amount of debt secured by the primary residence exceeds the estimated value of the residence, the new rules will not trigger any adjustment to net worth as calculated before the enactment of Section 413(a). In a pre-Section 413(a) basic net worth calculation involving an underwater mortgage, the fair market value of the residence and the amount of the mortgage up to that fair market value are included in the calculation but net to zero, and the excess of the amount of the mortgage over the fair market value of the primary residence is included as a liability. Under the final rules, the fair market value of the residence and the amount of the mortgage up to that fair market value are excluded from the calculation, and the excess of the amount of the mortgage over the fair market value of the primary residence is included as a

Three comment letters argued that mortgage debt in excess of the value of the primary residence should be excluded from the net worth calculation if the borrower would not be subject to personal liability by reason of contractual terms or state anti-deficiency statutes or similar laws.[43] In these situations, indebtedness in excess of the value of the residence may not be legally collectible, either because the loan by its terms provides recourse only to the underlying asset, the residence, or because applicable law bars a lender from obtaining a judgment for the shortfall when the fair market value of the residence (or the price obtained in a foreclosure sale) is less than the loan amount.[44]

Under the final rules, any excess of indebtedness secured by the primary residence over the estimated fair market value of the residence is considered a liability for purposes of determining accredited investor status on the basis of net worth, whether or not the lender can seek repayment from other assets in default. In our view, the full amount of the debt incurred by the investor is the most appropriate value to use in determining accredited investor status. That is the basis on which interest accrues under the mortgage and the amount that third parties would look to in assessing creditworthiness. We do not believe that the treatment of a mortgage should vary solely because of state laws that limit the rights of the lender in an action to enforce the borrower's promise to repay. Such laws vary significantly in scope and procedural requirements, and their operation is often contingent on the specific foreclosure process chosen by the lender and other factors beyond the borrower's control.[45] We believe it would add substantial complexity to the rule if market participants were called upon to determine how an anti-deficiency statute would operate in the individual circumstances of each prospective investor. Moreover, the data available to us suggest that there would be no material difference in the number of households that qualify as accredited investors if we were to allow special treatment of non-recourse mortgages.[46] Accordingly, the final rules specify that debt secured against the primary residence in excess of the estimated fair market value of the primary residence must be treated as a liability in the net worth calculation.

(3) Increases in Mortgage Debt in the 60 Days Before Sale of Securities

We also solicited comment on whether the amendments should contain a timing provision to prevent investors from artificially inflating their net worth by incurring incremental indebtedness secured by their primary residence, thereby effectively converting their home equity—which is excluded from the net worth calculation under the rules adopted today—into cash or other assets that would be included in the net worth calculation. As an example, we indicated that the amendments could provide that the net worth calculation must be made as of a date 30, 60, or 90 days before the sale of the securities, as well as at the time of sale.

State securities regulators strongly supported this approach, noting that it would make the practice of advising investors to use equity in their primary residence to purchase securities less attractive, thereby helping to ensure that unregistered securities are not sold to investors with limited assets other than their homes, who may not be able to fend for themselves without the protections afforded by registration.[47] On the other hand, many commentators opposed having special rules for debt secured by a primary residence incurred close in time to the sale of securities, asserting that imposing such a timing provision would unduly complicate the calculation of net worth.[48] Some were particularly concerned that the date when accredited investor status has to be determined may not be known sufficiently in advance to permit a full net worth calculation 30, 60, or 90 days ahead of time, or that such a requirement would force delays in capital raising efforts.[49] We agree that we should avoid adding undue complexity in the process for determination of accredited investor status; however, we believe that the rule should address potential incentives for individuals to incur debt secured by a primary residence for the purpose of inflating their net worth to qualify as accredited investors. If the rule does not address that issue, the population Congress intended to protect—individuals whose net worth is below $1 million unless their home equity is taken into account—may be incentivized (or urged by unscrupulous salespeople) to take on debt secured by their homes for the purpose of qualifying as accredited investors and participating in investments without the protection to which they are entitled.

We believe we have addressed this concern in a manner that manages the complexities noted by commentators that could arise from a requirement to calculate net worth far in advance of a possible sale of securities or to calculate net worth twice. The final rule provides a specific provision addressing the treatment of incremental debt secured by the primary residence that is incurred in the 60 days before the sale of securities.[50] As described above, debt secured by the primary residence generally will not be included as a

liability. In both cases, the overall impact on net worth is a reduction equal to the underwater amount (*i.e.,* the excess of the amount of the mortgage over the fair market value of the residence). Take, for example, an investor whose primary residence has an estimated fair market value of $1.2 million, with a mortgage of $1.4 million. The excess of mortgage loan over the fair market value of the primary residence (in this case, $200,000) would be taken into account as a liability and serve to reduce net worth both under a conventional net worth calculation and under the accredited investor definition adopted today. If, on the other hand, all debt secured by the primary residence were excluded, including debt in excess of the estimated fair market value of the residence, the investor's net worth would be $200,000 higher than under a conventional calculation because the mortgage debt in excess of the value of the primary residence would not be treated as a liability.

[43] *See* comment letters from ABA and IPA and advance comment letter from Keith P. Bishop.

[44] *See* Ghent, Andra C. and Kudlyak, Marianna, ''Recourse and Residential Mortgage Default: Theory and Evidence from U.S. States,'' (February 25, 2011), Federal Reserve Bank of Richmond Working Paper No. 09–10R. Available at SSRN: *http://ssrn.com/abstract=1432437*. In their Appendix A, the authors provide a summary of mortgage foreclosure procedures and anti-deficiency statutes in the 50 states and the District of Columbia. They classify 11 states (Alaska, Arizona, California, Iowa, Minnesota, Montana, North Carolina (for purchase mortgages only), North Dakota, Oregon, Washington and Wisconsin) as non-recourse states.

[45] *See id.*

[46] Using data from the 2007 Federal Reserve Board Survey of Consumer Finances, staff from our Division of Risk, Strategy and Financial Innovation estimate that in 2007 the same number of U.S. households (approximately 7.6 million) would have qualified for accredited investor status on the basis of net worth under our amendments and under an alternative net worth calculation that excluded both the fair market value of the primary residence and all indebtedness secured by the residence, even indebtedness in excess of the fair market value of the residence. Based on discussions with staff economists at the Federal Reserve Board, estimates derived from their unpublished 2009 supplemental update of the 2007 survey are qualitatively similar. For both 2007 and 2009, the data suggest that the number of households nationwide that qualify as accredited investors is not affected by whether the net worth calculation includes or excludes the underwater portion of debt secured by the primary residence.

[47] Comment letter from NASAA. The other supporter of a timing provision was the Cornell Securities Law Clinic. *See* comment letter from Cornell (''The Clinic believes that a timing rule should not require the '60 day' calculation to be performed on the date 60 days before the purchase date; rather, the calculation should occur on the intended purchase date, and estimate the investor's net worth as it was on the date 60 days before the intended purchase date.'').

[48] *See* letters from ABA, Robert Edgerton, Georg Merkl, REISA and S&C.

[49] *See* comment letters from ABA and Robert Edgerton.

[50] *See, e.g.,* New Rule 501(a)(i)(B).

liability in the net worth calculation under the rule, except to the extent it exceeds the estimated value of the primary residence. Under the final rule, any increase in the amount of debt secured by a primary residence in the 60 days before the time of sale of securities to an individual generally will be included as a liability, even if the estimated value of the primary residence exceeds the aggregate amount of debt secured by such primary residence.[51] Net worth will be calculated only once, at the time of sale of securities (the same time as under current rules). The individual's primary residence will be excluded from assets and any indebtedness secured by the primary residence, up to the estimated value of the primary residence at of that time, will be excluded from liabilities, except if there is incremental debt secured by the primary residence incurred in the 60 days before the sale of securities. If any such incremental debt is incurred, net worth will be reduced by the amount of the incremental debt. In other words, the only additional calculation required by the 60-day look-back provision is to identify any increase in mortgage debt over the 60-day period preceding the purchase of securities.

This approach will make it more difficult for individuals to manipulate their net worth as calculated under our rules by borrowing against their primary residence shortly before seeking to qualify as an accredited investor, to take advantage of any positive equity in the primary residence. It should, therefore, significantly reduce the incentive for individuals to try to ''game'' the accredited investor net worth standard or for salespeople to attempt to induce individuals to take on incremental debt secured against their homes to facilitate a near-term investment in an offering. The new provision may impose additional costs and burdens on investors who increase the indebtedness secured by their primary residence shortly before seeking to invest in a Rule 506 offering if the proceeds of such refinancing are invested in the primary residence or are otherwise disposed of without acquiring an asset that is included in the net worth calculation, because in such circumstances the amount of such additional borrowing will be treated as a liability, but the proceeds will not be treated as an asset. If such an increase in liabilities causes an individual not to meet the $1,000,000 net worth test, and he or she does not otherwise qualify as an accredited investor, the individual may be excluded from investment opportunities if issuers are unable or unwilling to permit the participation of non-accredited investors. However, our approach should not present the same practical difficulties as requiring a full net worth calculation as of a date 30, 60, or 90 days before securities are sold to an investor, in which all assets and liabilities of the investor would have to be taken into account based on their values as of the specified date.

We have included a 60-day look-back period for this purpose because we believe a 60-day period is long enough to decrease the likelihood that parties will attempt to circumvent the standard by taking on new debt and waiting for the look-back period to expire, while minimizing the potential burden on investors who increase their mortgage debt for other reasons. Both letters that commented favorably on the possible requirement to calculate net worth as of a specified date before the sale of securities supported a 60-day look-back period.[52] Another alternative to address this practice would have been to provide that any debt secured by a primary residence that was incurred after the original date of purchase of the primary residence would have to be counted as a liability, whether or not the fair market value of the primary residence exceeded the value of the total amount of debt secured by the primary residence. We believe that such a standard would be overly restrictive and not provide for ordinary course changes to debt secured by a primary residence, such as refinancing and drawings on home equity lines.

(4) Transition Rules

We did not propose any rules for transition to the new accredited investor net worth standards. In the Proposing Release, we questioned whether any transition relief would be necessary or appropriate because the new standards became effective upon enactment of the Dodd-Frank Act on July 21, 2010. We did, however, solicit comment on whether we should adopt provisions to permit investors who ceased to qualify as accredited investors as a result of the changes effected by Section 413(a) to be treated as accredited for purposes of certain subsequent or ''follow-on'' investments.

Commentators generally supported a provision that would allow investors in that situation to participate in certain types of follow-on investments.[53] Some letters argued that such a provision would be appropriate to permit investors to protect their proportionate interest in an issuer or to exercise rights associated with an existing investment on the basis originally bargained for.[54] Others argued more broadly that investors should be permitted to maintain existing investment plans to avoid adverse tax or other consequences.[55] Commentators expressed a concern that issuers may be unwilling or unable to provide the information required to be provided to non-accredited investors under Rule 501(b)(1) of Regulation D,[56] and may simply exclude individuals from participating in securities offerings who no longer qualify as accredited investors.[57]

We are not persuaded that grandfathering or other transition provisions would be appropriate in all circumstances urged by commentators. In cases where securities would be purchased based on an investment decision made before enactment of the Dodd-Frank Act (for example, a capital call that is not subject to conditions under the investor's control, under an

[51] The fair market value of the primary residence is determined as of the time of sale of securities, even if the investor has changed his or her primary residence during the 60-day period. The rule provides an exception to the 60-day look-back provision for increases in debt secured by a primary residence where the debt results from the acquisition of the primary residence. Without this exception, an individual who acquires a new primary residence in the 60-day period before a sale of securities may have to include the full amount of the mortgage incurred in connection with the purchase of the primary residence as a liability, while excluding the full value of the primary residence, in a net worth calculation. The 60-day look-back provision is intended to address incremental debt secured against a primary residence that is incurred for the purpose of inflating net worth. It is not intended to address debt secured by a primary residence that is incurred in connection with the acquisition of a primary residence within the 60-day period.

[52] *See* comment letters from Cornell (suggesting a 60-day period) and NASAA (suggesting a 60- or 90-day period).

[53] *See* comment letters from ABA, Robert Edgerton, IAA, IPA, Georg Merkl, REISA, S&C, Sutherland Asbill & Brennan (''Sutherland'') and Steven J. Thayer. Only one comment letter objected to a transition provision, arguing that Congressional intent is evident from the fact that Section 413(a) was effective immediately upon enactment of the Dodd-Frank Act and that investors who no longer qualify as accredited investors under Section 413(a) may participate in follow-on offerings as non-accredited investors. *See* letter from Cornell.

[54] Comment letters identified rights such as pre-emptive rights, rights of first refusal and buy-sell agreements, as well as provisions that impose dilution or other adverse consequences on investors who do not invest in future rounds of financing.

[55] *See, e.g.,* comment letters from REISA (roll over of real estate investments) and Sutherland (roll over of private placement insurance contracts).

[56] 17 CFR 230.501(b)(1).

[57] Several letters also argued that issuers would not attempt to rely on the broader Section 4(2) exemption because it would create unnecessary legal risk related to the offering process. *See, e.g.,* comment letters from Sutherland and Steven J. Thayer.

agreement entered into before enactment of the Dodd-Frank Act), accredited investor status would have been determined at the time of the investment decision. A subsequent change in the investor's accredited status would not be relevant, so special accommodation would not be needed. With respect to new investment decisions, some situations for which commentators requested special treatment could raise significant investor protection concerns. For example, certain rights to acquire securities in existence before the enactment of the Dodd-Frank Act could involve different issuers than the original investment. In such circumstances, an investor may not have been sufficiently familiar with, or had an opportunity to conduct diligence with respect to, such different issuers at the time the investor met the accredited investor net worth standard and received such rights.

We note also that the change in the accredited investor net worth standard took effect in July 2010, upon enactment of Section 413(a) of the Dodd-Frank Act. No grandfathering or transition provisions were included in Section 413(a), so market participants have been operating under the new standard for over a year. In particular, where existing rights (for example, under derivative instruments such as options, warrants and convertibles) give rise to a continuous offering of the underlying securities, because no grandfathering was provided by statute, issuers have already had to address any concerns that arose upon the change in the accredited investor net worth standard.

We do believe, however, that limited grandfathering would be appropriate in connection with investors' exercise of certain pre-existing rights to acquire securities. The final rules, therefore, contain a provision under which the former accredited investor net worth test will apply to purchases of securities in accordance with a right to purchase such securities,[58] so long as (i) The right was held by a person on July 20, 2010, the day before the enactment of the Dodd-Frank Act; (ii) the person qualified as an accredited investor on the basis of net worth at the time the right was acquired; and (iii) the person held securities of the same issuer, other than the right, on July 20, 2010. For example, if an investor who qualified as accredited based on net worth at the time of her original investment owned common stock of an issuer on July 20, 2010, and on that date had pre-emptive rights to acquire additional common stock of that issuer, then when the issuer makes an offering of common stock that triggers the pre-emptive rights, the investor's net worth will be calculated as it was before enactment of the Dodd-Frank Act. Likewise, if the same investor owned Series A preferred stock of an issuer on July 20, 2010 and on that date had a right of first offer to purchase any equity securities offered by the issuer in a future sale, and the issuer proposed to sell Series B preferred stock at a future date, then the investor's net worth will be calculated as it was before enactment of the Dodd-Frank Act for purposes of exercising the right of first offer to purchase Series B preferred stock from the issuer. The provision is limited to persons who qualified as accredited investors on the basis of net worth at the time the relevant rights were originally acquired, and who held securities of the issuer other than the rights on July 20, 2010. We believe this approach strikes an appropriate balance between preserving investors' ability to exercise previously bargained-for rights, which otherwise may have been impaired by the change in accredited investor definition, and maintaining the investor protection benefits that Section 413(a) seeks to achieve.

(5) Other Issues Considered

In our Proposing Release, we requested comment on two additional issues discussed below, which we determined do not require any change in our rules.

Defining ''Primary Residence.'' We solicited comment on whether we should define the term ''primary residence'' for purposes of the rules we are amending. Our proposal did not contain a definition, consistent with our past policies in this area[59] and in an attempt to avoid unnecessary complexity in a rule that is intended to be straightforward in application.

Several comment letters agreed with us that the term ''primary residence'' is well understood, and does not require a legal definition.[60] Two comment letters advocated adoption of a legal definition, but did not agree on what definition should apply.[61]

We believe that ''primary residence'' has a commonly understood meaning as the home where a person lives most of the time. Consistent with the approach in Regulation D to reduce unnecessary complexity, we are not adopting a definition of the term ''primary residence.''

Proceeds of Debt Secured by Primary Residence Incurred to Invest in Securities. We solicited comment on whether the accredited investor definition should contain special provisions addressing the treatment of debt secured by a primary residence where the proceeds of the debt are used to invest in securities. Under the rules we are adopting today, debt secured by the primary residence will generally be excluded from the calculation of net worth to the extent of the estimated fair market value of the primary residence. NASAA had urged in an advance comment letter that netting of such debt not be permitted if proceeds of the debt were used to invest in securities. NASAA's concern was that, without such a rule, we would create an incentive for unscrupulous salespeople to induce investors with significant equity in their home to borrow against their home for the purpose of investing in unsuitable unregistered offerings.[62]

NASAA made this suggestion again in its comment letter on the Proposing Release, which was the only comment letter supporting this idea.[63] The other comment letters that addressed this issue opposed it.[64] Critics asserted that such a change would add substantial complexity to the compliance process because of the difficulties of tracing loan proceeds, and suggested that the concerns articulated by NASAA could be better and more effectively addressed through enforcement of existing Securities Act and broker-dealer rules.

[58] The grandfathering provision applies to the exercise of statutory rights, such as pre-emptive rights arising under state law; rights arising under an entity's constituent documents; and contractual rights, such as rights to acquire securities upon exercise of an option or warrant or upon conversion of a convertible instrument, rights of first offer or first refusal and contractual pre-emptive rights.

[59] None of our three other rules that use the term ''primary residence'' have a definition of the term. *See* 17 CFR 240.17a–3(a)(17)(i)(A), 17 CFR 247.701(d)(1)(A) and 17 CFR 210.2–01(c)(1)(ii)(A)(*4*). Regulation D also did not define the similar term ''principal residence,'' as used in Rule 501(e)(1)(i) of Regulation D. 17 CFR 230.501(e)(1)(i). Until now, Regulation D used the term ''principal residence'' to exclude any purchasers who are relatives or spouses of the purchaser and who share the same principal residence as the purchaser for purposes of calculating the number of purchasers in a Regulation D offering. As explained below, we are adopting amendments to change this reference from ''principal residence'' to ''primary residence'' so that it conforms to the terminology of the Dodd-Frank Act. *See* text accompanying note 66 below.

[60] *See, e.g.,* comment letters from ABA, S&C and Steven J. Thayer.

[61] *See* comment letter from Cornell (suggesting the definition in Internal Revenue Code § 121). A comment letter from an individual suggested that the Commission use the definition of the term ''primary residence'' of the Organization for Economic Cooperation and Development, at least for non-U.S. investors. *See* letter from Georg Merkl.

[62] Advance comment letter from NASAA.

[63] *See* letter from NASAA.

[64] *See, e.g.,* letters from ABA, REISA, S&C, Robert G. Edgerton, Georg Merkl and Steven J. Thayer.

After reviewing all the comment letters and further considering the issue, we have included the 60-day look-back provision discussed in Part II.A.3 above rather than a tracing provision. We believe that requiring incremental debt secured by the primary residence to be treated as a liability in the net worth calculation for 60 days after it is incurred will be a substantial disincentive to inappropriate sales practices, and will be much simpler and more certain in application than a tracing rule.[65]

B. Technical and Conforming Amendments

As proposed, we are changing the reference to ''principal residence'' currently in Rule 501(e)(1)(i) of Regulation D[66] to ''primary residence,'' to conform it to the new language in Rule 501. We received one letter supporting this change,[67] and no letters objecting to this change.

Also as proposed, we are amending the references to former Securities Act Section 4(6) in Form D and several of our rules to refer to Section 4(5), as former Section 4(6) was renumbered by Section 944(a)(2) of the Dodd-Frank Act. Specifically, we are amending Rule 144(a)(3)(viii) (definition of ''restricted securities'') and Rule 155(a) (integration of abandoned offerings) of the general Securities Act rules; Rule 500(a)(1) of the Securities Act form rules; Item 6 and the General Instructions to Form D under the Securities Act; Rule 17j–1(a)(8) (personal investment activities of investment company personnel) under the Investment Company Act, and Rule 204A–1(e)(7) (investment adviser codes of ethics) under the Investment Advisers Act.

We are also removing the authority citation preceding the Preliminary Notes to Regulation D.

III. Paperwork Reduction Act

The amendments we are adopting do not contain a ''collection of information'' requirement within the meaning of the Paperwork Reduction Act of 1995.[68] Accordingly, the Paperwork Reduction Act is not applicable.

IV. Cost-Benefit Analysis

A. Background and Summary of Proposals

As discussed above, we are adopting amendments to the accredited investor standards in our rules under the Securities Act to implement the requirements of Section 413(a) of the Dodd-Frank Act.

Section 413(a) of the Dodd-Frank Act requires the definitions of ''accredited investor'' in the Securities Act rules to exclude the value of a person's primary residence for purposes of determining whether the person qualifies as an ''accredited investor'' on the basis of having a net worth in excess of $1 million. Under the previous standard, individuals qualified as accredited investors if they had a net worth of more than $1 million, including the value of their primary residence. The substantive change to the net worth standard was effected by operation of the Dodd-Frank Act upon enactment; however, Section 413(a) also requires us to adjust the accredited investor definitions in our Securities Act rules to conform to the new standard. We are therefore adopting conforming amendments to Securities Act Rule 501(a)(5) of Regulation D and Securities Act Rule 215(e).

This analysis focuses on the costs and benefits to the economy of including the specific amendments described below, rather than on the costs and benefits of the new accredited investor net worth standard itself. The new standard was mandated by Congress in Section 413(a) of the Dodd-Frank Act and does not reflect the exercise of our rulemaking discretion.

The language we are adopting reflects our exercise of discretion in choosing a method to implement the statutory language set forth in Section 413(a) (namely, that net worth for purposes of accredited investor qualification should be calculated excluding the positive equity, if any, in the primary residence) over two other possible methods to implement the statutory language. As explained in our Proposing Release, these two other methods of implementation of the Section 413(a) language are: (1) excluding from net worth the fair market value of the primary residence, but including all indebtedness secured by the primary residence; and (2) excluding from net worth the fair market value of the primary residence and all indebtedness secured by the primary residence, even if it exceeds the fair market value of the primary residence. We also exercised our discretion in requiring that incremental debt secured by the primary residence that is incurred in the 60 days before the accredited investor determination is made (other than debt incurred in connection with the acquisition of a primary residence) must be treated as a liability in the net worth calculation (*i.e.,* may not be netted against the value of the residence, even if the value of the residence exceeds the amount of debt secured against it), and in adding a limited grandfathering provision under which, in certain circumstances, the former accredited investor net worth standard will apply in connection with acquisitions of securities pursuant to rights held by a person before enactment of the Dodd-Frank Act.

B. Comments on the Cost-Benefit Analysis

In the Proposing Release, we requested qualitative and quantitative feedback on the nature of the benefits and costs described and any benefits and costs we may have overlooked. No comment letters expressly addressed the cost-benefit analysis in the Proposing Release, but some comment letters cited certain costs and benefits consistent with those described in this release in the course of making a variety of suggestions and observations. For example, the rules that we are adopting, which may result in individuals' having to estimate the value of their primary residence in order to determine whether the amount of debt secured against the residence exceeds the estimated fair market value of the residence, was criticized by some commentators on the basis that it would increase compliance costs.[69] As indicated above, individuals were required to estimate the value of their primary residence to calculate net worth as defined before enactment of the Dodd-Frank Act, and the Commission is not aware that this caused a problem for individuals seeking to qualify as accredited investors on that basis. Others asserted that the failure to include grandfathering or other transition

[65] The standards governing broker-dealer sales practices will also apply in relation to the activities of broker-dealer personnel. NASD (now known as FINRA) Rule 2310 requires registered representatives of broker-dealers to make only suitable recommendations to their customers. *See* Financial Industry Regulatory Authority, NASD Rule 2310: Recommendations to Customers (Suitability) (2010) (available at *http://finra.complinet.com/en/display/display_main.html?rbid=2403&element_id=3638*). Depending on the facts and circumstances, such behavior may also rise to the level of fraud under Section 17(a) of the Securities Act, 15 U.S.C. 77q(a), or Section 10(b) of the Securities Exchange Act, 15 U.S.C. 78j(b), or the Commission's antifraud rules issued under those statutory provisions.

[66] For purposes of calculating the number of purchasers in a Regulation D offering, Rule 501(e)(1)(i) uses the term ''principal residence'' to exclude any purchasers who are relatives or spouses of a purchaser of a Regulation D security and who share the same ''principal residence'' as the purchaser of the security. 17 CFR 230.501(e)(1)(i).

[67] *See* letter from ABA.

[68] 44 U.S.C. 3501–3521.

[69] *See* letters from IPA, Georg Merkl.

provisions in the new rules would impose costs on investors (who may be unable to protect their existing investments from dilution or to exercise pre-existing rights) and on issuers (which may have a harder time raising capital).[70] We have attempted to respond to that comment by providing for limited grandfathering.

C. Benefits

We believe the rules we are adopting provide the most appropriate method to implement Section 413(a), and will result in the following benefits compared to other possible methods to implement Section 413(a):

• We believe the final amendments most accurately reflect the manner in which individual net worth has traditionally been determined and understood, and what is commonly understood by ''the value of a person's primary residence.'' We believe investors and issuers will benefit from implementing rules that are easy to understand and consistent with conventional net worth calculation concepts through reduced transaction costs relative to other alternatives.[71]

• The amendments will result in a larger pool of accredited investors than the first alternative method of implementation, under which all indebtedness secured by the primary residence would be included as a liability in the net worth calculation. The available data suggest that there is no material difference in the size of the accredited investor pool between the alternative we are adopting and the second alternative method, under which all indebtedness secured by the primary residence would be excluded from the net worth calculation, even if in excess of the estimated value of the primary residence.[72] To the extent that exempt offerings to accredited investors are less costly for issuers to complete than registered offerings, a larger pool of accredited investors that may participate in these offerings could result in cost savings for issuers conducting these offerings.

• The additional provision in the final rules that requires incremental debt secured against the primary residence to be treated as a liability in the net worth calculation for 60 days after it is incurred will eliminate individuals' ability to inflate their net worth for purposes of the accredited investor definition by taking on incremental debt secured against their primary residence shortly before securities are sold to them. The look-back period will reduce incentives to manipulate net worth calculations, should make investors whose net worth reaches the accredited investor threshold only if value of available home equity is included as part of a net worth calculation less susceptible to high-pressure sales tactics, and generally will provide investor protection benefits to households which, under the criteria of Section 413(a), are less able to bear the economic risk of an investment in unregistered securities.

• The provision in the final rules will apply the pre-Dodd-Frank Act accredited investor net worth test to acquisitions of securities pursuant to rights held on July 20, 2010 by persons who qualified as accredited investor on the basis of net worth at the time the rights were acquired and who held securities of the issuer other than the rights on July 20, 2010. Under this provision, investors who no longer qualify as accredited investors under the new net worth standard, but who would qualify under the former standard, will qualify as accredited investors in that limited context. This should provide a benefit to both investors and issuers, in that investors who have ceased to qualify as accredited investors because of the change in net worth standard will be able to exercise pre-existing rights even if the issuer is unable or unwilling to permit exercise by non-accredited investors, and at lower cost than if the individuals did not qualify as accredited investors.

D. Costs

Like our analysis of the benefits, our analysis of the costs focuses on the costs attributable to our adopted language on how to treat the primary residence and debt secured by the primary residence in the calculation of net worth, including the treatment of debt incurred in the 60 days before the net worth calculation is performed, and on the costs attributable to the transition provision included in the final rules.

Many of the potential costs of our amendments are dependent on a number of factors. Costs may include the following:

• Our amendments involve more complex calculations than the two alternative possible approaches we have identified.[73] Although no third party appraisal is required, our amendments may require estimating the fair market value of the investor's primary residence to determine whether it exceeds the amount of indebtedness secured by the primary residence. In contrast, both of the alternative net worth calculations could be performed merely by ignoring the primary residence as an asset in determining the net worth amount, and in the case of the second alternative method of implementation also ignoring the indebtedness secured by the primary residence. However, this would appear to be a manageable cost. Investors had to estimate the fair market of their primary residence to calculate net worth under the net worth standard for accredited investor that applied before enactment of the Dodd-Frank Act, and the Commission is not aware that market participants found the need for such an estimate to be problematic.

• Where indebtedness secured by the primary residence has increased in the 60 days preceding the net worth calculation, other than in connection with the acquisition of the primary residence, our amendments will also require determining the amount of that increase, and treating that amount as a liability in the net worth calculation.

• The amendments could encourage investors (or incentivize salespeople to encourage investors) to take on indebtedness secured by their primary

[70] *See e.g.,* letters from ABA, Investment Advisers Association, Investment Program Association, Real Estate Investment Securities Association, S&C, Sutherland Asbill & Brennan and Steven J. Thayer.

[71] *See* notes 35–36 above and accompanying text.

[72] Using data from the 2007 Federal Reserve Board Survey of Consumer Finances, our Division of Risk, Strategy and Financial Innovation estimates that in 2007 approximately 8.3 million households (7.2% of U.S. households) would have qualified as accredited under the standards in our new rules on the basis of net worth, annual income or both. Approximately 7.6 million of such households (6.5% of U.S. households) would have qualified on the basis of net worth. If we adopted a standard based on an alternative method of implementation of Section 413(a) that excludes from the net worth calculation the fair market value of the primary residence but not any indebtedness secured by the primary residence, only 7.8 million households (6.7%) would have qualified as accredited. Conversely, if we adopted a standard under which both the fair market value of the primary residence and all indebtedness secured by the primary residence, even indebtedness in excess of the fair market value of the primary residence, were excluded from the net worth calculation, the number of accredited U.S. households would have been the same as under the approach we are adopting. More information regarding the survey may be obtained at *http://www.federalreserve.gov/pubs/oss/oss2/scfindex.html. See also* note 46 above and accompanying text. Staff at the Federal Reserve also informed us that based on an unpublished 2009 supplemental Survey of Consumer Finances, which surveyed the same households that were surveyed in 2007, estimates of the number of qualifying households in 2009 under the various methods of implementation of Section 413(a) are qualitatively similar to estimates derived from the 2007 survey. For both 2007 and 2009, the data suggest that the number of households nationwide that qualify as accredited investors is not affected by whether the net worth calculation includes or excludes the underwater portion of debt secured by the primary residence.

[73] Some commentators objected to the proposal on this basis. *See* note 39 and accompanying text.

residence with the primary motive of inflating their net worth in order to satisfy the new accredited investor net worth standard. As noted above, we believe the requirement to treat as a liability any incremental debt secured by the primary residence that is incurred in the 60 days before the accredited investor determination will reduce this incentive by requiring 60 days to pass before assets obtained with the proceeds of incremental indebtedness secured by the primary residence could result in an increase in net worth under the rule.

• Our amendments require that an investor's net worth calculation include as a liability any amount by which the indebtedness secured by the investor's primary residence exceeds the estimated fair market value of the residence. It is possible that our amendments will result in a smaller pool of eligible accredited investors than if we implemented an alternative approach that would exclude all indebtedness secured by the primary residence, even amounts in excess of the value of the residence. The data available to us do not support this view. The 2007 Federal Reserve Board Survey of Consumer Finances suggests that there is no difference in the number of households that would have qualified under the two standards in 2007 (that is, subject to sampling error, there were no households that had a net worth of $1 million or less if the underwater portion of the mortgage was considered as a liability but greater than $1 million if it was disregarded).[74] Staff at the Federal Reserve have informed us that based on an unpublished 2009 supplemental Survey of Consumer Finances, estimates of the number of qualifying households in 2009 under the two methods of implementation are qualitatively similar to estimates derived from the 2007 survey. Nevertheless, if our amendments result in a smaller pool of accredited investors than would otherwise be the case, that could result in increased costs for companies and funds that are seeking accredited investors to participate in their exempt offerings.

• The treatment of indebtedness secured by the primary residence that is incurred within 60 days before the accredited investor determination may result in some individuals failing to meet the $1 million net worth threshold for 60 days after entering into new financing or refinancing arrangements, who would have met such threshold if no look-back provision applied, if the proceeds of such refinancing are invested in the primary residence or are otherwise disposed of without acquiring an asset that is included in the net worth calculation. Such individuals may lose investment opportunities if issuers are not willing or able to allow them to participate in offerings conducted during the period in which they do not qualify as accredited investors.

• The transition provision we are including will, in limited circumstances, permit investors who do not qualify as accredited investors under the new net worth standard, but who do qualify under the previous standard, to acquire securities pursuant to pre-existing rights without the protections afforded to non-accredited investors. This will impose costs to the extent that such investors would have benefited from such protections. The transition provision applies only in limited circumstances, which may prevent some investors from participating in some offerings and may cause issuers to incur the cost of seeking out other investors.

V. Consideration of Burden on Competition and Promotion of Efficiency, Competition and Capital Formation

Section 2(b) of the Securities Act requires us, when engaging in rulemaking where we are required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. In the Proposing Release, we considered our proposed amendments and requested comment on their potential impact in light of those standards. We believe the amendments adopted today may facilitate capital formation and promote efficiency, relative to an alternative method of implementation that would exclude only the fair market value of the primary residence from the net worth calculation and would not provide grandfathering to facilitate exercise of pre-existing rights under certain circumstances. We do not anticipate that the amendments will have any effects on competition.

We believe the amendments impose no significant burden on efficiency, competition and capital formation beyond any that may have been imposed by enactment of the Dodd-Frank Act. As discussed in the cost-benefit analysis in Part IV above, however, the language of Section 413(a) could be subject to alternative methods of implementation if our rules do not provide standards for how to calculate the value of the primary residence. In this regard, we added explanatory language to our rules on how to treat the primary residence and indebtedness secured by the primary residence in determining whether a person qualifies under the accredited investor net worth standard. We believe these amendments further the purposes underlying the requirements of Section 413(a) of the Dodd-Frank Act.

The adopted explanatory language requires that in calculating net worth:

• The primary residence not be included as an asset; and

• Debt secured by the primary residence not be included as a liability, except that

• If the amount of debt secured by the primary residence has increased in the 60 days preceding the accredited investor determination, other than in connection with the acquisition of the residence, the amount of such increase must be included as a liability; and

• If the amount of debt secured by the primary residence exceeds the estimated fair market value of the primary residence, the amount of such excess must be included as a liability.

As described above, we believe the approach we are adopting is generally consistent with what is commonly understood by ''the value of a person's primary residence,'' and is preferable to either of the two alternative approaches. The addition of provisions related to any net increase in the amount of debt secured by the primary residence in the 60 days preceding a sale of securities is a straightforward provision to safeguard against manipulation of the general rule. Several comment letters addressed the burden and uncertainty on investors and issuers inherent in an approach that relies on a determination of the fair market value of the primary residence, which is necessary in order to determine whether any indebtedness secured by the primary residence exceeds the value of the residence.[75] These letters favored an approach that excludes from the net worth calculation both the value of the primary residence and all indebtedness secured by the primary residence, which they argue would provide investors and their advisors with certainty regarding the net worth calculation. We believe, however, that it would be inappropriate to implement Section 413(a) in this way, because it would result in a higher net worth for investors with ''underwater'' mortgages as compared to the same investors' basic net worth calculated without excluding the value of the

[74] *See* note 46 above.

[75] *See* letters from IPA, Georg Merkl, REISA and Steven J. Thayer.

primary residence.[76] Furthermore, we note that, before the enactment of the Dodd-Frank Act, a net worth calculation in connection with determining accredited investor status required estimating the fair market value of the primary residence. The existing pool of accredited investors and issuers should be familiar with this kind of estimate, which should mitigate the burdens cited in these letters.

The final amendments may result in a pool of accredited investors that is larger than the first alternative approach, which would not net out debt secured by the primary residence.[77] To the extent that exempt offerings to accredited investors are less costly for issuers to complete compared to registered offerings, issuers conducting these exempt offerings under the new amendments could potentially experience greater cost savings than under the first alternative standard. Based on the available data, the second alternative approach to excluding the value of the primary residence under Section 413(a) (excluding from net worth the fair market value of the primary residence and all indebtedness secured by the primary residence, including all such indebtedness in excess of the fair market value of the property) would not result in a measurably larger pool of eligible accredited investors than under our amendments, and therefore would not appear to result in additional cost savings compared to our amendments.[78]

We believe that the provisions in the final rules dealing with the treatment of debt secured by the primary residence will not significantly affect the costs of compliance for most market participants, and therefore will not have a significant effect on efficiency or capital formation. Where the estimated fair market value of the primary residence may be less than the amount of debt secured by the residence, individuals will have to estimate such fair market value in order to establish whether any portion of the debt secured by the primary residence must be included as a liability in the net worth calculation. The rules require an estimated fair market value only; no third party valuation will be required.

There is some further complexity to the net worth calculation for individuals who have increased the amount of debt secured by their primary residence in the 60 days before seeking to qualify as accredited investors, in that they will be required to treat the incremental debt as a liability. This provision may also result in some individuals' ceasing to satisfy the $1 million net worth threshold for 60 days after entering into new financing arrangements that increase the amount of indebtedness secured by their primary residence, if the proceeds of such financing are invested in the primary residence or are otherwise disposed of without creating an asset for net worth purposes. This may result in the individuals' losing investment opportunities, and issuers' losing qualified investors during such 60-day period.

Several commentators expressed concern that not providing grandfathering could impose costs on both investors and issuers, including increased transaction costs for offerings that no longer qualify for exemption or that include non-accredited investors;[79] dilution or other impairment of existing investments for investors that are excluded from follow-on investment opportunities because they no longer qualify as accredited;[80] investors being forced to abandon investment strategies;[81] investors losing the benefit of previously bargained-for rights;[82] burdens on issuers because existing investors may be ineligible to make follow-on investments;[83] and the impact on private company capital formation attributable to a decrease in the number of accredited investors and the withdrawal of broker-dealers from the private placement market.[84]

While the Commission acknowledges these potential costs, there are no available data tracking Regulation D investment by household, so we cannot develop quantitative estimates of the economic impact of eliminating from the pool of accredited investors the households that no longer qualify based on the new net worth standard, or of providing exemptive or other relief from the new standard, which would keep such households in the accredited investor pool. This impact arises principally as a result of the enactment of Section 413(a) of the Dodd-Frank Act and only to a limited extent from our exercise of rulemaking discretion.

The final rules provide for limited transition relief by applying the former accredited investor net worth test to acquisitions of securities pursuant to rights to acquire securities, if the rights were held on July 20, 2010, the person qualified as an accredited investor on the basis of net worth at the time the rights were acquired, and the person held securities of the issuer other than the rights on July 20, 2010. We believe this provision strikes an appropriate balance between preserving investors' ability to exercise previously bargained-for rights, which otherwise may have been impaired by the change in the accredited investor definition, and maintaining the investor protection benefits that Section 413(a) seeks to achieve.

Where the transition provision is unavailable, the new accredited investor net worth test will apply. This may prevent some investors from participating in some offerings and cause issuers to seek out other investors. However, we believe the final rules will provide benefits for individuals who would meet the $1 million accredited investor net worth standard only if their home equity were taken into account, to the extent they are protected by the enhanced disclosures required in registered offerings and offerings involving non-accredited investors, or become ineligible to participate in investments in restricted securities pursuant to Regulation D or Section 4(5), which are generally substantially less liquid than securities issued in registered offerings and may entail substantial additional risks.

We do not believe the amendments affect competition beyond what is required by Section 413(a). The amendments would apply equally to all issuers participating in exempt offerings under Regulation D and Section 4(5), in respect of all of their investors. We also do not believe that Section 413(a) itself places a burden on competition that our rules should ameliorate, except to the extent provided by the transition provision.

In addition to the effects described above, the amendments may positively affect efficiency and capital formation in other ways by providing a clear standard to calculate and exclude the value of the primary residence. This should generally benefit issuers and investors by making the requirements of Section 413(a) easier to apply and comply with, reducing the risk of sales to investors who do not meet the new accredited investor net worth standards, as well as the risk that an issuer may violate Securities Act registration requirements. Clear rules will also serve to promote efficiency by reducing the risk of issuers' inability to raise capital because of uncertainty in interpreting our rules. Greater clarity and certainty in our accredited investor net worth standards also should foster greater

[76] *See* note 42 above and accompanying text.

[77] *See* note 72 above and accompanying text.

[78] *See* note 46 above and accompanying text.

[79] Georg Merkl; REISA.

[80] Georg Merkl; S&C; Sutherland; ABA; IPA; REISA; IAA; Steven J. Thayer.

[81] Sutherland; IAA.

[82] Robert G. Edgerton; S&C; IAA; Steven J. Thayer.

[83] IPA; REISA; IAA.

[84] REISA.

confidence in our private placement markets and ultimately reduce the cost of capital, promoting increased capital formation, especially small business capital formation, which Regulation D was originally designed to promote.

VI. Final Regulatory Flexibility Act Analysis

This final regulatory flexibility analysis has been prepared in accordance with the Regulatory Flexibility Act.[85] This final regulatory flexibility analysis relates to amendments to our accredited investor rules under the Securities Act to implement the requirements of Section 413(a) of the Dodd-Frank Act.

A. Reasons for and Objectives of the Amendments

The reason for the amendments is to implement the requirements of the Dodd-Frank Act, primarily the requirements of Section 413(a) of that statute. Section 413(a) requires the definitions of ''accredited investor'' in the Securities Act rules to exclude the value of a person's primary residence for purposes of determining whether the person qualifies as an ''accredited investor'' on the basis of having a net worth in excess of $1 million. Under the previous standard, individuals qualified as accredited investors if they had a net worth of more than $1 million, including the value of their primary residence. The change to the net worth standard was effective upon enactment by operation of the Dodd-Frank Act; but Section 413(a) also requires us to revise the Securities Act accredited investor definitions to conform to the new standard, which we are doing by revising Securities Act Rule 501(a)(5) of Regulation D and Rule 215(e).

Our primary objective is to implement the requirements for a new accredited investor net worth standard in Section 413(a) of the Dodd-Frank Act. We note that Section 413(a) does not prescribe the method for calculating the value of the primary residence, nor does it address specifically the treatment of indebtedness secured by the residence for purposes of the net worth determination. Accordingly, we are exercising our discretion by providing explicit requirements regarding the treatment of the primary residence and indebtedness secured by the primary residence in the calculation of net worth. We believe this standard is generally consistent with conventional and commonly understood methods of determining net worth, and what is commonly understood by ''the value of a person's primary residence'' (with the addition of a provision for the special treatment of debt secured by a primary residence that is incurred in the 60 days preceding a sale of securities), and is preferable to other possible methods of implementation of the statutory language, such as: (1) Excluding from net worth the fair market value of the primary residence without netting out indebtedness secured by the primary residence; and (2) excluding from net worth the fair market value of the primary residence and all indebtedness secured by the primary residence, regardless of whether it exceeds the fair market value of the primary residence.

We are describing how to treat the primary residence and indebtedness secured by the primary residence in the calculation of net worth, so that implementation proceeds efficiently, with a minimum amount of uncertainty. We believe these amendments will help to reduce the cost of exempt offerings under Regulation D and Section 4(5), relative to the cost of such transactions with less specific implementation of Section 413(a), by reducing uncertainty among issuers and investors in applying the new accredited investor net worth standard mandated by Section 413(a) of the Dodd-Frank Act. By providing greater specificity, we are attempting to remove a possible impediment to issuers using these forms of offering, thereby potentially lowering the cost of capital generally and facilitating capital formation, especially for smaller issuers, while protecting investors.

The final amendments also address incremental indebtedness secured by the primary residence that is incurred within 60 days before the relevant sale of securities. This provision will eliminate individuals' ability to artificially inflate their net worth for purposes of the accredited investor definition by taking on incremental debt secured against their residence shortly before participating in an exempt offering.

The final amendments also include a transition provision, under which the former accredited investor net worth test will apply to acquisitions of securities pursuant to rights to acquire securities, if the rights were held on July 20, 2010, the person qualified as an accredited investor on the basis of net worth at the time the rights were acquired, and the person held securities of the issuer other than the rights on July 20, 2010. This provision should facilitate the exercise of rights held at the time of enactment of the Dodd-Frank Act by persons who would qualify as accredited investors under the former test but not the new test in limited circumstances that should not give rise to significant investor protection concerns.

B. Significant Issues Raised by Public Comments

In the Proposing Release, we requested comment on every aspect of the initial regulatory flexibility analysis (''IRFA''), including the number of small entities that would be affected by the proposed amendments, the nature of the impact, how to quantify the number of small entities that would be affected, and how to quantify the impact of the proposed amendments. We did not receive comments specifically addressing the IRFA.

C. Small Entities Subject to the Rule

The amendments will affect issuers that are small entities, because issuers that are small entities must believe or have a reasonable basis to believe that prospective investors are accredited investors at the time of the sale of securities if they are relying on the definition of ''accredited investor'' for an exemption under Regulation D or Section 4(5). For purposes of the Regulatory Flexibility Act under our rules, an issuer is a ''small business'' or ''small organization'' if it has total assets of $5 million or less as of the end of its most recent fiscal year.[86] For purposes of the Regulatory Flexibility Act, an investment company is a small entity if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year. The amendments apply to all issuers that rely on the accredited investor net worth standards in the exemptions to Securities Act registration in Regulation D and Section 4(5).

All issuers that sell securities in reliance on Regulation D and Section 4(5) must file a notice on Form D with the Commission. However, the vast majority of companies and funds filing notices on Form D are not required to provide financial reports to the Commission. For the fiscal year ended September 30, 2010, 22,941 issuers filed a notice on Form D. We believe that many of these issuers are small entities, but we currently do not collect information on total assets of all issuers to determine if they are small entities for purposes of this analysis. We note, however, that for the fiscal year ended September 30, 2010, the median offering size for offerings under Regulation D was approximately $1 million, which is

[85] 5 U.S.C. 601 *et seq.*

[86] 17 CFR 230.157.

consistent with the prevalence of small issuers.

D. Projected Reporting, Recordkeeping and Other Compliance Requirements

None of our amendments will increase the information or time required to complete the Form D that must be filed with the Commission in connection with sales under Regulation D and Section 4(5). Our amendments adjust our rules so they comply with the requirements of Section 413(a) of the Dodd-Frank Act, including adding an anti-evasion provision with respect to debt secured by a primary residence incurred within the 60 days before a sale of securities and a limited transition provision. The rules would not require any further disclosure than is currently required in offerings made in reliance on Regulation D and Section 4(5). To the extent that the amendments provide standards on how to treat the primary residence and indebtedness secured by the primary residence in calculating net worth under the accredited investor definition, we believe that they will eliminate potential ambiguity and facilitate compliance with the accredited investor net worth standard mandated by the Dodd-Frank Act.

E. Agency Action To Minimize Effect on Small Entities

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish the stated objective of our amendments, while minimizing any significant adverse impact on small entities. In connection with the amendments, we considered the following alternatives:

- The establishment of different compliance or reporting requirements or timetables that take into account the resources available to small entities;
- The clarification, consolidation, or simplification of the rule's compliance and reporting requirements for small entities;
- The use of performance rather than design standards; and
- An exemption from coverage of the amendments, or any part thereof, for small entities.

With respect to the establishment of special compliance requirements or timetables under our amendments for small entities, we do not think this is feasible or appropriate. Our amendments do not establish any compliance requirements or timetables for compliance that we could adjust to take into account the resources available to small entities. Moreover, the amendments are designed to eliminate uncertainty among issuers and investors that may otherwise result from inserting only the bare operative language from Section 413(a) of the Dodd-Frank Act in our rules. Providing greater specificity in our rules should provide issuers, including small entities, and investors with greater certainty concerning the availability of the Regulation D and Section 4(5) exemptions to Securities Act registration that rely on the accredited investor definition. This should facilitate efficient access to capital for both large and small entities consistent with investor protection.

Likewise, with respect to potentially clarifying, consolidating, or simplifying compliance and reporting requirements, the amendments do not impose any new compliance or reporting requirements or change any existing requirements.

With respect to using performance rather than design standards, we do not believe doing so in this context would be consistent with our objective or with the statutory requirement. Our amendments seek to specify how issuers should calculate the value of a person's primary residence for purposes of excluding its value in determining whether the person qualifies as an accredited investor on the basis of net worth. Specifying that issuers should calculate net worth by excluding the value of the primary residence and leaving the method of calculation to the discretion of the issuer, as a performance standard would, frustrates our purpose and denies small entities and others of the benefits of certainty that the amendments are designed to provide.

With respect to exempting small entities from coverage of these amendments, we believe such a provision would have no impact on the regulatory burdens on small entities, since Section 413(a) became effective upon enactment. Our amendments are designed to provide for the protection of investors without unduly burdening both issuers and investors, including small entities and their investors. They also are designed to minimize confusion among issuers and investors. Exempting small entities could potentially increase their regulatory burdens and increase confusion. We have endeavored to minimize the regulatory burden on all issuers, including small entities, while meeting our regulatory objectives.

VIII. Statutory Authority and Text of the Amendments

The amendments described in this release are being adopted under the authority set forth in Sections 2(a)(15), 3(b), 4(2), 19 and 28 of the Securities Act, as amended,[87] Section 38(a) of the Investment Company Act,[88] Section 211(a) of the Investment Advisers Act[89] and Sections 413(a) and 944(a) of the Dodd-Frank Act.

List of Subjects in 17 CFR Parts 230, 239, 270 and 275

Reporting and recordkeeping requirements, Securities.

For the reasons set out above, the Commission amends Title 17, Chapter II of the Code of Federal Regulations as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

■ 1. The general authority citation for Part 230 is revised to read as follows:

Authority: 15 U.S.C. 77b, 77b note, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z–3, 77sss, 78c, 78d, 78j, 78*l*, 78m, 78n, 78o, 78o–7 note, 78t, 78w, 78*ll*(d), 78mm, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

§ 230.144 [Amended]

■ 2. Amend § 230.144, paragraph (a)(3)(viii), by removing the reference to ''4(6) (15 U.S.C. 77d(6))'' and adding in its place ''4(5) (15 U.S.C. 77d(5))''.

§ 230.155 [Amended]

■ 3. Amend § 230.155, paragraph (a), by removing the references to ''4(6)'' and ''77d(6)'' and adding in their places ''4(5)'' and ''77d(5)'', respectively.

■ 4. Amend § 230.215 by revising paragraph (e) to read as follows:

§ 230.215 Accredited investor.

* * * * *

(e) Any natural person whose individual net worth, or joint net worth with that person's spouse, exceeds $1,000,000.

(1) Except as provided in paragraph (e)(2) of this section, for purposes of calculating net worth under this paragraph (e):

(i) The person's primary residence shall not be included as an asset;

(ii) Indebtedness that is secured by the person's primary residence, up to the estimated fair market value of the primary residence at the time of the sale of securities, shall not be included as a liability (except that if the amount of such indebtedness outstanding at the time of the sale of securities exceeds the amount outstanding 60 days before such

[87] 15 U.S.C. 77b(a)(15), 77c(b), 77d(2), 77s and 77z–3.

[88] 15 U.S.C. 80a–38(a).

[89] 15 U.S.C. 80b–11(a).

time, other than as a result of the acquisition of the primary residence, the amount of such excess shall be included as a liability); and

(iii) Indebtedness that is secured by the person's primary residence in excess of the estimated fair market value of the primary residence shall be included as a liability.

(2) Paragraph (e)(1) of this section will not apply to any calculation of a person's net worth made in connection with a purchase of securities in accordance with a right to purchase such securities, provided that:

(i) Such right was held by the person on July 20, 2010;

(ii) The person qualified as an accredited investor on the basis of net worth at the time the person acquired such right; and

(iii) The person held securities of the same issuer, other than such right, on July 20, 2010.

* * * * *

■ 5. Amend Part 230 by removing the authority citation after the undesignated center heading ''Regulation D—Rules Governing the Limited Offer and Sale of Securities Without Registration Under the Securities Act of 1933'' and preliminary notes preceding §§ 230.501 to 230.508.

■ 6. Amend § 230.501 by:

■ a. Revising paragraph (a)(5); and

■ b. Removing the word ''principal'' and adding in its place the word ''primary'' in paragraph (e)(1)(i).

The revision reads as follows:

§ 230.501 Definitions and terms used in Regulation D.

* * * * *

(a) * * *

(5) Any natural person whose individual net worth, or joint net worth with that person's spouse, exceeds $1,000,000.

(i) Except as provided in paragraph (a)(5)(ii) of this section, for purposes of calculating net worth under this paragraph (a)(5):

(A) The person's primary residence shall not be included as an asset;

(B) Indebtedness that is secured by the person's primary residence, up to the estimated fair market value of the primary residence at the time of the sale of securities, shall not be included as a liability (except that if the amount of such indebtedness outstanding at the time of sale of securities exceeds the amount outstanding 60 days before such time, other than as a result of the acquisition of the primary residence, the amount of such excess shall be included as a liability); and

(C) Indebtedness that is secured by the person's primary residence in excess of the estimated fair market value of the primary residence at the time of the sale of securities shall be included as a liability;

(ii) Paragraph (a)(5)(i) of this section will not apply to any calculation of a person's net worth made in connection with a purchase of securities in accordance with a right to purchase such securities, provided that:

(A) Such right was held by the person on July 20, 2010;

(B) The person qualified as an accredited investor on the basis of net worth at the time the person acquired such right; and

(C) The person held securities of the same issuer, other than such right, on July 20, 2010.

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

■ 7. The general authority citation for Part 239 is revised to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77sss, 78c, 78*l*, 78m, 78n, 78*o*(d), 78o–7 note, 78u–5, 78w(a), 78*ll*, 78mm, 80a–2(a), 80a–3, 80a–8, 80a–9, 80a–10, 80a–13, 80a–24, 80a–26, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

§ 239.500 [Amended]

■ 8. Amend § 239.500 by removing the reference to ''4(6)'' and adding in its place ''4(5)'' in the heading and in the first sentence of paragraph (a)(1).

■ 9. Amend Item 6 in Form D (referenced in § 239.500) by:

■ a. Removing the phrase ''Securities Act Section 4(6)'' and adding in its place ''Securities Act Section 4(5)'' next to the appropriate check box; and

■ b. Removing the reference to ''4(6)'' and adding in its place ''4(5)'' in the first sentence of the first paragraph of the General Instructions.

Note: The text of Form D does not, and the amendments will not, appear in the Code of Federal Regulations.

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

■ 10. The general authority citation for Part 270 continues to read in part as follows:

Authority: 15 U.S.C. 80a–1 *et seq.,* 80a–34(d), 80a–37, and 80a–39, unless otherwise noted.

* * * * *

§ 270.17j–1 [Amended]

■ 11. Amend § 270.17j–1, paragraph (a)(8), by removing the references to ''4(6)''and ''77d(6)'' and adding in their places ''4(5)'' and ''77d(5)'', respectively.

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

■ 12. The authority citation for Part 275 continues to read in part as follows:

Authority: 15 U.S.C. 80b–2(a)(11)(G), 80b–2(a)(11)(H), 80b–2(a)(17), 80b–3, 80b–4, 80b–4a, 80b–6(4), 80b–6a, and 80b–11, unless otherwise noted.

* * * * *

§ 275.204a–1 [Amended]

■ 13. Amend § 275.204a–1, paragraph (e)(7) by removing the references to ''4(6)'' and ''77d(6)'' and adding in their places ''4(5)''and ''77d(5)'', respectively.

By the Commission.

Dated: December 21, 2011.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–33333 Filed 12–28–11; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 524

[Docket No. FDA–2011–N–0003]

Ophthalmic and Topical Dosage Form New Animal Drugs; Ivermectin Topical Solution

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Cross Vetpharm Group, Ltd. The supplemental ANADA adds claims for persistent effectiveness against various species of external and internal parasites when cattle are treated with a topical solution of ivermectin.

DATES: This rule is effective December 29, 2011.

FOR FURTHER INFORMATION CONTACT: John K. Harshman, Center for Veterinary Medicine (HFV–170), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, (240) 276–8197, email: *john.harshman@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Cross Vetpharm Group, Ltd., Broomhill Rd., Tallaght, Dublin 24, Ireland, filed a supplement to ANADA 200–318 for

BIMECTIN (ivermectin) Pour-On, a topical solution used on cattle to control infestations of certain species of external and internal parasites. The supplemental ANADA adds claims for persistent effectiveness against various species of external and internal parasites that were approved for the pioneer product with 3 years of marketing exclusivity (69 FR 501, January 6, 2004). The supplemental ANADA is approved as of September 21, 2011, and 21 CFR 524.1193 is amended to reflect the approval.

Approval of this supplemental ANADA did not require review of additional safety or effectiveness data or information. Therefore, a freedom of information summary is not required.

The Agency has determined under 21 CFR 25.33 that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 524

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 524 is amended as follows:

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 524 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 524.1193 [Amended]

■ 2. In § 524.1193, in paragraph (b)(1), in numerical sequence add '', and 061623''; and in paragraph (b)(2), remove ''061623,''.

Dated: December 22, 2011.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 2011–33382 Filed 12–28–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 158

[Docket ID DOD–2009–OS–0029]

RIN 0790–AI48

Operational Contract Support

AGENCY: Department of Defense (DoD).

ACTION: Interim final rule.

SUMMARY: This part establishes policy, assigns responsibilities, and provides procedures for operational contract support (OCS), including OCS program management, contract support integration, and integration of defense contractor personnel into contingency operations outside the United States.

An interim final rule is required to procedurally close gaps and ensure the correct planning, oversight and management of DoD contractors supporting contingency operations, by updating the existing outdated policy. The existing policies are causing significant confusion, as they do not reflect current practices and legislative mandates. The inconsistencies between local Geographic Command guidance and the DoD-wide policies and the Defense Federal Acquisition Regulations Supplement are confusing for those in the field—in particular, with regard to policy on accountability and visibility requirements. Given the sustained employment of a large number of contractors in the U.S. Central Command area of responsibility; the importance of contractor oversight in support of the counter-insurgency operation in Afghanistan; and, the requirement to effectively manage contractors during the transition in Iraq, this issue has become so significant that DoD needs to revise the DoD-wide policies as a matter of urgency.

DATES: This rule is effective December 29, 2011. Comments must be received by February 27, 2012.

ADDRESSES: You may submit comments, identified by docket number and or/RIN number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, 2nd floor, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Shanna Poole, (703) 692–3032.

SUPPLEMENTARY INFORMATION: The revised policies include: (1) Incorporation of lessons learned from current operations; (2) requirements for the development of contractor oversight plans; (3) requirements for adequate military personnel necessary to execute contract oversight; and, (4) standards of medical care for deployed contractors.

Regulatory Procedures

Executive Order 12866, ''Regulatory Planning and Review'' and Executive Order 13563, ''Improving Regulation and Regulatory Review''

It has been certified that 32 CFR part 158 does not:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in these Executive Orders.

Section 202, Pub. L. 104–4, ''Unfunded Mandates Reform Act''

It has been certified that 32 CFR part 158 does not contain a Federal mandate that may result in expenditure by State, local and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)

It has been certified that 32 CFR part 158 is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

It has been certified that 32 CFR part 158 does impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995. These reporting requirements have been approved by OMB under OMB Control Number 0704–0460, Synchronized Predeployment and Operational Tracker (SPOT) System. DOD does not believe this interim rule will require a change in burden or a change in the information collected. DoD cleared the SPOT collection with the interim rule codified at 32 CFR part 159 (which concerned U.S. government private security contractors (USG PSCs)). The SPOT collection package encapsulated the requirement for all DoD contingency contractor personnel to register in the SPOT database—not just USG PSCs. The publication of this rule has no impact on the extant requirement for contractors to use SPOT.

Executive Order 13132, ''Federalism''

It has been certified that 32 CFR part 158 does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

(1) The States;

(2) The relationship between the National Government and the States; or

(3) The distribution of power and responsibilities among the various levels of Government.

List of Subjects in 32 CFR Part 158

Armed forces, Government contracts, Health and safety, Military personnel, National defense, Passports and visas, Recordkeeping, Security measures.

Accordingly, 32 CFR part 158 is added to read as follows:

PART 158—OPERATIONAL CONTRACT SUPPORT

Authority: Public Law 110–181; Public Law 110–417.

§ 158.1 Purpose.

This part establishes policy, assigns responsibilities, and provides procedures for operational contract support (OCS), including OCS program management, contract support integration, and integration of defense contractor personnel into contingency operations outside the United States in accordance with the guidance in DoD Directive 3020.49 (see *http://www.dtic.mil/whs/directives/corres/pdf/302049p.pdf*) and the authority in DOD Directive 5134.01 (see *http://www.dtic.mil/whs/directives/corres/pdf/513401p.pdf*).

§ 158.2 Applicability.

This part applies to:

(a) The Office of the Secretary of Defense, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense agencies, the DoD field activities, and all other organizational entities within the Department of Defense (hereinafter referred to collectively as the ''DoD Components'').

(b) DoD operations (contingency, humanitarian assistance, and other peace operations) outside the United States; other military operations as determined by a Combatant Commander (CCDR); or as directed by the Secretary of Defense (hereinafter referred to collectively as ''applicable contingency operations'').

§ 158.3 Definitions.

Unless otherwise noted, the following terms and their definitions are for the purposes of this part.

Acquisition. Defined in 48 CFR 2.101.

Contingency acquisition. The process of acquiring supplies, services, and construction in support of contingency operations.

Contingency contract. A legally binding agreement for supplies, services, and construction let by Government contracting officers in the operational area, as well as other contracts that have a prescribed area of performance within a designated operational area. Contingency contracts include theater support, external support, and systems support contracts.

Contingency contractor personnel. Individual contractors, individual subcontractors at all tiers, contractor employees, and sub-contractor employees at all tiers under all contracts supporting the Military Services during contingency operations.

Contingency operation. Defined in Joint Publication 1–02 (see *http://www.dtic.mil/doctrine/new_pubs/jp1_02.pdf*).

Contingency program management. The process of planning, organizing, staffing, controlling, and leading the operational contract support (OCS) efforts to meet joint force commander (JFC) objectives.

Contract administration. A subset of contracting that includes efforts that ensure supplies and services are delivered in accordance with the conditions and standards expressed in the contract. Contract administration is the oversight function, from contract award to contract closeout, performed by contracting professionals and designated non-contracting personnel.

Contract administration delegation. A CCDR policy or process related to theater business clearance that allows the CCDR to exercise control over the assignment of contract administration for that portion of contracted effort that relates to performance in, or delivery to, designated area(s) of operations and allows the CCDR to exercise oversight to ensure the contractor's compliance with CCDR and subordinate task force commander policies, directives, and terms and conditions. Whether the CCDR chooses to implement such a process depends on the situation.

Contracting. Defined in 48 CFR 2.101.

Contracting officer. Defined in 48 CFR 2.101.

Contracting Officer's Representative (COR). Defined in 48 CFR 202.101.

Contractor management. The oversight and integration of contractor personnel and associated equipment providing support to the joint force in a designated operational area.

Contractors Authorized to Accompany the Force (CAAF). Contractor personnel, including all tiers of subcontractor personnel, who are authorized to accompany the force in applicable contingency operations and who have been afforded CAAF status through Letter of Authorization (LOA). CAAF generally include all U.S. citizen and Third Country National (TCN) employees not normally residing within the operational area whose area of performance is in the direct vicinity of U.S. forces and who routinely are co-located with U.S. forces (especially in non-permissive environments). Personnel co-located with U.S. forces shall be afforded CAAF status through LOA. In some cases, CCDR subordinate commanders may designate mission-essential Host Nation (HN) or Local national (LN) contractor employees (*e.g.,* interpreters) as CAAF. CAAF includes contractors identified as contractors deploying with the force in DoD Instruction 3020.41 and DoD Directive 3002.01E (see *http://www.dtic.mil/whs/directives/corres/pdf/300201p.pdf*). CAAF status does not apply to contractor personnel in support of contingencies within the boundaries and territories of the United States.

Defense contractor. Any individual, firm, corporation, partnership,

association, or other legal non-Federal entity that enters into a contract directly with the DoD to furnish services, supplies, or construction. Foreign governments, representatives of foreign governments, or foreign corporations wholly owned by foreign governments that have entered into contracts with the DoD are not defense contractors.

Designated reception site. The organization responsible for the reception, staging, integration, and onward movement of contractors deploying during a contingency. The designated reception site includes assigned joint reception centers and other Service or private reception sites.

Essential contractor service. A service provided by a firm or an individual under contract to the DoD to support vital systems including ships owned, leased, or operated in support of military missions or roles at sea and associated support activities, including installation, garrison, base support, and linguist/translator services considered of utmost importance to the U.S. mobilization and wartime mission. The term also includes services provided to Foreign Military Sales customers under the Security Assistance Program. Services are considered essential because:

(1) The DoD Components may not have military or DoD civilian employees to perform the services immediately.

(2) The effectiveness of defense systems or operations may be seriously impaired and interruption is unacceptable when the services are not available immediately.

External support contracts. Prearranged contracts or contracts awarded during a contingency from contracting organizations whose contracting authority does not derive directly from theater support or systems support contracting authorities.

Functional Combatant Commands. U.S. Joint Forces Command (USJFCOM), U.S. Special Operations Command, U.S. Strategic Command, and U.S. Transportation Command.

*Geographic Combatant Command*s. U.S. Africa Command, U.S. Central Command, U.S. European Command, U.S. Northern Command, U.S. Pacific Command, and U.S. Southern Command.

Hostile environment. Defined in Joint Publication 1–02.

Host nation (HN). A nation that permits, either by written agreement or official invitation, government representatives and/or agencies of another nation to operate, under specified conditions, within its borders.

Letter of authorization (LOA). A document issued by a procuring contracting officer or designee that authorizes contractor personnel to accompany the force to travel to, from, and within an operational area, and outlines Government-furnished support authorizations within the operational area, as agreed to under the terms and conditions of the contract. For more information, see 48 CFR PGI 225.74.

Local national (LN). An individual who is a permanent resident of the nation in which the United States is conducting contingency operations.

Long-term care. A variety of services that help a person with comfort, personal, or wellness needs. These services assist in the activities of daily living, including such things as bathing and dressing. Sometimes known as custodial care.

Non-CAAF. Personnel who are not designated as CAAF, such as LN employees and non-LN employees who are permanent residents in the operational area or TCNs not routinely residing with U.S. forces (and TCN expatriates who are permanent residents in the operational area) who perform support functions away from the close proximity of, and do not reside with, U.S. forces. Government-furnished support to non-CAAF is typically limited to force protection, emergency medical care, and basic human needs (*e.g.,* bottled water, latrine facilities, security, and food when necessary) when performing their jobs in the direct vicinity of U.S. forces.

Operational contract support (OCS). The ability to orchestrate and synchronize the provision of integrated contract support and management of contractor personnel providing support to the joint force within a designated operational area.

Prime contract. Defined in 48 CFR 3.502.

Qualifying contingency operation. In accordance with Article 2(a)(10) of the Uniform Code of Military Justice (UCMJ) (see *http://www.au.af.mil/au/awc/awcgate/ucmj.htm*), a military contingency operation conducted for the purpose of engaging an enemy or a hostile force in combat where disciplinary authority over civilians under Article 2(a)(10) is governed by the UCMJ, the Secretary of Defense Memorandum, ''UCMJ Jurisdiction Over DoD Civilian Employees, DoD Contractor Personnel, and Other Persons Serving With or Accompanying the Armed Forces Overseas During Declared War and in Contingency Operations,'' dated March 10, 2008 (see *http://www.dtic.mil/whs/directives/corres/pdf/DTM-08-009.pdf*), and the Manual for Courts-Martial, United States, current edition (see *http://www.au.af.mil/au/awc/awcgate/law/mcm.pdf*).

Replacement center. The centers at selected installations that ensure personnel readiness processing actions have been completed prior to an individual reporting to the aerial port of embarkation for deployment to a designated operational area.

Requiring activity. The organization charged with meeting the mission and delivering the requirements the contract supports. This activity is responsible for delivering the services to meet the mission if the contract is not in effect. The requiring activity may also be the organizational unit that submits a written requirement, or statement of need, for services required by a contract. This activity is responsible for ensuring compliance with DoD Instruction 1100.22 (see *http://www.dtic.mil/whs/directives/corres/pdf/110022p.pdf*) and Deputy Secretary of Defense Memorandums, ''In-sourcing Contracted Services—Implementation Guidance'' dated May 28, 2009, and ''Implementation of Section 324 of the National Defense Authorization Act for Fiscal Year 2008 (FY 2008 NDAA)—Guidelines and Procedures on In-Sourcing New and Contracted Out Functions'' dated April 4, 2008 (for both Deputy Secretary of Defense Memorandums see *http://prhome.defense.gov/RSI/REQUIREMENTS/INSOURCE/INSOURCE_GUIDANCE.ASPX*).

Subcontract. Defined in 48 CFR 3.502.

Systems support contracts. Prearranged contracts awarded by Service acquisition program management offices that provide fielding support, technical support, maintenance support, and, in some cases, repair parts support, for selected military weapon and support systems. Systems support contracts routinely are put in place to provide support to many newly fielded weapons systems, including aircraft, land combat vehicles, and automated command and control systems. Systems support contracting authority, contract management authority, and program management authority reside with the Service system materiel acquisition program offices. Systems support contractors, made up mostly of U.S. citizens, provide support in continental U.S. (CONUS) and often deploy with the force in both training and contingency operations. The JFC generally has less control over systems support contracts than other types of contracts.

Theater business clearance. A CCDR policy or process to ensure visibility of and a level of control over systems support and external support contracts

executing or delivering support in designated area(s) of operations. The breadth and depth of such requirements will be situational. Theater business clearance is not necessarily discrete and can be implemented to varying degrees on a continuum during all phases of an operation.

Theater support contracts. Contingency contracts awarded by contracting officers deployed to an operational area serving under the direct contracting authority of the Service component, special operations force command, or designated joint contracting authority for the designated contingency operation.

Uniquely military functions. Defined in DoD Instruction 1100.22, ''Policy and Procedures for Determining Workforce Mix.''

§ 158.4 Policy.

It is DoD policy that:

(a) OCS actions (*e.g.,* planning, accountability, visibility, deployment, protection, and redeployment requirements) shall be implemented to:

(1) Incorporate appropriate contingency program management processes during applicable contingency operations.

(2) Comply with applicable U.S., international, and local laws, regulations, policies, and agreements.

(3) Use contract support only in appropriate situations consistent with 48 CFR subpart 7.5, 48 CFR 207.503, and DoD Instruction 1100.22, ''Policy and Procedures for Determining Workforce Mix.''

(4) Fully consider, plan for, integrate, and execute acquisition of, contracted support, including synchronizing and integrating contracted support flowing into an operational area from systems support, external support and theater support contracts and managing the associated contractor personnel, into applicable contingency operations consistent with CCDR policies and procedures and Joint Publication (JP) 4–10, ''Operational Contract Support,'' (see *http://www.dtic.mil/doctrine/new_pubs/jp4_10.pdf*).

(b) Contractors are generally responsible for providing their own logistical support. However, in austere, uncertain, and/or hostile environments, the DoD may provide logistical support to ensure continuation of essential contractor services. CAAF may receive Government-furnished support commensurate with the operational situation in accordance with the terms and conditions of their contract.

(c) Contracting officers will ensure that contracts used to support DoD operations require:

(1) That CAAF deploying from outside the operational area be processed through formal deployment (replacement) centers or a DoD-approved equivalent process prior to departure, and through in-theater reception centers upon arrival in the operational area, as specified in § 158.6 of this part.

(2) That contractors provide personnel who are medically, dentally, and psychologically fit, and if applicable, professionally tested and certified, to perform contract duties in applicable contingency operations. Section 158.6 of this part details medical support and evacuation procedures. Section 158.7 of this part provides guidance on contractor medical, psychological, and dental fitness.

(3) Solicitations and contracts address any applicable host country and designated operational area performance considerations.

(d) Contracts for highly sensitive, classified, cryptologic, and intelligence projects and programs shall implement this part to the maximum extent practicable, consistent with applicable laws, Executive orders, Presidential Directives, and DoD issuances.

(e) In applicable contingency operations, contractor visibility and accountability shall be maintained through a common joint database, the Synchronized Predeployment and Operational Tracker (SPOT) or its successor.

§ 158.5 Responsibilities.

(a) The Under Secretary of Defense for Acquisition, Technology, and Logistics (USD(AT&L)) shall develop, coordinate, establish, and oversee the implementation of DoD policy for managing OCS.

(b) The Director, Defense Procurement and Acquisition Policy (DPAP), under the authority, direction, and control of the USD(AT&L), shall:

(1) Oversee all acquisition and procurement policy matters including the development of DoD policies for contingency contracting and the coordinated development and publication of contract prescriptions and standardized contract clauses in 48 CFR 207.503, 252.225–7040, and 202.101, and associated contracting officer guidance in 48 CFR PGI 225.74. This includes working collaboratively with OSD Principal Staff Assistants, Chairman of the Joint Chiefs of Staff (CJCS) representatives, and the DoD Component Heads in the development of OCS related policies and ensuring that contracting equities are addressed.

(2) Develop contingency contracting policy and implement other OCS related policies into DFARS in support of applicable contingency operations.

(3) Ensure implementation by contracting officers and CORs of relevant laws and policies in 48 CFR Subparts 4.1301, 4.1303, 52.204–9, 7.5, 7.503(e), 2.101, and 3.502; 48 CFR Subparts 207.503, 252.225–7040 and 202.101; and 48 CFR PGI 225.74.

(4) Propose legislative initiatives that support accomplishment of the contingency contracting mission.

(5) Improve DoD business processes for contingency contracting while working in conjunction with senior procurement executives across the DoD. Assist other OSD Principal Staff Assistants, CJCS representatives, and DoD Component Heads in efforts to improve other OCS related business processes by ensuring contracting equities and interrelationships are properly addressed.

(6) Support efforts to resource the OCS toolset under the lead of the Deputy Assistant Secretary of Defense for Program Support (DASD(PS)) pursuant to paragraph (c)(6)(ii) of this section.

(7) Coordinate activities with other Government agencies to provide unity of effort. Maintain an open, user-friendly source for reports and lessons learned and ensure the coordinated development and publication, through participation on the FAR Council, of standardized contract clauses.

(8) As a member of the Contracting Functional Integrated Planning Team, collaborate with the Defense Acquisition University to offer education for all contingency contracting personnel.

(9) Participate in the OCS Functional Capability Integration Board (FCIB) to facilitate development of standard joint OCS concepts, policies, doctrine, processes, plans, programs, tools, reporting, and training to improve effectiveness and efficiency.

(10) In concert with the supported Combatant Commander, coordinate in advance of execution Executive Agency for Head of Contracting Activity requisite Operational Plans (OPLANS), Concept Plans (CONPLANS), and operations, where a lead service or a Joint Theater Support Contracting Command (JTSCC) will be established.

(c) The DASD(PS), under the authority, direction, and control of the USD(AT&L) through the Assistant Security of Defense for Logistics and Materiel Readiness (ASD(L&MR)), is responsible for oversight and management to enable the orchestration, integration, and synchronization of the preparation and execution of

acquisitions for DoD contingency operations, and shall:

(1) Coordinate policy relating to field operations and contingency contractor personnel in forward areas and the battlespace. In cooperation with the Joint Staff, Military Departments, and OSD, serve as the DoD focal point for the community of practice and the community of interest for efforts to improve OCS program management and oversight.

(2) Co-chair with the Vice Director, Directorate for Logistics, Joint Staff, (VDJ4) the OCS FCIB to lead and coordinate OCS with OSD, Military Department, and Defense Agency senior procurement officers in accordance with the OCS FCIB Charter (see *http://www.acq.osd.mil/log/PS/fcib/OCS_FCIB_charter_USA000737-09_signed.pdf*).

(3) Ensure integration of joint OCS activities across other joint capability areas and joint warfighting functions.

(4) Provide input to the Logistics Capability Portfolio Manager and the CJCS in the development of capability priorities; review final capability priorities; and provide advice to the Under Secretary of Defense for Policy (USD(P)) in developing the Quadrennial Defense Review (see *http://www.defense.gov/qdr/images/QDR_as_of_12Feb10_1000.pdf*) and defense planning and programming guidance, as appropriate.

(5) Serve as the DoD lead to:

(i) Develop a programmatic approach for the preparation and execution of orchestrating, integrating, and synchronizing acquisitions for contingency operations.

(ii) Establish and oversee DoD policies for OCS program management in the planning and execution of combat, post-combat, and other contingency operations involving the Military Departments, other Government agencies, multinational forces, and non-governmental organizations, as required.

(6) Improve DoD business practices for OCS.

(i) In consultation with the Under Secretary of Defense for Personnel and Readiness (USD(P&R)); the Director, DPAP; and the CJCS, ensure a joint web-based contract visibility and contractor personnel accountability system (currently SPOT) is designated and implemented, including business rules for its use.

(ii) Lead the effort to resource the OCS toolset providing improved OCS program management, planning, OCS preparation of the battlefield, systems support, and theater support contracts, contractor accountability systems, and automated contract process capabilities, including reach back from remote locations to the national defense contract base (*e.g.,* hardware and software).

(7) In consultation with the Heads of the OSD and DoD Components, provide oversight of experimentation efforts focusing on concept development for OCS execution.

(8) Serve as the DoD lead for the oversight of training and education of non-acquisition, non-contracting personnel identified to support OCS efforts.

(d) The Director, DLA, under the authority, direction, and control of the USD(AT&L), through the ASD(L&MR) shall, through the Joint Contingency Acquisition Support Office (JCASO), provide enabler OCS support to CCDR OCS planning efforts and training events, and, when requested, advise, assist, and support JFC oversight of OCS operations. Specifically, the Director, JCASO, shall:

(1) Provide OCS planning support to the CCDR through Joint OCS Planners embedded within the geographic Combatant Command staff. Maintain situational awareness of all plans with significant OCS equity for the purposes of exercise support and preparation for operational deployment. From JCASO forward involvement in exercises and operational deployments, develop and submit lessons learned that result in improved best practices and planning.

(2) When requested, assist the Joint Staff in support of the Chairman's OCS responsibilities listed in paragraph (l) of this section.

(3) Facilitate improvement in OCS planning and execution through capture and review of joint OCS lessons learned. In cooperation with USJFCOM, Military Services, other DoD Components, and interagency partners, collect joint operations focused OCS lessons learned and best practices from contingency operations and exercises to inform OCS policy and recommend doctrine, organization, training, materiel, leadership, personnel, and facilities (DOTMLPF) solutions.

(4) Participate in joint exercises, derive OCS best practices from after-action reports and refine tactics/techniques/procedures, deployment drills, and personal and functional training (to include curriculum reviews and recommendations). Assist in the improvement of OCS related policy, doctrine, rules, tools, and processes.

(5) Provide the geographic CCDRs, when requested, with deployable experts to assist the CCDR and subordinate JFCs in managing OCS requirements in a contingency environment.

(6) Practice continuous OCS-related engagement with interagency representatives and multinational partners, as appropriate and consistent with existing authorities.

(7) Participate in the OCS FCIB to facilitate development of standard joint OCS concepts, policies, doctrine, processes, plans, programs, tools, reporting, and training to improve effectiveness and efficiency.

(e) The Director, Defense Contract Management Agency (DCMA) under the authority, direction, and control of the USD(AT&L), through the Assistant Secretary of Defense for Acquisition (ASD(Acquisition)), plans for and performs contingency contract administration services in support of the CJCS and CCDRs in the planning and execution of military operations, consistent with DCMA's established responsibilities and functions.

(f) The Under Secretary of Defense for Intelligence (USD(I)), as the Principal Staff Assistant for intelligence, counterintelligence, and security in accordance with DoD Directive 5143.01 (see *http://www.dtic.mil/whs/directives/corres/pdf/514301p.pdf*), shall:

(1) Develop, coordinate, and oversee the implementation of DoD security programs and guidance for those contractors covered in DoD Instruction 5220.22 (see *http://www.dtic.mil/whs/directives/corres/pdf/522022p.pdf.*

(2) Assist the USD(AT&L) in determining appropriate contract clauses for intelligence, counterintelligence, and security requirements.

(3) Establish policy for contractor employees under the terms of the applicable contracts that support background investigations in compliance with 48 CFR 4.1301, 4.1303, and 52.204–9.

(4) Coordinate security and counterintelligence policy affecting contract linguists with the Secretary of the Army pursuant to DoD Directive 5160.41E (see *http://www.dtic.mil/whs/directives/corres/pdf/516041p.pdf*) .

(g) The Assistant Secretary of Defense for Health Affairs (ASD(HA)), under the authority, direction, and control of the USD(P&R), shall assist in the development of policy addressing the reimbursement of funds for qualifying medical support received by contingency contractor personnel in applicable contingency operations.

(h) The Deputy Assistant Secretary of Defense for Readiness (DASD(Readiness)) under the authority, direction, and control of the USD(P&R), shall develop policy and set standards for managing contract linguist capabilities supporting the total force to

include requirements for linguists and tracking linguist and role players to ensure that force readiness and security requirements are met.

(i) The Director, Defense Manpower Data Center (DMDC), under the authority, direction, and control of the USD(P&R), through the Director, DoD Human Resources Activity, shall:

(1) Serve as the central repository of information for all historical data on contractor personnel who have been issued common access cards (CAC) and are included in SPOT or its successor, that is to be archived.

(2) Ensure all data elements of SPOT or its successor to be archived are USD(P&R)-approved and DMDC-system compatible, and ensure the repository is protected at a level commensurate with the sensitivity of the information contained therein.

(j) The Under Secretary of Defense (Comptroller)/Chief Financial Officer (USD(C)/CFO), DoD, shall develop policy addressing the reimbursement of funds for qualifying medical support received by contingency contractor personnel in applicable contingency operations.

(k) The Secretaries of the Military Departments and the Directors of the Defense Agencies and DoD Field Activities shall incorporate this part into applicable policy, doctrine, programming, training, and operations and ensure:

(1) Assigned contracting activities populate SPOT with the required data in accordance with Assistant Secretary of Defense for Logistics and Materiel Readiness Publication, ''Business Rules for the Synchronized Predeployment and Operational Tracker (SPOT),'' current edition (see *http://www.acq.osd.mil/log/PS/spot.html*) and that information has been reviewed for security and operational security (OPSEC) concerns in accordance with paragraph (c)(3)(ii)(E) of § 158.6.

(2) CAAF meet all theater and/or joint operational area (JOA) admission procedures and requirements prior to deploying to or entering the theater or JOA.

(3) Contracting officers include in the contract:

(i) Appropriate terms and conditions and clause(s) in accordance with 48 CFR 252.225–7040 and 48 CFR PGI 225.74.

(ii) Specific deployment and theater admission requirements according to 48 CFR 252.225–7040 and 48 CFR PGI 225.74, and the applicable CCDR Web sites.

(iii) Specific medical preparation requirements according to paragraph (c)(8) of § 158.6.

(iv) The level of protection to be provided to contingency contractor personnel in accordance with paragraph (d)(5) of § 158.6. Contracting officers shall follow the procedures on the applicable CCDR Web sites to obtain theater-specific requirements.

(v) Government-furnished support and equipment to be provided to contractor personnel with prior coordination and approval of theater adjudication authorities, as referenced on the applicable CCDR Web sites.

(vi) A requirement for contractor personnel to show and have verified by the COR, proof of professional certifications/proficiencies as stipulated in the contract.

(4) Standardized contract accountability financial and oversight processes are developed and implemented.

(5) Requirements packages are completed to include all required documentation (*e.g.,* letter of justification, performance work statement, nominated COR, independent Government estimate (IGE)) are completed and funding strategies are articulated and updated as required.

(6) CORs are planned for, resourced, and sustained as necessary to ensure proper contract management capabilities are in place and properly executed.

(7) Assigned contracting activities plan for, and ensure the contractor plans for, the resources necessary to implement and sustain contractor accountability in forward areas through SPOT or its successor.

(8) Contract support integration plans (CSIPs) and contractor management plans (CMPs) are developed as directed by the supported CCDR.

(9) The risk of premature loss of mission-essential OCS is assessed and the mitigation of the loss of contingency contractor personnel in wartime or contingency operations who are performing essential contractor services is properly planned for.

(10) Assigned contracting activities comply with theater business clearance and contract administration delegation policies and processes when implemented by CCDRs to support any phase of a contingency operation.

(11) Agency equities are integrated and conducted in concert with the CCDR's plans for OCS intelligence of the battlefield.

(12) The implementation of a certification of, and a waiver process for, contractor-performed deployment and redeployment processing in lieu of a formally designated group, joint, or Military Department deployment center.

(13) Support the effort to resource the OCS toolset under the lead of the DASD(PS) pursuant to paragraph (c)(6)(ii) of this section.

(l) The CJCS shall:

(1) Where appropriate, incorporate program management and elements of this part into joint doctrine, joint instructions and manuals, joint training, joint education, joint capability development, joint strategic planning system (*e.g.,* Joint Operation Planning and Execution System (JOPES)), and CCDR oversight.

(2) Co-chair with the VDJ4 the OCS FCIB to lead and coordinate OCS with OSD, Military Department, and Defense Agency senior procurement officers in accordance with OCS FCIB charter. Provide the OCS FCIB with input and awareness of the CJCS functions and activities as defined in 10 U.S.C. 153 and 155.

(3) Perform OCS related missions and functions as outlined in the Joint Staff Manual 5100.01 [1] and the Chairman's authorities as defined in 10 U.S.C. (see *http://uscode.house.gov/download/title_10.shtml*).

(m) The geographic CCDRs and the CDRUSSOCOM (when they are the supported commander) shall:

(1) Plan and execute OCS program management, contract support integration, and contractor management actions in all applicable contingency operations in their AOR.

(2) Conduct integrated planning to determine and synchronize contract support requirements to facilitate OCS planning and contracting and contractor management oversight.

(3) In coordination with the Services and functional components, identify military capabilities shortfalls in all the joint warfighting functions that require contracted solutions. Ensure these requirements are captured in the appropriate CCDR, subordinate JFC, Service component and combat support agency CSIP or other appropriate section of the CONPLAN with time-phased force and deployment data (TPFDD), OPLAN or operation order (OPORD).

(4) Require Service component commanders and supporting Defense Agencies and DoD Field Activities to:

(i) Identify and incorporate contract support and operational acquisition requirements in supporting plans to OPLANs and CONPLANs with TPFDD, and to synchronize their supporting

[1] This document is classified Restricted, and is available via Secure Internet Protocol Router Network at *http://js.smil.mil.* If the requester is not an authorized user of the classified network the requestor should contact Joint Staff J–1 at (703) 697–9645.

CSIPs, CMPs, and contracted requirements and execution plans within geographic CCDR OPLANs and CONPLANs with TPFDD.

(ii) Review their supporting CSIPs and CMPs and identify funding strategies for particular contracted capabilities identified to support each OPLAN and CONPLAN.

(iii) Develop acquisition-ready requirements documents as identified in CSIPs including performance work statements, IGEs, task order change documents, and sole source justifications.

(iv) Ensure CAAF and their equipment are incorporated into TPFDD development and deployment execution processes in accordance with CJCS Manual 3122.02C, JOPES Volume III, ''Crisis Action Time-Phased Force and Deployment Data Development and Deployment Execution,'' June 19, 2006.

(v) Ensure financial management policies and procedures are in place in accordance with DoD 7000.14–R (see *http://comptroller.defense.gov/fmr/*) and applicable service specific financial management implementation guidance.

(5) Develop and publish comprehensive OCS plans. Synchronize OCS requirements among all Service components and Defense Agencies and DoD Field Activities operating within or in support of their area of responsibility (AOR). Optimize operational unity of effort by analyzing existing and projected theater support and external support contracts to minimize, reduce, and eliminate redundant and overlapping requirements and contracted capabilities.

(6) Ensure OCS requirements for the Defense Agencies, multinational partners, and other Governmental agencies are addressed and priorities of effort for resources are deconflicted and synchronized with OCS to military forces.

(7) Ensure policies and procedures are in place for reimbursing Government-furnished support of contingency contractor personnel, including (but not limited to) subsistence, military air, intra-theater lift, and medical treatment, when applicable.

(8) Ensure CAAF and equipment requirements (regardless if provided by the Government or the contractor) in support of an operation are incorporated into plan TPFDDs.

(9) Review Service component assessments of the risk of premature loss of essential contractor services and review contingency plans to mitigate potential premature loss of essential contractor services.

(10) Establish and communicate to contracting officers theater and/or JOA CAAF admission procedures and requirements, including country and theater clearance, waiver authority, immunizations, required training or equipment, and any restrictions necessary to ensure proper deployment, visibility, security, accountability, and redeployment of CAAF to their AORs and/or JOAs. Implement DoD Foreign Clearance Guide, current edition (available at *https://www.fcg.pentagon.mil/*).

(11) Coordinate with the Office of the USD(P) to ensure special area, country, and theater personnel clearance requirements are current in accordance with DoD Foreign Clearance Guide, and coordinate with affected agencies (*e.g.,* Intelligence Community agencies) to ensure that entry requirements do not impact mission accomplishment.

(12) Determine and distribute specific theater OCS organizational guidance in plans, to include command, control, and coordination, and Head Contracting Authority (HCA) relationships.

(13) Develop and distribute AOR/JOA-wide contractor management requirements, directives, and procedures into a separate contractor management plan as an annex or the appropriate section of the appropriate plan.

(14) Establish, staff, and execute appropriate OCS-related boards, centers, and working groups.

(15) Integrate OCS into mission rehearsals and training exercises.

(16) When contracts are being or will be executed in an AOR/JOA, designate and identify the organization responsible for managing and prescribing processes to:

(i) Establish procedures and assign authorities for adjudicating requests for provision of Government-furnished equipment and services to contractors when such support is operationally required. This should include procedures for communicating approval to the requiring activity and the contracting officer for incorporation into contracts.

(ii) Authorize trained and qualified contractor personnel to carry weapons for personal protection not related to the performance of contract-specific duties.

(iii) Establish procedures for, including coordination of, inter-theater strategic movements and intra-theater operational and tactical movements of contractor personnel and equipment.

(iv) Collect information on and refer to the appropriate Government agency offenses, arrests, and incidents of alleged misconduct committed by contractor personnel on or off-duty.

(v) Collect and maintain information relating to CAAF and selected non-CAAF kidnappings, injuries, and deaths.

(vi) Identify the minimum standards for conducting and processing background checks, and for issuing access badges to HN, LN, and TCN personnel employed, directly or indirectly, through Government-awarded contracts.

(vii) Remove CAAF from the designated operational area who do not meet medical deployment standards, whose contract period of performance has expired, or who are noncompliant with contract requirements.

(viii) Designate additional contractor personnel not otherwise covered by personnel recovery policy for personnel recovery support in accordance with DoD Directive 3002.01E.

(ix) Ensure that contract oversight plans are developed, and that adequate personnel to assist in contract administration are identified and requested, in either a separate contractor management plan as an annex of plans and orders and/or within appropriate parts of plans and orders.

(x) Develop a security plan for the protection of contingency contractor personnel according to paragraph (d)(5) of § 156.8.

(xi) Develop and implement theater business clearance and, if required, Contract Administration Delegation policies and procedures to ensure visibility of and a level of control over systems support and external support contracts providing or delivering contracted support in contingency operations.

(17) Enforce the individual arming policy and use of private security contractors in accordance with 32 CFR part 159 and DoD Directive 5210.56 (see *http://www.dtic.mil/whs/directives/corres/pdf/521056p.pdf*).

(18) Establish a process for reviewing exceptions to medical standards (waivers) for the conditions in paragraph (j) of § 158.7, including a mechanism to track and archive all approved and denied waivers and the medical conditions requiring waiver. Additionally, serve as the final approval/disapproval authority for all exceptions to this policy, except in special operations where the Theater Special Operations Command (TSOC) commander has the final approval or disapproval authority.

(19) Establish mechanisms for ensuring contractors are required to report offenses alleged to have been committed by or against contractor personnel to appropriate investigative authorities.

(20) Assign responsibility for providing victim and witness protection

and assistance to contractor personnel in connection with alleged offenses.

(21) Ensure applicable predeployment, deployment, in-theater management, and redeployment guidance and procedures are readily available and accessible by planners, requiring activities, contracting officers, contractors, contractor personnel and other interested parties on a Web page, and related considerations and requirements are integrated into contracts through contract terms, consistent with security considerations and requirements.

(22) Ensure OCS preparation of the battlefield is vetted with intelligence agencies when appropriate.

(23) Integrate OCS planning with operational planning across all primary and special staff sections.

(n) The functional CCDRs utilizing OCS shall ensure their Commands follow the procedures in this part and applicable operational-specific guidance provided by the supported geographic CCDR.

§ 158.6 Procedures.

(a) *Requirements, Relationships, and Restrictions.* In implementing this part, the Heads of DoD Components shall abide by applicable laws, regulations, DoD policy, and international agreements as they relate to contractor personnel supporting applicable contingency operations.

(1) *Status of Contractor Personnel.*

(i) Pursuant to applicable law, contracted services may be utilized in applicable contingency operations for all functions not inherently governmental. Contractor personnel may be utilized in support of such operations in a non-combat role as long as contractor personnel residing with the force in foreign contingencies have been designated as CAAF by the force they accompany and are provided with an appropriate identification card pursuant to the Geneva Convention Relative to the Treatment of Prisoners of War (see *http://www.icrc.org/ihl.nsf/FULL/375*). If captured during international armed conflict, contractors with CAAF status are entitled to prisoner of war status. Some contractor personnel may be covered by the Geneva Convention Relative to the Protection of Civilian Persons in Time of War (see *http://www.icrc.org/ihl.nsf/385ec082b509e76c41256739003e636d/6756482d86146898c125641e004aa3c5*) should they be captured during armed conflict. All contractor personnel may be at risk of injury or death incidental to enemy actions while supporting military operations. CAAF status does not apply to contractor personnel supporting domestic contingencies.

(ii) Contractor personnel may support applicable contingency operations such as by providing communications support; transporting munitions and other supplies; performing maintenance functions for military equipment; providing private security services; providing foreign language interpretation and translation services, and providing logistic services such as billeting and messing. Each service to be performed by contractor personnel in applicable contingency operations shall be reviewed on a case-by-case basis in consultation with the cognizant manpower official and servicing legal office to ensure compliance with DoD Instruction 1100.22 and relevant laws and international agreements.

(2) *Local and Third-Country Laws.* Subject to the application of international agreements, all contingency contractor personnel must comply with applicable local and third country laws. Contractor personnel may be hired from U.S., LN, or third country sources and their status may change (*e.g.,* from non-CAAF to CAAF), depending on where they are detailed to work by their employer or on the provisions of the contract. The CCDRs, as well as subordinate commanders and Service component commanders, and the Directors of the Defense Agencies and DoD Field Activities should be cognizant of limiting factors regarding the employment of LN and TCN personnel. Limiting factors may include imported labor worker permits; workforce and hour restrictions; medical, life, and disability insurance coverage; taxes, customs, and duties; cost of living allowances; hardship differentials; access to classified information; and hazardous duty pay.

(3) *U.S. Laws.* CAAF, with some exceptions, are subject to U.S. laws and Government regulations. For example, all U.S. citizen and TCN CAAF may be subject to prosecution pursuant to Federal law including, but not limited to, 18 U.S.C. 3261 (also known and hereinafter referred to as ''The Military Extraterritorial Jurisdiction Act of 2000 (MEJA), as amended''). MEJA extends U.S. Federal criminal jurisdiction to certain defense contractor personnel for offenses committed outside U.S. territory. Additionally, CAAF are subject to prosecution pursuant to 10 U.S.C. chapter 47 (also known and hereinafter referred to as ''The Uniform Code of Military Justice (UCMJ)'') in accordance with Secretary of Defense Memorandum (''UCMJ Jurisdiction Over DoD Civilian Employees, DoD Contractor Personnel, and Other Persons Serving With or Accompanying the Armed Forces Overseas During Declared War and in Contingency Operations,'' March 10, 2008). Other laws may allow prosecution of offenses by contactor personnel, such as 18 U.S.C. 7(9). Immediate consultation with the servicing legal office and the contracting officer is required in all cases of suspected MEJA and/or UCMJ application to conduct by CAAF personnel, especially in non-combat operations or in undeclared contingencies.

(4) *Contractual Relationships.* The contract is the only legal basis for the relationship between the DoD and the contractor. The contract shall specify the terms and conditions, to include minimum acceptable professional standards, under which the contractor is to perform, the method by which the contractor will be notified of the deployment procedures to process contractor personnel, and the specific support relationship between the contractor and the DoD. The contract shall contain standardized clauses to ensure efficient deployment, accountability, visibility, protection, authorized levels of health service, and other support, sustainment, and redeployment of contractor personnel. It shall also specify the appropriate flow-down of provisions and clauses to subcontracts, and shall state that the service performed by contractor personnel is not considered to be active duty or active service in accordance with DoD Directive 1000.20 (see *http://www.dtic.mil/whs/directives/corres/pdf/100020p.pdf*) and 38 U.S.C. 106.

(5) *Restrictions on Contracting Inherently Governmental Functions.* Inherently governmental functions and duties are barred from private sector performance in accordance with DoD Instruction 1100.22, 48 CFR 207.503, 48 CFR 7.5, Public Law (Pub. L.) 105–270, and Office of Management and Budget Circular A–76 (see *http://www.whitehouse.gov/omb/circulars_a076_a76_incl_tech_correction*). As required by 48 CFR 7.503(e), 48 CFR 207.503, and Deputy Secretary of Defense Memorandum, ''In-sourcing Contracted Services—Implementation Guidance'' dated May 28, 2009, contracting officials shall request requiring officials to certify in writing that functions to be contracted (or to continue to be contracted) are not inherently governmental. Requiring officials shall determine whether functions are inherently governmental based on the guidance in DoD Instruction 1100.22.

(6) *Restrictions on Contracting Functions Exempted From Private Sector Performance.* As required by 48 CFR 207.503 and Deputy Secretary of Defense Memorandum, ''In-sourcing Contracted Services—Implementation Guidance,'' May 28, 2009, contracting officials shall request requiring officials to certify in writing that functions to be contracted (or continue to be contracted) are not exempted from private sector performance. Requiring officials shall determine whether functions are exempted from private sector performance based on the guidance in DoD Instruction 1100.22.

(7) *Requirements for Contracting Commercial Functions.* As required by 10 U.S.C. 2463 and Deputy Secretary of Defense Memorandum, ''In-sourcing Contracted Services—Implementation Guidance,'' in advance of contracting for commercial functions or continuing to contract for commercial functions, requiring officials shall consider using DoD civilian employees to perform the work. Requiring officials shall determine whether DoD civilian employees should be used to perform the work based on the guidance in Deputy Secretary of Defense Memorandum, ''In-sourcing Contracted Services—Implementation Guidance'' and Deputy Secretary of Defense Memorandum ''Implementation of Section 324 of the National Defense Authorization Act for Fiscal Year 2008 (FY 2008 NDAA)—Guidelines and Procedures on In-Sourcing New and Contracted Out Functions,'' April, 4, 2008.

(8) *International Laws, Local Laws, and Host Nation (HN) Support Agreements.* Planners and requiring activities, in coordination with contracting officers shall take international laws, local laws, and HN support agreements into account when planning for contracted support, through assistance and coordination of the staff judge advocates (SJAs) office of the geographic CCDRs; the Commander, United States Special Operations Command (CDRUSSOCOM); the Commander, United States Transportation Command (CDRUSTRANSCOM); and the Service component commander SJA offices. These laws and support agreements may affect contracting by restricting the services to be contracted, limiting contracted services to LN or HN contractor sources or, in some cases, by prohibiting contractor use altogether.

(9) *Status-of-Forces Agreements (SOFAs).* Planners and requiring activities, in coordination with contracting officers shall review applicable SOFAs and related agreements to determine their affect on the status and use of contractors in support of applicable contingency operations, with the assistance and coordination of the geographic CCDR SJA offices.

(b) *OCS Planning.* Combatant and subordinate JFCs determine whether contracted support capabilities are appropriate in support of a contingency. When contractor personnel and equipment are anticipated to support military operations, military planners will develop orchestrated, synchronized, detailed, and fully developed CSIPs and CMPs as components CONPLANs and OPLANs, in accordance with appropriate strategic planning guidance. CONPLANS without TPFDD and OPORDs shall contain CSIP- and CMP-like guidance to the extent necessary as determined by the CCDR. OCS planning will, at a minimum, consider HN support agreements, acquisition cross-servicing agreements, and Military logistics support agreements.

(1) *CSIPs.* All CCDR CONPLANs with TPFDD and OPLANs shall include a separate CSIP (*i.e.,* Annex W) in accordance with Chairman of the Joint Chiefs of Staff Manual 3122.02C and Joint Publication 4–0, ''Joint Logistics,'' July 18, 2008. Further, plans and orders should contain additional contract support guidance, as appropriate, in applicable annexes and appendixes within the respective plans (*e.g.,* contracted bulk fuel support guidance should be addressed in the Class III(B) Appendix to the Logistic Annex). Service component commanders shall provide supporting CSIPs as directed by the CCDR.

(2) *CMPs.* All CCDR CONPLANs with TPFDD and OPLANs shall include a separate CMP and/or requisite contractor management requirements document in the applicable appendix or annex of these plans (*e.g.,* private security contractor rules for the use of force should be addressed in the Rules of Engagement Appendix to the Concept of the Operation Annex) in accordance with Chairman of the Joint Chiefs of Staff Manual 3122.02C and Joint Publication 4–0, ''Joint Logistics,'' July 18, 2008. Service component commanders shall provide supporting CMPs as directed by the CCDR.

(3) *Continuation of Essential Contractor Services.* To ensure that critical capabilities are maintained, it is necessary to assess the risk of premature loss of mission-essential contracted support. Supported and supporting commanders shall plan for the mitigation from the risk of premature loss of contingency contractor personnel who are performing essential contractor services. Planning for continuation of essential contractor services during applicable contingency operations includes:

(i) Determining all services provided overseas by defense contractors that must continue during an applicable contingency operation. Contracts shall obligate defense contractors to ensure the continuity of essential contractor services during such operations.

(ii) Developing mitigation plans for those tasks identified as essential contractor services to provide reasonable assurance of continuation during crisis conditions. These mitigation plans should be developed as part of the normal CSIP development process.

(iii) Ensuring the Secretaries of the Military Departments and the geographic CCDRs plan for the mitigation from the risk of premature loss of contingency contractor personnel who are performing essential contractor services. When the cognizant DoD Component Commander or geographic CCDR has a reasonable doubt about the continuation of essential services by the incumbent contractor during applicable contingency operations, the commander shall prepare a mitigation plan for obtaining the essential services from alternative sources (military, DoD civilian, HN, or other contractor(s)). This planning requirement also applies when the commander has concerns that the contractor cannot or will no longer fulfill the terms of the contract:

(A) Because the threat level, duration of hostilities, or other factors specified in the contract have changed significantly;

(B) Because U.S., international, or local laws; HN support agreements; or SOFAs have changed in a manner that affect contract arrangements; or

(C) Due to political or cultural reasons.

(iv) Encouraging contingency contractor personnel performing essential contractor services overseas to remain in the respective operations area.

(4) *Requirements for Publication.* CCDRs shall make OCS planning factors, management policies, and specific contract support requirements available to affected contingency contractor personnel. To implement the OCS-related requirements of DoD Directive 1100.4 (see *http://www.dtic.mil/whs/directives/corres/pdf/110004p.pdf*), DoD Instruction 1100.19 (see *http://www.dtic.mil/whs/directives/corres/pdf/110019p.pdf*), DoD Directive 5205.02 (see *http://www.dtic.mil/whs/directives/corres/pdf/520502p.pdf*), the mandated CCDR Web site at *http://*

www.acq.osd.mil/dpap/pacc/cc/areas_of_responsibility.html shall include the information in paragraphs (b)(4)(i) through (b)(4)(ix) of this section (the data owner must review this information for security classification and OPSEC considerations prior to its posting).

(i) Theater Business Clearance and Contract Administration Delegation requirements for external support and systems support contracts executing or delivering contracted support in the CCDR's AOR (implemented at the CCDR's discretion).

(ii) Restrictions imposed by applicable international and local laws, SOFAs, and HN support agreements.

(iii) CAAF-related deployment requirements and theater reception.

(iv) Reporting requirements for accountability of contractor personnel and visibility of contracts.

(v) OPSEC plans and restrictions.

(vi) Force protection policies.

(vii) Personnel recovery procedures.

(viii) Availability of medical and other Government-furnished support.

(ix) Redeployment procedures.

(5) *Implementing OCS Plan Decisions Into Contracts.*

(i) Specific contract-related considerations and requirements set forth in Annex Ws of CONPLANs with TPFDD and OPLANs shall be reflected and addressed in CCDR policies (*e.g.,* Theater Business Clearance/Contract Administration Delegation) and orders that apply to contractors and their personnel, maintained on CCDR OCS Web pages and integrated into contracts performing or delivering in a CCDR area of responsibility. When such CCDR policies potentially affect contracts other than those originated in the CCDR AOR, the CCDR should consult the contingency contracting section of the Office of the Director, DPAP, for advice on how best to implement these policies. All contracted services in support of contingency operations shall be included and accounted for in accordance with 10 U.S.C. 235 and 2330a. This accounting shall be completed by the operational CCDR requiring the service.

(ii) When making logistics sustainability recommendations, the DoD Components and acquisition managers shall consider the requirements of DoD Instruction 5000.02 (see *http://www.dtic.mil/whs/directives/corres/pdf/500002p.pdf*) and paragraph (a)(5) of this section. Early in the contingency or crisis action planning process, they shall coordinate with the affected supported and supporting commands any anticipated requirements for contractor logistics support arrangements that may affect existing CONPLANs, OPLANs, and OPORDs. As part of the supporting plans, supporting organizations (Service components, defense agencies, others) must provide adequate data (*e.g.,* estimates of the numbers of contractors and contracts and the types of supplies or services that will be required to support their responsibilities within the OPLAN) to the supported command planners to ensure the supported commander has full knowledge of the magnitude of contracted support required for the applicable contingency operation.

(6) *TPFDD Development.* Deployment data for CAAF and their equipment supporting the Military Services must be incorporated into TPFDD development and deployment execution processes in accordance with Chairman of the Joint Chiefs of Staff Manual 3122.02C (see *https://ca.dtic.mil/cjcs_directives/cjcs/manuals.htm*). The requirement to provide deployment data shall be incorporated into known system support and external support contracts and shall apply regardless of whether defense contractors will provide or arrange their own transportation.

(c) *Deployment and Theater Admission Requirements and Procedures.* The considerations in this section are applicable during CAAF deployment processing.

(1) *General.*

(i) The CCDR or subordinate JFC shall provide specific deployment and theater admission requirements to the DoD Components for each applicable contingency operation. These requirements must be delineated in supporting contracts as explained in 48 CFR PGI 225.74. At a minimum, contracting officers shall ensure that contracts address operational area-specific contract requirements and the means by which the Government will inform contractors of the requirements and procedures applicable to a deployment.

(ii) A formally designated group, joint, or Military Department deployment center (*e.g.,* replacement center, Federal deployment center, unit deployment site) shall be used to conduct deployment and redeployment processing for CAAF, unless contractor-performed theater admission preparation is authorized according to paragraph (c)(5), or waived pursuant to paragraph (c)(15), of this section. However, a Government-authorized process that incorporates all the functions of a deployment center may be used if designated in the contract.

(2) *Country Entry Requirements.* Special area, country, and theater personnel clearance documents must be current in accordance with the DoD Foreign Clearance Guide (available at *https://www.fcg.pentagon.mil/*) and coordinated with affected agencies (*e.g.,* Intelligence Community agencies) to ensure that entry requirements do not impact accomplishment of mission requirements. CAAF employed in support of a DoD mission are considered DoD-sponsored personnel for DoD Foreign Clearance Guide purposes. Contracting officers shall ensure contracts include a requirement that CAAF must meet theater personnel clearance requirements and must obtain personnel clearances prior to entering applicable contingency operations. Contracts shall require CAAF to obtain proper identification credentials (*e.g.,* passport, visa) as required by the terms and conditions of the contract.

(3) *Accountability and Visibility of Contingency Contracts and Contractor Personnel.*

(i) DoD contracts and contractors supporting an applicable contingency operation shall be accountable and visible in accordance with this part, 48 CFR PGI 225.74, and section 862 of Public Law 110–181 (''National Defense Authorization Act for Fiscal Year 2008,'' January 28, 2008). Additionally, contract linguist utilization will be tracked using the Contract Linguist Enterprise-wide Database in accordance with DoD Directive 5160.41E. OCS requirements and contractor accountability and visibility must be preplanned and integrated into plans and OPORDs in accordance with Joint Publication 4–10 and Chairman of the Joint Chiefs of Staff Manual 3122.02C and U.S. citizen, U.S. legal alien contractor, LN, and TCN information provided in accordance with CJCS Manual 3150.13C (see *http://www.dtic.mil/cjcs_directives/cdata/unlimit/m315013.pdf*).

(ii) As stated in the Deputy Under Secretary of Defense (Logistics and Materiel Readiness) and Deputy Under Secretary of Defense (Program Integration) Memorandum, ''Designation of Synchronized Predeployment and Operational Tracker (SPOT) as Central Repository for Information on Contractors Deploying with the Force,'' January 25, 2007 (see *http://www2.centcom.mil/sites/contracts/Synchronized%20Predeployment%20and%20Operational%20Tracker/01–SPOT%20DFARS%20Deviation%202007–00004,%2019%20MAR%2007.pdf*), SPOT was designated as the joint web-based database to assist the CCDRs in

maintaining awareness of the nature, extent, and potential risks and capabilities associated with OCS for contingency operations, humanitarian assistance and peacekeeping operations, or military exercises designated by the CCDR. To facilitate integration of contingency contractors and other personnel as directed by the USD(AT&L) or the CCDR, and to ensure accountability, visibility, force protection, medical support, personnel recovery, and other related support can be accurately forecasted and provided, these procedures shall apply for establishing, maintaining, and validating the database:

(A) SPOT or its successor shall:

(*1*) Serve as the central repository for up-to-date status and reporting on contingency contractor personnel as directed by the USD(AT&L), 48 CFR 252.225–7040 and 48 CFR PGI 225.74, or the CCDR, as well as other Government agency contractor personnel as applicable.

(*2*) Track contract information for all DoD contracts supporting applicable contingency operations, as directed by the USD(AT&L), 48 CFR PGI 225.74 and Chairman of the Joint Chiefs of Staff Manual 3150.13C, or the CCDR. SPOT data elements are intended to provide planners and CCDRs an awareness of the nature, extent, and potential risks and capabilities associated with contracted support.

(*3*) Provide personnel accountability via unique identifier (*e.g.,* Electronic Data Interchange Personnel Identifier (EDI–PI)) of DoD contingency contractor personnel and other personnel as directed by the USD(AT&L), 48 CFR PGI 225.74, Chairman of the Joint Chiefs of Staff Manual 3150.13C, or the CCDR.

(*4*) Contain, or link to, minimum contract information (*e.g.,* contract number, contract category, period of performance, contracting agency and contracting office) necessary to establish and maintain accountability and visibility of the personnel in paragraph (c)(3)(ii)(A)*1.* of this section, to maintain information on specific equipment related to private security contracts, and the contract capabilities in contingency operations, humanitarian assistance, and peacekeeping operations, or military exercises designated by the CCDR.

(*5*) Comply with the personnel identity protection program requirements of DoD Directive 5205.02, DoD 5400.11–R (see *http://www.dtic.mil/whs/directives/corres/pdf/540011r.pdf*), and DoD 6025.18–R (see *http://www.dtic.mil/whs/directives/corres/pdf/602518r.pdf*); be consistent with the DoD Global Information Grid enterprise architecture in DoD Directive 8000.01 (see *http://www.dtic.mil/whs/directives/corres/pdf/800001p.pdf*); and be compliant with DoD Directive 8320.02 (see *http://www.dtic.mil/whs/directives/corres/pdf/832002p.pdf*), DoD Directive 4630.05 (see *http://www.dtic.mil/whs/directives/corres/pdf/463005p.pdf*), and DoD Directive 8500.01E (see *http://www.dtic.mil/whs/directives/corres/pdf/850001p.pdf*).

(B) All required data must be entered into SPOT or its successor before a contractor employee is permitted to deploy to or enter a military theater of operations. Contracting officers, through the terms of the contracts, shall require contractors to enter data before an employee's deployment and to maintain and update the information for all CAAF, as well as non-CAAF as directed by the USD(AT&L), 48 CFR PGI 225.74, or the CCDR. The contract shall require the contractor to use SPOT or its successor, to enter and maintain data on its employees.

(C) A summary of all DoD contract services or capabilities for all contracts that are awarded to support contingency, humanitarian assistance, and peacekeeping operations, to include theater, external, and systems support contracts, shall be entered into SPOT or its successor in accordance with 48 CFR 252.225–7040 and 48 CFR PGI 225.74.

(D) In accordance with applicable acquisition policy and regulations, all defense contractors awarded contracts that support applicable contingency operations shall be required, under the terms and conditions of each affected contract, to input employee data and maintain by-name accountability of designated contractor personnel in SPOT or its successor as required by 48 CFR 252.225–7040 and 48 CFR PGI 225.74. Contractors shall be required under the terms and conditions of their contracts to maintain policies and procedures for knowing the general location of their employees and to follow the procedures provided to them to submit up-to-date, real-time information reflecting all personnel deployed or to be deployed in support of contingency, humanitarian assistance, and peacekeeping operations. Prime contractors shall be required under the terms and conditions of their contract to follow the procedure provided to them to submit into SPOT or its successor, up-to-date, real-time information regarding their subcontractors at all tiers.

(E) In all cases, classified information responsive to the requirements of this part shall be reported and maintained on systems approved for the level of classification of the information provided.

(4) *LOA.* A SPOT-generated LOA shall be issued by the contracting officer or designee to all CAAF as required by the clause in 48 CFR subpart 252.225–7040 and selected non-CAAF (*e.g.,* LN private security contractors) as required under 48 CFR PGI 225.74 or otherwise designated by the CCDR. The contract shall require that all contingency contractor personnel who are issued an LOA will carry the LOA with them at all times. For systems authorized in accordance with paragraph (c)(3)(ii)(B) of this section, DoD Components shall coordinate with the SPOT program manager to obtain an LOA handled within appropriate security guidelines.

(5) *Deployment Center Procedures.*

(i) Affected contracts shall require that all CAAF process through a designated deployment center or a Government-authorized, contractor-performed deployment processing facility prior to deploying to an applicable contingency operation. Upon receiving the contracted company's certification that employees meet deployability requirements, the contracting officer or his/her representative will digitally sign the LOA. The LOA will be presented to officials at the deployment center. The deployment process shall be for, but not limited to:

(A) Verifying accountability information in SPOT or its successor.

(B) Issuing applicable Government-furnished equipment.

(C) Verifying medical and dental screening, including required military-specific vaccinations and immunizations (*e.g.,* anthrax, smallpox).

(D) Verifying and, when necessary, providing required training (*e.g.,* Geneva Conventions; law of armed conflict; general orders; standards of conduct; force protection; personnel recovery; first aid; operations security; anti-terrorism; counterintelligence reporting; the use of chemical, biological, radiological, nuclear (CBRN) protective ensemble), country and cultural awareness briefings, and other training and briefings as appropriate.

(ii) Affected contingency contracts shall require that, prior to deployment, contractors certify to the Government authorizing representative named in the contract that all required deployment processing actions have been completed for each individual.

(6) *CAAF Identification, Training, and Security Clearance Requirements.* Contracts shall require eligible CAAF to be issued an identification card with the Geneva Conventions Accompanying the Force designation in accordance with

DoD Instruction 1000.13 (see *http://www.dtic.mil/whs/directives/corres/pdf/100013p.pdf*) and DTM 08–003 (see *http://www.dtic.mil/whs/directives/corres/pdf/DTM-08-003.pdf*). CAAF shall be required to present their SPOT generated LOA as proof of eligibility at the time of ID card issuance. All CAAF shall receive training regarding their status under the law of war and the Geneva Convention. In addition and to the extent necessary, the contract shall require the defense contractor to provide personnel who have the appropriate security clearance or are able to satisfy the appropriate background investigation to obtain access required for the applicable contingency operation.

(7) *Government Support.* Generally, contingency contracts shall require that contractors provide all life, mission, and administrative support to their employees necessary to perform the contract in accordance with DoD Instruction 4161.02 (see *http://www.dtic.mil/whs/directives/corres/pdf/416102p.pdf*) and CCDR guidance as posted on the CCDR OCS Web site. As part of preparing an acquisition requirement, the requiring activity will include an estimate of the Government support that is required to be provided to CAAF and selected non-CAAF in accordance with 48 CFR 4.1301, 4.1303, 52.204–9, 7.5, 7.503(e), 2.101, and 3.502 and 48 CFR PGI 225.74. The requiring activity will confirm with theater adjudication authorities that the Government has the capacity, capability, and willingness to provide the support. However, in many contingency operations, especially those in which conditions are austere, uncertain, and/or non-permissive, the contracting officer may decide it is in the interest of the Government to allow for selected life, mission, medical, and administrative support to some contingency contractor personnel. Prior to awarding the contract, the contracting officer will request the requiring activity to verify that proper arrangements for Government support at the deployment center and within the designated operational area have been made. The contract shall specify the level of Government-furnished support to be provided to CAAF and selected non-CAAF and what support is reimbursable to the Government. The requiring activity will ensure that approved GFS is available.

(8) *Medical Preparation.*

(i) In accordance with § 158.7 of this part, contracts shall require that contractors provide medically and physically qualified contingency contractor personnel to perform duties in applicable contingency operations as outlined in the contract. Any CAAF deemed unsuitable to deploy during the deployment process due to medical or dental reasons will not be authorized to deploy. The Secretary of Defense may direct immunizations as mandatory for CAAF performing DoD-essential contractor services in accordance with Joint Publication 4–0, ''Joint Logistics'', and Chairman of the Joint Chiefs of Staff Manual 3150.13C. For CAAF who are U.S. citizens, contracts shall require contractors to make available the medical and dental records (including current panographic x-ray) of the deploying employees who grant release authorization for this purpose, according to contract terms based on this section, DoD Directive 6485.02E (see *http://www.dtic.mil/whs/directives/corres/pdf/648502p.pdf*), applicable joint force command surgeon guidance, and relevant Military Department policy.

(ii) Government personnel cannot force a contractor employee to receive an immunization or disclose private medical records against his or her will; therefore, particularly for medical requirements that arise after contract award, the contracting officer will allow contractors time to notify and/or hire employees who are willing to meet Government medical requirements and disclose their private information.

(iii) Medical threat pre-deployment briefings will be provided to all CAAF to communicate health risks and countermeasures in the designated operational area in accordance with DoD Instruction 6490.03 (see *http://www.dtic.mil/whs/directives/corres/pdf/649003p.pdf*). Health readiness, force health protection capability, either as a responsibility of the contractor or the DoD Components, will be fully delineated in plans, orders, and contracts to ensure appropriate medical staffing in the operational area. Health surveillance activities shall also include plans for contingency contractor personnel who are providing essential contractor services (as detailed in DoD Directive 6490.02E (see *http://www.dtic.mil/whs/directives/corres/pdf/649002Ep.pdf*)). Deoxyribonucleic acid (DNA) collection and other medical requirements are further addressed in § 158.7 of this part.

(9) *Individual Protective Equipment (IPE).* When necessary and directed by CCDR, the contracting officer will include language in the contract authorizing CAAF and selected non-CAAF, as designated by the CCDR, to be issued military IPE (*e.g.,* CBRN protective ensemble, body armor, ballistic helmet) in accordance with DoD Directive 1100.4. This equipment shall typically be issued at the deployment center, before deployment to the designated operational area, and must be accounted for and returned to the Government or otherwise accounted for in accordance with appropriate DoD Component standing regulations (including DoD Instruction 4161.2 (see *http://www.dtic.mil/whs/directives/corres/pdf/416102p.pdf*), directives, instructions, and supplementing publications). It is important to plan and resource IPE as required by the geographic CCDR or subordinate JFC, and the terms of the contract. Training on the proper care, fitting, and maintenance of issued protective equipment will be provided as part of contractor deployment training. This training will include practical exercises within the context of the various mission-oriented protective posture levels. When a contractor is required under the terms and conditions of the contract to provide IPE, such IPE shall meet minimum standards as defined by the contract.

(10) *Clothing.* Defense contractors or their personnel are responsible for providing their own personal clothing, including casual and working clothing required by the assignment. Generally, commanders shall not issue military clothing to contractor personnel or allow the wearing of military or military look-alike uniforms. However, a CCDR or subordinate JFC deployed forward may authorize contractor personnel to wear standard uniform items for operational reasons. Contracts shall require that this authorization be in writing and maintained in the possession of authorized contractor personnel at all times. When commanders issue any type of standard uniform item to contractor personnel, care must be taken to ensure, consistent with force protection measures, that contractor personnel are distinguishable from military personnel through the use of distinctive patches, arm bands, nametags, or headgear.

(11) *Weapons.* Contractor personnel shall not be authorized to possess or carry firearms or ammunition during applicable contingency operations except as provided in paragraphs (d)(5) and (d)(6) of this section and in 32 CFR part 159. The contract shall provide the terms and conditions governing the possession of firearms.

(12) *Training.* Joint training policy and guidance for the Military Services, including DoD contractors, is provided in CJCS Instruction 3500.01F (see *http://www.dtic.mil/doctrine/training/cjcsi3500_01f.pdf*). Standing training requirements shall be placed on the

CCDR OCS Web sites for reference by contractors. Training requirements that are specific to the operation shall be placed on the CCDR Web sites immediately after a declared contingency so contracting officers can incorporate them into the appropriate contracts as soon as possible. Training requirements must be contained or incorporated by reference in contracts employing contractor personnel in support of an applicable contingency operation. Training requirements include specific training requirements established by the CCDR and training required in accordance with this part, 32 CFR part 159, DoD Directive 2000.12 (see *http://www.dtic.mil/whs/directives/corres/pdf/200012p.pdf*), and DoD Instruction 2000.16 (see *http://www.dtic.mil/whs/directives/corres/pdf/200016p.pdf* and DoD Instruction 1300.23 (see *http://www.dtic.mil/whs/directives/corres/pdf/130023p.pdf*).

(13) *Legal Assistance.* Individual contractor personnel are responsible to have their personal legal affairs in order (including preparing and completing powers of attorney, wills, trusts, estate plans, etc.) before reporting to deployment centers. Contractor personnel are not entitled to military legal assistance either in-theater or at the deployment center.

(14) *Contractor Integration.* It is critical that CAAF brought into an operational area are properly integrated into the military operation through a formal reception process. This shall include, at a minimum, ensuring as they move into and out of the operational area, and commensurate with local threat levels, that they:

(i) Have met theater entry requirements and are authorized to enter the theater.

(ii) Are accounted for.

(iii) Possess any required IPE, including CBRN protective ensemble.

(iv) Have been authorized any required Government-furnished support and force protection.

(15) *Waivers.* For contract support in the operational area that is required for less than 30 consecutive days, the CCDR or designee may waive a portion of the formal procedural requirements in paragraph (c)(5) of this section, which may include waiving the requirement for processing through a deployment center. However, the requirements to possess proper identification cards and to establish and maintain accountability and visibility for all defense contractors in accordance with applicable policy shall not be waived, nor shall any medical requirement be waived without the prior approval of qualified medical personnel. If contingency contractor personnel are authorized to be armed, the requirements of paragraphs (d)(5) and (d)(6) of this section cannot be waived.

(d) *Contractor In-Theater Management Requirements.* The DoD Components shall adhere to the in-theater management policies of this section in managing contingency contractor personnel in support of applicable contingency operations.

(1) *Reception.* All CAAF shall be processed into the operational area through a designated reception site. The site shall verify, based upon a visual inspection of the LOA, that contractor personnel are entered into SPOT or its successor, and verify that personnel meet theater-specific entry requirements. Contractor personnel already in the designated operational area when a contingency is declared must report to the appropriate designated reception site as soon as it is operational. If any CAAF does not have the proper documentation, the person will be refused entry into the theater, and the contracting officer will notify the contractor to take action to resolve the reason for the lack of proper documentation for performing in that area. Should the contractor fail to take that action, the person shall be sent back to his or her departure point, or directed to the Service component command or Defense Agency responsible for that specific contract for theater entrance processing.

(2) *Contractor Use Restrictions.* CCDRs, through their respective contracting officers or their representatives, may place specific restrictions on locations or timing of contracted support based on the prevailing operational situation, in coordination with subordinate commanders and the applicable Defense Agencies.

(3) *Contractor Security Screening.* Contractor screening requirements for CAAF and non-CAAF who require access to U.S. facilities will be integrated into OPSEC programs and plans.

(4) *Contractor Conduct and Discipline.* Terms and conditions of contracts shall require that CAAF comply with theater orders, applicable directives, laws, and regulations, and that employee discipline is maintained. Non-CAAF who require base access will be directed to follow base force protection and security-related procedures as applicable.

(i) Contracting officers are the legal link between the requiring activity and the contractor. The contracting officer may appoint a designee (usually a COR) as a liaison between the contracting officer and the contractor and requiring activity. This designee monitors and reports contractor performance and requiring activity concerns to the contracting officer. The requiring activity has no direct contractual relationship with or authority over the contractor. However, the ranking military commander may, in emergency situations (*e.g.,* enemy or terrorist actions or natural disaster), urgently recommend or issue warnings or messages urging that CAAF and non-CAAF personnel take emergency actions to remove themselves from harm's way or take other appropriate self-protective measures.

(ii) The contractor is responsible for disciplining contingency contractor personnel. However, in accordance with paragraph (h)(1) of 48 CFR 252.225–7040, the contracting officer may direct the contractor, at its own expense, to remove and replace any contingency contractor personnel who jeopardize or interfere with mission accomplishment, or whose actual field performance (certification/professional standard) is well below that stipulated in the contract, or who fail to comply with or violate applicable requirements of the contract. Such action may be taken at Government discretion without prejudice to its rights under any other provision of the contract, including the Termination for Default. A commander also has the authority to take certain actions affecting contingency contractor personnel, such as the ability to revoke or suspend security access or impose restrictions from access to military installations or specific worksites.

(iii) CAAF, with some restrictions (*e.g.,* LN CAAF are not subject to MEJA), are subject to prosecution under MEJA and UCMJ in accordance with 18 U.S.C. 7(9), 2441, and 3261 and Secretary of Defense Memorandum, ''UCMJ Jurisdiction Over DoD Civilian Employees, DoD Contractor Personnel, and Other Persons Serving With or Accompanying the Armed Forces Overseas During Declared War and in Contingency Operations,'' March 10, 2008. Commanders possess significant authority to act whenever criminal activity is committed by anyone subject to MEJA and UCMJ that relates to or affects the commander's responsibilities. This includes situations in which the alleged offender's precise identity or actual affiliation is to that point undetermined. Secretary of Defense Memorandum, ''UCMJ Jurisdiction Over DoD Civilian Employees, DoD Contractor Personnel, and Other Persons Serving With or Accompanying the Armed Forces Overseas During Declared War and in

Contingency Operations,'' March 10, 2008, sets forth the scope of this command authority in detail. Contracting officers will ensure that contractors are made aware of their status and liabilities as CAAF and the required training requirements associated with this status. Subject to local or HN law, SOFA, and the jurisdiction of the Department of State (*e.g.,* consulate or chief of mission) over civilians in another country, commanders retain authority to respond to an incident, restore safety and order, investigate, apprehend suspected offenders, and otherwise address the immediate needs of the situation.

(iv) The Department of Justice may prosecute misconduct under applicable Federal laws, including MEJA and 18 U.S.C. 2441. Contingency contractor personnel are also subject to the domestic criminal laws of the local nation absent a SOFA or international agreement to the contrary. When confronted with disciplinary problems involving contingency contractor personnel, commanders shall seek the assistance of their legal staff, the contracting officer responsible for the contract, and the contractor's management team.

(v) In the event of an investigation of reported offenses alleged to have been committed by or against contractor personnel, appropriate investigative authorities shall keep the contracting officer informed, to the extent possible without compromising the investigation, if the alleged offense has a potential contract performance implication.

(5) *Force Protection and Weapons Issuance.* CCDRs shall develop security plans for protection of CAAF and selected non-CAAF (*e.g.,* those working on a military facility or as otherwise determined by the operational commander) in locations where the civil authority is either insufficient or illegitimate, and the commander determines it is in the interests of the Government to provide security because the contractor cannot obtain effective private security services; such services are unavailable at a reasonable cost; or threat conditions necessitate security through military means.

(i) In appropriate cases, the CCDR may provide security through military means commensurate with the level of security provided DoD civilians. Specific security measures shall be mission and situation dependent as determined by the CCDR and provided to the contracting officer. The contracting officer shall include in the contract the level of protection to be provided to contingency contractor personnel as determined by the CCDR or subordinate JFC. Specific procedures for determining requirements for and integrating contractors into the JOA force protection structure will be placed on the geographic CCDR Web sites.

(ii) Contracts shall require all contingency contractor personnel to comply with applicable CCDR and local commander force protection policies. Contingency contractor personnel working within a U.S. Military facility or in close proximity of U.S. Military forces may receive incidentally the benefits of measures undertaken to protect U.S. forces in accordance with DoD Directive 2000.12 (see *http://www.dtic.mil/whs/directives/corres/pdf/200012p.pdf*). However, it may be necessary for contingency contractor personnel to be armed for individual self-defense. Procedures for arming for individual self-defense are:

(A) According to applicable U.S., HN, or international law; relevant SOFAs; international agreements; or other arrangements with local authorities and on a case-by-case basis when military force protection and legitimate civil authority are deemed unavailable or insufficient, the CCDR (or a designee no lower than the general/flag officer level) may authorize contingency contractor personnel to be armed for individual self-defense.

(B) The appropriate SJA to the CCDR shall review all applications for arming contingency contractor personnel on a case-by-case basis to ensure there is a legal basis for approval. In reviewing applications, CCDRs shall apply the criteria mandated for arming contingency contractor personnel for private security services provided in paragraph (d)(6) of this section and 32 CFR part 159. In such cases, the contractor will validate to the contracting officer, or designee, that weapons familiarization, qualification, and briefings regarding the rules for the use of force have been provided to contingency contractor personnel in accordance with CCDR policies. Acceptance of weapons by contractor personnel shall be voluntary and permitted by the defense contractor and the contract. In accordance with paragraph (j) of 48 CFR 252.225–7040, the contract shall require that the defense contractor ensure such personnel are not prohibited by U.S. law from possessing firearms.

(C) When armed for personal protection, contingency contractor personnel are only authorized to use force for individual self-defense. Unless immune from local laws or HN jurisdiction by virtue of an international agreement or international law, the contract shall include language advising contingency contractor personnel that the inappropriate use of force could subject them to U.S. and local or HN prosecution and civil liability.

(6) *Use of Contractor Personnel for Private Security Services.* If, consistent with applicable U.S., local, and international laws; relevant HN agreements, or other international agreements and this part, a defense contractor may be authorized to provide private security services for other than uniquely military functions as identified in DoD Instruction 1100.22. Specific procedures relating to contingency contractor personnel providing private security services are provided in 32 CFR part 159.

(7) *Personnel Recovery, Missing Persons, and Casualty Reporting.*

(i) DoD Directive 3002.01E (see *http://www.dtic.mil/whs/directives/corres/pdf/300201p.pdf*) outlines the DoD personnel recovery program and Joint Publication 3–50 (see *http://www.dtic.mil/dpmo/laws_directives/documents/joint_pu_3_50.pdf*) details its doctrine. The DoD personnel recovery program covers all CAAF employees regardless of their citizenship. If a CAAF becomes isolated or unaccounted for, the contractor must expeditiously file a search and rescue incident report (SARIR) (available at *http://www.armystudyguide.com/content/the_tank/army_report_and_message_formats/search-and-rescue-inciden.shtml*) to the theater's personnel recovery architecture, *i.e.,* the component personnel recovery coordination cell or the Combatant Command joint personnel recovery center.

(ii) Upon recovery following an isolating event, a CAAF returnee shall enter the first of three phases of reintegration in DoD Instruction 2310.4 (see *http://www.dtic.mil/whs/directives/corres/pdf/231004p.pdf*). The additional phases of reintegration in DoD Instruction 2310.4 shall be offered to the returnee to ensure his or her physical and psychological well being while adjusting to the post-captivity environment.

(iii) Accounting for missing persons, including contractors, is addressed in DoD Directive 2310.07E (see *http://www.dtic.mil/whs/directives/corres/pdf/231007p.pdf*). Evacuation of dependents of contractor personnel is addressed in DoD Directive 3025.14 (see *http://www.dtic.mil/whs/directives/corres/pdf/302514p.pdf*). All CAAF and non-CAAF casualties shall be reported in accordance with Joint Publication 1–0, ''Personnel Support to Joint Operations,'' October 16, 2006 (see

http://www.dtic.mil/doctrine/new_pubs/jp1_0.pdf) and ASD(L&MR) Publication, ''Business Rules for the Synchronized Predeployment and Operational Tracker (SPOT),'' current edition. (See *http://www.acq.osd.mil/log/PS/spot.html*)

(8) *Mortuary Affairs.*

(i) CAAF who die while in support of U.S. forces shall be covered by the DoD mortuary affairs program as described in DoD Directive 1300.22 (see *http://www.dtic.mil/whs/directives/corres/pdf/130022p.pdf*). Every effort shall be made to identify remains and account for unrecovered remains of contractors and their dependents who die in military operations, training accidents, and other multiple fatality incidents. The remains of CAAF who are fatalities resulting from an incident in support of military operations deserve and shall receive the same dignity and respect afforded military remains.

(ii) The DoD may provide mortuary support for the disposition of remains and personal effects at the request of the Department of State. The USD(P&R) shall coordinate this support with the Department of State to include cost reimbursement, where appropriate. The disposition of non-CAAF contractors (LNs and TCNs) shall be given the same dignity and respect afforded U.S. personnel. The responsibility for coordinating the transfer of these remains to the HN or affected nation resides with the geographic CCDR in coordination and conjunction with the Department of State through the embassies or the International Red Cross, as appropriate, and in accordance with applicable contract provisions.

(9) *Medical Support and Evacuation.* Theater-specific contract language to clarify available healthcare can be found on the CCDR Web sites. During applicable contingency operations in austere, uncertain, and/or hostile environments, CAAF may encounter situations in which they are unable to access medical support on the local economy. Generally, the DoD will only provide resuscitative care, stabilization, hospitalization at Level III medical treatment facilities (MTFs), and assistance with patient movement in emergencies where loss of life, limb, or eyesight could occur. Hospitalization will be limited to stabilization and short-term medical treatment with an emphasis on return to duty or placement in the patient movement system in accordance with DoD Instruction 6000.11 (see *http://www.dtic.mil/whs/directives/corres/pdf/600011p.pdf*). All costs associated with the treatment and transportation of CAAF to the selected civilian facility are reimbursable to the Government and shall be the responsibility of contractor personnel, their employers, or their health insurance providers. Nothing in this paragraph is intended to affect the allowability of costs incurred under a contingency contract. Medical support and evacuation procedures are:

(i) *Emergency Medical and Dental Care.* All CAAF will normally be afforded emergency medical and dental care if injured while supporting contingency operations. Additionally, non-CAAF employees who are injured while in the vicinity of U.S. forces will also normally receive emergency medical and dental care. Emergency medical and dental care includes medical care situations in which life, limb, or eyesight is jeopardized. Examples of emergency medical and dental care include examination and initial treatment of victims of sexual assault; refills of prescriptions for life-dependent drugs; repair of broken bones, lacerations, infections; and traumatic injuries to the dentition.

(ii) *Primary Care.* Primary medical or dental care normally will not be authorized or be provided to CAAF by MTFs. When required and authorized by the CCDR or subordinate JFC, this support must be specifically authorized under the terms and conditions of the contract and detailed in the corresponding LOA. Primary care is not authorized for non-CAAF employees. Primary care includes routine inpatient and outpatient services, non-emergency evacuation, pharmaceutical support, dental services, and other medical support as determined by appropriate military authorities based on recommendations from the joint force command surgeon and on the existing capabilities of the forward-deployed MTFs.

(iii) *Long-Term Care.* The DoD shall not provide long-term care to contractor personnel.

(iv) *Quarantine or Restriction of Movement.* The CCDR or subordinate commander has the authority to quarantine or restrict movement of contractor personnel according to DoD Instruction 6200.03 (see *http://www.dtic.mil/whs/directives/corres/pdf/620003p.pdf*).

(v) *Evacuation.* Patient movement of CAAF shall be performed in accordance with DoD Instruction 6000.11 (see *http://www.dtic.mil/whs/directives/corres/pdf/600011p.pdf*). When CAAF are evacuated for medical reasons from the designated operational area to MTFs funded by the Defense Health Program, normal reimbursement policies will apply for services rendered by the facility. Should CAAF require medical evacuation outside the continental United States (OCONUS), the sending MTF shall assist CAAF in making arrangements for transfer to a civilian facility of their choice. When U.S. forces provide emergency medical care to non-CAAF, these patients will be evacuated or transported via national means (when possible) to their local medical systems.

(10) *Other Government-Furnished Support.* In accordance with DoD Component policy and consistent with applicable laws and international agreements, Government-furnished support may be authorized or required when CAAF and selected non-CAAF are deployed with or otherwise provide support in the theater of operations to U.S. Military forces deployed OCONUS. Types of support are listed in 48 CFR PGI 225.74 and may include transportation to and within the operational area, mess operations, quarters, phone service, religious support, and laundry.

(i) In operations where no reliable or local mail service is available, CAAF who are U.S. citizens will be authorized postal support in accordance with DoD 4525.6–M (see *http://www.dtic.mil/whs/directives/corres/pdf/452506m.pdf*). CAAF who are not U.S. citizens will be afforded occasional mail service necessary to mail their pay checks back to their homes of record.

(ii) Morale, welfare, and recreation (MWR) and exchange services will be authorized for CAAF who are U.S. citizens in accordance with 10 U.S.C. 133. CAAF who are not U.S. citizens and non-CAAF are not authorized MWR and exchange services.

(e) *Redeployment Procedures.* The considerations in this section are applicable during the redeployment of CAAF.

(1) *Transportation Out of Theater.* When the terms and conditions of the contract state that the Government shall provide transportation out of theater:

(i) Upon completion of the deployment or other authorized release, the Government shall, in accordance with each individual's LOA, provide contractor employees transportation from the theater of operations to the location from which they deployed, unless otherwise directed.

(ii) Prior to redeployment from the AOR, the contractor employee, through their defense contractor, shall coordinate contractor exit times and transportation with CONUS Replacement Center (CRC) or designated reception site. Additionally, intelligence out-briefs must be completed and customs and immigration briefings and inspections must be conducted. CAAF are subject to customs and immigration processing procedures at all designated

stops and their final destination during their redeployment. CAAF returning to the United States are subject to U.S. reentry customs requirements in effect at the time of reentry.

(2) *Post-Deployment Health Assessment.* In accordance with DoD Instruction 6490.03, contracts shall require that CAAF complete a post-deployment health assessment in the Defense Medical Surveillance System (DMSS) at the termination of the deployment (within 30 days of redeployment). These assessments will only be used by the DoD to accomplish population-wide assessments for epidemiological purposes, and to help identify trends related to health outcomes and possible exposures. They will not be used for individual purposes in diagnosing conditions or informing individuals they require a medical followup. Diagnosing conditions requiring medical referral is a function of the contractor.

(3) *Redeployment Center Procedures.* In most instances, the deployment center/site that prepared the CAAF for deployment will serve as the return processing center. As part of CAAF redeployment processing, the deployment center/site personnel will screen contractor records, recover Government-issued identification cards and equipment, and conduct debriefings as appropriate. The amount of time spent at the return processing center will be the minimum required to complete the necessary administrative procedures.

(i) A special effort will be made to collect all CACs from returning deployed contractors.

(ii) Contractor employees are required to return any issued clothing and equipment. Lost, damaged, or destroyed clothing and equipment shall be reported in accordance with procedures of the issuing facility. Contractor employees shall also receive a post-deployment medical briefing on signs and symptoms of diseases to watch for, such as tuberculosis. As some countries hosting an intermediate staging base may not permit certain items to enter their borders, some clothing and equipment, whether issued by the contractor, purchased by the employee, or provided by the Government, may not be permitted to exit the AOR. In this case, alternate methods of accounting for Government-issued equipment and clothing will be used according to CCDR or JFC guidance and contract language.

(4) *Update to SPOT.* Contracting officers or their designated representative must verify that defense contractors have updated SPOT to reflect their employee's change in status within 3 days of his or her redeployment as well as close out the deployment and collect or revoke the LOA.

(5) *Transportation to Home Destination.* Transportation of CAAF from the deployment center/site to the home destination is the employer's responsibility. Government reimbursement to the employer for travel will be determined by the terms and conditions of the contract.

§ 158.7 Guidance for contractor medical and dental fitness.

(a) *General.*

(1) DoD contracts requiring the deployment of CAAF shall include medical and dental fitness requirements as specified in this section. Under the terms and conditions of their contracts, defense contractors shall provide personnel who meet such medical and dental requirements as specified in their contracts.

(2) The geographic CCDR will establish theater-specific medical qualifications. When exceptions to these standards are requested through the contracting officer, the geographic CCDR will establish a process for reviewing such exceptions and ensuring that a mechanism is in place to track and archive all approved and denied waivers, including the medical condition requiring the waiver.

(3) The geographic CCDR shall also ensure that processes and procedures are in place to remove contractor personnel in theater who are not medically qualified, once so identified by a healthcare provider. The geographic CCDR shall ensure appropriate language regarding procedures and criteria for requiring removal of contractor personnel identified as no longer medically qualified is developed, is posted on the CCDR OCS Web site, and also ensure contracting officers incorporate the same into all contracts for performance in the AOR.

(4) Unless otherwise stated in the contract, all pre-, during-, and post-deployment medical evaluations and treatment are the responsibility of the contractor.

(b) *Medical and Dental Evaluations.*

(1) All CAAF deploying in support of a contingency operation must be medically, dentally, and psychologically fit for deployment as stated in DoD Directive 6200.04 (see *http://www.dtic.mil/whs/directives/corres/pdf/620004p.pdf*). Fitness specifically includes the ability to accomplish the tasks and duties unique to a particular operation and the ability to tolerate the environmental and operational conditions of the deployed location. Under the terms and conditions of their contracts, defense contractors will provide medically, dentally, and psychologically fit contingency contractor personnel to perform contracted duties.

(2) Just as military personnel must pass a complete health evaluation, CAAF shall have a similar evaluation based on the functional requirements of the job. All CAAF must undergo a medical and dental assessment within 12 months prior to arrival at the designated deployment center or Government-authorized contractor-performed deployment processing facility. This assessment should emphasize diagnosing cardiovascular, pulmonary, orthopedic, neurologic, endocrinologic, dermatologic, psychological, visual, auditory, dental, and other systemic disease conditions that may preclude performing the functional requirements of the contract, especially in the austere work environments encountered in some contingency operations.

(3) In accordance with DoD Instruction 6490.03, contracts shall require that CAAF complete a pre-deployment health assessment in the DMSS at the designated deployment center or a Government-authorized contractor-performed deployment processing facility. These assessments will only be used by the DoD to accomplish population-wide assessments for epidemiological purposes, and to help identify trends related to health outcomes and possible exposures. They will not be used for individual purposes in diagnosing conditions or informing individuals they require a medical followup. Diagnosing conditions requiring medical referral is a function of the contractor.

(4) In general, CAAF who have any of the medical conditions in paragraph (j) of this section, based on an individual assessment pursuant to DoD Instruction 6490.03, should not deploy.

(5) Individuals who are deemed not medically qualified at the deployment center or at any period during the deployment process based upon an individual assessment, or who require extensive preventive dental care (see paragraph (j)(2)(xxv) of this section) will not be authorized to deploy.

(6) Non-CAAF shall be medically screened when specified by the requiring activity, for the class of labor that is being considered (*e.g.,* LNs working in a dining facility).

(7) Contracts shall require contractors to replace individuals who develop, at any time during their deployment,

conditions that cause them to become medically unqualified.

(8) In accordance with DoD Instruction 6490.03, contracts shall require that CAAF complete a post-deployment health assessment in DMSS at the termination of the deployment (within 30 days of redeployment).

(c) *Glasses and Contact Lenses.* If vision correction is required, contractor personnel will be required to have two pair of glasses. A written prescription may also be provided to the supporting military medical component so that eyeglass inserts for use in a compatible chemical protective mask can be prepared. If the type of protective mask to be issued is known and time permits, the preparation of eyeglass inserts should be completed prior to deployment. Wearing contact lenses in a field environment is not recommended and is at the contingency contractor employee's own risk due to the potential for irreversible eye damage caused by debris, chemical or other hazards present, and the lack of ophthalmologic care in a field environment.

(d) *Medications.* Other than force health protection prescription products (FHPPPs) to be provided to CAAF and selected non-CAAF, contracts shall require that contractor personnel deploy with a minimum 90-day supply of any required medications obtained at their own expense. Contractor personnel must be aware that deployed medical units are equipped and staffed to provide emergency care to healthy adults. They will not be able to provide or replace many medications required for routine treatment of chronic medical conditions, such as high blood pressure, heart conditions, and arthritis. The contract shall require contractor personnel to review both the amount of the medication and its suitability in the foreign area with their personal physician and make any necessary adjustments before deploying. The contract shall require the contractor to be responsible for the re-supply of required medications.

(e) *Comfort Items.* The contract shall require that CAAF take spare hearing-aid batteries, sunglasses, insect repellent, sunscreen, and any other supplies related to their individual physical requirements. These items will not be provided by DoD sources.

(f) *Immunizations.* A list of immunizations, both those required for entry into the designated area of operations and those recommended by medical authorities, shall be produced for each deployment; posted to the geographic CCDR Web site or other venue, as appropriate; and incorporated in contracts for performance in the designated AOR.

(1) The geographic CCDR, upon the recommendation of the appropriate medical authority (*e.g.,* Combatant Command surgeon), shall provide guidance and a list of immunizations required to protect against communicable diseases judged to be a potential hazard to the health of those deploying to the applicable theater of operation. The Combatant Command surgeon of the deployed location shall prepare and maintain this list.

(2) The contract shall require that CAAF be appropriately immunized before completing the pre-deployment process.

(3) The Government shall provide military-specific vaccinations and immunizations (*e.g.,* anthrax, smallpox) during pre-deployment processing. However, the contract shall stipulate that CAAF obtain all other immunizations (*e.g.,* yellow fever, tetanus, typhoid, flu, hepatitis A and B, meningococcal, and tuberculin (TB) skin testing) prior to arrival at the deployment center.

(4) Theater-specific medical supplies and FHPPPs, such as anti-malarials and pyridostigmine bromide, will be provided to CAAF and selected non-CAAF on the same basis as they are to active duty military members. Additionally, CAAF will be issued deployment medication information sheets for all vaccines or deployment-related medications that are dispensed or administered.

(5) A TB skin test is required within 3 months prior to deployment. Additionally, the contract shall stipulate that CAAF and selected non-CAAF bring to the JOA a current copy of Public Health Service Form 791, ''International Certificate of Vaccination,'' (also known as ''shot record,'' available for purchase at *http://bookstore.gpo.gov/collections/vaccination.jsp*).

(g) *Human Immunodeficiency Virus (HIV) Testing.* HIV testing is not mandatory for contingency contractor personnel unless specified by an agreement or by local requirements. HIV testing, if required, shall occur within 1 year before deployment.

(h) *Armed Forces Repository of Specimen Samples for the Identification of Remains (AFRSSIR).* For identification of remains purposes, all CAAF who are U.S. citizens shall obtain a dental panograph and provide a specimen sample suitable for DNA analysis prior to or during deployment processing. The DoD Components shall ensure that all contracts require CAAF who are U.S. citizens to provide specimens for AFRSSIR as a condition of employment according to DoD Instruction 5154.30 (see *http://www.dtic.mil/whs/directives/corres/pdf/515430p.pdf*). Specimens shall be collected and managed as provided in paragraphs (h)(1) through (h)(3) of this section.

(1) All CAAF who are U.S. citizens processing through a deployment center will have a sample collected and forwarded to the AFRSSIR for storage. Contracts shall require contractors to verify in SPOT or its successor that AFRSSIR has received the sample or that the DNA reference specimen sample has been collected by the contractor.

(2) If CAAF who are U.S. citizens do not process through a deployment center or the defense contractor is authorized to process its own personnel, the contract shall require that the contractor make its own arrangements for collection and storage of the DNA reference specimen through a private facility, or arrange for the storage of the specimen by contacting AFRSSIR. Regardless of what specimen collection and storage arrangements are made, all defense contractors deploying CAAF who are U.S. citizens must provide the CAAF name and Social Security number, location of the sample, facility contact information, and retrieval plan to AFRSSIR. If AFRSSIR is not used and a CAAF who is a U.S. citizen becomes a casualty, the defense contractor must be able to retrieve identification media for use by the Armed Forces Medical Examiner (AFME) or other competent authority to conduct a medical-legal investigation of the incident and identification of the victim(s). These records must be retrievable within 24 hours for forwarding to the AFME when there is a reported incident that would necessitate its use for human remains identification purposes. The defense contractor shall have access to:

(i) Completed DD Form 93 or equivalent record.

(ii) Location of employee medical and dental records, including panograph.

(iii) Location of employee fingerprint record.

(3) In accordance with DoD Instruction 5154.30 (see *http://www.dtic.mil/whs/directives/corres/pdf/515430p.pdf*), AFRSSIR is responsible for implementing special rules and procedures to ensure the protection of privacy interests in the specimen samples and any DNA analysis of those samples. Specimen samples shall only be used for the purposes outlined in DoD Instruction 5154.30. Other details, including retention and destruction

requirements of DNA samples, are addressed in DoD Instruction 5154.30.

(i) *Pre-Existing Medical Conditions.* All evaluations of pre-existing medical conditions should be accomplished prior to deployment. Personnel who have pre-existing medical conditions may deploy if all of these conditions are met:

(1) The condition is not of such a nature that an unexpected worsening is likely to have a medically grave outcome or a negative impact on mission execution.

(2) The condition is stable and reasonably anticipated by the pre-deployment medical evaluator not to worsen during the deployment under contractor-provided medical care in-theater in light of the physical, physiological, psychological, environmental, and nutritional effects of the duties and location.

(3) Any required ongoing health care or medications must be available or accessible to the contractor, independent of the military health system, and have no special handling, storage, or other requirements (*e.g.,* refrigeration requirements and/or cold chain, electrical power requirements) that cannot be met in the specific theater of operations. Personnel must deploy with a minimum 90-day supply of prescription medications other than FHPPPs.

(4) The condition does not and is not anticipated to require duty limitations that would preclude performance of duty or to impose accommodation. (The nature of the accommodation must be considered. The Combatant Command surgeon (or his delegated representative) is the appropriate authority to evaluate the suitability of the individual's limitations in-theater.)

(5) There is no need for routine out-of-theater evacuation for continuing diagnostics or other evaluations.

(j) *Conditions Usually Precluding Medical Clearance.*

(1) This section is not intended to be comprehensive. A list of all possible diagnoses and their severity that should not be approved would be too expansive to list in this part. In general, individuals with the conditions in paragraphs (j)(2)(i) through (j)(2)(xxx) of this section, based on an individual assessment pursuant to DoD Instruction 6490.03, will not normally be approved for deployment. The medical evaluator must carefully consider whether climate; altitude; nature of available food and housing; availability of medical, behavioral health, and dental services; or other environmental and operational factors may be hazardous to the deploying person's health because of a known physical or mental condition.

(2) Medical clearance for deployment of persons with any of the conditions in this section shall be granted only after consultation with the appropriate Combatant Command surgeon. The Combatant Command surgeon makes recommendations and serves as the geographic CCDR advisor; however, the geographic CCDR is the final approval or disapproval authority except as provided in paragraph (k)(3) of this section. The Combatant Command surgeon can determine if adequate treatment facilities and specialist support is available at the duty station for:

(i) Physical or psychological conditions resulting in the inability to effectively wear IPE, including protective mask, ballistic helmet, body armor, and CBRN protective ensemble, regardless of the nature of the condition that causes the inability to wear the equipment if wearing such equipment may be reasonably anticipated or required in the deployed location.

(ii) Conditions that prohibit immunizations or use of FHPPs required for the specific deployment. Depending on the applicable threat assessment, required FHPPs, vaccines, and countermeasures may include atropine, epinephrine and/or 2-pam chloride auto-injectors, certain antimicrobials, antimalarials, and pyridostigmine bromide.

(iii) Any chronic medical condition that requires frequent clinical visits, that fails to respond to adequate conservative treatment, or that necessitates significant limitation of physical activity.

(iv) Any medical condition that requires durable medical equipment or appliances or that requires periodic evaluation and/or treatment by medical specialists not readily available in theater (*e.g.,* CPAC machine for sleep apnea).

(v) Any unresolved acute or chronic illness or injury that would impair duty performance in a deployed environment during the duration of the deployment.

(vi) Active tuberculosis or known blood-borne diseases that may be transmitted to others in a deployed environment. (For HIV infections, see paragraph (j)(2)(xvii) of this section.)

(vii) An acute exacerbation of a physical or mental health condition that could affect duty performance.

(viii) Recurrent loss of consciousness for any reason.

(ix) Any medical condition that could result in sudden incapacitation including a history of stroke within the last 24 months, seizure disorders, and diabetes mellitus type I or II, treated with insulin or oral hypoglycemic agents.

(x) Hypertension not controlled with medication or that requires frequent monitoring to achieve control.

(xi) Pregnancy.

(xii) Cancer for which the individual is receiving continuing treatment or that requires periodic specialty medical evaluations during the anticipated duration of the deployment.

(xiii) Precancerous lesions that have not been treated and/or evaluated and that require treatment and/or evaluation during the anticipated duration of the deployment.

(xiiii) Any medical condition that requires surgery or for which surgery has been performed that requires rehabilitation or additional surgery to remove devices.

(xv) Asthma that has a Forced Expiratory Volume-1 (FEV–1) of less than or equal to 50 percent of predicted FEV–1 despite appropriate therapy, that has required hospitalization at least 2 times in the last 12 months, or that requires daily systemic oral or injectable steroids.

(xvi) Any musculoskeletal condition that significantly impairs performance of duties in a deployed environment.

(xvii) HIV antibody positive with the presence of progressive clinical illness or immunological deficiency. The Combatant Command surgeon should be consulted in all instances of HIV seropositivity before medical clearance for deployment.

(xviii) Hearing loss. The requirement for use of a hearing aid does not necessarily preclude deployment. However, the individual must have sufficient unaided hearing to perform duties safely.

(xviiii) Loss of vision. Best corrected visual acuity must meet job requirements to safely perform duties.

(xx) Symptomatic coronary artery disease.

(xxi) History of myocardial infarction within 1 year of deployment.

(xxii) History of coronary artery bypass graft, coronary artery angioplasty, carotid endarterectomy, other arterial stenting, or aneurysm repair within 1 year of deployment.

(xxiii) Cardiac dysrhythmias or arrhythmias, either symptomatic or requiring medical or electrophysiologic control (presence of an implanted defibrillator and/or pacemaker).

(xxiv) Heart failure.

(xxv) Individuals without a dental exam within the last 12 months or who are likely to require dental treatment or reevaluation for oral conditions that are likely to result in dental emergencies within 12 months.

(xxvi) Psychotic and/or bipolar disorders. For detailed guidance on deployment-limiting psychiatric conditions or psychotropic medications, see ASD(HA) Memorandum ''Policy Guidance for Deployment-Limiting Psychiatric Conditions and Medications'' November 7, 2006 (see *http://www.ha.osd.mil/policies/2006/061107_deployment-limiting_psych_conditions_meds.pdf*).

(xxvii) Psychiatric disorders under treatment with fewer than 3 months of demonstrated stability.

(xxviii) Clinical psychiatric disorders with residual symptoms that impair duty performance.

(xxviiii) Mental health conditions that pose a substantial risk for deterioration and/or recurrence of impairing symptoms in the deployed environment.

(xxx) Chronic medical conditions that require ongoing treatment with antipsychotics, lithium, or anticonvulsants.

(k) *Exceptions to Medical Standards (Waivers).* If a contractor believes an individual CAAF employee with one of the conditions listed in paragraphs (j)(2)(i) through (j)(2)(xxx) of this section can accomplish his or her tasks and duties and tolerate the environmental and operational conditions of the deployed location, the contractor may request a waiver for that individual through the contracting officer or designee.

(1) Waivers are unlikely for contractor personnel and an explanation should be given as to why other persons who meet the medical standards could not be identified to fulfill the deployed duties. Waivers and requests for waivers will include a summary of a detailed medical evaluation or consultation concerning the medical condition(s). Maximization of mission accomplishment and the protection of the health of personnel are the ultimate goals. Justification will include statements indicating the CAAF member's experience, position to be placed in, any known specific hazards of the position, anticipated availability and need for care while deployed, and the benefit expected to accrue from the waiver.

(2) Medical clearance to deploy or continue serving in a deployed environment for persons with any of the conditions in paragraphs (j)(2)(i) through (j)(2)(xxx) of this section must have the concurrence by the Combatant Command surgeon, or his designee, who will recommend approval or disapproval to the geographic CCDR. The geographic CCDR, or his designee, is the final decision authority for approvals and disapprovals.

(3) For CAAF employees working with Special Operations Forces personnel who have conditions in paragraphs (j)(2)(i) through (j)(2)(xxx) of this section, medical clearance may be granted after consultation with the appropriate Theater Special Operations Command (TSOC) surgeon. The TSOC surgeon, in coordination with the Combatant Command surgeon and senior in-theater medical authority, will ascertain the capability and availability of treatment facilities and specialist support in the general duty area versus the operational criticality of the particular SOF member. The TSOC surgeon will recommend approval or disapproval to the TSOC Commander. The TSOC Commander is the final approval or disapproval authority.

Dated: December 21, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–33107 Filed 12–28–11; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2011–0817]

Drawbridge Operation Regulation; Delaware River, Between Burlington, NJ and Bristol, PA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Fifth Coast Guard District has issued a temporary deviation from the regulations governing the operation of the Burlington-Bristol (Route 413) Bridge, across the Delaware River, mile 117.8, between the townships of Burlington, NJ and Bristol, PA. The deviation restricts the operation of the draw span in order to facilitate the replacement of the lift cables.

DATES: This deviation is effective 7 a.m. December 27, 2011, until 3 p.m. January 20, 2012.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2011–0817 and are available online by going to *http://www.regulations.gov* inserting USCG–2011–0817 in the ''Keyword'' box and then clicking ''Search''. They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Terrance Knowles, Environmental Protection Specialist, Fifth Coast Guard District, at telephone (757) 398–6587, email *Terrance.A.Knowles@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION: The Burlington County Bridge Commission, who owns and operates this vertical lift drawbridge, has requested a temporary deviation from the current operating regulations set out in 33 CFR 117.5 and 117.716(b) to facilitate the replacement of the lift cables.

The Burlington-Bristol Bridge (Route 413) at mile 117.8, across the Delaware River, between PA and NJ, has a vertical clearance in the closed position to vessels of 62 feet above mean high water.

Under the regular operating schedule the bridge opens on signal as required by 33 CFR 117.5 and the opening of a bridge may not be delayed more than five minutes for a highway bridge, after the signal to open is given as required by 33 CFR 117.716(b).

Under this temporary deviation, beginning 7 a.m. on Tuesday, December 27, 2011 and ending at 3 p.m. on Friday, January 20, 2012, the cable replacement will restrict the operation of the draw span on the following dates and times: Closed-to-navigation each of the following days from 7 a.m. to 3 p.m.: December 27–29, 2011; January 3–6, 2012; January 9–13, 2012; and January 16–20, 2012; except vessel openings will be provided with at least eight hours advance notice given to the bridge operator at (856) 829–3002 or via marine radio on Channel 13.

Vessels that can pass under the bridge without a bridge opening may do so at all times. There are no alternate routes for vessels transiting this section of the Delaware River.

There are approximately four to six vessels per week from four facilities whose vertical clearances exceed the closed bridge position, requiring an opening of the draw span. The Coast Guard has coordinated this replacement work with the Mariners Advisory Committee for Bay & River Delaware, and will inform the other users of the waterway through our Local and Broadcast Notices to Mariners of the closure periods for the bridge so that

vessels can arrange their transits to minimize any impact caused by the temporary deviation. The bridge will not be able to open in an emergency due to the lift cables being removed.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period.

This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: December 16, 2011.

Waverly W. Gregory, Jr.,

Bridge Program Manager, Fifth Coast Guard District.

[FR Doc. 2011–33369 Filed 12–28–11; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2011–1102]

Drawbridge Operation Regulation; Middle Branch of the Patapsco River, Baltimore, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Fifth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Hanover Street S2 bridge across the Middle Branch of the Patapsco River, mile 12.0, at Baltimore, MD. The deviation is necessary to accommodate repairs to the bridge and will allow the bridge to open on signal if at least four hours of notice is given except that the drawbridge need not open during the morning and evening rush hours.

DATES: This deviation is effective from 12:01 a.m. on January 9, 2012 through 11:59 p.m. July 6, 2012.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2011–1102 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–1102 in the ''Keyword'' box and then clicking ''Search''. They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

SUPPLEMENTARY INFORMATION: The City of Baltimore has requested a temporary deviation from the current operating regulation of the Hannover Street S2 bridge across the Middle Branch of the Patapsco River, mile 12.0, at Baltimore, MD. The requested deviation is necessary to accommodate gear motor and gate repairs on the bridge. To facilitate this work, the draw of the bridge will open on signal if at least four hours of notice is given except that from 6:30 a.m. to 9:30 a.m. and from 4 p.m. to 6:30 p.m. Monday through Friday, the bridge need not open. The deviation will be in effect from Monday, January 9, 2012 through Friday, July 6, 2012.

The vertical clearance of this double-leaf bascule bridge in the closed position is 38 feet at Mean High Water and unlimited in the open position. The operating regulation is set forth in 33 CFR 117.541(a) which states that the bridge will open on signal except that from 6:30 a.m. to 9:30 a.m. and 4 p.m. to 6 p.m. the drawbridge need not open except for emergency vessels. Vessels with mast heights less than 38 feet that are able to pass under the bridge in the closed position may do so at any time.

The main users of this waterway are recreational motorboats and sailboats. The waterway users have been notified of the deviation and the Coast Guard has not received any objections. The Coast Guard will inform waterway users of the temporary deviation through our Local and Broadcast Notices to Mariners to minimize any potential impacts caused by the four hour advance notice. The bridge owner will also be required to post signs upstream and downstream of the bridge notifying mariners of the temporary regulation change.

Tender logs provided by the city have shown that this bridge has had minimal openings within the last three years. The bridge will be able to open for emergencies. There are no alternate routes available to vessels.

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

Dated: December 14, 2011.

Waverly W. Gregory, Jr.,

Bridge Program Manager, Fifth Coast Guard District.

[FR Doc. 2011–33367 Filed 12–28–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2011–1119]

Drawbridge Operation Regulation; Pocomoke River, Pocomoke City, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Fifth Coast Guard District, has issued a temporary deviation from the regulations governing the operation of the Route 675 Bridge across Pocomoke River, mile 15.6, at Pocomoke City, MD. The deviation restricts the operation of the draw span to facilitate an electrical outage for testing purposes.

DATES: This deviation is effective from 7 a.m. on January 19, 2012 to 5 p.m. on January 20, 2012.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2011–1119 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–1119 in the ''Keyword'' box and then clicking ''Search''. They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Waverly W. Gregory, Jr., Bridge Administrator, Fifth District, Coast Guard; telephone (757) 398–6222, email *Waverly.W.GregoryJr@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION: An engineering consulting firm on behalf of the Maryland State Highway Administration (SHA), who owns and operates this single leaf bascule drawbridge, has requested a temporary deviation from the current operating schedule to allow for an electrical

outage of the bridge for testing purposes. Under the regular operating schedule required by 33 CFR 117.569(b), the bridge opens on signal, except between November 1 and March 31 the draw must open only if at least five hours advance notice is given.

The Route 675 Bridge across Pocomoke River, mile 15.6 at Pocomoke City, MD, has a vertical clearance in the closed position of three feet above mean high water. Under this temporary deviation, the engineering consulting firm has requested to maintain the bridge in the closed position to vessels beginning at 7 a.m. on January 19, 2012 until and including 5 p.m. on January 20, 2012, to allow for an electrical outage of the bridge for testing purposes.

Bridge opening data supplied by SHA and reviewed by the Coast Guard revealed that there were approximately five openings in January 2011.

The Coast Guard has coordinated the restrictions with the local users of the waterway and will inform other users through our Local and Broadcast Notices to Mariners of the closure periods for the bridge so that vessels can arrange their transits to minimize any impact caused by the temporary deviation. There are no alternate routes for vessels transiting this section of the Pocomoke River and the drawbridge will be not able to open in the event of an emergency.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period.

This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: December 14, 2011.

Waverly W. Gregory, Jr.,

Bridge Program Manager, Fifth Coast Guard District.

[FR Doc. 2011–33368 Filed 12–28–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG 2011–1047]

Safety Zone; Sacramento New Years Eve Fireworks Display, Sacramento, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the 1,000 foot safety zones during the Sacramento New Years Eve Fireworks Display in the navigable waters of the Sacramento River during the dates and times noted below. This action is necessary to control vessel traffic and to ensure the safety of event participants and spectators. During the enforcement period, unauthorized persons or vessels are prohibited from entering into, transiting through, or anchoring in the safety zone, unless authorized by the Patrol Commander (PATCOM).

DATES: The regulations in 33 CFR 165.1191 will be enforced from 9 p.m. to 9:15 p.m. on December 31, 2011 and from 11:59 p.m. on December 31, 2011 to 12:15 a.m. on January 1, 2012.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email Ensign William Hawn, U.S. Coast Guard, Waterways Safety Division; telephone (415) 399–7442, email *D11-PF-MarineEvents@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the Sacramento New Years Eve Fireworks Display safety zones in the navigable waters of the Sacramento River near positions 38°34′48.26″ N, 121°30′38.52″ W (NAD 83) and 38°34′49.84″ N, 121°30′29.59″ W (NAD 83). Upon the commencement of the first fireworks display, scheduled to take place from 9 p.m. to 9:15 p.m. on December 31, 2011, the safety zone applies to the navigable waters around the fireworks launch site near position 38°34′48.26″ N, 121°30′38.52″ W (NAD 83) within a radius of 1,000 feet. Upon the commencement of the second fireworks display, scheduled to take place at 11:59 p.m. on December 31, 2011 until 12:15 a.m. on January 1, 2012, the safety zone applies to the navigable waters around the fireworks launch sites near positions 38°34′48.26″ N, 121°30′38.52″ W (NAD 83) and 38°34′49.84″ N, 121°30′29.59″ W (NAD 83) within a radius of 1,000 feet.

Under the provisions of 33 CFR 165.1191, unauthorized persons or vessels are prohibited from entering into, transiting through, or anchoring in the safety zone during all applicable effective dates and times, unless authorized to do so by the PATCOM. Additionally, each person who receives notice of a lawful order or direction issued by an official patrol vessel shall obey the order of direction. The PATCOM is empowered to forbid entry into and control the regulated area. The PATCOM shall be designated by the Commander, Coast Guard Sector San Francisco. The PATCOM may, upon request, allow the transit of commercial vessels through regulated areas when it is safe to do so.

This notice is issued under authority of 33 CFR 165.1191 and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with extensive advance notification of this enforcement period via the Local Notice to Mariners. If the Captain of the Port determines that the regulated area need not be enforced for the full duration stated in this notice, he or she may use a Broadcast Notice to Mariners to grant general permission to enter the regulated area.

Dated: December 8, 2011.

Cynthia L. Stowe,

Captain, U.S. Coast Guard, Captain of the Port San Francisco.

[FR Doc. 2011–33372 Filed 12–28–11; 8:45 am]

BILLING CODE 9110–04–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1260

[FDMS NARA–11–0001]

RIN 3095–AB64

Declassification of National Security Information

AGENCY: National Archives and Records Administration.

ACTION: Final rule.

SUMMARY: The National Archives and Records Administration (NARA) is updating its regulations related to declassification of classified national security information in records transferred to NARA's legal custody. The rule incorporates changes resulting from issuance of Executive Order 13526, Classified National Security Information, and its Implementing Directive. These changes include establishing procedures for the automatic declassification of records in NARA's legal custody and revising requirements for reclassification of information to meet the provisions of E.O. 13526. Executive Order 13526 also created the National Declassification Center (NDC) with a mission to align people, processes, and technologies to advance the declassification and public release of historically valuable permanent records while maintaining national security. This rule will affect members of the public and Federal agencies.

DATES: This rule is effective January 30, 2012.

FOR FURTHER INFORMATION CONTACT: Marilyn Redman at (301) 837–1850; email: *marilyn.redman@nara.gov.*

SUPPLEMENTARY INFORMATION: On July 8, 2011, NARA published a proposed rule (76 FR 40296) for revisions to the regulations on declassification of national security information. These revisions were required by the issuance of Executive Order 13526, replacing Executive Order 12958, as amended. We received one formal comment from an individual on the proposed changes. This commenter identified three specific concerns. The first concern was of the adequacy of the definition of ''Declassification'' in Section 1260.2. Executive Order 13526 defines declassification of information in Section 6.1(m) of the Order and we have used the definition found in the Order in our regulation. We believe NARA's language for 36 CFR 1260 is consistent with the language of the Order.

The commenter's second concern was that Section 1260.28 of the proposed rule did not indicate that the three categories of nuclear weapons information are exempt from the requirements of E.O. 13526. Section 1260.28(b) specifically states that ''Any record that contains RD, FRD, or TFNI shall be excluded from automatic declassification and referred by the primary reviewing agency to DOE using a completed SF 715.'' Additionally, the language in this section was vetted and approved by DOE.

The third comment suggested that agency responsibilities for mandatory declassification review (Section 1260.74) include a requirement for FOIA-type review. While a referral agency may provide advice to NARA on other possible restrictions, there is no requirement that it do so when responding to a mandatory declassification request. Moreover, it is NARA's responsibility to apply other restrictions in accordance with FOIA and other laws for accessioned Federal records and transferred Presidential records and papers, and communicate this to the requester.

This final rule is a significant regulatory action for the purpose of Executive Order 12866 and has been reviewed by the Office of Management and Budget. As required by the Regulatory Flexibility Act, I certify that this rule will not have a significant impact on a substantial number of small entities because it affects Federal agencies and individual researchers. This regulation does not have any federalism implications.

List of Subjects in 36 CFR Part 1260

Archives and records, Classified information.

For the reasons set forth in the preamble, NARA revises Subchapter D of Chapter XII of title 36, Code of Federal Regulations, to read as follows:

Subchapter D—Declassification

PART 1260—DECLASSIFICATION OF NATIONAL SECURITY INFORMATION

Authority: 44 U.S.C. 2101 to 2118; 5 U.S.C. 552; E.O. 13526, 75 FR 707, 3 CFR, 2009 Comp., p. 298; Presidential Memorandum of December 29, 2009 ''Implementation of the Executive Order, Classified National Security Information,'' 75 FR 733, 3 CFR, 2009 Comp., p. 412; 32 CFR Part 2001.

Subpart A—General Information

§ 1260.1 What is the purpose of this part?

(a) This subchapter defines the responsibilities of NARA and other Federal agencies for declassification of classified national security information in the holdings of NARA. This part also describes NARA's procedures for:

(1) Operation of the National Declassification Center,

(2) Processing referrals to other agencies,

(3) Facilitating systematic reviews of NARA holdings, and

(4) Processing mandatory declassification review requests for NARA holdings.

(b) Regulations for researchers who wish to request access to materials containing classified national security information are found in 36 CFR part 1256.

(c) For the convenience of the user, the following table provides references between the sections contained in this part and the relevant sections of the Order and the Implementing Directive.

CFR section	Related section of E.O. 13526	Related section of Implementing Directive
1260.20 Who is responsible for the declassification of classified national security Executive Branch information that has been accessioned by NARA?	3.3, 3.3(d)(3), 3.6	
1260.22 Who is responsible for the declassification of classified national security White House originated information in NARA's holdings?	3.3(d)(3), 3.6	
1260.24 Who is responsible for declassification of foreign government information in NARA's holdings?	6.1(s)	
1260.28 Who is responsible for declassifying Restricted Data (as defined by the Atomic Energy Act of 1954, as amended), Formerly Restricted Data (as defined in 10 CFR 1045.3, and Transclassified Foreign Nuclear Information (as defined in 32 CFR 2001.24(i))?	.....	2001.24(i)
1260.34 What are the responsibilities of the NDC?	3.3, 3.3(d)(3), 3.4	
1260.36 What are agency responsibilities with the NDC?	3.3(d)(3)	
1260.40 What types of referrals will the NDC process?	3.3	
1260.42 How does the NDC process referrals of Federal Records?	3.3(d)(3)(B)	
1260.46 How does the Department of Defense process referrals?	3.3	
1260.50 How are records at NARA reviewed as part of the automatic declassification process?	3.3	
1260.52 What are the procedures when agency personnel review records in NARA's legal and physical custody?	3.3	2001.30(p)
1260.56 What are NARA considerations when implementing automatic declassification?	3.3	
1260.72 What procedures does NARA follow when it receives a request for Executive Branch records under MDR?	3.6(a), 3.6(b)	2001.33
1260.74 What are agency responsibilities after receiving an MDR request forwarded by NARA?	3.5(c)	
1260.76 What are NARA's procedures after it has received the agency's declassification determinations?	.....	Appendix A
1260.78 What is the appeal process when an MDR request for Executive Branch information in NARA's legal custody is denied in whole or in part?	3.3	2001.30(p), 2001.33
1260.80 What actions must NARA take when information in its physical and legal custody is reclassified after declassification under proper authority?	.....	2001.13
1260.82 What actions must NARA take with information in its physical and legal custody that has been made available to the public after declassification without proper authority?	.....	2001.13

§ 1260.2 What definitions apply to the regulations in this part?

Classified national security information, or *classified information,* means information that has been determined under Executive Order 13526 or any predecessor order to require protection against unauthorized disclosure and is marked to indicate its classified status when in documentary form.

Declassification means the authorized change in the status of information from classified information to unclassified information.

Equity refers to information:

(1) Originally classified by or under the control of an agency;

(2) In the possession of the receiving agency in the event of transfer of function; or

(3) In the possession of a successor agency for an agency that has ceased to exist.

File series means file units or documents arranged according to a filing system or kept together because they relate to a particular subject or function, result from the same activity, document a specific kind of transaction, take a particular physical form, or have some other relationship arising out of their creation, receipt, or use, such as restrictions on access or use.

Integral file block means a distinct component of a file series, as defined in this section, that should be maintained as a separate unit in order to ensure the integrity of the records. An integral file block may consist of a set of records covering either a specific topic or a range of time such as presidential administration or a 5-year retirement schedule within a specific file series that is retired from active use as a group. For purposes of automatic declassification, integral file blocks shall contain only records dated within 10 years of the oldest record in the file block.

Mandatory declassification review means the review for declassification of classified information in response to a request for declassification that meets the requirements under section 3.5 of Executive Order 13526.

Records means the records of an agency and Presidential materials or Presidential records, as those terms are defined in title 44, United States Code, including those created or maintained by a government contractor, licensee, certificate holder, or grantee that are subject to the sponsoring agency's control under the terms of the contract, license, certificate, or grant.

Referral means that information in an agency's records that was originated by or is of interest to another agency is sent to that agency for a determination of its classification status.

Systematic declassification review means the review for declassification of classified information, including previously exempted information, contained in records that have been determined by the Archivist of the United States to have permanent historical value in accordance with 44 U.S.C. 2107.

§ 1260.4 What NARA holdings are covered by this part?

The NARA holdings covered by this part are records legally transferred to NARA, including Federal records, 44 U.S.C. 2107; Presidential records, 44 U.S.C. 2201–2207; Nixon Presidential materials, 44 U.S.C. 2111 note; and donated historical materials, 44 U.S.C. 2111.

Subpart B—Responsibilities

§ 1260.20 Who is responsible for the declassification of classified national security Executive Branch information that has been accessioned by NARA?

(a) Consistent with the requirements of section 3.3 of the Order on automatic declassification, the originating agency is responsible for declassification of its information and identifying equity holders.

(b) An agency may delegate declassification authority to NARA.

(c) If an agency does not delegate declassification authority to NARA, the agency is responsible for reviewing the records to identify the equities of other agencies before the date that the records become eligible for automatic declassification.

(d) NARA is responsible for the declassification of records in its legal custody of defunct agencies that have no successor. NARA will consult with agencies having an equity in the records before making declassification determinations in accordance with sections 3.3(d)(3) and 3.6 of the Order.

§ 1260.22 Who is responsible for the declassification of classified national security White House originated information in NARA's holdings?

(a) NARA is responsible for declassification of information from a previous administration that was originated by:

(1) The President and Vice President;

(2) The White House staff;

(3) Committees, commissions, or boards appointed by the President; or,

(4) Others specifically providing advice and counsel to the President or acting on behalf of the President.

(b) NARA will consult with agencies having equity in the records before making declassification determinations in accordance with sections 3.3(d)(3) and 3.6 of Executive Order 13526.

§ 1260.24 Who is responsible for declassification of foreign government information in NARA's holdings?

(a) The agency that received or classified the information is responsible for its declassification.

(b) In the case of a defunct agency, NARA is responsible for declassification of foreign government information, as defined in section 6.1(s) of the Order, in its holdings and will consult with the agencies having equity in the records before making declassification determinations.

§ 1260.26 Who is responsible for issuing special procedures for declassification of records pertaining to intelligence activities and intelligence sources or methods, or of classified cryptologic records in NARA's holdings?

(a) The Director of National Intelligence is responsible for issuing special procedures for declassification of classified records pertaining to intelligence activities and intelligence sources and methods.

(b) The Secretary of Defense is responsible for issuing special procedures for declassification of classified cryptologic records.

§ 1260.28 Who is responsible for declassifying Restricted Data, Formerly Restricted Data, and Transclassified Foreign Nuclear Information?

(a) Only designated officials within the Department of Energy (DOE) may declassify Restricted Data (RD) *(as defined by the Atomic Energy Act of 1954, as amended).* The declassification of Formerly Restricted Data (FRD) *(as defined in 10 CFR 1045.3)* may only be performed after designated officials within DOE, in conjunction with designated officials within DOD, have determined that the FRD marking may be removed. Declassification of Transclassified Foreign Nuclear Information (TFNI) *(as defined in 32 CFR 2001.24(i))* may be performed only by designated officials within DOE.

(b) Any record that contains RD, FRD, or TFNI shall be excluded from automatic declassification and referred by the primary reviewing agency to DOE using a completed SF 715 to communicate both the referral action and the actions taken on the equities of the primary reviewing agency. Any record identified by the primary reviewing agency as potentially containing RD, FRD, or TFNI shall be referred to DOE using a completed SF 715.

Subpart C—The National Declassification Center (NDC)

§ 1260.30 What is the NDC?

The National Declassification Center (NDC) is established within NARA to streamline declassification processes, facilitate quality-assurance measures, and implement standardized training for declassification of records determined to have permanent historical value.

§ 1260.32 How is the NDC administered?

(a) The NDC is administered by a Director, who shall be appointed by the Archivist of the United States, in consultation with the Secretaries of State, Defense, Energy, and Homeland Security, the Attorney General, and the Director of National Intelligence.

(b) The Archivist, in consultation with the representatives of the participants in the NDC and after receiving comments from the general public, shall develop priorities for declassification activities under the responsibility of the NDC that are based upon researcher interest and likelihood of declassification.

§ 1260.34 What are the responsibilities of the NDC?

The NDC shall coordinate the following activities:

(a) Referrals, to include:

(1) Timely and appropriate processing of all referrals in accordance with section 3.3(d)(3) of Executive Order 13526; and

(2) The exchange among agencies of detailed declassification guidance to enable referrals as identified in paragraph (a)(1) of this section.

(b) General interagency declassification activities as necessary to fulfill the requirements of sections 3.3 and 3.4 of the Order;

(c) The development of effective, transparent, standard declassification work processes, training, and quality assurance measures;

(d) The development of solutions to declassifying information contained in electronic records and special media; and planning for solutions for declassifying information as new technologies emerge;

(e) The documentation and publication of declassification review decisions; and support of NDC declassification responsibilities by linking and using existing agency databases; and

(f) Storage, and related services, on a reimbursable basis, for Federal records containing classified national security information.

§ 1260.36 What are agency responsibilities with the NDC?

Agency heads shall fully cooperate with the Archivist and the activities of the NDC and provide the following resources for NDC operations:

(a) Adequate and current declassification guidelines to process referrals in accordance with section 3.3(d)(3) of the Order and as indicated in § 1260.54(a); and

(b) Assignment of agency personnel to the NDC, at the request of the Archivist, with delegated authority by the agency head to review and exempt or declassify information originated by that agency found in records accessioned into the National Archives of the United States; and

(c) Coordination with the NDC of the establishment of any agency centralized facilities and internal operations to conduct declassification reviews to ensure that such agencies conduct internal declassification reviews of records of permanent historical value.

§ 1260.38 How does the NDC ensure the quality of declassification reviews?

An interagency team of experienced declassification reviewers, established by NDC, conducts a sampling of reviewed records according to a sampling regime approved by a separate interagency program management team. The interagency team will verify that each series of agency reviewed records complies with the requirements of the Special Historical Records Review Plan (Supplement) dated March 3, 2000 (DOE–NARA Plan), pursuant to the requirements of Public Law 105–261 (112 Stat. 2259) and Public Law No. 106–65 (113 Stat. 938). Record series that cannot be verified to have been reviewed in accordance with the DOE–NARA Plan will not proceed through the NDC verification process until verification is received by the NDC. The DOE will participate on the interagency team to conduct the quality control reviews required by the DOE–NARA Plan in accordance with priorities established by the NDC.

§ 1260.40 What types of referrals will the NDC process?

The NDC processes referrals of both Federal records and Presidential records. Referrals identified in accessioned Federal records will be processed by the Interagency Referral Center (IRC); referrals identified in records maintained by the Presidential Libraries will be processed by the Remote Archives Capture (RAC) Project. (The RAC Project is a collaborative program to facilitate the declassification review of classified records in the Presidential Libraries in accordance with section 3.3 of the Order. In this project, classified Presidential records at the various Presidential Libraries are scanned and brought to the Washington, DC, metropolitan area in electronic form for review by equity-holding agencies.)

§ 1260.42 How does the NDC process referrals of Federal Records?

(a) All referrals are processed through the IRC.

(b) Agencies will have one year from the time they receive formal notification of referrals by the NDC to review their equity in the records. If an agency does not complete its review within one year of formal notification, its information will be automatically declassified in accordance with section 3.3(d)(3)(B) of the Order unless the information has been properly exempted by an equity holding agency under section 3.3 of the Order.

(c) Once notified, the agencies will coordinate their review with the NDC so the NDC can properly manage the workflow of the IRC.

§ 1260.44 How does the NDC process RAC Project referrals?

(a) The Presidential Libraries use the RAC Project to process referrals.

(b) Agencies will be notified of RAC Project referrals according to an annual prioritization schedule via the NDC.

(c) The RAC Project identifies the primary agency with equity in the record.

(d) The primary agency will have up to one year from the time it is notified of their referral to complete the review of its equity and identify all other agencies (''secondary agencies'') with an interest in the record. If an agency does not complete its review in one year, its equity will be automatically declassified.

(e) Secondary agencies receiving notification of their referrals through the RAC Project will have up to one year from the date of notification to complete their review.

§ 1260.46 How does the Department of Defense process referrals?

(a) The Department of Defense (DOD) established the Joint Referral Center (JRC) to review DOD agencies' records and all DOD equities within those records for declassification in accordance with section 3.3 of the Order.

(b) The JRC shall include sufficient quality assurance review policies that are in accordance with policies at the NDC and will provide the NDC with sufficient information on the results of these reviews to facilitate non-DOD agency referral processing and final archival processing for public release.

(c) NARA may loan accessioned records to the JRC for this purpose.

Subpart D—Automatic Declassification

§ 1260.50 How are records at NARA reviewed as part of the automatic declassification process?

(a) Consistent with the requirements of section 3.3 of Executive Order 13526 on automatic declassification, NARA staff may review for declassification records for which the originating agencies have provided written authority to apply their approved declassification guides. The originating agency must review records for which this authority has not been provided.

(b) Agencies may choose to review their own records that have been transferred to NARA's legal custody, by sending personnel to the NARA facility where the records are located to conduct the declassification review.

(c) Classified materials in the Presidential Libraries may be referred to agencies holding equity in the records through the RAC Project.

§ 1260.52 What are the procedures when agency personnel review records in NARA's legal and physical custody?

(a) NARA will:

(1) Make the records available to properly cleared agency reviewers;

(2) Provide space for agency reviewers in the facility in which the records are located to the extent that space is available; and

(3) Provide training and guidance for agency reviewers on the proper handling of archival materials.

(b) Agency reviewers must:

(1) Follow NARA security regulations and abide by NARA procedures for handling archival materials;

(2) Use the Standard Form (SF) 715 and follow NARA procedures for identifying and documenting records that require exemption, referral, or exclusion in accordance with section 3.3 of the Order or 32 CFR 2001.30(p); and

(3) Obtain permission from NARA before bringing into a NARA facility computers, scanners, tape recorders, microfilm readers, and other equipment necessary to view or copy records. NARA will not allow the use of any equipment that poses an unacceptable risk of damage to archival materials. See 36 CFR part 1254 for more information on acceptable equipment.

(4) Provide NARA with information, as requested by the Archivist and/or NDC Director, on their review so as to facilitate the processing of referrals and archival processing.

§ 1260.54 Will NARA loan accessioned records back to the agencies to conduct declassification review?

In rare cases, when agency reviewers cannot be accommodated at a NARA facility, NARA will consider a request to loan records back to an originating agency in the Washington, DC, metropolitan area for declassification review. Each request will be judged on a case-by-case basis. The requesting agency must:

(a) Ensure that the facility in which the documents will be stored and reviewed passes a NARA inspection to ensure that the facility maintains:

(1) The correct archival environment for the storage of permanent records; and

(2) The correct security conditions for the storage and handling of classified national security materials.

(b) Meet NARA requirements for ensuring the safety of the records;

(c) Abide by NARA procedures for handling of archival materials;

(d) Identify and mark documents that cannot be declassified in accordance with NARA procedures; and

(e) Obtain NARA approval for use of any equipment such as scanners, copiers, or cameras to ensure that they do not pose an unacceptable risk of damage to archival materials.

§ 1260.56 What are NARA considerations when implementing automatic declassification?

(a) *Integral File Blocks.* Classified records within an integral file block that have not been reviewed and properly exempted from declassification, or referred to an equity holder, will be automatically declassified on December 31 of the year that is 25 years from the date of the most recent record within the file block, except as specified in paragraphs (b), (c), and (d) of this section. For the purposes of automatic declassification, integral file blocks shall contain only records dated within 10 years of the oldest record in the block. The records of each Presidential Administration will be treated as an integral file block and will be scanned for declassification review through the RAC Project.

(b) *Special media records.* After consultation with the Director of the National Declassification Center and before the records are subject to automatic declassification, an agency head or senior agency official may delay automatic declassification for up to five additional years for classified information contained in media that make a review for possible declassification exemptions more difficult or costly. NARA, through the NDC, will coordinate processing of referrals made in these special media records as part of its overall prioritization strategy.

(c) *Referrals.* The IRC at the NDC will provide official notification for Federal records, while the RAC Project will provide formal notification for Presidential records. For agencies which fail to act on their referrals after formal notification by the IRC or the RAC Project, NARA will automatically declassify their information in accordance with section 3.3(d)(3)(B) of the Order.

(d) *Additional referrals.* Agencies will identify referrals in accordance with section 3.3(d)(3) of the Order. NARA will delay automatic declassification for up to 1 year for classified records that have been identified by the originating agency or by NARA as having classified information that requires referral that were not identified by the primary reviewing agency.

(e) *Other circumstances.* Information from another agency that has not been properly identified and referred is not subject to automatic declassification. When NARA identifies information, in accordance with section 3.3 of the Order, that agency will have up to 1 year from the date of formal notification to review its information for declassification.

(f) *Discovery of information inadvertently not reviewed.* When NARA identifies a file series or collection in its physical and legal custody that contains classified information over 25 years old and that was inadvertently not reviewed before the effective date of automatic declassification, NARA must report the discovery to the Information Security Oversight Office (ISOO) and to the responsible agency head or senior agency official within 90 days of discovery. ISOO, the responsible agency, and NARA will consult on a delay of up to three years to review the records.

Subpart E—Systematic Declassification

§ 1260.60 How does the NDC facilitate systematic review of records exempted at the individual record or file series level?

(a) NARA, through the NDC, follows the procedures established in § 1260.52 above regarding agency access for review of exempt file series.

(b) NARA, through the NDC, will establish a prioritization schedule for review of exempted individual Federal records. This schedule will take into account upcoming exemption expiration, researcher interest and likelihood of declassification. This schedule will be included as part of the NDC annual work plan.

(c) The Presidential Libraries will work directly with agencies to facilitate the review of records exempted at the file series level.

(d) The Presidential Libraries, through the NDC, will establish a prioritization schedule for review of previously exempted classified materials in the Presidential Library system. These materials will be referred to agencies holding equity in the records via the RAC Project.

Subpart F—Mandatory Declassification Review (MDR)

§ 1260.70 How does a researcher submit an MDR request?

(a) For Federal records in NARA's physical and legal custody, requests for MDR should be submitted to: National Archives at College Park, ANDC (Attn: MDR Staff), 8601 Adelphi Road, Room 2600, College Park MD 20740 or *specialaccess_foia@nara.gov;*

(b) For Presidential records, Nixon Presidential materials, or donated presidential materials in the custody of the Presidential Libraries, MDR requests should be submitted to the Presidential Library with physical and legal custody of the records;

(c) For Congressional records in NARA's custody, MDR requests should be submitted to: The Center for Legislative Archives, 700 Pennsylvania Ave. NW., Washington, DC 20408 or *legislative.archives@nara.gov.*

(d) For all records in NARA's physical and legal custody, MDR requests must describe the record or material with sufficient specificity to enable NARA to locate it with a reasonable amount of effort. If NARA is unable to locate the record or material, or requires additional information, NARA will inform the requester.

§ 1260.72 What procedures does NARA follow when it receives a request for Executive Branch records under MDR?

(a) NARA will review the requested records and determine if they have already been released. If not, NARA will refer copies of the records to the originating agency and to agencies that may have an interest or activity with respect to the classified information for declassification review. Agencies may also send personnel to a NARA facility where the records are located to conduct a declassification review, or may delegate declassification authority to NARA.

(b) When the records were originated by a defunct agency that has no successor agency, NARA is responsible for making the declassification determinations, but will consult with agencies having interest in or activity with respect to the classified information.

(c) If the document or information has been reviewed for declassification within the past 2 years, NARA may opt not to conduct a second review and may instead inform the requester of this fact and of the prior review decision and advise the requester of appeal rights in accordance with 32 CFR 2001.33.

(d) If NARA determines that a requester has submitted a request for the

same information under both MDR and the Freedom of Information Act (FOIA), as amended, NARA will notify the requester that he/she is required to elect one process or the other. If the requester fails to elect one or the other, the request will be treated under the FOIA, unless the requested information or materials are subject only to mandatory review.

(e) In every case, NARA will acknowledge receipt of the request and inform the requester of the action taken. If additional time is necessary to make a declassification determination on material for which NARA has delegated authority, NARA will tell the requester how long it will take to process the request and advise the requester of available appeal rights. NARA may also inform the requester if part or all of the requested information is referred to other agencies for declassification review in accordance with section 3.6(a) and (b) of the Executive Order.

(f) If NARA fails to provide the requester with a final decision on the mandatory review request within one year of the original date of the request, the requester may appeal to the Interagency Security Classification Appeals Panel (ISCAP).

§ 1260.74 What are agency responsibilities after receiving an MDR request forwarded by NARA?

(a) The agency receiving the referral will promptly process and review the referral for declassification and public release on a line-by-line basis in accordance with section 3.5(c) of the Order and communicate its review decisions to NARA.

(b) The agency must notify NARA of any other agency to which it forwards the request in those cases requiring the declassification determination of another agency to which NARA has not already sent a referral for review.

(c) The agency must return to NARA a complete copy of each referred document with the agency determination clearly stated to leave no doubt about the status of the information and the authority for its continued classification or its declassification.

§ 1260.76 What are NARA's procedures after it has received the agency's declassifications determination?

(a) If a document cannot be declassified in its entirety, the agency must return to NARA a copy of the document with those portions that require continued classification clearly marked. If a document requires continued classification in its entirety, the agency must return to NARA a copy of the document clearly so marked.

(b) NARA will notify the requester of the results of its review and make available copies of documents declassified in full and in part. If the requested information cannot be declassified in its entirety, NARA will send the requester a notice of the right to appeal the determination within 60 calendar days to the Deputy Archivist of the United States, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Additional information on appeals is located in 36 CFR Part 1264 and in Appendix A to 32 CFR Part 2001 (Article VIII).

§ 1260.78 What is the appeal process when an MDR request for Executive Branch information in NARA's legal custody is denied in whole or in part?

(a) NARA shall respond to the requester in writing that her/his mandatory declassification review request was denied in full or in part and the rationale for the denial by using the appropriate category in either section 1.4 of the Order for information that is less than 25 years old, or section 3.3 of the Order for information that is older than 25 years, or 32 CFR 2001.30(p) for information governed by the Atomic Energy Act of 1954, as amended, or the National Security Act of 1947, as amended. NARA will send the requester a notice of the right to appeal the determination within 60 calendar days to the Deputy Archivist of the United States, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD. If a final decision on the appeal is not made within 60 working days of the date of the appeal, the requester may appeal to the Interagency Security Classification Appeals Panel (ISCAP).

(b) NARA will process all appeals in accordance with 32 CFR 2001.33(a)(2)(iii). NARA will inform all agencies with equity interests in the denied information. Those agencies will assist NARA in the appellate process and provide NARA with final declassification review decisions in a timely manner and consistent with 32 CFR 2001.33(a)(2)(iii).

(c) NARA will also notify the requester of the right to appeal denials of access to the Interagency Security Classification Appeals Panel, Attn: Mandatory Declassification Review Appeals, c/o Information Security Oversight Office, National Archives and Records Administration, 700 Pennsylvania Avenue NW., Room 503, Washington, DC 20408; *iscap@nara.gov*.

(d) The pertinent NARA office or Presidential Library will coordinate the potential release of information declassified by the Interagency Security Classification Appeals Panel (ISCAP).

Subpart G—Reclassification of Records Transferred to NARA

§ 1260.80 What actions must NARA take when information in its physical and legal custody is reclassified after declassification under proper authority?

(a) When information in the physical and legal custody of NARA that has been available for public use following declassification under proper authority is proposed for reclassification in accordance with 32 CFR 2001.13(b)(1), NARA shall take the following actions:

(1) The agency head making the determination to reclassify the information shall notify the Archivist of the potential reclassification in writing,

(2) The Archivist shall suspend public access pending approval or disapproval by the Director of the Information Security Oversight Office of the reclassification request, and

(3) The Director of the Information Oversight Office shall normally make a decision on the validity of the reclassification request within 30 days, and

(4) The decision of the Director of ISOO may be appealed by the Archivist or the agency head to the President through the National Security Advisor.

(5) Access shall remain suspended pending a prompt decision on the appeal.

(b) [Reserved]

§ 1260.82 What actions must NARA take with information in its physical and legal custody that has been made available to the public after declassification without proper authority?

(a) When information in the physical and legal custody of NARA has been made available for public use following declassification without proper authority and needs to have its original classification markings restored, the original classification authority shall notify the Archivist in writing in accordance with 32 CFR 2001.13(a)(1).

(b) If the Archivist does not agree with the reclassification decision and the information is more than 25 years old, the information will be temporarily withdrawn from public access and the Archivist will appeal the agency decision to the Director of ISOO, who will make a final decision in accordance with 32 CFR 2001.13(a)(1). The decision of the Director of ISOO may be appealed by the Archivist or the agency head to the President through the National Security Advisor.

(c) Information about records that have been reclassified or have had their classification restored as described in

§§ 1260.80 and 1260.82 will be made available quarterly through the NARA Web site, *http://www.archives.gov/about/plans-reports/withdrawn/*. Information will include the responsible agency, NARA location, date withdrawn, number of records, and number of pages.

Dated: December 14, 2011.

David S. Ferriero,

Archivist of the United States.

[FR Doc. 2011–33284 Filed 12–28–11; 8:45 am]

BILLING CODE 7515–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AO09

Extension of Statutory Period for Compensation for Certain Disabilities Due to Undiagnosed Illnesses and Medically Unexplained Chronic Multi-Symptom Illnesses

AGENCY: Department of Veterans Affairs.

ACTION: Interim final rule.

SUMMARY: The Department of Veterans Affairs (VA) is issuing this interim final rule to amend its adjudication regulation regarding compensation for disabilities suffered by veterans who served in the Southwest Asia Theater of Operations during the Persian Gulf War. This amendment is necessary to extend the period during which disabilities associated with undiagnosed illnesses and medically unexplained chronic multi-symptom illnesses must become manifest in order for a veteran to be eligible for compensation.

DATES: *Effective Date:* This interim final rule is effective *December 29, 2011.* Comments must be received by VA on or before February 27, 2012.

ADDRESSES: Written comments may be submitted through *www.Regulations.gov;* by mail or hand-delivery to Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Ave. NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. (This is not a toll-free number). Comments should indicate that they are submitted in response to ''RIN 2900–AO09—Extension of Statutory Period for Compensation for Certain Disabilities Due to Undiagnosed Illnesses and Medically Unexplained Chronic Multi-Symptom Illnesses.'' Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. (This is not a toll-free number). In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Nancy Copeland, Consultant, Regulations Staff (211D), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–9428. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: In response to the needs and concerns of veterans who served in the Southwest Asia theater of operations during the Persian Gulf War, Congress enacted the Persian Gulf War Veterans' Benefits Act, Title I of the Veterans' Benefits Improvement Act of 1994, Public Law 103–446, which was codified at 38 U.S.C. 1117. This law provided authority for the Secretary of Veterans Affairs (Secretary) to compensate Gulf War veterans with a chronic disability resulting from an undiagnosed illness that became manifest either during service on active duty in the Southwest Asia theater of operations during the Persian Gulf War or to a degree of ten percent or more disabling during a presumptive period determined by the Secretary.

Public Law 103–446 directed the Secretary to prescribe by regulation the period of time, following service in the Southwest Asia theater of operations, determined to be appropriate for the manifestation of an illness warranting payment of compensation. It further directed that the Secretary's determination of a presumptive period be made only following a review of any credible medical or scientific evidence and the historical treatment afforded disabilities for which manifestation periods have been established, taking into account other pertinent circumstances regarding the experiences of veterans of the Persian Gulf War.

To implement 38 U.S.C. 1117, VA published a final rule to add 38 CFR 3.317, which established the framework for the Secretary to pay compensation under the authority granted by the Persian Gulf War Veterans' Benefits Act. *See* 60 FR 6660, February 3, 1995. As part of that rulemaking, VA established a 2 year, post-Gulf War service presumptive period based primarily on the historical treatment of disabilities for which manifestation periods have been established and pertinent facts known regarding service in the Southwest Asia theater of operations during the Persian Gulf War. VA determined that there was little or no scientific or medical evidence, at that time, useful in determining an appropriate presumptive period for undiagnosed illnesses.

Due to the continuing lack of medical and scientific evidence about the nature and cause of the illnesses suffered by Gulf War veterans and the inadequacy of a designated presumptive period for undiagnosed illnesses, the Secretary established December 31, 2001, as the date by which an undiagnosed illness must become manifest for purposes of claims based on service in the Southwest Asia theater of operations during the Persian Gulf War. In 2001, VA further extended the period from December 31, 2001, to December 31, 2006.

In December 2001, section 202(a) of Public Law 107–103 amended 38 U.S.C. 1117 by revising the term ''chronic disability'' to include the following (or any combination of the following): (a) An undiagnosed illness; (b) a medically unexplained chronic multi-symptom illness (such as chronic fatigue syndrome, fibromyalgia, and irritable bowel syndrome) that is defined by a cluster of signs and symptoms; or (c) any diagnosed illness that the Secretary determines warrants a presumption of service connection. The revised term ''qualifying chronic disability,'' has broadened the scope of those health outcomes the Secretary may include under the presumption of service connection. Under 38 U.S.C. 1117, a chronic disability must still occur during service in the Southwest Asia theater of operations during the Persian Gulf War, or to a degree of ten percent or more disabling during the prescribed presumptive period following such service. VA amended 38 CFR 3.317 to reflect these changes. *See* 68 FR 34539, June 10, 2003.

As required by Public Law 105–277, the National Academy of Sciences (NAS) conducts ongoing review, evaluation, and summarization of the scientific and medical literature for peer review regarding the possible association between service in the Southwest Asia theater of operations and long-term adverse health effects. Due to the inconclusive nature of the scientific and medical evidence concerning the manifestation period for the subject illnesses, in December 2007, VA published a final rule to further extend the manifestation period from December 31, 2006 (previously extended), to December 31, 2011. *See* 72 FR 68507–01. Additionally, on October 13, 2010, Congress enacted section 806

of Public Law 111–275, which directed NAS to continue to review, evaluate, and summarize scientific and medical literature associated with Persian Gulf War service and broadly expanded the time frame for NAS to complete this research, since military operations in the Southwest Asia Theater of Operations continue, including Operation Iraqi Freedom, and no end date for the Gulf War has been established by Congress. *See* 38 U.S.C. 101(33).

In a report published in 2010 titled *Gulf War and Health, Volume 8: Update of Health Effects of Serving in the Gulf War,* NAS evaluated the available scientific and medical literature regarding the prevalence of chronic multi-symptom illnesses in Gulf War veterans. Consistent with its prior findings, NAS concluded, based on multiple studies, that there is sufficient evidence of an association between deployment to the Gulf War and chronic multi-symptom illness. NAS analyzed two follow-up studies that surveyed veterans who served in the Gulf War in 1991 in order to determine whether the increased prevalence of chronic multi-symptom illness persisted several years after such service. One study, conducted 10 years after the 1991 Gulf War, involved conducting detailed examinations and medical histories of veterans deployed to the Gulf War and non-deployed veterans of the same era. The study found that, 10 years after the 1991 Gulf War, chronic multi-symptom illness was nearly twice as prevalent in veterans deployed to the Gulf War (present in 28.9 percent of such veterans) than in the non-deployed veterans (15.8 percent). The study found that the prevalence of chronic multi-symptom illness decreased gradually over time, but remained significantly elevated 10 years after service. The other follow-up study involved a 2005 survey of veterans deployed to the 1991 Gulf War and their non-deployed counterparts of that era. That study found that 36.5 percent of the deployed veterans reported experiencing symptoms of chronic multi-symptom illness in 2005, compared to 11.7 percent of the non-deployed veterans. While this report is limited in that it is based on self-reports, the results are statistically significant and are consistent with the other follow-up report.

The currently available scientific and medical literature thus suggests that, while the prevalence of chronic multi-symptom illness may decrease over time following deployment to the Gulf War, the prevalence remains significantly elevated among deployed veterans more than a decade after deployment. At present, there is not a sufficient basis to identify the point, if any, at which the increased risk of chronic multi-symptom illness may abate. Further follow-up studies may provide additional information relevant to this issue in the future.

Section 501(a) of Title 38, United States Code, provides that the Secretary of Veterans Affairs ''[h]as authority to prescribe all rules and regulations which are necessary or appropriate to carry out the laws administered by the Department and are consistent with those laws.'' Because scientific uncertainty remains as to the cause of illnesses suffered by Persian Gulf War veterans and the time period in which such veterans have an increased risk of chronic multi-symptom illness, and because scientific studies and NAS reviews are ongoing, in order to ensure that benefits established by Congress are fairly administered, VA is further amending 38 CFR 3.317 to extend the evaluation period from December 31, 2011, to December 31, 2016.

Administrative Procedures Act

The Secretary of Veterans Affairs finds that there is good cause under the provisions of 5 U.S.C. 553(b)(3)(B) to publish this rule without prior opportunity for public comment. Absent extension of the sunset date in the current regulation, VA's authority to provide benefits in new claims for qualifying chronic disability in Gulf War veterans will lapse on December 31, 2011. A lapse of such authority would have significant adverse impact on veterans disabled due to such disabilities. To avoid such impact, VA is issuing this rule as an interim final rule. However, VA invites public comments on this interim final rule and will fully consider and address any comments received.

Paperwork Reduction Act

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

Regulatory Flexibility Act

The Secretary hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This rule would not affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a ''significant regulatory action,'' which requires review by the Office of Management and Budget (OMB), as ''any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.''

The economic, interagency, budgetary, legal, and policy implications of this rule have been examined and it has been determined to be a significant regulatory action under Executive Order 12866.

Unfunded Mandates

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

Catalog of Federal Domestic Assistance Numbers and Titles

The Catalog of Federal Domestic Assistance program numbers and titles for this rule are: 64.109, Veterans

Compensation for Service-Connected Disability.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on November 28, 2011, for publication.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Radioactive materials, Veterans, Vietnam.

Dated: December 22, 2011.

Robert C. McFetridge,

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

For the reasons set out in the preamble, VA amends 38 CFR part 3 as follows:

PART 3—ADJUDICATION

■ 1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

§ 3.317 [Amended]

■ 2. In § 3.317, paragraph (a)(1)(i), remove the date ''December 31, 2011'' and add, in its place, ''December 31, 2016''.

[FR Doc. 2011–33222 Filed 12–28–11; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2011–0032; FRL–9613–3]

Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Albuquerque/Bernalillo County; Prevention of Significant Deterioration; Greenhouse Gas Tailoring Rule Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving a revision to the Albuquerque/Bernalillo County, New Mexico State Implementation Plan (SIP) that was submitted by the Governor of New Mexico to EPA on December 15, 2010. This SIP revision modifies Albuquerque/Bernalillo County's Prevention of Significant Deterioration (PSD) program to establish appropriate emission thresholds for determining which new stationary sources and modification projects become subject to Albuquerque/Bernalillo County's PSD permitting requirements for their greenhouse gas (GHG) emissions. EPA is fully approving the Albuquerque/Bernalillo County, New Mexico December 15, 2010 PSD SIP revision because the Agency has determined that this PSD SIP revision is in accordance with section 110 and part C of the Federal Clean Air Act and EPA regulations regarding PSD permitting for GHGs.

DATES: This final rule will be effective January 30, 2012.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2011–0032. 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 the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at (214) 665–7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. A 15 cent per page fee will be charged for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area on the seventh floor at 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

The State submittal related to this SIP revision, and which is part of the EPA docket, is also available for public inspection at the Local Air Agency listed below during official business hours by appointment:

Albuquerque Environmental Health Department, Suite 3023, 3rd floor, One Civic Plaza, 400 Marquette Avenue NW., Albuquerque, New Mexico 87102.

FOR FURTHER INFORMATION CONTACT: If you have questions concerning today's final rule, please contact Mr. Mike Miller (6PD–R), Air Permits Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 1200, Dallas, TX 75202–2733. The telephone number is (214) 665–7550. Mr. Miller can also be reached via electronic mail at *miller.michael@epa.gov.*

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

I. What is the background for this action?

The background for EPA's national actions pertaining to GHG's as well as today's action is discussed in detail in our September 26, 2011 proposal (76 FR 59334). The comment period was open for thirty days and no comments were received.

II. What final action is EPA taking?

We are fully approving Albuquerque/Bernalillo County's December 15, 2010, SIP submittal, relating to PSD requirements for GHG-emitting sources in Albuquerque/Bernalillo County. Specifically, the SIP revision establishes appropriate emissions thresholds for determining PSD applicability to new and modified GHG-emitting sources in accordance with EPA's Tailoring Rule. We are approving this SIP revision because it is in accordance with the Clean Air Act (CAA) and EPA regulations regarding PSD permitting for GHGs.

As explained in our proposed approval of the Albuquerque/Bernalillo County December 15, 2010, SIP revision, 76 FR 59334 (September 26, 2011), since we are approving Albuquerque/Bernalillo County's changes to its air quality regulations to incorporate the appropriate thresholds for GHG permitting applicability into its SIP, then paragraph (e) in Section 52.1634 of 40 CFR part 52, as included in EPA's SIP Narrowing Rule—which codifies EPA's limiting its approval of Albuquerque/Bernalillo County's PSD SIP to not cover the applicability of PSD to GHG-emitting sources below the Tailoring Rule thresholds—is no longer necessary. In today's action, we are also amending Section 52.1634 of 40 CFR part 52 to remove this unnecessary regulatory language.

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 27, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purpose of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, and Reporting and recordkeeping requirements.

Dated: December 14, 2011.

Al Armendariz,

Regional Administrator, Region 6.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart GG—New Mexico

■ 2. The second table in § 52.1620(c) entitled ''EPA Approved Albuquerque/Bernalillo County, NM Regulations'' is amended by revising the entry for ''Part 61 (20.11.61), Prevention of Significant Deterioration,'' to read as follows:

§ 52.1620 Identification of plan.

* * * * *

(c) * * *

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EPA APPROVED ALBUQUERQUE/BERNALILLO COUNTY, NM REGULATIONS

State citation	Title/subject	State approval/effective date	EPA approval date	Explanation
*	*	*	*	*
New Mexico Administrative Code (NMAC) Title 20—Environment Protection, Chapter 11—Albuquerque/Bernalillo County Air Quality Control Board				
*	*	*	*	*
Part 61 (20.11.61)	Prevention of Significant Deterioration.	1/10/2011	12/29/11 [Insert *FR* page number where document begins].	Only sections 20.11.61.6, 20.11.61.7, 20.11.61.11, 20.11.61.12, 20.11.61.20, and 20.11.61.27 of Part 61 are approved as of 12/29/11. The remainder of Part 61 remains unchanged from EPA's approval of April 26, 2007 (72 FR 20728).

EPA APPROVED ALBUQUERQUE/BERNALILLO COUNTY, NM REGULATIONS—Continued

State citation	Title/subject	State approval/effective date	EPA approval date	Explanation
*	*	*	*	*

§ 52.1634 [Amended]

■ 3. Section 52.1634 is amended by removing paragraphs (d) and (e).

[FR Doc. 2011–33280 Filed 12–28–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2007–0314; FRL–9613–2]

Approval and Promulgation of Implementation Plans; Oklahoma; Interstate Transport of Pollution

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving severable portions of State Implementation Plan (SIP) revisions submitted by Oklahoma to address Clean Air Act (CAA) requirements that prohibit air emissions which will contribute significantly to nonattainment in, or interfere with maintenance by, any other State for the 1997 fine particulate matter ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS or standards) and the 2006 24-hour $PM_{2.5}$ NAAQS. EPA is also approving the severable portion of a SIP revision submitted by the State of Oklahoma to address the CAA requirement that prohibits air emissions which will contribute significantly to nonattainment in any other State for the 1997 8-hour ozone National Ambient Air Quality Standards (NAAQS or standards). EPA is taking no action at this time on the severable portion of the SIP revision submitted to address the CAA requirement that prohibits air emissions which will interfere with maintenance of the 1997 ozone NAAQS in any other State. This action is being taken under section 110 of the CAA.

DATES: This final rule is effective on January 30, 2012.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2007–0314. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 Freedom of Information Act Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at (214) 665–7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The state submittal is also available for public inspection during official business hours, by appointment, at the Oklahoma Department of Environmental Quality, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101–1677.

FOR FURTHER INFORMATION CONTACT: Carl Young, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–6645; email address *young.carl@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

Outline

I. Background

The background for today's action is discussed in detail in our October 17, 2011, proposal (76 FR 64065). In that notice, we addressed severable portions of SIP revisions submitted by the state of Oklahoma to address the requirement in section 110(a)(2)(D)(i)(I) of the Clean Air Act that all SIPs contain adequate provisions to prohibit emissions that significantly contribute to nonattainment of the NAAQS in another state and to prohibit emissions that interfere with maintenance of the NAAQS in another state. 42 U.S.C. 7410(a)(2)(D)(i)(I). Specifically, we proposed to (1) disapprove, or in the alternative, approve the severable portion of the May 1, 2007, SIP submittal asserting that Oklahoma does not interfere with maintenance of the 1997 8-hour ozone NAAQS in other states, (2) approve the severable portion of the May 1, 2007, SIP submittal asserting that Oklahoma emissions do not contribute significantly to nonattainment of the 1997 8-hour ozone NAAQS in other states, and (3) approve the severable portions of the May 1, 2007, and April 5, 2011, SIP submittals asserting that Oklahoma emissions do not contribute significantly to nonattainment in, or interfere with maintenance of the 1997 and 2006 $PM_{2.5}$ NAAQS in other states.

We received comments on our proposal from (1) the Oklahoma Department of Environmental Quality, (2) Western Farmers Electric Cooperative and Oklahoma Gas and Electric Company, and (3) the Oklahoma Attorney General. The comments are available for review in the electronic docket for this rulemaking at the *regulations.gov* Web site (Docket No. EPA–R06–OAR–2007–0314). All the comments addressed our proposal to disapprove, or in the alternative, approve the severable portion of the May 1, 2007, SIP submittal demonstrating Oklahoma does not interfere with maintenance of the 1997 8-hour ozone NAAQS in other states. We are not taking any final action at this time on that severable portion of our October 17, 2011 proposal. Therefore, we are also not addressing at this time the comments we received regarding that severable portion of the proposal. We intend to respond to comments and take a final action in a future rulemaking.

We did not receive any adverse comments regarding our proposal to approve the severable portions of the SIP submittals demonstrating that

Oklahoma emissions (1) do not contribute significantly to nonattainment of the 1997 ozone NAAQS in other states, and (2) do not contribute significantly to nonattainment, or interfere with maintenance of the 1997 and 2006 $PM_{2.5}$ NAAQS in other states.

II. Final Action

We are approving the severable portion of the Oklahoma SIP revision submitted on May 1, 2007, to address the significant contribution to nonattainment requirement for the 1997 8-hour ozone NAAQS. We are also approving the severable portions of the SIP revisions submitted on May 1, 2007, and April 5, 2011, to address the significant contribution to nonattainment or interference with maintenance requirements for the 1997 $PM_{2.5}$ NAAQS and the 2006 $PM_{2.5}$ NAAQS. This action is being taken under section 110 of the CAA.

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 27, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposed of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Sulfur dioxide.

Dated: December 16, 2011.

Al Armendariz,

Regional Administrator, Region 6.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart LL—Oklahoma

■ 2. The first table in § 52.1920(e) entitled ''EPA–Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Oklahoma SIP'' is amended by adding entries for ''Interstate transport for the 1997 ozone NAAQS (contribute to nonattainment)'', ''Interstate transport for the 1997 $PM_{2.5}$ NAAQS (contribute to nonattainment or interfere with maintenance)'', and ''Interstate transport for the 2006 $PM_{2.5}$ NAAQS (contribute to nonattainment or interfere with maintenance)'' at the end. The additions read as follows:

§ 52.1920 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE OKLAHOMA SIP

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanation
*	*	*	*	*
Interstate transport for the 1997 ozone NAAQS (contribute to nonattainment).	Statewide	5/1/2007	12/29/11 [Insert FR page number where document begins].	

EPA-APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE OKLAHOMA SIP—Continued

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanation
Interstate transport for the 1997 $PM_{2.5}$ NAAQS (contribute to nonattainment or interfere with maintenance).	Statewide	5/1/2007	12/29/11 [Insert FR page number where document begins].	
Interstate transport for the 2006 $PM_{2.5}$ NAAQS (contribute to nonattainment or interfere with maintenance).	Statewide	4/5/2011	12/29/11 [Insert FR page number where document begins].	

[FR Doc. 2011–33282 Filed 12–28–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–R04–SFUND–2011–0574; FRL–9612–5]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Deletion of the Hipps Road Landfill Superfund Site

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) Region 4 is publishing a direct final Notice of Deletion of the Hipps Road Landfill Superfund Site (Site), located in Jacksonville, Florida, from the National Priorities List (NPL). The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final deletion is being published by EPA with the concurrence of the State of Florida, through the Florida Department of Environmental Protection, because EPA has determined that all appropriate response actions under CERCLA, other than operation, maintenance, and five-year reviews have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: This direct final deletion is effective February 27, 2012 unless EPA receives adverse comments by January 30, 2012. If adverse comments are received, EPA will publish a timely withdrawal of the direct final deletion in the **Federal Register** informing the public that the deletion will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID no. EPA–R04–SFUND–2011–0574, by one of the following methods:

- *http://www.regulations.gov.* Follow on-line instructions for submitting comments.
- *Email: miller.scott@epa.gov*
- *Fax:* (404) 562–8896
- *Mail:* Scott Miller, Remedial Project Manager, Superfund Remedial Branch, Section C, Superfund Division, U.S. EPA Region 4, 61 Forsyth Street SW., Atlanta, GA 30303.
- *Hand delivery:* Same address as listed above. 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–R04–SFUND–2011–0574. 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 email. 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 email comment directly to EPA without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statue. Certain other material, such as copyrighted material, will be publicly available only in the hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at: U.S. EPA Record Center, 61 Forsyth Street SW., Atlanta, GA 30303; Hours: 8 a.m. to 4 p.m., Monday through Friday. Jacksonville Public Library, 6886 103rd Street, Jacksonville, FL 32210; Monday–Thursday: 10 a.m.–9 p.m., Friday & Saturday: 10 a.m.–6 p.m. Sunday: 1 p.m.–6 p.m.

FOR FURTHER INFORMATION CONTACT: Scott Miller, Remedial Project Manager, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, GA 30303, (404) 562–9120, email: *miller.scott@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

EPA Region 4 is publishing this direct final Notice of Deletion of the Hipps Road Landfill (Site), from the National Priorities List (NPL). The NPL constitutes Appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. EPA maintains the NPL as the list of sites that appear to present a significant

risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). As described in 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for Fund-financed remedial actions if future conditions warrant such actions.

Because EPA considers this action to be noncontroversial and routine, this action will be effective *February 27, 2012* unless EPA receives adverse comments by *January 30, 2012.* Along with this direct final Notice of Deletion, EPA is co-publishing a Notice of Intent to Delete in the ''Proposed Rules'' section of the **Federal Register**. If adverse comments are received within the 30-day public comment period on this deletion action, EPA will publish a timely withdrawal of this direct final Notice of Deletion before the effective date of the deletion, and the deletion will not take effect. EPA will, as appropriate, prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent to Delete and the comments already received. There will be no additional opportunity to comment.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Hipps Road Landfill Superfund Site and demonstrates how it meets the deletion criteria. Section V discusses EPA's action to delete the Site from the NPL unless adverse comments are received during the public comment period.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making such a determination pursuant to 40 CFR 300.425(e), EPA will consider, in consultation with the state, whether any of the following criteria have been met:

i. responsible parties or other persons have implemented all appropriate response actions required;

ii. all appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

iii. the remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Pursuant to CERCLA section 121(c) and the NCP, EPA conducts five-year reviews to ensure the continued protectiveness of remedial actions where hazardous substances, pollutants, or contaminants remain at a site above levels that allow for unlimited use and unrestricted exposure. EPA conducts such five-year reviews even if a site is deleted from the NPL. EPA may initiate further action to ensure continued protectiveness at a deleted site if new information becomes available that indicates it is appropriate. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

III. Deletion Procedures

The following procedures apply to deletion of the Site:

(1) EPA consulted with the State of Florida prior to developing this direct final Notice of Deletion and the Notice of Intent to Delete co-published today in the ''Proposed Rules'' section of the **Federal Register**.

(2) EPA has provided the Florida Department of Environmental Protection (FDEP) 30 working days for review of this notice and the parallel Notice of Intent to Delete prior to their publication today, and the state, through the FDEP, has concurred on the deletion of the Site from the NPL.

(3) Concurrently with the publication of this direct final Notice of Deletion, a notice of the availability of the parallel Notice of Intent to Delete is being published in a major local newspaper, Florida Times-Union. The newspaper notice announces the 30-day public comment period concerning the Notice of Intent to Delete the Site from the NPL.

(4) The EPA placed copies of documents supporting the proposed deletion in the deletion docket and made these items available for public inspection and copying at the Site information repositories identified above.

(5) If adverse comments are received within the 30-day public comment period on this deletion action, EPA will publish a timely notice of withdrawal of this direct final Notice of Deletion before its effective date and will prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent to Delete and the comments already received.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

IV. Basis for Site Deletion

The following information provides EPA's rationale for deleting the Site from the NPL:

Site Background and History

The twelve acre Hipps Road Landfill Site (EPA CERCLIS Identification Number FLD980709802) is located on the southeastern corner at the intersection of Hipps Road and Exline Road in Jacksonville Heights, Duval County, Florida. Landfill operations were conducted on approximately six acres of the Site. The Site is surrounded by a residential neighborhood. The Site's landfill area was initially a cypress swamp. In 1968, property owner G. O. Williams contracted with Waste Control of Florida (WCF) to fill the low-lying areas of the property. Landfill operations ceased in 1970 and were covered by soil. In the early 1980s, residents complained about unusual tastes and odors in private water wells, which led to investigations that identified groundwater contamination. The City of Jacksonville began to provide residents with bottled water for use as a potable water source. The City of Jacksonville completed the extension of a city water line to the affected area in October 1983 and by September 1985, all area residents were connected to the public water system. WCF acquired the residential properties in 1987. Waste Management Corporation (WM) inherited the Site property through its acquisition of WCF. Surface water is not used as a drinking water supply in the area. Surface waters nearby are used for recreational purposes such as swimming, boating, and fishing. There are no ecologically sensitive areas near the Site, which is situated above the 500-year flood plain. WM, the current landowners, have expressed interest in using the Site as a wildlife habitat area. The Site was proposed to the NPL in September 1983 (48 FR 40674) and was finalized to the NPL on September 21, 1984 (49 FR 37070).

Remedial Investigation and Feasibility Study (RI/FS)

In May 1986, EPA presented the results of the RI/FS, which included geophysical investigations, soil sampling, and groundwater sampling to

characterize the Site. The results indicated that Site groundwater was the media of concern, and the migration of contaminants would occur in the lower sand aquifer located to the northeast of the landfill.

The contaminants of concern (COCs) identified at the Site in the Site's 1990 ROD Amendment were bis (2-ethylhexyl) phthalate, chlorobenzene, chromium, 1,4-dichlorobenzene, trans-1,2-dichloroethylene, ethyl benzene, lead, naphthalene, and vinyl chloride. The risk assessment conducted during the FS concluded that none of the compounds detected in Site soil were present at concentrations of toxicological concern. The RI/FS was completed in September 1986.

Seven groundwater and five soil remedial actions were retained for detailed evaluation in the FS and were evaluated based on the National Contingency Plan decision criteria found at 40 CFR 300.430(e)(9) and include nine separate criteria used to evaluate each combination of remedial alternatives.

Selected Remedy

The ROD was released on September 3, 1986. The remedy for the Site included the following components:

- Proper landfill closure in a manner consistent with all applicable federal, state and local requirements.
- Recovery of contaminated groundwater with treatment at the publicly owned treatment works (POTW).
- Long-term monitoring of groundwater.
- Operation and maintenance includes upkeep of the landfill cap, groundwater monitoring, and maintenance of the groundwater recovery system. O&M will continue for at least 20 years after the final groundwater recovery operation.
- Institutional controls may include, but are not limited to, fencing the site, continuance of the local well drilling prohibition, land use restrictions, grouting existing private wells, and public or PRP acquisition of private lands.

In September 1990, EPA amended the ROD to provide for on-Site groundwater treatment and disposal as a more cost effective treatment alternative to disposal of groundwater to the publicly-owned treatment works (POTW). The 1990 ROD Amendment changed the remedy to the recovery of groundwater from five recovery wells; treatment of contaminated groundwater by air stripping; and the use of an on-Site holding pond for disposal of treated groundwater.

In August 1994, EPA issued an ESD to alter the method by which the abandonment of private wells impacted by the Site groundwater was achieved. In June 1996, EPA issued a second ESD to address operating difficulties at the groundwater treatment system during excessive rainfall and/or effluent discharges. During this situation, the high water level switch in the holding pond would trigger a system shutdown. In an effort to keep the treatment system operational, the ESD allowed for the periodic discharge of treated groundwater to the local POTW during high water levels in the holding pond.

In July 2004, EPA issued a third ESD, which changed the existing pump-and-treat recovery system to a monitored natural attenuation (MNA) plan to complete remediation of remaining groundwater contaminants.

Response Actions

On May 22, 1989, the landfill closure design was completed. The Remedial Design used a standard municipal cap design consisting of:

a. General earthfill cover to provide a crown over the landfill area with a minimum grade of 2.5 percent towards the perimeter of the landfill.

b. One foot of low-permeability clay having a permeability of 1×10^{-6} cm/s or less.

c. Two feet of vegetative soil cover and vegetative cover.

The Remedial Action construction for both the landfill closure and groundwater treatment system began in October 1989 and was completed on September 2, 1993, as documented in the September 9, 1994, Preliminary Closeout Report. Construction of the landfill cap was completed in April 1990 and final inspection of the landfill cover was April 26, 1990. The complete groundwater treatment system was constructed from May through August 1993. The groundwater treatment system included the installation of recovery wells, air-stripping system, and air blower system. Long-term groundwater monitoring began on March 15, 1994.

As recommended in the 2001 MNA Pilot Study Report, the Remedial Goal Verification Plan (RGVP) monitoring program was replaced with the MNA long-term monitoring program beginning in September 2004. The MNA long-term monitoring program called for groundwater monitoring well sampling semi-annually.

The wells included in the MNA long-term monitoring program fulfilled the following four purposes: (1) Confirm ongoing natural attenuation mechanisms; (2) ensure that benzene and vinyl chloride concentrations continue to be below cleanup goals; (3) monitor benzene and vinyl chloride in groundwater in areas in proximity to (or upgradient of) potential receptors; and (4) monitor the efficiency of the landfill cap. The MNA long-term monitoring program included the following tasks:

- Semi-annual hydraulic (water level) monitoring of piezometers, monitoring wells, and recovery wells, as specified in the RGVP.
- Semi-annual groundwater sample collection at upgradient wells TMW–1I and TMW–5I; side-gradient wells TMW–10I; and plume wells TMW–9I, TMW–13I, and RW–2 for analyses of volatile organic compounds (VOCs) via EPA Method 8260B. EPA approved discontinuing sampling and analysis of MNA long-term monitoring program wells TMW–7I, RW–3, TMW–6I, and RW–1 on March 3, 2006. Concentrations of benzene and vinyl chloride detected in these monitoring wells were below ROD cleanup criteria for four or more consecutive quarters and satisfied the cleanup criteria for the RGVP and MNA monitoring program.
- Semi-annual field monitoring of the following parameters where groundwater samples were collected: dissolved oxygen, oxidation reduction potential, conductivity, pH, and temperature.
- Annual groundwater sample collection for the analyses of biogeochemical parameters and dissolved gases, and field analysis of alkalinity, sulfide, and ferrous iron.

Groundwater monitoring occurred semi-annually and associated reports were submitted to EPA semi-annually. Off-Site wells were sampled until cleanup goals were achieved for four consecutive sampling events in February 2010.

Since the Site's 2005 Five Year Review, the landfill cover, infiltration pond, and security fencing were inspected semi-annually; each Site inspection found that they were properly maintained. In addition, each semi-annual report has shown that:

- Site security, including a locked gate and perimeter fencing with appropriate notice signs, was in place.
- Stormwater management features were functioning as designed.
- The landfill cover was inspected.
- No adverse conditions were observed.

The Site has two institutional controls in place that provide protection to potential receptors. The Site lies within a Florida Groundwater Delineation Area found at Florida Administrative Code (FAC) 62–524, which restricts placement of new wells on the property

and surrounding areas. This regulation was codified on March 25, 1990. The Site also lies within the jurisdiction of the St. John's River Water Management District (SJRWMD), which implements water supply well permitting controls and restricts groundwater withdrawals. A restrictive covenant recorded in the Duval County real estate records for the five parcels that constitute the Site restricts land use so that there would be no land disturbance which would effect the integrity of the final landfill cover or any component of the containment system without approval from the EPA Region 4 Regional Administrator. This restrictive convenant was recorded on January 24, 1988.

Cleanup Goals

Groundwater sampling data from September 2005 through September 2009 has been reviewed to determine cleanup goal attainment. In addition, groundwater sampling results of three off-Site wells, TMW–91, TMW–131 and RW–2, were reviewed from November 2009 and February 2010. No COCs have been detected in any off-Site well since 2008. No COCs have been detected above cleanup goals in on-Site wells since the 2005 Five Year Review.

TABLE 1—CONTAMINANTS OF CONCERN AND THEIR CLEAN UP GOALS

Contaminants of concern	Clean up goals (µg/L)
Benzene	1
Chlorobenzene	100
Chromium	100
1,4-dichlorobenzene	75
Trans-1,2-dichloroethylene	100
Ethyl benzene	700
Lead	15
Naphthalene	140
Vinyl chloride	1

Through the Fifty-First Monitoring and Maintenance Report monitoring period which has groundwater monitoring data obtained from April 1, 2009 to September 20, 2009, only three MNA monitoring wells (TMW–91, TMW–131, and RW–2) had not achieved the ROD cleanup criteria of four consecutive sampling events with results below cleanup goals. Benzene was detected above the cleanup goal of 1 µg/L in the three wells at concentrations ranging from 1.0 to 4.5 µg/L. Vinyl chloride was detected above the cleanup goal of 1 µg/L in RW–2 once in October 2005 and in TMW–131 in March and September 2006 and March 2007. Additional sampling of TMW–91, TMW–131 and RW–2 was performed in November 2009 and February 2010. The March 2010 Final Monitoring and Maintenance Report and Site Delisting Request included the supplemental TMW–91, TMW–131, and RW–2 sampling results, which found no COCs above cleanup goals. No COCs were detected above cleanup goals in the February, September, and November 2009 and February 2010 sampling. As of February 2010, all monitoring wells have met the ROD criteria of meeting cleanup goals for four consecutive monitoring events.

Operation and Maintenance

Waste Management designed and implemented an Operation and Maintenance Plan to ensure the long-term effectiveness of the ROD remedial elements. This Operations and Maintenance Plan was submitted on May 17, 1994. This Plan addressed maintaining the integrity and effectiveness of the final cover, including repairing the landfill cover; maintenance and sampling of the groundwater monitoring network; and protecting and maintaining surveyed benchmarks associated with institutional controls.

Five-Year Review

Since hazardous substances are present onsite above levels allowing for unlimited use and unrestricted exposure, statutory Five Year Reviews will be conducted by EPA every five years, pursuant to CERCLA Section 121 (c) and as provided in OSWER Directive 9355.7–03B–P, *Comprehensive Five-Year Review Guidance* (EPA, 2001). The purpose of these reviews is to ensure that the Site remedy remains protective of human health and the environment. The first Five Year Review at the Site was conducted in February 1996, the second in July 2000, the third in September 2005, and the fourth in July 2010.

The Fourth Five-Year Review concluded that remedial actions at the Hipps Road Landfill Superfund Site are protective of human health and the environment in the short term, and exposure pathways that could result in unacceptable risks are being controlled. In order for the site to remain protective in the long-term, the Site needed to be assessed to determine if ICs are necessary to prevent inappropriate land use. Further analysis of existing groundwater use prohibitions related to the delineated areas and examination of the existing restrictive covenant indicate that all institutional controls needed at the Site have been implemented. EPA will complete the next Five Year Review by July 2015.

Community Involvement

A public meeting was held on May 7, 1986, to present EPA's proposed plan for remedial action to the local community. Since that time community involvement activities, including community interviews, have occurred during each Five-Year review period (1996, 2000, 2005, 2010). Copies of site documents are in the designated Site repository at the Jacksonville Public Library, Webb-Wesconnett Regional Branch located at 6887 103rd St., Jacksonville, Florida.

Concurrently with the publication of this direct final Notice of Deletion, a notice of the availability of the parallel Notice of Intent to Delete is being published in a major local newspaper, Florida Times-Union. The newspaper notice announces the 30-day public comment period concerning the Notice of Intent to Delete the Site from the NPL.

Determination That the Site Meets the Criteria for Deletion in the NCP

The NCP specifies that EPA may delete a site from the NPL if ''all appropriate responsible parties or other persons have implemented all appropriate response actions required'' or ''all appropriate fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate''. EPA, with the concurrence of the State of Florida through the FDEP by a letter dated April 22, 2011, has determined that the Site responsible party Waste Management has implemented all appropriate response actions required and no further response action is required. Therefore, EPA is proposing the deletion of the site from the NPL. All of the completion requirements for the site have been met as described in the Hipps Road Landfill Final Close Out Report (FCOR) dated April 21, 2011.

V. Deletion Action

The EPA, with concurrence of the State of Florida through the FDEP, has determined that all appropriate response actions under CERCLA, other than operation, maintenance, monitoring and five-year reviews have been completed. Therefore, EPA is deleting the Site from the NPL.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication. This action will be effective *February 27, 2012* unless EPA receives adverse comments by *January 30, 2012.* If adverse comments are received within the 30-day public comment period, EPA

will publish a timely withdrawal of this direct final notice of deletion before the effective date of the deletion, and it will not take effect. EPA will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: November 21, 2011.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

For the reasons set out in this document, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

■ 2. Table 1 of Appendix B to part 300 is amended by removing the entry ''Hipps Road Landfill'', ''Duval County'' under FL.

[FR Doc. 2011–33472 Filed 12–28–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 111219777–1775–02]

RIN 0648–BB52

Fisheries of the Northeastern United States; Removal of Standardized Bycatch Reporting Methodology Regulations

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

ACTION: Final rule.

SUMMARY: This action removes regulations implementing the Northeast Region Standardized Bycatch Reporting Methodology (SBRM). To comply with the D.C. Circuit Court's decision, NMFS announces that the Northeast Region SBRM Omnibus Amendment is vacated and all regulations implemented by the SBRM Omnibus Amendment final rule are removed. The intended effect of this rule is to revise regulatory language to refer specifically to the industry-funded observer program in the scallop fishery.

DATES: Effective January 30, 2012.

FOR FURTHER INFORMATION CONTACT: Douglas Potts, Fishery Policy Analyst, (978) 281–9341, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION:

Background

On September 15, 2011, upon the order of the U.S. Court of Appeals for the District of Columbia Circuit, the U.S. District Court for the District of Columbia, in the case of *Oceana, Inc.* v. *Locke* (Civil Action No. 08–318), vacated the Northeast Region Standardized Bycatch Reporting Methodology (SBRM) Omnibus Amendment and remanded the case to NMFS for further proceedings consistent with the D.C. Circuit Court's decision. To comply with the ruling, NMFS announces that the Northeast Region SBRM Omnibus Amendment is vacated and all regulations implemented by the SBRM Omnibus Amendment final rule (73 FR 4736, January 28, 2008) are removed.

The removal of regulations implementing the SBRM Omnibus Amendment is not an exact reversal of the regulation amendatory instructions as written in the January 28, 2008, final rule. Some regulatory changes that occurred subsequent to the SBRM Omnibus Amendment final rule had to be accommodated. The final rule implementing the Annual Catch Limit and Accountability Measure Omnibus Amendment (76 FR 60606, September 29, 2011) reorganized the regulations for some species managed by the Mid-Atlantic Fishery Management Council and changed where SBRM provisions were located. In addition, the final rule implementing Amendment 11 to the Atlantic Sea Scallop Fishery Management Plan (FMP) (73 FR 20090, April 14, 2008) and the final rule implementing Amendment 3 to the Northeast Skate Complex FMP (75 FR 34049, June 16, 2010) inadvertently overwrote the SBRM provisions for those fisheries. Therefore, this action does not need to remove SBRM provisions in those two fisheries.

This action removes the SBRM section at § 648.18 and removes SBRM-related items from the lists of measures that can be changed through the FMP framework adjustment and/or annual specification process for the Atlantic mackerel, squid, and butterfish; Atlantic surfclam and ocean quahog; Northeast multispecies, monkfish; summer flounder; scup; black sea bass; bluefish; Atlantic herring; spiny dogfish; deep-sea red crab; and tilefish fisheries. This action also makes changes to the regulations regarding observer service provider approval and responsibilities and observer certification. The SBRM Omnibus Amendment had authorized the development of an industry-funded observer program in any fishery, and the final rule modified regulatory language in these sections to apply broadly to any such program. This action revises that regulatory language to refer specifically to the industry-funded observer program in the scallop fishery, which existed prior to the adoption of the SBRM Omnibus Amendment.

Classification

The Assistant Administrator for Fisheries finds it is unnecessary, impracticable, and contrary to the public interest to provide for prior notice and an opportunity for public comment. This action is required by Court order and, therefore, NMFS has no discretion in implementing this rule. The September 15, 2011, Court order requires NMFS to vacate the SBRM Omnibus Amendment and the implementing regulations. Public comments will not affect the Court's order. Therefore, prior notice and the opportunity for public comment, pursuant to authority set forth at U.S.C. 553(b)(B), is unnecessary and impracticable because of the Court order.

This final rule is promulgated under NMFS' general rule making authority specified at 16 U.S.C. 1855(d), and is issued to bring the regulations into compliance with the U.S. District Court for the District of Columbia's order vacating the SBRM Omnibus Amendment.

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

This rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior notice and opportunity for public comment. Accordingly, no initial regulatory flexibility analysis is required, and none has been prepared.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 22, 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 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.11, paragraphs (h) and (i) are revised to read as follows:

§ 648.11 At-sea sea sampler/observer coverage.

* * * * *

(h) *Observer service provider approval and responsibilities*—(1) *General.* An entity seeking to provide observer services to the Atlantic sea scallop fishery must apply for and obtain approval from NMFS following submission of a complete application to The Observer Program Branch Chief, 25 Bernard St. Jean Drive, East Falmouth, MA 02536. A list of approved observer service providers shall be distributed to scallop vessel owners and shall be posted on NMFS' Web page, as specified in paragraph (g)(4) of this section.

(2) [Reserved]

(3) *Contents of application.* An application to become an approved observer service provider shall contain the following:

(i) Identification of the management, organizational structure, and ownership structure of the applicant's business, including identification by name and general function of all controlling management interests in the company, including but not limited to owners, board members, officers, authorized agents, and staff. If the applicant is a corporation, the articles of incorporation must be provided. If the applicant is a partnership, the partnership agreement must be provided.

(ii) The permanent mailing address, phone and fax numbers where the owner(s) can be contacted for official correspondence, and the current physical location, business mailing address, business telephone and fax numbers, and business email address for each office.

(iii) A statement, signed under penalty of perjury, from each owner or owners, board members, and officers, if a corporation, that they are free from a conflict of interest as described under paragraph (h)(6) of this section.

(iv) A statement, signed under penalty of perjury, from each owner or owners, board members, and officers, if a corporation, describing any criminal convictions, Federal contracts they have had, and the performance rating they received on the contract, and previous decertification action while working as an observer or observer service provider.

(v) A description of any prior experience the applicant may have in placing individuals in remote field and/or marine work environments. This includes, but is not limited to, recruiting, hiring, deployment, and personnel administration.

(vi) A description of the applicant's ability to carry out the responsibilities and duties of a scallop fishery observer services provider as set out under paragraph (h)(5) of this section, and the arrangements to be used.

(vii) Evidence of holding adequate insurance to cover injury, liability, and accidental death for observers during their period of employment (including during training). Workers' Compensation and Maritime Employer's Liability insurance must be provided to cover the observer, vessel owner, and observer provider. The minimum coverage required is $5 million. Observer service providers shall provide copies of the insurance policies to observers to display to the vessel owner, operator, or vessel manager, when requested.

(viii) Proof that its observers, either contracted or employed by the service provider, are compensated with salaries that meet or exceed the Department of Labor (DOL) guidelines for observers. Observers shall be compensated as Fair Labor Standards Act (FLSA) non-exempt employees. Observer providers shall provide any other benefits and personnel services in accordance with the terms of each observer's contract or employment status.

(ix) The names of its fully equipped, NMFS/NEFOP certified observers on staff or a list of its training candidates (with resumes) and a request for a NMFS/NEFOP Sea Scallop Observer Training class. The NEFOP training has a minimum class size of eight individuals, which may be split among multiple vendors requesting training. Requests for training classes with fewer than eight individuals will be delayed until further requests make up the full training class size.

(x) An Emergency Action Plan (EAP) describing its response to an ''at sea'' emergency with an observer, including, but not limited to, personal injury, death, harassment, or intimidation.

(4) *Application evaluation.* (i) NMFS shall review and evaluate each application submitted under paragraphs (h)(2) and (h)(3) of this section. Issuance of approval as an observer provider shall be based on completeness of the application, and a determination by NMFS of the applicant's ability to perform the duties and responsibilities of a sea scallop fishery observer service provider, as demonstrated in the application information. A decision to approve or deny an application shall be made by NMFS within 15 days of receipt of the application by NMFS.

(ii) If NMFS approves the application, the observer service provider's name will be added to the list of approved observer service providers found on NMFS' Web site specified in paragraph (g)(4) of this section, and in any outreach information to the industry. Approved observer service providers shall be notified in writing and provided with any information pertinent to its participation in the sea scallop fishery observer program.

(iii) An application shall be denied if NMFS determines that the information provided in the application is not complete or NMFS concludes that the applicant does not have the ability to perform the duties and responsibilities of a sea scallop fishery observer service provider. NMFS shall notify the applicant in writing of any deficiencies in the application or information submitted in support of the application. An applicant who receives a denial of his or her application may present additional information, in writing, to rectify the deficiencies specified in the written denial, provided such information is submitted to NMFS within 30 days of the applicant's receipt of the denial notification from NMFS. In the absence of additional information, and after 30 days from an applicant's receipt of a denial, an observer provider is required to resubmit an application containing all of the information required under the application process specified in paragraph (h)(3) of this section to be re-considered for being added to the list of approved observer service providers.

(5) *Responsibilities of observer service providers.* (i) An observer service provider must provide observers certified by NMFS/NEFOP pursuant to paragraph (i) of this section for deployment in the sea scallop fishery when contacted and contracted by the owner, operator, or vessel manager of a vessel fishing in the scallop fishery, unless the observer service provider does not have an available observer within 48 hr of receiving a request for an observer from a vessel owner, operator, and/or manager, or refuses to deploy an observer on a requesting vessel for any of the reasons specified at paragraph (h)(5)(viii) of this section. An

observer's first three deployments and the resulting data shall be immediately edited and approved after each trip, by NMFS/NEFOP, prior to any further deployments by that observer. If data quality is considered acceptable, the observer will be certified.

(ii) An observer service provider must provide to each of its observers:

(A) All necessary transportation, including arrangements and logistics, of observers to the initial location of deployment, to all subsequent vessel assignments, and to any debriefing locations, if necessary;

(B) Lodging, per diem, and any other services necessary for observers assigned to a scallop vessel or to attend a NMFS/NEFOP Sea Scallop Observer Training class;

(C) The required observer equipment, in accordance with equipment requirements listed on NMFS' Web site specified in paragraph (g)(4) of this section under the Sea Scallop Program, prior to any deployment and/or prior to NMFS observer certification training; and

(D) Individually assigned communication equipment, in working order, such as a cell phone or pager, for all necessary communication. An observer service provider may alternatively compensate observers for the use of the observer's personal cell phone or pager for communications made in support of, or necessary for, the observer's duties.

(iii) *Observer deployment logistics.* Each approved observer service provider must assign an available certified observer to a vessel upon request. Each approved observer service provider must provide for access by industry 24 hr per day, 7 days per week, to enable an owner, operator, or manager of a vessel to secure observer coverage when requested. The telephone system must be monitored a minimum of four times daily to ensure rapid response to industry requests. Observer service providers approved under paragraph (h) of this section are required to report observer deployments to NMFS daily for the purpose of determining whether the predetermined coverage levels are being achieved in the scallop fishery.

(iv) *Observer deployment limitations.* Unless alternative arrangements are approved by NMFS, an observer provider must not deploy any observer on the same vessel for more than two consecutive multi-day trips, and not more than twice in any given month for multi-day deployments.

(v) *Communications with observers.* An observer service provider must have an employee responsible for observer activities on call 24 hr a day to handle emergencies involving observers or problems concerning observer logistics, whenever observers are at sea, stationed shoreside, in transit, or in port awaiting vessel assignment.

(vi) *Observer training requirements.* The following information must be submitted to NMFS/NEFOP at least 7 days prior to the beginning of the proposed training class: A list of observer candidates; observer candidate resumes; and a statement signed by the candidate, under penalty of perjury, that discloses the candidate's criminal convictions, if any. All observer trainees must complete a basic cardiopulmonary resuscitation/first aid course prior to the end of a NMFS/NEFOP Sea Scallop Observer Training class. NMFS may reject a candidate for training if the candidate does not meet the minimum qualification requirements as outlined by NMFS/NEFOP Minimum Eligibility Standards for observers as described on the NMFS/NEFOP Web site.

(vii) *Reports* —(A) *Observer deployment reports.* The observer service provider must report to NMFS/NEFOP when, where, to whom, and to what fishery (open or closed area) an observer has been deployed, within 24 hr of the observer's departure. The observer service provider must ensure that the observer reports back to NMFS its Observer Contract (OBSCON) data, as described in the certified observer training, within 24 hr of landing. OBSCON data are to be submitted electronically or by other means as specified by NMFS. The observer service provider shall provide the raw (unedited) data collected by the observer to NMFS within 72 hr, which should be within 4 business days of the trip landing.

(B) *Safety refusals.* The observer service provider must report to NMFS any trip that has been refused due to safety issues, e.g., failure to hold a valid USCG Commercial Fishing Vessel Safety Examination Decal or to meet the safety requirements of the observer's pre-trip vessel safety checklist, within 24 hr of the refusal.

(C) *Biological samples.* The observer service provider must ensure that biological samples, including whole marine mammals, sea turtles, and sea birds, are stored/handled properly and transported to NMFS within 7 days of landing.

(D) *Observer debriefing.* The observer service provider must ensure that the observer remains available to NMFS, either in-person or via phone, at NMFS' discretion, including NMFS Office for Law Enforcement, for debriefing for at least 2 weeks following any observed trip. If requested by NMFS, an observer that is at sea during the 2-week period must contact NMFS upon his or her return.

(E) *Observer availability report.* The observer service provider must report to NMFS any occurrence of inability to respond to an industry request for observer coverage due to the lack of available observers by 5 p.m., Eastern Standard Time, of any day on which the provider is unable to respond to an industry request for observer coverage.

(F) *Other reports.* The observer provider must report possible observer harassment, discrimination, concerns about vessel safety or marine casualty, or observer illness or injury; and any information, allegations, or reports regarding observer conflict of interest or breach of the standards of behavior, to NMFS/NEFOP within 24 hr of the event or within 24 hr of learning of the event.

(G) *Observer status report.* Providers must provide NMFS/NEFOP with an updated list of contact information for all observers that includes the observer identification number, observer's name, mailing address, email address, phone numbers, homeports or fisheries/trip types assigned, and must include whether or not the observer is ''in service,'' indicating when the observer has requested leave and/or is not currently working for the industry funded program.

(H) Providers must submit to NMFS/NEFOP, if requested, a copy of each type of signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract) between the observer provider and those entities requiring observer services.

(I) Providers must submit to NMFS/NEFOP, if requested, a copy of each type of signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract) between the observer provider and specific observers.

(J) Providers must submit to NMFS/NEFOP, if requested, copies of any information developed and used by the observer providers distributed to vessels, such as informational pamphlets, payment notification, description of observer duties, etc.

(viii) *Refusal to deploy an observer.* (A) An observer service provider may refuse to deploy an observer on a requesting scallop vessel if the observer service provider does not have an available observer within 72 hr of receiving a request for an observer from a vessel.

(B) An observer service provider may refuse to deploy an observer on a requesting scallop vessel if the observer

service provider has determined that the requesting vessel is inadequate or unsafe pursuant to the reasons described at § 600.746.

(C) The observer service provider may refuse to deploy an observer on a scallop vessel that is otherwise eligible to carry an observer for any other reason, including failure to pay for previous observer deployments, provided the observer service provider has received prior written confirmation from NMFS authorizing such refusal.

(6) *Limitations on conflict of interest.* An observer service provider:

(i) Must not have a direct or indirect interest in a fishery managed under Federal regulations, including, but not limited to, a fishing vessel, fish dealer, fishery advocacy group, and/or fishery research;

(ii) Must assign observers without regard to any preference by representatives of vessels other than when an observer will be deployed; and

(iii) Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who conducts fishing or fishing related activities that are regulated by NMFS, or who has interests that may be substantially affected by the performance or nonperformance of the official duties of observer providers.

(7) *Removal of observer service provider from the list of approved observer service providers.* An observer provider that fails to meet the requirements, conditions, and responsibilities specified in paragraphs (h)(5) and (h)(6) of this section shall be notified by NMFS, in writing, that it is subject to removal from the list of approved observer service providers. Such notification shall specify the reasons for the pending removal. An observer service provider that has received notification that it is subject to removal from the list of approved observer service providers may submit written information to rebut the reasons for removal from the list. Such rebuttal must be submitted within 30 days of notification received by the observer service provider that the observer service provider is subject to removal and must be accompanied by written evidence rebutting the basis for removal. NMFS shall review information rebutting the pending removal and shall notify the observer service provider within 15 days of receipt of the rebuttal whether or not the removal is warranted. If no response to a pending removal is received by NMFS within 30 days of the notification of removal, the observer service provider shall be automatically removed from the list of approved observer service providers. The decision to remove the observer service provider from the list, either after reviewing a rebuttal, or automatically if no timely rebuttal is submitted, shall be the final decision of the Department of Commerce. Removal from the list of approved observer service providers does not necessarily prevent such observer service provider from obtaining an approval in the future if a new application is submitted that demonstrates that the reasons for removal are remedied. Certified observers under contract with an observer service provider that has been removed from the list of approved service providers must complete their assigned duties for any scallop trips on which the observers are deployed at the time the observer service provider is removed from the list of approved observer service providers. An observer service provider removed from the list of approved observer service providers is responsible for providing NMFS with the information required in paragraph (h)(5)(vii) of this section following completion of the trip. NMFS may consider, but is not limited to, the following in determining if an observer service provider may remain on the list of approved observer service providers:

(i) Failure to meet the requirements, conditions, and responsibilities of observer service providers specified in paragraphs (h)(5) and (h)(6) of this section;

(ii) Evidence of conflict of interest as defined under paragraph (h)(6) of this section;

(iii) Evidence of criminal convictions related to:

(A) Embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; or

(B) The commission of any other crimes of dishonesty, as defined by state law or Federal law, that would seriously and directly affect the fitness of an applicant in providing observer services under this section;

(iv) Unsatisfactory performance ratings on any Federal contracts held by the applicant; and

(v) Evidence of any history of decertification as either an observer or observer provider.

(i) *Observer certification.* (1) To be certified, employees or sub-contractors operating as observers for observer service providers approved under paragraph (h) of this section must meet NMFS National Minimum Eligibility Standards for observers. NMFS National Minimum Eligibility Standards are available at the National Observer Program Web site: *http://www.st.nmfs.gov/st4/nop/.*

(2) *Observer training.* In order to be deployed on any scallop vessel, a candidate observer must have passed a NMFS/NEFOP Sea Scallop Fisheries Observer Training course. If a candidate fails training, the candidate shall be notified in writing on or before the last day of training. The notification will indicate the reasons the candidate failed the training. A candidate that fails training shall not be able to enroll in a subsequent class. Observer training shall include an observer training trip, as part of the observer's training, aboard a scallop vessel with a trainer. A certified observer's first deployment and the resulting data shall be immediately edited, and approved, by NMFS prior to any further deployments of that observer.

(3) *Observer requirements.* All observers must:

(i) Have a valid NMFS/NEFOP fisheries observer certification pursuant to paragraph (i)(1) of this section;

(ii) Be physically and mentally capable of carrying out the responsibilities of an observer on board scallop vessels, pursuant to standards established by NMFS. Such standards are available from NMFS/NEFOP Web site specified in paragraph (g)(4) of this section and shall be provided to each approved observer service provider;

(iii) Have successfully completed all NMFS-required training and briefings for observers before deployment, pursuant to paragraph (i)(2) of this section; and

(iv) Hold a current Red Cross (or equivalence) CPR/first aid certification.

(v) Observers must accurately record their sampling data, write complete reports, and report accurately any observations relevant to conservation of marine resources or their environment.

(4) *Probation and decertification.* NMFS has the authority to review observer certifications and issue observer certification probation and/or decertification as described in NMFS policy found on the Web site at: *http://www.nefsc.noaa.gov/femad/fsb/.*

(5) *Issuance of decertification.* Upon determination that decertification is warranted under paragraphs (i)(1) through (3) of this section, NMFS shall issue a written decision to decertify the observer to the observer and approved observer service provider via certified mail at the observer's most current address provided to NMFS. The decision shall identify whether a certification is revoked and shall identify the specific reasons for the action taken. Decertification is effective immediately as of the date of issuance,

unless the decertification official notes a compelling reason for maintaining certification for a specified period and under specified conditions. Decertification is the final decision of the Department of Commerce.

* * * * *

§ 648.18 [Amended]

■ 3. § 648.18 is removed and reserved.

§ 648.22 [Amended]

■ 4. In § 648.22, paragraph (c)(13) is removed and reserved.

■ 5. In § 648.25, paragraph (a)(1) is revised to read as follows:

§ 648.25 Atlantic Mackerel, squid, and butterfish framework adjustments to management measures.

(a) * * *

(1) *Adjustment process.* The MAFMC shall develop and analyze appropriate management actions over the span of at least two MAFMC meetings. The MAFMC must provide the public with advance notice of the availability of the recommendation(s), appropriate justification(s) and economic and biological analyses, and the opportunity to comment on the proposed adjustment(s) at the first meeting and prior to and at the second MAFMC meeting. The MAFMC's recommendations on adjustments or additions to management measures must come from one or more of the following categories: Adjustments within existing ABC control rule levels; adjustments to the existing MAFMC risk policy; introduction of new AMs, including sub-ACTs; minimum fish size; maximum fish size; gear restrictions; gear requirements or prohibitions; permitting restrictions, recreational possession limit; recreational seasons; closed areas; commercial seasons; commercial trip limits; commercial quota system, including commercial quota allocation procedure and possible quota set-asides to mitigate bycatch; recreational harvest limit; annual specification quota setting process; FMP Monitoring Committee composition and process; description and identification of EFH (and fishing gear management measures that impact EFH); description and identification of habitat areas of particular concern; overfishing definition and related thresholds and targets; regional gear restrictions; regional season restrictions (including option to split seasons); restrictions on vessel size (LOA and GRT) or shaft horsepower; any other management measures currently included in the FMP, set aside quota for scientific research, regional management, and process for inseason adjustment to the annual specification. Measures contained within this list that require significant departures from previously contemplated measures or that are otherwise introducing new concepts may require amendment of the FMP instead of a framework adjustment.

* * * * *

■ 6. In § 648.79, paragraph (a)(1) is revised to read as follows:

§ 648.79 Surfclam and ocean quahog framework adjustments to management measures.

(a) * * *

(1) *Adjustment process.* The MAFMC shall develop and analyze appropriate management actions over the span of at least two MAFMC meetings. The MAFMC must provide the public with advance notice of the availability of the recommendation(s), appropriate justification(s) and economic and biological analyses, and the opportunity to comment on the proposed adjustment(s) at the first meeting, and prior to and at the second MAFMC meeting. The MAFMC's recommendations on adjustments or additions to management measures must come from one or more of the following categories: Adjustments within existing ABC control rule levels; adjustments to the existing MAFMC risk policy; introduction of new AMs, including sub-ACTs; description and identification of EFH (and fishing gear management measures that impact EFH); habitat areas of particular concern; set-aside quota for scientific research; VMS; OY range; and suspension or adjustment of the surfclam minimum size limit. Issues that require significant departures from previously contemplated measures or that are otherwise introducing new concepts may require an amendment of the FMP instead of a framework adjustment.

* * * * *

■ 7. In § 648.90, paragraphs (a)(2)(i), (a)(2)(iii), (b)(1)(ii), and (c)(1)(i) are revised to read as follows:

§ 648.90 NE multispecies assessment, framework procedures and specifications, and flexible area action system.

* * * * *

(a) * * *

(2) *Biennial review.* (i) The NE multispecies PDT shall meet on or before September 30 every other year, unless otherwise specified in paragraph (a)(3) of this section, under the conditions specified in that paragraph, to perform a review of the fishery, using the most current scientific information available provided primarily from the NEFSC. Data provided by states, ASMFC, the USCG, and other sources may also be considered by the PDT. Based on this review, the PDT will develop ACLs for the upcoming fishing year(s) as described in paragraph (a)(4) of this section and develop options for consideration by the Council if necessary, on any changes, adjustments, or additions to DAS allocations, closed areas, or other measures necessary to rebuild overfished stocks and achieve the FMP goals and objectives.

* * * * *

(iii) Based on this review, the PDT shall recommend ACLs and develop options necessary to achieve the FMP goals and objectives, which may include a preferred option. The PDT must demonstrate through analyses and documentation that the options they develop are expected to meet the FMP goals and objectives. The PDT may review the performance of different user groups or fleet sectors in developing options. The range of options developed by the PDT may include any of the management measures in the FMP, including, but not limited to: ACLs, which must be based on the projected fishing mortality levels required to meet the goals and objectives outlined in the FMP for the 12 regulated species and ocean pout if able to be determined; identification and distribution of ACLs and other sub-components of the ACLs among various segments of the fishery; AMs; DAS changes; possession limits; gear restrictions; closed areas; permitting restrictions; minimum fish sizes; recreational fishing measures; description and identification of EFH; fishing gear management measures to protect EFH; designation of habitat areas of particular concern within EFH. In addition, the following conditions and measures may be adjusted through future framework adjustments: Revisions to DAS measures, including DAS allocations (such as the distribution of DAS among the four categories of DAS), future uses for Category C DAS, and DAS baselines, adjustments for steaming time, etc.; modifications to capacity measures, such as changes to the DAS transfer or DAS leasing measures; calculation of area-specific ACLs, area management boundaries, and adoption of area-specific management measures; sector allocation requirements and specifications, including the establishment of a new sector, the disapproval of an existing sector, the allowable percent of ACL available to a sector through a sector allocation, and the calculation of PSCs; sector administration provisions, including at-sea and dockside monitoring measures;

sector reporting requirements; measures to implement the U.S./Canada Resource Sharing Understanding, including any specified TACs (hard or target); changes to administrative measures; additional uses for Regular B DAS; reporting requirements; the GOM Inshore Conservation and Management Stewardship Plan; adjustments to the Handgear A or B permits; gear requirements to improve selectivity, reduce bycatch, and/or reduce impacts of the fishery on EFH; SAP modifications; revisions to the ABC control rule and status determination criteria, including, but not limited to, changes in the target fishing mortality rates, minimum biomass thresholds, numerical estimates of parameter values, and the use of a proxy for biomass may be made either through a biennial adjustment or framework adjustment; and any other measures currently included in the FMP.

* * * * *

(b) * * *

(1) * * *

(ii) The WMC shall recommend management options necessary to achieve FMP goals and objectives pertaining to small-mesh multispecies, which may include a preferred option. The WMC must demonstrate through analyses and documentation that the options it develops are expected to meet the FMP goals and objectives. The WMC may review the performance of different user groups or fleet Sectors in developing options. The range of options developed by the WMC may include any of the management measures in the FMP, including, but not limited to: Annual target TACs, which must be based on the projected fishing mortality levels required to meet the goals and objectives outlined in the FMP for the small-mesh multispecies; possession limits; gear restrictions; closed areas; permitting restrictions; minimum fish sizes; recreational fishing measures; description and identification of EFH; fishing gear management measures to protect EFH; designation of habitat areas of particular concern within EFH; and any other management measures currently included in the FMP.

* * * * *

(c) * * *

(1) * * *

(i) After a management action has been initiated, the Council shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Council shall provide the public with advance notice of the availability of both the proposals and the analyses and opportunity to comment on them prior to and at the second Council meeting. The Council's recommendation on adjustments or additions to management measures, other than to address gear conflicts, must come from one or more of the following categories: DAS changes, effort monitoring, data reporting, possession limits, gear restrictions, closed areas, permitting restrictions, crew limits, minimum fish sizes, onboard observers, minimum hook size and hook style, the use of crucifer in the hook-gear fishery, sector requirements, recreational fishing measures, area closures and other appropriate measures to mitigate marine mammal entanglements and interactions, description and identification of EFH, fishing gear management measures to protect EFH, designation of habitat areas of particular concern within EFH, and any other management measures currently included in the FMP. In addition, the Council's recommendation on adjustments or additions to management measures pertaining to small-mesh NE multispecies, other than to address gear conflicts, must come from one or more of the following categories: Quotas and appropriate seasonal adjustments for vessels fishing in experimental or exempted fisheries that use small mesh in combination with a separator trawl/grate (if applicable), modifications to separator grate (if applicable) and mesh configurations for fishing for small-mesh NE multispecies, adjustments to whiting stock boundaries for management purposes, adjustments for fisheries exempted from minimum mesh requirements to fish for small-mesh NE multispecies (if applicable), season adjustments, declarations, and participation requirements for the Cultivator Shoal Whiting Fishery Exemption Area.

* * * * *

■ 8. In § 648.96, paragraph (a)(3)(ii) is revised to read as follows:

§ 648.96 FMP review, specification, and framework adjustment process.

(a) * * *

(3) * * *

(ii) The range of options developed by the Councils may include any of the management measures in the Monkfish FMP, including, but not limited to: ACTs; closed seasons or closed areas; minimum size limits; mesh size limits; net limits; liver-to-monkfish landings ratios; annual monkfish DAS allocations and monitoring; trip or possession limits; blocks of time out of the fishery; gear restrictions; transferability of permits and permit rights or administration of vessel upgrades, vessel replacement, or permit assignment; measures to minimize the impact of the monkfish fishery on protected species; gear requirements or restrictions that minimize bycatch or bycatch mortality; transferable DAS programs; changes to the Monkfish Research Set-Aside Program; and other frameworkable measures included in §§ 648.55 and 648.90.

* * * * *

§ 648.102 [Amended]

■ 9. In § 648.102, paragraph (a)(10) is removed and reserved.

■ 10. In § 648.110, paragraph (a)(1) is revised to read as follows:

§ 648.110 Summer flounder framework adjustments to management measures.

(a) * * *

(1) *Adjustment process.* The MAFMC shall develop and analyze appropriate management actions over the span of at least two MAFMC meetings. The MAFMC must provide the public with advance notice of the availability of the recommendation(s), appropriate justification(s) and economic and biological analyses, and the opportunity to comment on the proposed adjustment(s) at the first meeting and prior to and at the second MAFMC meeting. The MAFMC's recommendations on adjustments or additions to management measures must come from one or more of the following categories: Adjustments within existing ABC control rule levels; adjustments to the existing MAFMC risk policy; introduction of new AMs, including sub-ACTs; minimum fish size; maximum fish size; gear restrictions; gear requirements or prohibitions; permitting restrictions; recreational possession limit; recreational seasons; closed areas; commercial seasons; commercial trip limits; commercial quota system including commercial quota allocation procedure and possible quota set asides to mitigate bycatch; recreational harvest limit; specification quota setting process; FMP Monitoring Committee composition and process; description and identification of essential fish habitat (and fishing gear management measures that impact EFH); description and identification of habitat areas of particular concern; regional gear restrictions; regional season restrictions (including option to split seasons); restrictions on vessel size (LOA and GRT) or shaft horsepower; operator permits; any other commercial or recreational management measures; any other management measures currently included in the FMP; and set aside quota for scientific research. Issues that require significant departures

from previously contemplated measures or that are otherwise introducing new concepts may require an amendment of the FMP instead of a framework adjustment.

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§ 648.122 [Amended]

■ 11. In § 648.122, paragraph (a)(13) is removed and reserved.

§ 648.142 [Amended]

■ 12. In § 648.142, paragraph (a)(12) is removed and reserved.

§ 648.162 [Amended]

■ 13. In § 648.162, paragraph (a)(9) is removed and reserved.

■ 14. In § 648.167, paragraph (a)(1) is revised to read as follows:

§ 648.167 Bluefish framework adjustment to management measures.

(a) * * *

(1) *Adjustment process.* After a management action has been initiated, the MAFMC shall develop and analyze appropriate management actions over the span of at least two MAFMC meetings. The MAFMC shall provide the public with advance notice of the availability of both the proposals and the analysis and the opportunity to comment on them prior to and at the second MAFMC meeting. The MAFMC's recommendation on adjustments or additions to management measures must come from one or more of the following categories: Adjustments within existing ABC control rule levels; adjustments to the existing MAFMC risk policy; introduction of new AMs, including sub-ACTs; minimum fish size; maximum fish size; gear restrictions; gear requirements or prohibitions; permitting restrictions; recreational possession limit; recreational season; closed areas; commercial season; description and identification of EFH; fishing gear management measures to protect EFH; designation of habitat areas of particular concern within EFH; and any other management measures currently included in the FMP. Measures that require significant departures from previously contemplated measures or that are otherwise introducing new concepts may require an amendment of the FMP instead of a framework adjustment.

* * * * *

■ 15. In § 648.200, paragraph (b) introductory text is revised to read as follows:

§ 648.200 Specifications.

* * * * *

(b) *Guidelines.* As the basis for its recommendations under paragraph (a) of this section, the PDT shall review available data pertaining to: Commercial and recreational catch data; current estimates of fishing mortality; stock status; recent estimates of recruitment; virtual population analysis results and other estimates of stock size; sea sampling and trawl survey data or, if sea sampling data are unavailable, length frequency information from trawl surveys; impact of other fisheries on herring mortality; and any other relevant information. The specifications recommended pursuant to paragraph (a) of this section must be consistent with the following:

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§ 648.206 [Amended]

■ 16. In § 648.206, paragraph (b)(29) is removed and reserved.

§ 648.232 [Amended]

■ 17. In § 648.232, paragraph (a)(5) is removed and reserved.

■ 18. In § 648.239, paragraph (a)(1) is revised to read as follows:

§ 648.239 Spiny dogfish framework adjustments to management measures.

(a) * * *

(1) *Adjustment process.* After the Councils initiate a management action, they shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Councils shall provide the public with advance notice of the availability of both the proposals and the analysis for comment prior to, and at, the second Council meeting. The Councils' recommendation on adjustments or additions to management measures must come from one or more of the following categories: Adjustments within existing ABC control rule levels; adjustments to the existing MAFMC risk policy; introduction of new AMs, including sub-ACTs; minimum fish size; maximum fish size; gear requirements, restrictions, or prohibitions (including, but not limited to, mesh size restrictions and net limits); regional gear restrictions; permitting restrictions, and reporting requirements; recreational fishery measures (including possession and size limits and season and area restrictions); commercial season and area restrictions; commercial trip or possession limits; fin weight to spiny dogfish landing weight restrictions; onboard observer requirements; commercial quota system (including commercial quota allocation procedures and possible quota set-asides to mitigate bycatch, conduct scientific research, or for other purposes); recreational harvest limit; annual quota specification process; FMP Monitoring Committee composition and process; description and identification of essential fish habitat; description and identification of habitat areas of particular concern; overfishing definition and related thresholds and targets; regional season restrictions (including option to split seasons); restrictions on vessel size (length and GRT) or shaft horsepower; target quotas; measures to mitigate marine mammal entanglements and interactions; regional management; any other management measures currently included in the Spiny Dogfish FMP; and measures to regulate aquaculture projects. Measures that require significant departures from previously contemplated measures or that are otherwise introducing new concepts may require an amendment of the FMP instead of a framework adjustment.

* * * * *

■ 19. In § 648.260, paragraph (a)(1) is revised to read as follows:

§ 648.260 Specifications.

(a) * * *

(1) The Red Crab PDT shall meet at least once annually during the intervening years between Stock Assessment and Fishery Evaluation (SAFE) Reports, described in paragraph (b) of this section, to review the status of the stock and the fishery. Based on such review, the PDT shall provide a report to the Council on any changes or new information about the red crab stock and/or fishery, and it shall recommend whether the specifications for the upcoming year(s) need to be modified. At a minimum, this review shall include a review of at least the following data, if available: Commercial catch data; current estimates of fishing mortality and catch-per-unit-effort (CPUE); stock status; recent estimates of recruitment; virtual population analysis results and other estimates of stock size; sea sampling, port sampling, and survey data or, if sea sampling data are unavailable, length frequency information from port sampling and/or surveys; impact of other fisheries on the mortality of red crabs; and any other relevant information.

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§ 648.299 [Amended]

20. In § 648.299, paragraph (a)(1)(xviii) is removed and reserved.

[FR Doc. 2011–33302 Filed 12–28–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 101029427–0609–02]

RIN 0648–XA884

Fisheries of the Northeastern United States; Summer Flounder Fishery; Quota Transfer

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

ACTION: Temporary rule; quota transfer.

SUMMARY: NMFS announces that the State of North Carolina is transferring a portion of its 2011 commercial summer flounder quota to the Commonwealth of Virginia. By this action, NMFS adjusts the quotas and announces the revised commercial quota for each state involved.

DATES: Effective December 23, 2011, through December 31, 2011.

FOR FURTHER INFORMATION CONTACT: Carly Bari, Fishery Management Specialist, (978) 281–9224.

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state are described in § 648.100.

The final rule implementing Amendment 5 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan, which was published on December 17, 1993 (58 FR 65936), provided a mechanism for summer flounder quota to be transferred from one state to another. Two or more states, under mutual agreement and with the concurrence of the Administrator, Northeast Region, NMFS (Regional Administrator), can transfer or combine summer flounder commercial quota under § 648.100(d). The Regional Administrator is required to consider the criteria set forth in § 648.100(d)(3) in the evaluation of requests for quota transfers or combinations.

North Carolina has agreed to transfer 63,573 lb (28,836 kg) of its 2011 commercial quota to Virginia. This transfer was prompted by summer flounder landings of 14 North Carolina vessels that were granted safe harbor in Virginia due to hazardous shoaling in Oregon Inlet, North Carolina, severe weather conditions, and/or mechanical problems between October 31, 2011, and December 8, 2011, thereby requiring a quota transfer to account for an increase in Virginia's landings that would have otherwise accrued against the North Carolina quota. The Regional Administrator has determined that the criteria set forth in § 648.100(d)(3) have been met. The revised summer flounder quotas for calendar year 2011 are: North Carolina, 3,315,571 lb (1,503,918 kg); and Virginia, 5,141,507 lb (2,332,148 kg).

Classification

This action is taken under 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: December 23, 2011.

Alan D. Risenhoover,

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

[FR Doc. 2011–33439 Filed 12–23–11; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 101029427–0609–02]

RIN 0648–XA887

Fisheries of the Northeastern United States; Summer Flounder Fishery; Quota Transfer

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

ACTION: Temporary rule; quota transfer.

SUMMARY: NMFS announces that the State of Maine is transferring portions of their 2011 commercial summer flounder quota to the State of Rhode Island. By this action, NMFS adjusts the quotas and announces the revised commercial quota for each state involved.

DATES: Effective December 23, 2011, through December 31, 2011.

FOR FURTHER INFORMATION CONTACT: Carly Bari, Fishery Management Specialist, (978) 281–9224.

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state are described in § 648.100.

The final rule implementing Amendment 5 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan, which was published on December 17, 1993 (58 FR 65936), provided a mechanism for summer flounder quota to be transferred from one state to another. Two or more states, under mutual agreement and with the concurrence of the Administrator, Northeast Region, NMFS (Regional Administrator), can transfer or combine summer flounder commercial quota under § 648.100(d). The Regional Administrator is required to consider the criteria set forth in § 648.100(d)(3) in the evaluation of requests for quota transfers or combinations.

Maine has agreed to transfer 8,200 lb (3,719 kg) of its 2011 commercial quota to Rhode Island. This transfer was prompted by a diligent effort from Rhode Island to not overharvest its summer flounder commercial quota. The Regional Administrator has determined that the criteria set forth in § 648.100(d)(3) have been met. The revised summer flounder quotas for calendar year 2011 are: Rhode Island, 2,733,139 lb (1,239,731 kg); and Maine, 64 lb (29 kg).

Classification

This action is taken under 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: December 23, 2011.

Alan D. Risenhoover,

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

[FR Doc. 2011–33434 Filed 12–23–11; 11:15 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 101206604–1758–02]

RIN 0648–BA55

Fisheries Off West Coast States; West Coast Salmon Fisheries; Amendment 16 to the Salmon Fishery Management Plan

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule under authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) to implement Amendment 16 to the Pacific Coast Salmon Fishery Management Plan for Commercial and Recreational Salmon Fisheries off the Coasts of Washington, Oregon, and California (Salmon FMP). NMFS approved Amendment 16 on December 16, 2011. This final rule implements components of Amendment 16 that bring the Salmon FMP into compliance with the MSA as amended in 2007, and the corresponding revised National Standard 1 Guidelines (NS1Gs) to end and prevent overfishing. Amendment 16 identifies stocks that are in the fishery, establishes status determination criteria (SDC), and specifies overfishing limits (OFLs), acceptable biological catch (ABC), and annual catch limits (ACLs). Amendment 16 also includes ''*de minimis*'' fishing provisions that allow for low levels of fishing impacts on stocks that are at low levels of abundance.

DATES: This final rule is effective January 30, 2012.

ADDRESSES: This final rule is also accessible on the Web site of NMFS' Northwest Region (*http://www.nwr.noaa.gov*). Electronic copies of the Environmental Assessment (EA) and current Salmon FMP, through Amendment 16, are available on the Pacific Fishery Management Council's Web site (*http://www.pcouncil.org/*).

FOR FURTHER INFORMATION CONTACT: Peggy Mundy, Northwest Region Salmon Management Division, NMFS, (206) 526–4323 or Jennifer Isé, Southwest Region, Sustainable Fisheries Division, NMFS, (562) 980–4046.

SUPPLEMENTARY INFORMATION: The Pacific Fishery Management Council (Council) developed Amendment 16 to bring the Salmon FMP into compliance with the 2007 MSA amendments and revised NS1Gs (74 FR 3178, January 16, 2009). The Council took final action on Amendment 16 in June 2011 and transmitted the amendment to NMFS on September 12, 2011. NMFS published a Notice of Availability of Amendment 16 in the **Federal Register** (76 FR 57945, September 19, 2011) to notify the public of the availability of the amendment and invite comments. Alternatives considered in the development of Amendment 16 were analyzed in a draft Environmental Assessment (EA). NMFS published a proposed rule and notice of availability of the draft EA in the **Federal Register** (76 FR 65673, October 24, 2011) to notify the public and invite comments. NMFS received 10 comment submissions. The comments are summarized and responded to in the ''Response to Comments'' section of this rule.

Amendment 16 reorganizes and classifies stocks in the FMP, establishes new status determination criteria, establishes a framework for defining reference points related to overfishing limits (OFL), acceptable biological catch (ABC), and annual catch limits (ACLs), and establishes appropriate accountability measures (AM) necessary to prevent the ACLs from being exceeded, and to mitigate any overages that may occur. Amendment 16 also sets a new conservation objective for Klamath River fall Chinook, and specifies *de minimis* fishing rate provisions to address management in years of low abundance. The details of Amendment 16 were described in the proposed rule (76 FR 65673, October 24, 2011) and are not repeated here. This final rule identifies changes to the regulations under 50 CFR 660 subpart H to implement Amendment 16 and describes changes made from the proposed rule.

Response to Comments

NMFS invited comments on Amendment 16, the related draft EA, and the proposed rule. Comments were received from 10 groups and individuals, including a letter of ''no comment'' submitted by U.S. Department of the Interior. Complete written comments are incorporated into Appendix J of the EA. Many comments were similar in substance, therefore, the comments are summarized and addressed below.

Comment 1: Several comments received included requests to extend the comment period for up to 60 days.

Response: NMFS determined that extension of the comment period for this action was not possible. The Council and NMFS are operating under a statutory deadline to implement an amendment to the FMP to bring it into compliance with the requirements of the MSA to implement annual catch limits and accountability measures in 2011. Additionally, under the MSA, NMFS has 95 days to approve or disapprove an FMP amendment. If NMFS did not take action within that 95-day period, the amendment would have been approved by default. The PFMC transmitted the Amendment 16 to NMFS on September 12; therefore, the 95-day period to approve or disapprove the amendment would have expired on December 16. Therefore, there was insufficient time to allow for a meaningful extension of the comment period. In addition, Amendment 16 has been in development in an open, public process since March 2009. There have been multiple opportunities to comment at public meetings throughout this process, and an ongoing opportunity to submit written comments. The Council developed Amendment 16 at its meetings in Washington, Oregon, Idaho, and California of both the full Council and the Salmon Amendment Committee, all of which were open to the public and announced in the **Federal Register.** To facilitate those unable to attend Council meetings in person, the Council streams meetings live on the Internet.

Comment 2: While habitat conditions in the Klamath River basin have been improving, the number of fish returning to spawn has been observed to decrease over time. For example, habitat restoration efforts have resulted in increased production of age 0+ Chinook in the Scott River. The reason for the decline in spawning adults is the decline in returning adults.

Response: Amendment 16 should result in greater spawning escapement throughout the Klamath Basin, because managing for MSY spawning escapement will result in managing for an escapement of 40,700 natural area adult spawners rather than 35,000.

Comment 3: The EA does not address all in-river tribal harvest, particularly that by the Karuk Tribe and occupants of the Resighini Reservation.

Response: The EA assesses the impacts the proposed actions on the affected environment, which includes in-river harvest by the Yurok and Hoopa Valley Tribes (sections 4.1.2.2, 4.1.5.4, and 4.4.8). Additional information was added to the final EA in section 4.1.5.4 noting the rationale for *de minimis* fishing at low stock size to address minimal tribal needs. Thus, the EA adequately accounts for harvest by the Yurok and Hoopa Valley tribal members.

The Karuk tribe and Resighini Rancheria do not have federally recognized fishing rights. The Karuk tribal dipnet fisheries, and fishing conducted by members of the Resighini Rancheria, are conducted in-river under state regulations (15 CCR § 7.50(b)(91.1)), and are subject to the same season and bag limit restrictions as the in-river non-Indian recreational fisheries; tribal effort is thought to be minor compared to the recreational fishery. Fish caught in these fisheries may not be sold commercially, so there are no significant economic impacts. The biological impacts are reflected in spawning escapement, which is the basis for Annual Catch Limits (ACL) and status determination criteria (SDC) which are part of the proposed action

and are thoroughly analyzed in the EA. Information describing the Karuk and Resighini fisheries was added to section 3.4.6.4 of the EA.

Comment 4: The EA fails to analyze the effects of in-river fisheries, which according to one commenter will have significant environmental effects that ''will result from the implementation of Amendment 16.'' Such effects according to the commenters include excessive pressure on certain stocks, use of gear that is selective for larger fish, and impacts to ESA-listed coho. The draft EA fails to analyze the effects of in-river fishing on ESA-listed species. The Council and NMFS should regulate in-river fisheries. Accountability measures are not adequate because they don't address in-river harvest.

Response: Regulation of in-river fisheries is beyond the scope of Amendment 16, and therefore the EA is not required to address the impacts of in-river fisheries as effects of Amendment 16. Neither the Council nor NMFS have statutory authority to directly regulate in-river fisheries under the Magnuson-Stevens Act, 16 U.S.C. 1800 *et seq.* The Council's jurisdiction is specifically limited to the area ''seaward'' of the west coast states (16 U.S.C. section 1852(a)(1)(F)). NMFS' authority to manage fisheries under the MSA is limited to the U.S. EEZ, and with respect to the proposed action is limited to approving or disapproving, and implementing the Council's action in Amendment 16 (18 U.S.C. section 1854). As the commenters point out, federal, state, and tribal fishery managers coordinate their management of the salmon fisheries. Such coordination is necessary as salmon are impacted by fisheries under multiple management jurisdictions, and all of those impacts must be addressed to ensure that escapement goals are met and that the tribes can exercise their fishing rights. However, coordination with the entities that regulate in-river fishing does not bestow upon the Council and NMFS the statutory authority to impose regulations on that fishing. As the regulation of in-river fisheries is beyond the scope of this proposed action, and in any event is beyond the scope of the Council's and NMFS' jurisdiction under the Magnuson-Stevens Act, the extent of NMFS' authority to implement and enforce the Endangered Species Act with respect to in-river fisheries is not relevant to the scope of effects of the proposed action analyzed in the EA for Amendment 16. In-river fisheries, however, are part of the Affected Environment, and a brief description of these fisheries was added to sections 3.4.4.4, 3.4.5.4, 3.4.6.4, and 3.4.7.4 of the EA. The analysis of the effects of Amendment 16 on biological resources was based on spawning escapement relative to the SDC, and therefore accounts for all mortality sources, including in-river fisheries (Tables 4–2 and 4–5 in the EA).

Comment 5: The EA fails to include reasonable alternatives with respect to the Klamath Basin, specifically a spawning escapement target for KRFC higher than 40,700, regulating in-river harvest practices, and improving in-river accountability measures.

Response: The additional alternatives identified are beyond the scope of actions identified in the purpose and need statement. The purpose and need for Amendment 16 was to bring the Salmon FMP into compliance with the amended MSA and NS1 guidelines, particularly requirements for ACLs, accountability measures, and to ensure objective and measureable status determination criteria, which requires management based on MSY. There were no analyses supporting spawning escapement objectives for any purpose other than consistency with MSY. As part of its issue scoping process, the Council directed that conservation objectives should be updated as part of the Amendment 16 process only as necessary to comply with the purpose and need statement. As explained in response to Comment 4, the additional alternatives related to changing in-river harvest methods, timing, and accountability measures are not within the jurisdiction of the Council and NMFS to implement. In-river harvest is regulated by the State of California and the Yurok and Hoopa Valley Tribes. The EA did contemplate and analyze effects from the amount of in-river harvest on the affected environment. Accountability measures are intended to ensure compliance with the established ACLs or to mitigate the adverse affects if there is non-compliance. Mortality from all sources, including all in-river fisheries, is accounted for in assessing compliance with ACLs because the metric is based on spawning escapement.

Comment 6: The EA does not analyze impacts to Klamath sub-basin Chinook populations. The EA should address the disproportionate impact of fishery management on early spawners and propose approaches to quantify and minimize such impacts.

Response: The effects of implementing Amendment 16 on sub-basin populations within the Klamath Basin are acknowledged and assessed by incorporating the analysis from Salmon FMP Amendment 15 into Amendment 16 (section 4.1.5.4). There is insufficient information to analyze the effects of Amendment 16 on Klamath sub-basin populations beyond what is contained in the Amendment 15 analysis; to the extent there are ''disproportionate effects'' these cannot be quantified.

The focus of the comments seems to be on the adequacy of 40,700 spawners as a management objective, and how that number was derived. The value of the MSY spawning escapement that is included in Amendment 16 (40,700 natural area adult spawners) is based on what is currently the best available science. The MSA requires that management decisions be based on the best available science. The FMP as amended by Amendment 16 provides a process for changing estimates of MSY if additional information suggests a better estimate is available, or sub-basin specific management objectives could be adopted; however, there is not sufficient information available on which to base such changes at this time.

Comment 7: An escapement objective of 40,700 KRFC spawners is an improvement, but inadequate. Shasta River Basin needs at least 10,000 spawners, and is unlikely to achieve that with an escapement of 40,700 for the entire Klamath-Trinity system. The 40,700 escapement goal does not allow for reaching historical Chinook numbers in the Shasta River.

Response: NMFS and the Council are unaware of any information supporting an objective of 10,000 spawners for the Shasta River. There is no identified objective for the Shasta River in the Salmon FMP, and there is insufficient information on which to base management of the fisheries to achieve an annual Shasta River-specific spawning escapement goal. Therefore, the Council manages Klamath Basin on an aggregate basis using the best available science. The currently available habitat is not capable of supporting historic fish abundance due to dam construction and habitat degradation throughout the Klamath-Trinity Basin. As evidence, relatively large spawning escapements in recent years have not resulted in larger than average subsequent broods (Klamath River fall Chinook stock-recruitment analysis, STT 2005). The best available science indicates that 40,700 is an appropriate spawning escapement.

Comment 8: The KRFC escapement objectives considered in the EA do not provide enough fish returning to allow those involved in habitat restoration efforts to see improvement in fish abundance.

Response: The comment suggests that the escapement objective be set to

provide an adequate number of returning fish to demonstrate progress resulting from habitat improvement efforts in the Klamath. The criterion is subjective and it is not clear how it could be implemented. Text was added to the EA to note that a larger escapement goal could generally correlate to increased visibility of returning spawners in the Klamath Basin, and that there is likely a relationship between participation in habitat restoration efforts and returning adults, as well as between other aesthetic uses and returning adults (section 4.5.7).

Comment 9: MSY for KRFC is based on recruitment as if all variability were a result of only inland conditions.

Response: The MSY spawning escapement objective is based on both spawner/recruit relationship and an early life history survival term that accounts for both river out-migrant and early ocean entry survival; therefore, the estimate of MSY does not assume survival variability is only the result of inland conditions (Klamath River fall Chinook stock-recruitment analysis, STT 2005).

Comment 10: Including first generation hatchery strays (*e.g.,* Iron Gate Hatchery fish spawning in Bogus Creek and Trinity River Hatchery fish spawning downstream of the hatchery) in any estimate of ''natural spawners'' effectively props up natural spawning escapement estimates. First generation hatchery fish spawning naturally should be excluded from reported values for natural spawning escapement.

Response: The spawner escapement portion of the KRFC conservation objective is, and has been, specified in terms of natural-area adults and not natural-origin adults. The spawner/recruit relationship used to specify MSY spawning escapement for KRFC is based on the best available science, and provides a statistically significant, scientifically defensible estimate of MSY spawning escapement.

Comment 11: The EA does not analyze effects on marine nutrient cycle.

Response: The marine nutrient cycle is identified as part of the affected environment (section 3.3) and assessed qualitatively in the EA (section 4.3.1).

Comment 12: The draft EA's reliance on previous environmental review documents is inappropriate. Circumstances have changed, specifically regarding the effects of in-river fisheries and habitat improvements in the Klamath Basin.

Response: Use of previous environmental documents is appropriate as long as they are properly incorporated by reference and up to date information is included in the EA or in the referenced documents. The documents referenced in Amendment 16 are all less than 10 years old, and many are updated annually, including the stock assessment and fishery evaluation, which assesses management effectiveness annually. The stock/recruitment analysis for KRFC (Klamath River fall Chinook stock-recruitment analysis, STT 2005) used more recent data than 2000 to derive the 40,700 MSY spawning escapement estimate. The analysis was completed in 2005 and used data through 2004; the 2000 brood was the last complete brood available for that analysis. STT (2005) and the Amendment 15 EA (PFMC and NMFS 2007) were added to the list of documents incorporated by reference and text was added to the final Amendment 16 EA clarifying that the documents referenced in Section 1.4.2 were incorporated by reference.

The FMP describes a process for incorporating new scientific information and methodologies into the annual salmon management process, and Amendment 16 provides for reference points, including S_{MSY}, to be changed in response to new information. Thus, if scientific information becomes available that warrants a reconsideration of reference points specific to the Klamath, this can serve as a basis for reevaluation of those reference points.

Comment 13: Maximum sustainable yield is not adequate to achieve optimum yield, which should take into consideration the need for those living inland in the Klamath Basin to see spawner returns that reflect recovery efforts.

Response: The scope of Amendment 16 did not include revising the current definition of achieving OY for salmon; therefore, considering alternatives for OY was not appropriate as part of this action. The FMP currently defines OY on a coast-wide stock and fishery aggregate basis. Changing the conservation objective of one stock to address OY would not be appropriate given the current definition of OY.

Comment 14: The EA does not analyze the impacts of fishing, particularly in-river fishing practices, on ESA-listed species.

Response: The EA considers the effects of the proposed action on listed species. As stated in the EA (section 3.2), the effects of alternatives on ESA-listed salmon are assessed along with target salmon stocks (section 4.1). To address impacts on ESA-listed species, NMFS undertakes ESA Section 7 consultations. NMFS has issued several biological opinions on the FMP covering salmonid and non-salmonid species that are affected by the ocean salmon fisheries and fisheries are managed to meet standards set forth in those opinions. The proposed action would not change this aspect of the salmon FMP. As discussed in response to Comment 4, regulation of in-river fishing is beyond the scope of Amendment 16, therefore the effects of in-river fishing on ESA-listed species are not effects of this action.

Comment 15: Objection to setting the lower end of the current conservation objective for SRFC (*i.e.,* 122,000) as S_{MSY}, this effectively changes the conservation objective from a range of 122,000 to 180,000 to a single value of 122,000.

Response: The form of the harvest control rule adopted requires a single value of S_{MSY} upon which to calculate annual management measures, so a single value was adopted based on the 1984 framework amendment. There was no supporting analysis to suggest that a different value was appropriate, and such an analysis was beyond the scope of Amendment 16. The conservation objective as stated in the FMP (Appendix I of the EA) was unchanged at 122,000–180,000 adult spawners and is not changed by the definition of S_{MSY}, which is used to determine the point at which SRFC are overfished, rebuilt, and when *de minimis* fishing provisions apply. Defining S_{MSY} does not remove the Council and NMFS' ability to structure management measures to target higher escapement levels in response to year-specific conditions. A list of considerations for implementing *de minimis* fisheries is included in the FMP language (Appendix I) and has been added to the EA (section 2.5.1.6) and the regulatory text at § 660.410 (b).

Comment 16: Managing to the low end of the SRFC conservation objective is not appropriate given that the low end was established due to migratory restrictions imposed by Red Bluff Diversion Dam. The reasonable and prudent alternative in NMFS' 2009 Biological Opinion for the Central Valley Project would require that gates be raised year-round on the dam in order to improve passage. As a consequence, NMFS should set S_{MSY} at 180,000 adult spawners.

Response: There was no scientific support for choosing 180,000 as S_{MSY}. The S_{MSY} value used in the EA is based on the best available science. Amendment 16 provides a mechanism for updating reference points based on new scientific information, when that becomes available.

Comment 17: Even the high end of the SRFC conservation objective range (180,000) may not be appropriate under

the ''doubling goal'' of the Central Valley Project Improvement Act (CVPIA).

Response: As noted in response to the previous comments, the S_{MSY} value used in the EA is based on the best available scientific information. The conservation objective for SRFC is not changed by this action. The ''doubling goal'' of the CVPIA does not create any specific standards that make a revision to the conservation objective for SRFC necessary or appropriate.

The purpose and need for Amendment 16 was to bring the Salmon FMP into compliance with the MSA, which requires management based on MSY. There is no analysis supporting any specific spawning escapement objective for any purpose other than MSY. Also as noted in response to Comment 16, setting a specific value for S_{MSY} does not remove the Council's ability to structure fisheries to achieve the conservation objective for SRFC.

Comment 18: De minimis fishing provisions could be counterproductive to the ''doubling goal'' of the CVPIA.

Response: All of the *de minimis* fishing alternatives are based on management for MSY. Managing for MSY will result in optimal production that the habitat can support. Estimates of MSY are based on long-term average escapement, and some years with escapement below S_{MSY} are expected. The low exploitation rates allowed under the *de minimis* fishing provisions will not significantly affect achievement of MSY in the long-term, as they are expected to occur infrequently. In applying the *de minimis* control rules, the Council and NMFS must consider a number of factors related to the continued productivity of the stock, and *de minimis* exploitation rates must not jeopardize the long term capacity of the stock to produce MSY on a continuing basis. As habitat is improved, estimates of MSY should be reviewed and revised if appropriate to account for the increased capacity of spawning habitat.

Comment 19: Relying on abundance of hatchery stocks to support *de minimis* fisheries is potentially harmful to genetic and phenotypic diversity in Central Valley Chinook. Statement in EA that egg transfers between hatcheries is viable mitigation for low spawner abundance is flawed.

Response: Hatchery policy is set by CDFG and USFWS, and is therefore outside the scope of Amendment 16. Conservation objectives for hatchery stocks are set by those entities and annual salmon management measures are crafted to meet them. Amendment 16 retains the provision to allow conservation objectives for hatchery stocks to be modified as hatchery policies change.

Comment 20: Contrary to analysis in the EA, San Joaquin River fall-run Chinook could suffer significant impacts under *de minimis* fishing provisions.

Response: Exploitation rates under *de minimis* fishing conditions are, by definition, intended to avoid significant impacts. San Joaquin fall Chinook are expected to experience the same ocean exploitation rates, and the same or lower freshwater exploitation rates, as SRFC; therefore the EA correctly assessed the risk to San Joaquin fall Chinook. In addition, the alternatives for *de minimis* fisheries include consideration of the list of factors currently in the *de minimis* provision for Klamath River Fall Chinook, adopted as part of Amendment 15. These include the status of sub-stocks and the status of co-mingled stocks. A list of considerations for implementing *de minimis* fisheries is included in the FMP language (Appendix I) and has been added to the EA (section 2.5.1.6) and the regulatory text at § 660.410 (b).

Comment 21: The draft EA does not ''discuss the interplay between ocean harvest and freshwater management'' and should do so.

Response: The interaction of ocean and inside fisheries is described in the annual Review of Ocean Fisheries document (PFMC 2011a), which was referenced in the description of the affected environment and incorporated by reference. Language was added to the EA to emphasize the incorporation by reference (section 1.4.2). The analysis of alternatives in Amendment 16 included effects of inside fisheries on spawning escapement, and described the relationship between escapement from ocean fisheries and allowable harvest of tribal and recreational river fisheries in the Klamath Basin.

Text has been added to the EA to note that a larger escapement goal could generally correlate to increased visibility of returning spawners, and that there is likely a relationship between participation in habitat restoration efforts and returning adults, as well as between other aesthetic uses and returning adults (section 4.5.7).

Comment 22: ''Producers'' (communities and entities where salmon spawn and rear and are produced) should be included in harvest management and should have positions on the PFMC and Klamath Fishery Management Council (KFMC).

Response: The Klamath Act, which established the KFMC, expired on October 1, 2006, and was not reauthorized by Congress. Funding for this program was eliminated and the charter for the KFMC was discontinued. The non-agency PFMC members are nominated by governors of the four states and appointed by the Secretary of Commerce. Most appointed positions are held by representatives of fishery sectors, but that is not a requirement and the PFMC has appointed members that are not associated with commercial, recreational, or tribal fishery sectors. People interested in appointments need to contact the office of their state Governor (for additional information see 50 CFR 600.215). The Council also has advisory bodies with positions reserved for general public and environmental groups. These advisory bodies include the Salmon Advisory Subpanel and the Habitat Committee, and other *ad hoc* committees. People interested in appointments to advisory bodies need to follow PFMC procedures for nomination (*http://www.pcouncil.org/council-operations/council-and-committees/current-vacancies/*).

Comment 23: The EA fails to incorporate adaptive management—KRFC escapement should be reviewed and updated.

Response: Adaptive management is inherent in all fishery management plans and the MSA process, as informed by new information and science. Escapement of all managed salmon stocks is reviewed and updated annually in the Review of Ocean Fisheries (SAFE) document (*e.g.,* PFMC 2011a). In addition, a process for review and updating of stock specific conservation objectives is provided in Amendment 16 and the Salmon FMP. As part of its issue scoping process, the Council directed that conservation objectives should be updated as part of the Amendment 16 process only as necessary to comply with the purpose and need statement. However, the Council noted that development and review of conservation objectives for stocks should be pursued through the Salmon Methodology Review process on a priority basis as adequate information becomes available.

Comment 24: The Yurok and Hoopa Valley tribes submitted comments focused primarily on Klamath River fall Chinook. The tribes generally supported Amendment 16 including most aspects of the control rule and the proposal to increase the S_{MSY} based conservation objective to 40,700. However, both tribes expressed concern that the control rule for Klamath River fall Chinook and the resulting allowance for non-zero *de minimis* exploitation rates at low abundance levels could adversely affect sub-stocks. The tribes' comments refer to the analysis done in conjunction with Amendment 15 that highlighted the

increased risk to sub-stocks as abundance falls below approximately 20,000 adult spawners. Both tribes support use of the control rule in most part, but requested that *de minimis* fishing be reduced to zero when abundance is less than ½ S_{MSY} or 20,350 (Yurok Tribe) or 22,000 (Hoopa Valley Tribe). As an alternative, the Yurok Tribe requested that the final rule be modified to include qualitative considerations similar to those used in Amendment 15 indicating that there would be little or no harvest opportunity when abundance is projected to be below ½ S_{MSY}.

Response: The effects of implementing Amendment 16 on sub-basin populations within the Klamath Basin, including the *de minimis* fishing provisions, are acknowledged and considered in the EA by incorporating the analysis from Salmon FMP Amendment 15 into Amendment 16. The control rule proposed in Amendment 16 is more prescriptive than that contained in Amendment 15. Unlike Amendment 15 the control rule defines maximum allowable exploitation rates at all abundance levels. The *de minimis* provisions were designed, in part, to account for impacts in fall season fisheries that sometimes occur before the status of the returning brood is known. In addition, the control rule lists several qualitative considerations that the Council must consider when recommending *de minimis* exploitation rates in a given year. The first of these considerations relates to genetic concerns and the effect to sub-stocks at low abundance. Another consideration, and one reason for providing qualitative considerations for some limited harvest at low abundance, relates to a recognition of the minimal needs for tribal fisheries. NMFS believes that the effect of these considerations are largely coincident with the views expressed by the tribes and that in fact there would be little or no opportunity for harvest at abundance levels that are on the order of 20,000 fish or less. It is worth noting that there has never been a forecast of abundance as low as 22,000. Nonetheless, NMFS has added language to the final rule in response to the tribes' request to emphasize this expectation.

The Council considered alternative versions of the control rule that would have reduced *de minimis* fishing to zero at various levels of abundance. However, the Council ultimately recommended an alternative that allowed for consideration of some limited, non-zero harvest at low abundance coupled with the qualitative considerations that would be used for making the necessary recommendations. NMFS' decision here is whether or not to approve Amendment 16, including the *de minimis* fishing provisions, based on assessment of whether the amendment is consistent with the MSA and other applicable law. NMFS cannot, in this action, modify the Amendment. NMFS believes that the control rule recommended for Klamath River fall Chinook through Amendment 16, including the *de minimis* fishing provisions, are consistent with the requirements of the MSA, including the requirement to maintain the capacity of the stock to produce MSY on a continuing basis, and other applicable laws. As noted above, NMFS has modified the regulatory text in this final rule to emphasize our expectation that there will be little or no harvest when abundance is very low. The distinction between the zero levels of fishing that the tribes request under rare circumstances, and the single digit exploitation rates that might be allowed under Amendment 16 is inconsequential from a biological perspective and does not affect the general conclusion regarding the capacity of the stock to produce MSY on a continuing basis.

Changes From Proposed Rule

This final rule includes changes to the existing regulations at 50 CFR 660.401 *et seq.* to implement Amendment 16 and additional updates. These are largely unchanged from the proposed rule; those that have changed from the proposed rule are described below.

- § 660.408—Annual actions

Language reinforcing that ACLs are not to be exceeded even when *de minimis* control rules apply has been added.

- § 660.410—Conservation objectives, ACLs, and *de minimis* control rules

Section title is changed and language added to include additional considerations for implementation of *de minimis* control rules and to clarify the relationship between *de minimis* control rules, ACLs and conservation objectives.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with Amendment 16, other provisions of the Magnuson-Stevens Act, and other applicable law.

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

An EA has been prepared for Amendment 16; a copy of the EA is available online at *http://www.pcouncil.org/.* The EA includes a regulatory impact review.

NMFS prepared a Final Regulatory Flexibility Analysis (FRFA) for this action to assess its impact on small entities. The FRFA incorporates the initial regulatory flexibility analysis (IRFA) prepared for the draft EA, summarizes the significant issues raised by the public comments in response to the IRFA, responds to those comments, and summarizes of the analyses completed to support the action. A copy of the FRFA is available from NMFS (see **ADDRESSES**) and a summary of the FRFA, per the requirements of 5 U.S.C. 604(a), follows.

Amendment 16 to the Salmon FMP establishes conservation and allocation guidelines for annual management of salmon off the coasts of Washington, Oregon, and California. This framework allows the Council to develop measures responsive to stock status in a given year. Section 3 of the Salmon FMP describes the conservation objectives for Salmon FMP stocks necessary to meet the dual MSA objectives of obtaining optimum yield (OY) from a fishery while preventing overfishing. Each stock has a specific objective, generally designed to achieve MSY, maximum sustained production (MSP), or in some cases, an exploitation rate to serve as an MSY proxy.

The Salmon FMP under Amendment 16 also specifies criteria to determine when overfishing may be occurring and when a stock may have become overfished. The Salmon FMP also specifies required actions when these conditions are triggered. Amendment 16 will bring the Salmon FMP into compliance with the MSA, as amended in 2007, and the revised NS1Gs, by developing and implementing ACLs and AMs to prevent overfishing on stocks in the fishery to which MSA section 303(a)(15) applies, ensure ''measurable and objective'' SDC for stocks in the fishery, and define the control rules under which *de minimis* fishing opportunity would take place consistent with NS1.

The Pacific Fishery Management Council's ''Review 2010 Ocean Salmon Fisheries'' provides the following economic snapshot of the 2010 fishery. Total 2010 ex-vessel value of the Council-managed non-Indian commercial salmon fishery was $7.15 million, which is the fifth lowest on record, but more than four times above its 2009 level of $1.5 million. California had its first commercial salmon fishery since 2007. The 2010 ex-vessel value of the commercial fishery was 28 percent below the 2005–2009 inflation-adjusted average of $10 million and 88 percent

below the 1979 through 1990 inflation-adjusted average of $59.3 million. Based on Pacific Coast Fisheries Information Network (PacFIN) data, a total of 641 vessels participated in the non-tribal West Coast commercial salmon fishery in 2010. This is more than double the number that participated in 2009 (313), and nearly triple the number in 2008. However the 2010 total was down 36 percent from 2007's total of 1,007 vessels.

The preliminary number of vessel-based ocean salmon recreational angler trips taken on the West Coast in 2010 was 182,900, a decrease of three percent from 2009, and 70 percent below the 1979 through 1990 average. Compared with 2009, preliminary estimates of the number of trips taken in 2010 decreased by 37 percent in Oregon and 18 percent in Washington. California effort was up substantially since the sport fishery was not restricted to a 10-day fishery in the Klamath Management Zone as it was in 2009; however it was still severely depressed compared to historic levels. Recreational salmon fishing takes place primarily in two modes, (1) anglers fishing from privately owned pleasure crafts, and (2) anglers employing the services of the charter boat fleet. In general, success rates on charter vessels tend to be higher than success rates on private vessels. Small amounts of shore-based effort directed toward ocean area salmon occur, primarily from jetties and piers. Coastwide, the proportion of angler trips taken on charter vessels in 2010 was relatively stable at 24 percent compared with 23 percent in 2009; however, underlying this trend was a decline in the proportion of charter trips in Oregon and increases in California and Washington. During 2010, the Review indicates that there were 465 charterboats that participated in the 2010 fishery.

While some of the treaty Indian harvest was for ceremonial and subsistence purposes, the vast majority of the catch was commercial harvest. For all of 2010 the preliminary ex-vessel value of Chinook and coho landed in the treaty Indian ocean troll fishery was $1.8 million, compared with the ex-vessel value in 2009 of $1.0 million. According to a Northwest Indian Fisheries Commission representative, the tribal fleet consists of 40 to 50 trollers. The commercial entities directly regulated by the Pacific Council's Fishery Management Plan are non-tribal commercial trollers, tribal commercial trollers, and charterboats. During 2010, these fleets consisted of 641 non-tribal trollers, 40 to 50 tribal trollers, and 465 charterboats.

Total West Coast income impact associated with recreational and commercial ocean salmon fisheries for all three states combined was estimated at $25.5 million in 2010. This was 46 percent above the estimated 2009 level of $17.4 million. 2010 had the third lowest income impacts on record, with 2008 having the lowest on record at $7.5 million and 2009 the second lowest (adjusted for inflation).

The key components of Amendment 16 are administrative; as they are revisions to the key components of the process by which the Council and NMFS make decisions on how best to manage various stocks in the fishery. These key components include defining what stocks are in the fishery; how these stocks may be organized into stock complexes, the treatment of international stocks, revising the stock status determination criteria including definitions of overfishing, ABC, and ACL reference points; and revising *de minimis* fishing provisions to allow for more flexibility in setting annual regulations when the conservation objectives for limiting stocks are projected not to be met, and provide opportunity to access more abundant salmon stocks that are typically available in the Council management area when the status of one stock may otherwise preclude all ocean salmon fishing in a large region. This action revises the process of how conservation and management decisions will be made; it contains no actual application of the methods to set ABC, ACL, or OFL or the management measures (*e.g.* closed seasons, area closures, bag limits, *etc.*) to keep the fishery within the ACL and other conservation objectives to assure that overfishing does not occur. As a result there are no immediate economic impacts to evaluate. These will occur when the new process is actually applied in future actions and the economic impacts will be evaluated then.

However, the EA did undertake an economic analysis of the expected effects of the preferred action and options relative to ''No Action'' alternative and presented the following conclusions. The proposed alternatives for classifying the stocks in the FMP will have no economic impacts, as there are no biological implications to designating stocks ''in the fishery'' and ''ecosystem components,'' as compared with the no action Alternative. Proposed alternatives for SDC have no significant biological or economic impacts. The stocks have had low frequency of experiencing overfishing in the past, and many of the current control rules clearly prevent fishing at or above F_{MSY}. It has been rare that stock abundance or other constraints on the fishery have created opportunity for fishing above F_{MSY} in other cases. Identifying clearer criteria with which to determine stock status will more clearly align with the MSA and NS1Gs, and can help managers implement timelier management responses and contribute to ensuring sustainable salmon stock levels to support the fishery, resulting in positive economic effects. The proposed alternatives for implementing ACLs, ABCs, and associated reference points (*i.e.,* the ACL framework) are similar in nature to the effects of the proposed SDC. Thus, they have no significant biological or economic impacts. In the short term, fisheries may be constrained in a given year to prevent overfishing, but such actions will provide long-term benefits from more sustainable salmon populations to support harvest and recreational opportunities.

Proposed alternatives to identify AMs have no significant biological or economic impacts, compared to the no action alternative. Many of the proposed AMs identified are actions that exist in the FMP currently and are administrative in nature (*e.g.,* notification). Proposed alternatives for *de minimis* fishing are not expected to result in significant biological or economic effects. However, providing for *de minimis* fishing will afford more opportunities for harvest, consistent with National Standard 8, and achieve optimum yield for the fishery consistent with NS1. Therefore, there are projected positive economic benefits of the proposed action by allowing some minimal harvest of weaker stocks in an effort to harvest healthier, abundant stocks in the mixed stock fishery.

The commercial entities directly regulated by the Pacific Council's Fishery Salmon Management Plan are non-tribal commercial trollers, tribal commercial trollers, and charterboats. During 2010, these fleets consisted of 641 non-tribal trollers, 40 to 50 tribal trollers, and 465 charterboats. A fish-harvesting business is considered a ''small'' business by the Small Business Administration (SBA) if it has annual receipts not in excess of $4.0 million. For marinas and charter/party boats, a small business is one with annual receipts not in excess of $6.5 million. All of the businesses that would be affected by this action are considered small businesses under SBA guidance. Tribal and non-tribal commercial salmon vessel revenues averaged approximately $13,000 in 2010 (Review of 2010 Ocean Salmon Fisheries). Charterboats participating in the recreational salmon fishery in 2000 had

average revenues ranging from $7,000 to $131,000, depending on vessel size class (Pacific States Marine Fisheries Commission study). These figures remain low, and NMFS has no information suggesting that these vessels have received annual revenues since 2000 such that they should be considered ''large'' entities under the RFA. As these average revenues are far below SBA's thresholds for a small entities, NMFS has determined that all of these entities are small entities under SBA's definitions.

The economic analysis does not highlight any significant impact upon small businesses. The key components of Amendment 16 are administrative; as they are revisions to the key components of the process by which the Council and NMFS make decisions on how best to manage various stocks in the fishery. As a result there are no immediate economic impacts to evaluate. These will occur when the new process is actually applied in future actions, and the economic impacts will be evaluated then. Consequently, the regulations are not expected to meet any of the tests of having a ''significant'' economic impact on a ''substantial number'' of small entities. The comments that NMFS received on this final rule are discussed above. None of these comments addressed the IRFA. There are no additional projected reporting, record-keeping, and other compliance requirements of this final rule not already envisioned within the scope of current requirements. References to collections-of-information made in this action are intended to properly cite those collections in Federal regulations, and not to alter their effect in any way. No Federal rules have been identified that duplicate, overlap, or conflict with this action.

NMFS has issued ESA biological opinions that address the impacts of the Council managed salmon fisheries on listed salmonids as follows: March 8, 1996 (Snake River spring/summer and fall Chinook and sockeye), April 28, 1999 (Oregon Coast natural coho, Southern Oregon/Northern California coastal coho, Central California coastal coho), April 28, 2000 (Central Valley spring Chinook), April 27, 2001 (Hood Canal summer chum 4(d) limit), April 30, 2004 (Puget Sound Chinook), June 13, 2005 (California coastal Chinook), April 28, 2008 (Lower Columbia River natural coho), and April 30, 2010 (Sacramento River winter Chinook, Lower Columbia River Chinook; and listed Puget Sound yelloweye rockfish, canary rockfish, and bocaccio). NMFS reiterates its consultation standards for all ESA-listed salmon and steelhead species in their annual Guidance letter to the Council. In 2009, NMFS consulted on the effects of fishing under the Salmon FMP on the endangered Southern Resident Killer Whale Distinct Population Segment (SRKW) and concluded the salmon fisheries were not likely to jeopardize SRKW (biological opinion dated May 5, 2009). NMFS previously concluded that Pacific Coast salmon fisheries would have no effect on ESA-listed North American green sturgeon (biological opinion dated April 30, 2007) or Pacific eulachon (biological opinion dated April 30, 2010). These biological opinions are available online (*http://www.nwr.noaa.gov/Salmon-Habitat/ESA-Consultations/Biological-Opinions.cfm*).

Pursuant to Executive Order 13175, this proposed rule was developed after meaningful consultation and collaboration with Tribal officials from the area covered by the FMP. Under the Magnuson-Stevens Act at 16 U.S.C. 1852(b)(5), one of the voting members of the Pacific Council must be a representative of an Indian Tribe with Federally recognized fishing rights from the area of the Council's jurisdiction. In addition, a Tribal representative served on the committee appointed by the Pacific Council to develop Amendment 16.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: December 22, 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 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.* and 16 U.S.C. 773 *et seq.*

■ 2. In § 660.402, revise the definition for ''Pacific Coast Salmon Plan'' to read as follows:

§ 660.402 Definitions.

* * * * *

Pacific Coast Salmon Plan (PCSP or Salmon FMP) means the Fishery Management Plan, as amended, for commercial and recreational ocean salmon fisheries in the Exclusive Economic Zone (EEZ) (3 to 200 nautical miles offshore) off Washington, Oregon, and California. The Salmon FMP was first developed by the Council and approved by the Secretary in 1978. The Salmon FMP was amended on October 31, 1984, to establish a framework process to develop and implement fishery management actions; the Salmon FMP has been subsequently amended at irregular intervals. Other names commonly used include: Pacific Coast Salmon Fishery Management Plan, West Coast Salmon Plan, West Coast Salmon Fishery Management Plan.

* * * * *

■ 3. In § 660.403, revise paragraph (b) to read as follows:

§ 660.403 Relation to other laws.

* * * * *

(b) Any person fishing subject to this subpart who also engages in fishing for groundfish should consult Federal regulations in subpart C through G for applicable requirements of that subpart, including the requirement that vessels engaged in commercial fishing for groundfish (except commercial passenger vessels) have vessel identification in accordance with § 660.20.

* * * * *

■ 4. In § 660.405, revise paragraphs (b) and (c) to read as follows:

§ 660.405 Prohibitions.

* * * * *

(b) The fishery management area is closed to salmon fishing except as opened by this subpart or superseding regulations or notices. All open fishing periods begin at 0001 hours and end at 2400 hours local time on the dates specified, except that a fishing period may be ended prior to 2400 hours local time through an inseason action taken under § 660.409 in order to meet fishery management objectives.

(c) Under the Pacific Coast groundfish regulations at § 660.330, fishing with salmon troll gear is prohibited within the Salmon Troll Yelloweye Rockfish Conservation Area (YRCA). It is unlawful for commercial salmon troll vessels to take and retain, possess, or land fish taken with salmon troll gear within the Salmon Troll YRCA. Vessels may transit through the Salmon Troll YRCA with or without fish on board.The Salmon Troll YRCA is an area off the northern Washington coast. The Salmon Troll YRCA is intended to protect yelloweye rockfish. The Salmon Troll YRCA is defined by straight lines connecting specific latitude and longitude coordinates under the Pacific Coast Groundfish regulations at § 660.70.

* * * * *

■ 5. In § 660.408,
■ a. Revise paragraph (a);
■ b. Redesignate paragraphs (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), and (n) as paragraphs (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), and (o), respectively;
■ c. Add a new paragraph (b);
■ d. Revise newly redesignated paragraphs (c), (d)(1)(ii), (d)(1)(v)(B), (d)(1)(vi), (d)(2)(iv), (e), (g), (i)(2), (k), (l)(2), (l)(4), and (o) to read as follows:

§ 660.408 Annual actions.

(a) *General.* NMFS will annually establish specifications and management measures or, as necessary, adjust specifications and management measures for the commercial, recreational, and treaty Indian fisheries by publishing the action in the **Federal Register** under § 660.411. Management of the Pacific Coast salmon fishery will be conducted consistent with the standards and procedures in the Salmon FMP. The Salmon FMP is available from the Regional Administrator or the Council. Specifications and management measures are described in paragraphs (b) through (o) of this section.

(b) *Annual catch limits.* Annual Specifications will include annual catch limits (ACLs) determined consistent with the standards and procedures in the Salmon FMP.

(c) *Allowable ocean harvest levels.* Allowable ocean harvest levels must ensure that conservation objectives and ACLs are met, as described in § 660.410, except that where the *de minimis* fishing control rules described in § 660.410(c) apply, conservation objectives may not be met, provided ACLs are met. The allowable ocean harvest for commercial, recreational, and treaty Indian fishing may be expressed in terms of season regulations expected to achieve a certain optimum harvest level or in terms of a particular number of fish. Procedures for determining allowable ocean harvest vary by species and fishery complexity, and are documented in the fishery management plan and Council documents.

(d) * * *

(1) * * *

(ii) *Deviations from allocation schedule.* The initial allocation may be modified annually in accordance with paragraphs (d)(1)(iii) through (viii) of this section. These deviations from the allocation schedule provide flexibility to account for the dynamic nature of the fisheries and better achieve the allocation objectives and fishery allocation priorities in paragraphs (d)(1)(ix) and (x) of this section. Total allowable ocean harvest will be maximized to the extent possible consistent with treaty obligations, state fishery needs, conservation objectives, and ACLs. Every effort will be made to establish seasons and gear requirements that provide troll and recreational fleets a reasonable opportunity to catch the available harvest. These may include single-species directed fisheries with landing restrictions for other species.

* * * * *

(v) * * *

(B) *Chinook distribution.* Subarea distributions of Chinook will be managed as guidelines based on calculations of the Salmon Technical Team with the primary objective of achieving all-species fisheries without imposing Chinook restrictions (*i.e.,* area closures or bag limit reductions). Chinook in excess of all-species fisheries needs may be utilized by directed Chinook fisheries north of Cape Falcon or by negotiating a preseason species trade of Chinook and coho between commercial and recreational allocations in accordance with paragraph (d)(1)(iii) of this section.

* * * * *

(vi) *Inseason trades and transfers.* Inseason transfers, including species trades of Chinook and coho, may be permitted in either direction between commercial and recreational fishery quotas to allow for uncatchable fish in one fishery to be reallocated to the other. Fish will be deemed uncatchable by a respective commercial or recreational fishery only after considering all possible annual management actions to allow for their harvest that are consistent with the harvest management objectives specific in the fishery management plan including consideration of single species fisheries. Implementation of inseason transfers will require consultation with the pertinent commercial and recreational Salmon Advisory Subpanel representatives from the area involved and the Salmon Technical Team, and a clear establishment of available fish and impacts from the transfer. Inseason trades or transfers may vary from the guideline ratio of four coho to one Chinook to meet the allocation objectives in paragraph (d)(1)(ix) of this section.

* * * * *

(2) * * *

(iv) *Oregon coastal natural coho.* The allocation provisions in paragraph (d)(2) of this section provide guidance only when coho abundance permits a directed coho harvest, not when the allowable harvest impacts are insufficient to allow coho retention south of Cape Falcon. At such low levels, allowable harvest impacts will be allocated during the Council's preseason process.

* * * * *

(e) *Management boundaries and zones.* Management boundaries and zones will be established or adjusted to achieve a conservation purpose or management objective. A conservation purpose or management objective protects a fish stock, simplifies management of a fishery, or promotes wise use of fishery resources by, for example, separating fish stocks, facilitating enforcement, separating conflicting fishing activities, or facilitating harvest opportunities. Management boundaries and zones will be described by geographical references, coordinates (latitude and longitude), depth contours, distance from shore, or similar criteria.

* * * * *

(g) *Recreational daily bag limits.* Recreational daily bag limits for each fishing area will specify number and species of salmon that may be retained. The recreational daily bag limits for each fishing area will be set to maximize the length of the fishing season consistent with the allowable level of harvest in the area.

* * * * *

(i) * * *

(2) *Commercial seasons.* Commercial seasons will be established or modified taking into account wastage of fish that cannot legally be retained, size and poundage of fish caught, effort shifts between fishing areas, and protection of depressed stocks present in the fishing areas. All-species seasons will be established to allow the maximum allowable harvest of pink salmon, when and where available, without exceeding allowable Chinook or coho harvest levels and within conservation and allocation constraints of the pink stocks.

* * * * *

(k) *Selective fisheries*—(1) *In general.* In addition to the all-species seasons and the all-species-except-coho seasons established for the commercial and recreational fisheries, species selective fisheries and mark selective fisheries may be established.

(2) *Species selective fisheries.* Selective coho-only, Chinook-only, pink-only, all salmon except Chinook, and all salmon except coho fisheries may be established if harvestable fish of the target species are available; harvest of incidental species will not exceed allowable levels; proven, documented selective gear exists; significant wastage of incidental species will not occur; and

the selective fishery will occur in an acceptable time and area where wastage can be minimized and target stocks are primarily available.

(3) *Mark selective fisheries.* Fisheries that select for salmon marked with a healed adipose fin clip may be established in the annual management measures as long as they are consistent with guidelines in section 6.5.3.1 of the Pacific Coast Salmon Plan.

(l) * * *

(2) The combined treaty Indian fishing seasons will not be longer than necessary to harvest the allowable treaty Indian catch, which is the total treaty harvest that would occur if the tribes chose to take their total entitlement of the weakest stock in the fishery management area, assuming this level of harvest did not create conservation or allocation problems for other stocks.

* * * * *

(4) If adjustable quotas are established for treaty Indian fishing, they may be subject to inseason adjustment because of unanticipated Chinook or coho hooking mortality occurring during the season, catches in treaty Indian fisheries inconsistent with those unanticipated under Federal regulations, or a need to redistribute quotas to ensure attainment of an overall quota.

* * * * *

(o) *Reporting requirements.* Reporting requirements for commercial fishing may be imposed to ensure timely and accurate assessment of catches in regulatory areas subject to quota management. Such reports are subject to the limitations described herein. Persons engaged in commercial fishing in a regulatory area subject to quota management and landing their catch in another regulatory area open to fishing may be required to transmit a brief report prior to leaving the first regulatory area. The regulatory areas subject to these reporting requirements, the contents of the reports, and the entities receiving the reports will be specified annually.

■ 6. In § 660.409, revise paragraph (b)(2) introductory text to read as follows:

§ 660.409 Inseason actions.

* * * * *

(b) * * *

(2) Fishery managers must determine that any inseason adjustment in management measures is consistent with fishery regimes established by the U.S.-Canada Pacific Salmon Commission, conservation objectives and ACLs, conservation of the salmon resource, any adjudicated Indian fishing rights, and the ocean allocation scheme in the fishery management plan. All inseason adjustments will be based on consideration of the following factors:

* * * * *

■ 7. Revise § 660.410 to read as follows:

§ 660.410 Conservation objectives, ACLs, and de minimis control rules.

(a) *Conservation objectives.* Annual management measures will be consistent with conservation objectives described in Table 3–1 of the Salmon FMP or as modified through the processes described below, except where the ACL escapement level for a stock is higher than the conservation objective, in which case annual management measures will be designed to ensure that the ACL for that stock is met, or where the de minimis control rules described in paragraph (c) of this section apply.

(1) *Modification of conservation objectives.* NMFS is authorized, through an action issued under § 660.411, to modify a conservation objective if—

(i) A comprehensive technical review of the best scientific information available provides conclusive evidence that, in the view of the Council, the Scientific and Statistical Committee, and the Salmon Technical Team, justifies modification of a conservation objective or

(ii) Action by a Federal court indicates that modification of a conservation objective is appropriate.

(2) *ESA-listed species.* The annual specifications and management measures will be consistent with NMFS consultation standards or NMFS recovery plans for species listed under the Endangered Species Act (ESA). Where these standards differ from those described in FMP Table 3–1, NMFS will describe the ESA-related standards for the upcoming annual specifications and management measures in a letter to the Council prior to the first Council meeting at which the development of those annual management measures occurs.

(b) *Annual Catch Limits.* Annual management measures will be designed to ensure escapement levels at or higher than ACLs determined through the procedures set forth in the FMP.

(c) *De minimis control rules.* Klamath River fall Chinook and Sacramento River fall Chinook salmon have the same form of *de minimis* control rule described in the FMP, which allows for limited fishing impacts when abundance falls below S_{MSY}. The control rule describes maximum allowable exploitation rates at any given level of abundance. The annual management measures may provide for lower exploitation rates as needed to address uncertainties or other year-specific circumstances. The *de minimis* exploitation rate in a given year must also be determined in consideration of the following factors:

(1) The potential for critically low natural spawner abundance, including considerations for substocks that may fall below crucial genetic thresholds;

(2) Spawner abundance levels in recent years;

(3) The status of co-mingled stocks;

(4) Indicators of marine and freshwater environmental conditions;

(5) Minimal needs for tribal fisheries;

(6) Whether the stock is currently in an approaching overfished condition;

(7) Whether the stock is currently overfished;

(8) Other considerations as appropriate.

(9) Exploitation rates, including *de minimis* exploitation rates, must not jeopardize the long-term capacity of the stock to produce maximum sustained yield on a continuing basis. NMFS expects that the control rule and associated criteria will result in decreasing harvest opportunity as abundance declines and little or no opportunity for harvest at abundance levels less than half of MSST.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 111220788–1785–02]

RIN 0648–XA855

Fisheries of the Exclusive Economic Zone Off Alaska; Gulf of Alaska; Final 2011 and 2012 Harvest Specifications for Groundfish

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

ACTION: Final rule; closures.

SUMMARY: NMFS publishes revisions to the final 2011 and 2012 harvest specifications and prohibited species catch allowances for the groundfish fisheries of the Gulf of Alaska (GOA) that are required by the final rule implementing Amendment 83 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). This action is necessary to establish harvest limits for Pacific cod at the beginning of the 2012 fishing year consistent with the new Pacific cod

sector allocations implemented by Amendment 83 and to accomplish the goals and objectives of the FMP. The intended effect of this action is to conserve and manage the groundfish resources in the GOA in accordance with the Magnuson-Stevens Fishery Conservation and Management Act.

DATES: The final 2011 and 2012 harvest specifications and associated apportionment of reserves are effective at 0001 hrs, Alaska local time (A.l.t.), January 1, 2012, until the effective date of the final 2012 and 2013 harvest specifications for GOA groundfish, which will be published in the **Federal Register**.

ADDRESSES: Copies of the Final Alaska Groundfish Harvest Specifications Environmental Impact Statement (EIS), 2011 Supplemental Information Report to the EIS, and the Final Regulatory Flexibility Analysis (FRFA) prepared for the final 2011 and 2012 harvest specifications, as well as the Environmental Assessment (EA), Regulatory Impact Review, and FRFA prepared for Amendment 83 to the FMP, may be obtained from the NMFS Alaska Region Web site at *http://www.alaskafisheries.noaa.gov.* Copies of the 2011 Stock Assessment and Fishery Evaluation report for the groundfish resources of the GOA, dated November 2011, are available from the North Pacific Fishery Management Council at *http://www.alaskafisheries.noaa.gov/npfmc.*

FOR FURTHER INFORMATION CONTACT: Obren Davis, (907) 586–7228.

SUPPLEMENTARY INFORMATION: Federal regulations at 50 CFR parts 679 and 680 implement the FMP and govern the groundfish fisheries in the GOA. The North Pacific Fishery Management Council (Council) prepared the FMP, and NMFS approved it under the Magnuson-Stevens Fishery Conservation and Management Act. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

The final rule implementing Amendment 83 to the FMP was published in the **Federal Register** on December 1, 2011 (76 FR 74670) and is effective January 1, 2012. Amendment 83 to the FMP allocates the Western and Central GOA Pacific cod total allowable catch (TAC) limits among various gear and operational sectors. Sector-level allocations will limit the annual amount of Pacific cod that each sector is allowed to harvest. A complete description of the purpose and background of Amendment 83 is in the proposed rule published for that action (76 FR 44700, July 26, 2011), as well as in the final rule noted above.

Amendment 83 to the Gulf of Alaska FMP

Amendment 83 was adopted by the Council in December 2009 to supersede the current inshore/offshore processing allocation of Western and Central GOA Pacific cod. Under the inshore/offshore management regime, 90 percent of the Western, Central, and Eastern TAC is allocated to vessels catching Pacific cod for processing by the inshore component and 10 percent to vessels catching Pacific cod for processing by the offshore component. The inshore component is composed of three types of processors: (1) Shoreside plants, (2) stationary floating processors, and (3) vessels with catcher/processor (C/P) endorsements less than 125 ft (45.7 m) in length overall (LOA) that process less than 126 mt (round weight) per week of inshore pollock and Pacific cod, combined. Catcher vessels operating inshore component use a variety of gear types, and vary widely in size. The offshore component is comprised of C/Ps, which catch and process fish, and motherships, which take deliveries of fish from catcher vessels. The Council recognized that competition among participants in the Western and Central GOA Pacific cod fisheries has intensified in recent years. Because the TACs are not divided among gear or operation types, there is a derby-style race for fish and competition among the various gear types for shares of the Pacific cod TACs.

Amendment 83 divides the Western and Central GOA Pacific cod TACs among various gear and operation types, based primarily on historical dependency and use by each sector, while also considering the needs of fishing communities. Amendment 83 does not establish sector allocations in the Eastern GOA. Historically, the Pacific cod TAC is much smaller in the Eastern GOA management area. In recent years, only a small proportion of the annual TAC has been harvested. Fishing sector characteristics also are different, as fishing with trawl gear is prohibited in the Southeast Outside district of the Eastern GOA. The changes implemented under Amendment 83 are intended to enhance stability in the fishery by enabling operators within each sector to plan harvesting or processing activity during a fishing year, reduce competition among sectors, and preserve the historical division of catch among sectors, while providing opportunities for new entrants in these fisheries.

Revisions to the Final 2011 and 2012 Harvest Specifications for the Gulf of Alaska

Based on the approval of Amendment 83 and its implementing regulations at 50 CFR part 679 (effective January 1, 2012), NMFS is revising the final 2011 and 2012 specifications for Pacific cod in the GOA. In the Central GOA, the annual Pacific cod TAC must be apportioned between vessels using jig gear, catcher vessels (CVs) less than 50 feet length overall using hook-and-line gear, CVs equal to or greater than 50 length overall using hook-and-line gear, catcher/processors (C/Ps) using hook-and-line gear, CVs using trawl gear, C/Ps using trawl gear, and vessels using pot gear. In the Western GOA, the Pacific cod TAC must be apportioned between vessels using jig gear, CVs using hook-and-line gear, C/Ps using hook-and-line gear, CVs using trawl gear, and vessels using pot gear. In the Eastern GOA, the 2012 Pacific cod TAC will still be apportioned seasonally between the inshore and offshore components.

With this final rule, NMFS revises those sections of the text and the tables in the final 2011 and 2012 harvest specifications for groundfish in the GOA (76 FR 11111, March 1, 2011) that change as the result of the final rule implementing Amendment 83. This includes Tables 8, 15, and 18 originally published in the final 2011 and 2012 harvest specifications for the GOA (available at the NMFS, Alaska Region Web site: *http://www.alaskafisheries.noaa.gov/frules/76fr11111.pdf*). This final rule uses the same table numbers that were used in the final 2011 and 2012 harvest specifications. This action also adds a new table, Table 26, for the new halibut prohibited species catch (PSC) apportionment between hook-and-line CVs and hook-and-line C/Ps that was established as part of Amendment 83.

This final rule is necessary to ensure that appropriate allocations will be in effect for the beginning of the 2012 fishing year for those fishery participants affected by the Pacific cod sector allocations established under Amendment 83. These allocations also will be incorporated in future harvest specification for the Alaska groundfish fisheries.

Allocation of the Pacific Cod TAC

This action revises the Pacific cod allocations in Table 8 by incorporating the sector splits established for the various gear and operational modes in the Western and Central GOA. It eliminates the inshore and offshore

sector allocations, with the exception of the Eastern GOA. The Pacific cod TAC in the Eastern GOA will continue to be apportioned to vessels catching Pacific cod for processing by the inshore (90 percent) and offshore (10 percent) components as required by § 679.20(a)(6)(ii).

The Pacific cod TAC for the Western and Central GOA is divided as follows. First, the jig sector receives 1.5 percent of the annual Pacific cod TAC in the Western GOA and 1.0 percent of the annual Pacific cod TAC in the Central GOA, as required by § 679.20(c)(7). This annual allocation is further apportioned between the A season (60 percent) and B season (40 percent) as required by § 679.20(a)(12)(i). NMFS allocates the remainder of the annual Pacific cod TAC based on gear type, operation type, and vessel length overall in the Western and Central GOA seasonally as required by § 679.20(a)(i)(12)(A) and (B). Table 8 lists the seasonal apportionments and allocations of the 2012 GOA Pacific cod TACs.

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Table 8 - Final 2012 Seasonal Apportionments and Allocation of Pacific Cod Total Allowable Catch Amounts in the GOA; Allocations for the Western GOA and Central GOA Sectors and the Eastern GOA Inshore and Offshore Processing Components

(Values are rounded to the nearest metric ton; seasonal allowances may not total precisely to annual allocation amount)

Regulatory Area and Sector	Annual Allocation (mt)	A Season		B Season	
		Sector % of Annual Non-Jig TAC	Seasonal Allowances (mt)	Sector % of Annual Non-Jig TAC	Seasonal Allowances (mt)
Western GOA					
Jig (1.5 % of TAC)	308	N/A	185	N/A	123
Hook-and-line CV	283	0.70	142	0.70	142
Hook-and-line C/P	4,004	10.90	2,204	8.90	1,800
Trawl CV	7,764	27.70	5,601	10.70	2,164
Trawl C/P	485	0.90	182	1.50	303
All Pot CV and Pot C/P	7,684	19.80	4,004	18.20	3,680
Total	20,528	60.00	12,317	40.00	8,211
Central GOA					
Jig (1.0% of TAC)	364	N/A	218	N/A	146
Hook-and-line < 50 CV	5,257	9.32	3,354	5.29	1,903
Hook-and-line ≥ 50 CV	2,414	5.61	2,019	1.10	395
Hook-and-line C/P	1,838	4.11	1,478	1.00	359
Trawl CV	14,970	21.13	7,609	20.45	7,361
Trawl C/P	1,511	2.00	721	2.19	790
All Pot CV and Pot C/P	10,010	17.83	6,419	9.97	3,591
Total	36,363	60.00	21,818	40.00	14,545
Eastern GOA		Inshore (90% of Annual TAC)		Offshore (10% of Annual TAC)	
	1,760		1,584		176

BILLING CODE 3510–22–C

Non-Exempt American Fisheries Act Catcher Vessel Harvest Limits

This action revises the final 2012 GOA non-exempt American Fisheries Act (AFA) CV groundfish harvest sideboard limits, also known as sideboards. These limits are established by § 679.64. Sideboard limits are necessary to protect the interests of fishermen and processors who do not directly benefit from the AFA from those fishermen and processors who receive exclusive harvesting and processing privileges under the AFA, typically by limiting access to non-pollock groundfish fisheries. AFA CVs are subject to harvesting sideboards unless exempted from such limits through the criteria established in § 679.64(b)(2). Thus, the vessels to which sideboards do apply are known as ''non-exempt AFA CVs.''

This action revises the Pacific cod sideboards in Table 15 of the final 2011 and 2012 harvest specifications (76 FR

11111, March 1, 2011). The Pacific cod sideboards are revised by combining the Western and Central GOA inshore and offshore apportionments into a single apportionment, further divided by season. This reduces the number of non-exempt AFA CV sideboards in these two areas to four sideboards, rather than eight prior to Amendment 83. The Eastern GOA Pacific cod sideboards are not revised.

These sideboard revisions are based on changes implemented under Amendment 83. The Council recommended sideboard allocations for the non-exempt AFA CVs and non-AFA crab vessels that now supersede the inshore/offshore processing sideboards established under the AFA and Crab Rationalization Program. These sideboards are calculated annually as part of the harvest specification process. Non-exempt AFA CV sideboards are now calculated as area-specific sideboard accounts, rather than inshore and offshore sideboards in each respective Western and Central GOA regulatory areas. The Council recognized that in recent years the offshore sideboard allocations have not been fully harvested, while inshore allocations are typically fully caught. The intent of combining the two sideboard categories into a single sideboard for each regulatory area is to make the offshore sideboard allocation available to the CVs historically associated with the inshore processing components. The new, combined sideboard amounts will continue to be apportioned seasonally. This action revises only the Pacific cod sideboards in Table 15; however, the entire suite of species and sideboards in the table are re-published in order to eliminate potential confusion that the other sideboards specified in Table 15 are no longer effective.

The following Table 15 replaces Table 15 in the final 2011 and 2012 GOA harvest specifications (76 FR 11111, March 1, 2011).

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Table 15 - Final 2012 GOA Non-Exempt AFA CV Groundfish Harvest Sideboard Limitations
(Values are rounded to nearest metric ton)

Species	Apportionments by season/gear	Area/component	Ratio of 1995-1997 non-exempt AFA CV catch to 1995-1997 TAC	2012 TAC	2012 non-exempt AFA CV sideboard limit
Pollock	A Season January 20 - March 10	Shumagin (610)	0.6047	6,186	3,741
		Chirikof (620)	0.1167	15,374	1,794
		Kodiak (630)	0.2028	5,783	1,173
	B Season March 10 - May 31	Shumagin (610)	0.6047	6,185	3,740
		Chirikof (620)	0.1167	18,392	2,146
		Kodiak (630)	0.2028	2,765	561
	C Season August 25 - October 1	Shumagin (610)	0.6047	11,280	6,821
		Chirikof (620)	0.1167	7,262	847
		Kodiak (630)	0.2028	8,803	1,785
	D Season October 1 - November 1	Shumagin (610)	0.6047	11,280	6,821
		Chirikof (620)	0.1167	7,262	847
		Kodiak (630)	0.2028	8,803	1,785
	Annual	WYK (640)	0.3495	3,024	1,057
		SEO (650)	0.3495	9,245	3,231
Pacific cod	A Season[1] January 1 - June 10	W	0.1331	12,317	1,639
		C	0.0692	21,818	1,510
	B Season[2] September 1 - December 31	W	0.1331	8,211	1,093
		C	0.0692	14,545	1,007
	Annual	E inshore	0.0079	1,583	13
		E offshore	0.0078	176	1
Sablefish	Annual, trawl gear	W	0.0000	297	0
		C	0.0642	869	56
		E	0.0433	226	10
Flatfish, Shallow-water	Annual	W	0.0156	4,500	70
		C	0.0587	13,000	763
		E	0.0126	1,228	15
Flatfish, deep-water	Annual	W	0.0000	541	0
		C	0.0647	3,004	194
		E	0.0128	2,144	27
Rex sole	Annual	W	0.0007	1,490	1
		C	0.0384	6,184	237
		E	0.0029	853	2
Arrowtooth flounder	Annual	W	0.0021	8,000	17
		C	0.0280	30,000	840
		E	0.0002	2,500	1

Flathead sole	Annual	W	0.0036	2,000	7
		C	0.0213	5,000	107
		E	0.0009	2,125	2
Pacific ocean perch	Annual	W	0.0023	2,665	6
		C	0.0748	9,884	739
		E	0.0466	1,845	86
Northern rockfish	Annual	W	0.0003	2,446	1
		C	0.0277	2,168	60
Shortraker rockfish	Annual	W	0.0000	134	0
		C	0.0218	325	7
		E	0.0110	455	5
Other rockfish	Annual	W	0.0034	212	1
		C	0.1699	507	86
		E	0.0000	275	0
Pelagic shelf rockfish	Annual	W	0.0001	570	0
		C	0.0000	2,850	0
		E	0.0067	380	3
Rougheye rockfish	Annual	W	0.0000	81	0
		C	0.0237	868	21
		E	0.0124	363	5
Demersal shelf rockfish	Annual	SEO	0.0020	300	1
Thornyhead rockfish	Annual	W	0.0280	425	12
		C	0.0280	637	18
		E	0.0280	708	20
Atka mackerel	Annual	Gulfwide	0.0309	2000	62
Big skates	Annual	W	0.0063	598	4
		C	0.0063	2,049	13
		E	0.0063	681	4
Longnose skates	Annual	W	0.0063	81	0
		C	0.0063	2,009	13
		E	0.0063	762	5
Other skates	Annual	Gulfwide	0.0063	2,093	13
Squids	Annual	Gulfwide	0.0063	1,148	7
Sharks	Annual	Gulfwide	0.0063	6,197	39
Octopuses	Annual	Gulfwide	0.0063	954	6
Sculpins	Annual	Gulfwide	0.0063	5,496	35

[1] The Pacific cod A season for trawl gear does not open until January 20.
[2] The Pacific cod B season for trawl gear closes November 1.

BILLING CODE 3510–22–C

Non-AFA Crab Vessel Groundfish Harvest Sideboard Limits

This action also revises the final 2012 GOA non-AFA crab vessel groundfish harvest limits. Such limits preclude vessels that benefit from exclusive crab harvesting privileges under the Bering Sea and Aleutian Islands Crab Rationalization Program from expanding their participation in the GOA groundfish fisheries. This action revises the Pacific cod sideboards in Table 18 of the final 2011 and 2012 harvest specifications (76 FR 11111; March 1, 2011). Under Amendment 83 (76 FR 74670, December 1, 2011), the non-AFA crab vessel sideboards for the inshore and offshore components in the Western and Central GOA were combined. These combined sideboards must then be allocated to sectors as required by the final rule implementing Amendment 83.

Thus, NMFS must specify revised non-AFA crab vessel sideboard limits in the Western and Central GOA.

The non-AFA crab vessel Pacific cod sideboards are revised by apportioning the Pacific cod sideboards for the Western and Central GOA among gear and operational sectors, as well as seasons. This change eliminates the inshore and offshore area and seasonal apportionments, and replaces them with sector-level area and seasonal apportionments. The Eastern GOA Pacific cod sideboards are not revised, and continue to be apportioned between the inshore and offshore components.

The basis for these sideboard limits is described in detail in the final rules implementing the Crab Rationalization Program (70 FR 10174, March 2, 2005) and Amendment 83 (76 FR 74670, December 1, 2011). Table 18 lists the revised 2012 groundfish sideboard limitations for non-AFA crab vessels. It replaces Table 18 in the final 2011 and 2012 GOA harvest specifications (76 FR 11131–11132, March 1, 2011). All targeted or incidental catch of sideboard species made by non-AFA crab vessels or associated License Limitation Program groundfish licenses will be deducted from these sideboard limits. This action revises only the Pacific cod sideboards in Table 18; however, the entire suite of species and sideboards in the table are re-published in order to eliminate potential confusion that the other groundfish sideboards specified in Table 18 are no longer effective.

BILLING CODE 3510–22–P

Table 18 - Final 2012 GOA Non-American Fisheries Act Crab Vessel Groundfish Harvest Sideboard Limits (Values are rounded to nearest metric ton)

Species	Season/gear	Area/component	Ratio of 1996-2000 non-AFA crab vessel catch to 1996-2000 total harvest	2012 TAC	2012 non-AFA crab vessel sideboard limit
Pollock	A Season January 20 - March 10	Shumagin (610)	0.0098	6,186	61
		Chirikof (620)	0.0031	15,374	48
		Kodiak (630)	0.0002	5,783	1
	B Season March 10 - May 31	Shumagin (610)	0.0098	6,185	61
		Chirikof (620)	0.0031	18,393	57
		Kodiak (630)	0.0002	2,765	1
	C Season August 25 - October 1	Shumagin (610)	0.0098	11,280	111
		Chirikof (620)	0.0031	7,262	23
		Kodiak (630)	0.0002	8,803	2
	D Season October 1 - November 1	Shumagin (610)	0.0098	11,280	111
		Chirikof (620)	0.0031	7,262	23
		Kodiak (630)	0.0002	8,803	2
	Annual	WYK (640)	0.0000	3,024	0
		SEO (650)	0.0000	9,245	0
Pacific cod	A Season[1] January 1 - June 10	W Jig CV	0.0000	12,317	0
		W Hook-and-line CV	0.0003	12,317	4
		W Hook-and-line C/P	0.0015	12,317	18
		W Pot CV	0.0816	12,317	1,005
		W Pot C/P	0.0064	12,317	79
		W Trawl CV	0.0060	12,317	74
		C Jig CV	0.0000	21,818	0
		C Hook-and-line CV	0.0001	21,818	2
		C Hook-and-line C/P	0.0000	21,818	0
		C Pot CV	0.0354	21,818	772
		C Pot C/P	0.0092	21,818	201
		C Trawl CV	0.0010	21,818	22
	B Season[2] September 1 - December 31	W Jig CV	0.0000	8,211	0
		W Hook-and-line CV	0.0003	8,211	2
		W Hook-and-line C/P	0.0015	8,211	12
		W Pot CV	0.0816	8,211	670
		W Pot C/P	0.0064	8,211	53
		W Trawl CV	0.0060	8,211	49

		C Jig CV	0.0000	14,546	0
		C Hook-and-line CV	0.0001	14,546	1
		C Hook-and-line C/P	0.0000	14,546	0
		C Pot CV	0.0354	14,546	515
		C Pot C/P	0.0092	14,546	134
		C Trawl CV	0.0010	14,546	15
	Annual	E inshore	0.0110	1,583	17
		E offshore	0.0000	176	0
Sablefish	Annual, trawl gear	W	0.0000	297	0
		C	0.0000	869	0
		E	0.0000	226	0
Flatfish, shallow-water	Annual	W	0.0059	23,681	140
		C	0.0001	29,999	3
		E	0.0000	2,562	0
Flatfish, deep-water	Annual	W	0.0035	541	2
		C	0.0000	3,004	0
		E	0.0000	2,941	0
Rex sole	Annual	W	0.0000	1,490	0
		C	0.0000	6,184	0
		E	0.0000	1,722	0
Arrowtooth flounder	Annual	W	0.0004	33,975	14
		C	0.0001	143,119	14
		E	0.0000	33,933	0
Flathead sole	Annual	W	0.0002	17,960	4
		C	0.0004	28,938	12
		E	0.0000	3,693	0
Pacific ocean perch	Annual	W	0.0000	2,665	0
		C	0.0000	9,884	0
		E	0.0000	3,638	0
Northern rockfish	Annual	W	0.0005	2,446	1
		C	0.0000	2,168	0
Shortraker rockfish	Annual	W	0.0013	134	0
		C	0.0012	325	0
		E	0.0009	455	0
Other rockfish	Annual	W	0.0035	224	1
		C	0.0033	566	2
		E	0.0000	3,052	0
Pelagic shelf rockfish	Annual	W	0.0017	558	1
		C	0.0000	2,791	0

		E	0.0000	998	0
Rougheye shelf rockfish	Annual	W	0.0067	81	1
		C	0.0047	868	4
		E	0.0008	363	0
Demersal shelf rockfish	Annual	SEO	0.0000	300	0
Thornyhead rockfish	Annual	W	0.0047	425	2
		C	0.0066	637	4
		E	0.0045	708	3
Atka mackerel	Annual	Gulfwide	0.0000	4,700	0
Big skate	Annual	W	0.0392	598	23
		C	0.0159	2,049	33
		E	0.0000	681	0
Longnose skate	Annual	W	0.0392	81	3
		C	0.0159	2,009	32
		E	0.0000	762	0
Other skates	Annual	Gulfwide	0.0176	2,093	37
Squids	Annual	Gulfwide	0.0176	1,148	20
Sharks	Annual	Gulfwide	0.0176	6,197	109
Octopuses	Annual	Gulfwide	0.0176	954	17
Sculpins	Annual	Gulfwide	0.0176	5,496	97

[1] The Pacific cod A season for trawl gear does not open until January 20.
[2] The Pacific cod B season for trawl gear closes November 1.

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Changes to Halibut PSC Apportionments

Section 679.21(d) establishes annual halibut PSC limit apportionments for trawl and hook-and-line gear. The trawl gear apportionment is further divided seasonally and between the deep-water and shallow-water species categories. The hook-and-line gear apportionment is divided seasonally, and also between the demersal shelf rockfish (DSR) fishery and the remaining groundfish fisheries. This action revises the annual hook-and-line gear ''other than DSR'' halibut PSC limit to the ''other hook-and-line fisheries'' by dividing the annual halibut PSC limit between the hook-and-line CV and C/P sectors.

This change is intended to increase the ability of each hook-and-line sector to plan its fishing operations and harvest its respective Pacific cod allocation. Apportioning the halibut PSC limit to hook-and-line CV and C/P sectors will prevent one sector from pre-empting the other sector's fishing season by taking a greater proportion of the hook-and-line halibut PSC limit than expected. These PSC apportionments also will apply to hook-and-line CVs and C/Ps operating in the Eastern GOA; however, the halibut PSC limit apportionments only are derived from Pacific cod TAC allocations to the Western and Central GOA. Annually, NMFS will calculate the halibut PSC limit apportionments for the entire GOA to hook-and-line CVs and C/Ps.

This action adds Table 26 to the final 2011 and 2012 harvest specifications to specify new halibut PSC limits by each hook-and-line sector and by season as required by § 679.21(d)(4)(iii)(B). These changes reflect the halibut PSC allocation revisions made under Amendment 83 (76 FR 74670, December 1, 2011), which modified the ''other than DSR'' hook-and-line halibut PSC apportionment to the ''other hook-and-line fisheries'' by dividing it between the two hook-and-line sectors. The halibut PSC limit apportioned to the trawl gear sector was not changed by Amendment 83. Comprehensive changes to GOA halibut PSC limits and apportionments currently are under development and consideration by the Council.

A comprehensive description and example of the calculations necessary to apportion the ''other than DSR'' hook-and-line halibut PSC limit to the ''other hook-and-line fisheries'' between the hook-and-line CV and C/P sectors was included in the final rule to implement Amendment 83 (76 FR 74670, December 1, 2011) and is not repeated here. For 2012, NMFS is apportioning halibut PSC limits of 167 mt and 123 mt to the hook-and-line CV and hook-and-line C/P sectors, respectively. In addition, these annual limits are divided into three seasonal apportionments, using seasonal percentages of 86 percent, 2 percent, and 12 percent. These annual limits and seasonal apportionments are shown in Table 26, which augments Table 10 in the final GOA harvest specifications (76 FR 11111, March 1, 2011). Table 26 lists the 2012 annual and seasonal halibut PSC apportionments between the hook-and-line sectors in the GOA.

Table 26 - Apportionments of the "other hook-and-line fisheries" annual Halibut PSC allowance between the hook-and-line gear catcher vessel and catcher/processor sectors.
(Values are in metric tons)

"Other than DSR" Allowance	Hook-and-Line Sector	Percent of annual amount	Sector annual amount	Season	Seasonal Percentage	Sector Seasonal Amount
290	Catcher Vessel	57.6%	167	January 1 - June 10	86%	144
				June 10 - September 1	2%	3
				September 1 - December 31	12%	20
	Catcher Processor	42.4%	123	January 1 - June 10	86%	106
				June 10 - September 1	2%	2
				September 1 - December 31	12%	15

Directed Fishing Closures

Section 680.22 provides for the management of non-AFA crab vessel sideboards using directed fishing closures in accordance with § 680.22(e)(2) and (3). The Regional Administrator has determined that the non-AFA crab vessel sideboards listed in Table 18 are insufficient to support a directed fishery and has set the sideboard directed fishing allowance at zero, with the exception of the Pacific cod pot CV sector limits in the Western and Central Regulatory Areas. Therefore, NMFS is prohibiting directed fishing by non-AFA crab vessels in the GOA for all species and species groups listed in Tables 17 and 18, with the exception of Pacific cod sideboard limits established for the pot CV sector in the Western and Central Regulatory Areas.

Small Entity Compliance Guide

The following information is a plain language guide to assist small entities in complying with this final rule as required by the Small Business Regulatory Enforcement Fairness Act of 1996. This final rule is necessary to revise final 2012 Pacific cod harvest specifications and halibut PSC limits for the groundfish fishery of the GOA so that these amounts are consistent with new fishery allocations and limitations established under Amendment 83. This action affects all fishermen who participate in the Pacific cod fishery in the GOA. The specific amounts of TAC limits and PSC amounts, and respective allocations thereof, are provided in tabular form to assist the reader. NMFS will announce closures of directed fishing in the **Federal Register** and in information bulletins released by the Alaska Region. Affected fishermen should keep themselves informed of such closures.

Classification

NMFS determined that these revisions to the final 2011 and 2012 harvest specifications are necessary for the conservation and management of the Alaska groundfish fisheries and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

This action is authorized under § 679.20 and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator for Fisheries, NOAA (AA) finds good cause to waive prior notice and opportunity for public comment on this action as notice and comment is unnecessary. Through this action, NOAA seeks to revise the final 2011 and 2012 GOA harvest specifications consistent with the final rules implementing Amendment 83 to the FMP and to ensure that the Pacific cod allocations and halibut PSC limits implemented under Amendment 83 will be effective at the beginning of the 2012 fishing year. Prior notice and opportunity for public comment on this action is unnecessary because the revisions being made by this action merely update the 2011 and 2012 GOA harvest specifications to reflect allocations and limitations implemented and required by Amendment 83, and which have already been subject to notice and comment.

This action does not revise the final 2011 and 2012 GOA harvest specifications in any substantive manner not previously the subject of notice and comment during the development of Amendment 83. The Pacific cod fisheries in the Western and Central GOA are intensive, fast-paced fisheries. U.S. fishing vessels have demonstrated the capacity to catch the Pacific cod TAC allocations in these fisheries. Any delay in allocating the Pacific cod TACs under Amendment 83 would cause confusion to the industry and potential economic harm through unnecessary discards. Determining which fisheries may close is impossible because these fisheries are affected by several factors that cannot be predicted in advance, including fishing effort, weather, movement of fishery stocks, and market price. Furthermore, the closure of one fishery has a cascading effect on other fisheries by freeing up fishing vessels, allowing them to move from closed fisheries to open ones, increasing the fishing capacity in those open fisheries and causing them to close at an accelerated pace.

In fisheries subject to declining sideboards, a failure to implement the updated sideboards before initial season's end could preclude the intended economic protection to the non-sideboarded sectors. Conversely, in fisheries with increasing sideboards, economic benefit could be precluded to the sideboarded sectors.

The AA also finds good cause to waive the 30-day delay in the effective date requirement of 5 U.S.C. 553(d). The waiver of the 30-day delay in effective date requirement of 5 U.S.C. 553(d) is necessary to ensure that the allocations and limitations required under Amendment 83 will be effective at the beginning of the 2012 fishing year and to provide the regulated community

with timely, adequate, and accurate information necessary to allow the industry to plan for the fishing season, to conduct orderly and efficient fisheries, and to avoid potential disruption to the fishing fleet and processors. Per the implementing requirements of Amendment 83 to the GOA FMP (76 FR 74670, December 1, 2011), the Pacific cod TAC apportionments between the inshore and offshore components in the Western and Central Management Areas are superseded and replaced by apportionments among various gear and operational sectors. Absent waiver of the 30-day delay in effective date, the Pacific cod fisheries in the Western and Central Management Areas would be subject to obsolete management measures for a several weeks at the onset of the 2012, as the regulations requiring NMFS to apportion the Pacific cod TAC limits in these two areas to the inshore and offshore components (§ 679.20(a)(6)(ii)) no longer exist as of January 1, 2012.

NMFS prepared a Final EIS for the harvest strategy implemented by the annual harvest specifications and made it available to the public on January 12, 2007 (72 FR 1512). On February 13, 2007, NMFS issued the Record of Decision (ROD) for the Final EIS. Copies of the Final EIS and ROD for this action are available (see **ADDRESSES**). NMFS also prepared an EA in conjunction with Amendment 83 to the GOA FMP (See **ADDRESSES**).

Two separate final regulatory flexibility analyses (FRFAs) were prepared to evaluate the impacts on small entities resulting from (1) alternative harvest strategies employed in establishing the final 2011 and 2012 harvest specifications and (2) alternatives considered during the development and approval of Amendment 83. Both of these FRFAs met the statutory requirements of the Regulatory Flexibility Act of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 601–612). A summary of each FRFA was published with its relevant final rule and is not repeated here. The summary of the FRFA supporting the final 2011 and 2012 harvest specifications was published March 1, 2011 (76 FR 11111), and the summary of the FRFA supporting Amendment 83 to the FMP was published December 1, 2011 (76 FR 74670).

Authority: 16 U.S.C. 773 *et seq.,* 1801 *et seq.,* 3631 *et seq.;* Pub. L. 108–447.

Dated: December 22, 2011.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2011–33448 Filed 12–28–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

RIN 0648–AY53

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod Allocations in the Gulf of Alaska; Amendment 83; Correction

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

ACTION: Correction to final rule.

SUMMARY: This document contains one correction to the final rule pertaining to Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod Allocations in the Gulf of Alaska published on December 1, 2011. This correction is intended to clarify a regulatory prohibition.

DATES: Effective January 1, 2012.

FOR FURTHER INFORMATION CONTACT: Seanbob Kelly, (907) 586–7228.

SUPPLEMENTARY INFORMATION:

Background

A final rule was published in the **Federal Register** on December 1, 2011 (76 FR 74670) that revises several sections of regulations that pertain to the management of Pacific cod in the Gulf of Alaska Management Area (GOA). The final rule allocates total allowable catch of Pacific cod to various gear and operational type sectors in the Western and Central GOA Pacific cod fisheries that are managed under the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP).

Need for Correction

The error is located in a prohibition at § 679.7 that limits access to the Pacific cod parallel fishery for federal fishery participants. This prohibition precludes federally permitted vessels that do not have a properly endorsed license limitation program license from participating in the Western or Central GOA Pacific cod parallel fishery. The error occurred in limiting the scope of the prohibition to vessels that ''catch and process'' only; thus the regulations omit vessels that solely directed fish for Pacific cod and do not process. As written, the regulation is inconsistent with the Council's recommendations under Amendment 83, the environmental analysis, regulatory impact review, final regulatory flexibility analysis, and the preambles to both the proposed and final rules.

The correction will amend § 679.7(b)(6) to replace the words ''catch and process'' with ''directed fish for''. The correction will ensure that the prohibition applies to both catcher and catcher processor vessels, as intended by the Council's recommendations and the Secretarial action under Amendment 83.

The Assistant Administrator for Fisheries, NOAA (AA), finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment because it would be unnecessary and contrary to the public interest. This error must be corrected immediately to clarify the regulatory prohibition's application. Left uncorrected, the prohibition purports to apply only to catcher processor vessels fishing for Pacific cod in the GOA, when the prohibition was clearly meant to apply to catcher vessels, too. The correction will ensure that NMFS can enforce the prohibition against both catcher and catcher processors, as intended. If the effective date for these corrections is delayed to solicit prior public comment, this technical error will not be corrected by the effective date of this final rule, thereby undermining the conservation and management objectives of the FMP. The AA further finds, pursuant to 5 U.S.C. 553(d)(3), good cause to waive the thirty (30) day delayed effectiveness period for the reasons stated above.

NMFS is correcting this error and is not making substantive changes to the document in rule FR Docket No. 100107012–1689–03 published on December 1, 2011 (76 FR 74670).

Correction

Accordingly, the final rule published on December 1, 2011 (76 FR 74670), to be effective January 1, 2012, is corrected as follows:

§ 679.7 [Corrected]

On page 74687, in § 679.7(b)(6), in the third column of the page, under the paragraph heading ''Parallel fisheries.'', correct the reference to ''catch and process'' to read as ''directed fish for''.

Dated: December 23, 2011.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2011–33452 Filed 12–28–11; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 101126521–0640–02]

RIN 0648–XA901

Fisheries of the Exclusive Economic Zone Off Alaska; Inseason Adjustment to the 2012 Bering Sea and Aleutian Islands Atka Mackerel Total Allowable Catch Amount

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

ACTION: Temporary rule; inseason adjustment; request for comments.

SUMMARY: NMFS is adjusting the 2012 total allowable catch (TAC) amount for the Bering Sea and Aleutian Island management area (BSAI) Atka mackerel fishery. This action is necessary because NMFS has determined this TAC is incorrectly specified. This action will ensure the BSAI Atka mackerel TAC is the appropriate amount, based on the best available scientific information for Atka mackerel in the BSAI. This action is consistent with the goals and objectives of the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), December 29, 2011, until the effective date of the final 2012 and 2013 harvest specifications for BSAI groundfish, unless otherwise modified or superseded through publication of a notification in the **Federal Register.**

Comments must be received at the following address no later than 4:30 p.m., A.l.t., January 13, 2012.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2011–0297, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal *www.regulations.gov.* To submit comments via the e-Rulemaking Portal, first click the ''submit a comment'' icon, then enter NOAA–NMFS–2011–0297 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the ''Submit a Comment'' icon on that line.
- *Mail:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.
- *Fax:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Fax comments to (907) 586–7557.
- *Hand delivery to the Federal Building:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Deliver comments to 709 West 9th Street, Room 420A, Juneau, AK.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, (907) 586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council (Council) under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2012 Atka mackerel TAC in the BSAI was set at 36,800 metric tons (mt) in the Eastern Aleutian District and the Bering Sea subarea, 10,293 mt in the Central Aleutian District, and 1,150 mt in the Western Aleutian District by the final 2011 and 2012 harvest specification for groundfish in the BSAI (76 FR 11139, March 1, 2011).

In December 2011, the Council recommended the 2012 Atka mackerel TACs of 38,500 metric tons (mt) in the Eastern Aleutian District and the Bering Sea subarea, 10,763 mt in the Central Aleutian District, and 1,500 mt in the Western Aleutian District. These amounts are higher in the Eastern Aleutian District and Bering Sea subarea and Central Aleutian District, and the same in the Western Aleutian District than established by the final 2011 and 2012 harvest specification for groundfish in the BSAI (76 FR 11139, March 1, 2011). The TACs recommended by the Council are based on the Stock Assessment and Fishery Evaluation report (SAFE), dated November 2011, which NMFS has determined is the best available scientific information for this fishery.

Regulations at § 679.20(a)(8)(ii)(A) apportion the Atka mackerel TAC allocated to the BSAI Atka mackerel trawl fisheries seasonally to distribute catch over time because Atka mackerel is a principal prey species for Steller sea lions listed as endangered under the Endangered Species Act. The first seasonal apportionment can be harvested quickly, and must reflect the TAC based on the best available scientific information to provide the opportunity to harvest available TAC in a manner consistent with the established Steller sea lion protection measures.

In accordance with § 679.25(a)(1)(iii) and (a)(2)(i)(B), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that, based on the November 2011 SAFE report for this fishery, the current BSAI Atka mackerel TAC is incorrectly specified. Consequently, the Regional Administrator is adjusting the 2012 Atka mackerel TACs to 38,500 mt in the Eastern Aleutian District and Bering Sea subarea, 10,763 mt in the Central Aleutian District, and 1,500 mt in the Western Aleutian District.

Pursuant to § 679.20(a)(8), Table 4 of the final 2011 and 2012 harvest specifications for groundfish in the BSAI (76 FR 11139, March 1, 2011) is revised for the 2012 Atka mackerel TAC consistent with this adjustment. Table 4 includes the Steller sea lion protection measures effective January 1, 2011 (75 FR 77535, December 13, 2010), to insure that the BSAI groundfish fisheries off Alaska are not likely to jeopardize the continued existence of the western distinct population segment of Steller

sea lions or adversely modify its designated critical habitat.

TABLE 4—FINAL 2011 AND 2012 SEASONAL AND SPATIAL ALLOWANCES, GEAR SHARES, CDQ RESERVE, INCIDENTAL CATCH ALLOWANCE, AND AMENDMENT 80 ALLOCATIONS OF THE BSAI ATKA MACKEREL TAC

[Amounts are in metric tons]

Sector [1]	Season [2 3 4]	2011 allocation by area			2012 allocation by area		
		Eastern Aleutian District/ Bering Sea	Central Aleutian District [5]	Western Aleutian District	Eastern Aleutian District/ Bering Sea	Central Aleutian District [5]	Western Aleutian District
TAC	n/a	40,300	11,280	1,500	38,500	10,763	1,500
CDQ reserve	Total	4,312	1,207	161	4,120	1,152	161
	A	2,156	603	80	2,060	576	80
	Critical habitat [5].	n/a	60	n/a	n/a	55	n/a
	B	2,156	603	80	2,060	576	80
	Critical habitat [5].	n/a	60	n/a	n/a	55	n/a
ICA	Total	75	75	40	1,000	100	40
Jig [6]	Total	180	0	0	167	0	0
BSAI trawl limited access	Total	2,859	800	0	3,321	951	0
	A	1,429	400	0	1,661	476	0
	B	1,429	400	0	1,661	476	0
Amendment 80 sectors	Total	32,875	9,198	1,300	29,892	8,560	1,300
	A	16,437	4,599	650	14,946	4,280	650
	B	16,437	4,599	650	14,946	4,280	650
Alaska Groundfish Cooperative.	Total	19,181	5,389	755	n/a	n/a	n/a
	A	9,591	2,695	377	n/a	n/a	n/a
	Critical habitat [5].	n/a	269	n/a	n/a	n/a	n/a
	B	9,591	2,695	377	n/a	n/a	n/a
	Critical habitat [5].	n/a	269	n/a	n/a	n/a	n/a
Alaska Seafood Cooperative.	Total	13,694	3,809	545	n/a	n/a	n/a
	A	6,847	1,904	272	n/a	n/a	n/a
	Critical habitat [5].	n/a	190	n/a	n/a	n/a	n/a
	B	6,847	1,904	272	n/a	n/a	n/a
	Critical habitat [5].	n/a	190	n/a	n/a	n/a	n/a

[1] Section 679.20(a)(8)(ii) allocates the Atka mackerel TACs, after subtraction of the CDQ reserves, jig gear allocation, and ICAs to the Amendment 80 and BSAI trawl limited access sectors. The allocation of the ITAC for Atka mackerel to the Amendment 80 and BSAI trawl limited access sectors is established in Table 33 to part 679 and § 679.91. The CDQ reserve is 10.7 percent of the TAC for use by CDQ participants (see §§ 679.20(b)(1)(ii)(C) and 679.31).

[2] Sections 679.20(a)(8)(ii)(A) and 679.22(a) establish temporal and spatial limitations for the Atka mackerel fishery.

[3] The seasonal allowances of Atka mackerel are 50 percent in the A season and 50 percent in the B season.

[4] Section 679.23(e)(3) authorizes directed fishing for Atka mackerel with trawl gear during the A season from January 20 to June 10 and the B season from June 10 to November 1.

[5] Section 679.20(a)(8)(ii)(C) requires the TAC in area 542 shall be no more than 47% of ABC, and Atka mackerel harvests for Amendment 80 cooperatives and CDQ groups within waters 10 nm to 20 nm of Gramp Rock and Tag Island, as described in Table 12 to part 679, in Area 542 are limited to no more than 10 percent of the Amendment 80 cooperative Atka mackerel allocation or 10 percent of the CDQ Atka mackerel allocation.

[6] Section 679.20(a)(8)(i) requires that up to 2 percent of the Eastern Aleutian District and the Bering Sea subarea TAC be allocated to jig gear after subtraction of the CDQ reserve and ICA. The amount of this allocation is 0.5 percent. The jig gear allocation is not apportioned by season.

Note: Seasonal or sector apportionments may not total precisely due to rounding.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) and § 679.25(c)(1)(ii) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would require harvests other than the appropriate allocations for Atka mackerel, based on the best scientific information available. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of December 13, 2011, and additional time for prior public comment would result in conservation concerns for the ESA-listed Steller sea lions.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Under § 679.25(c)(2), interested persons are invited to submit written

comments on this action to the above address until January 13, 2012.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: December 22, 2011.

Alan D. Risenhoover,

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

[FR Doc. 2011–33322 Filed 12–28–11; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 101126521–0640–02]

RIN 0648–XA903

Fisheries of the Exclusive Economic Zone Off Alaska; Inseason Adjustment to the 2012 Bering Sea and Aleutian Islands Pacific Cod Total Allowable Catch Amount

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

ACTION: Temporary rule; inseason adjustment; request for comments.

SUMMARY: NMFS is adjusting the 2012 total allowable catch (TAC) amount for the Bering Sea and Aleutian Islands (BSAI) Pacific cod fishery. This action is necessary because NMFS has determined this TAC is incorrectly specified. This action will ensure the BSAI Pacific cod TAC is the appropriate amount, based on the best available scientific information for Pacific cod in the BSAI. This action is consistent with the goals and objectives of the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), December 29, 2011, until the effective date of the final 2012 and 2013 harvest specifications for BSAI groundfish, unless otherwise modified or superseded through publication of a notification in the **Federal Register**.

Comments must be received at the following address no later than 4:30 p.m., A.l.t., January 13, 2012.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2011–0299, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal *www.regulations.gov.* To submit comments via the e-Rulemaking Portal, first click the ''submit a comment'' icon, then enter NOAA–NMFS–2011–0299 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the ''Submit a Comment'' icon on that line.
- *Mail:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.
- *Fax:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Fax comments to (907) 586–7557.
- *Hand delivery to the Federal Building:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Deliver comments to 709 West 9th Street, Room 420A, Juneau, AK.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, (907) 586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council (Council) under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2012 Pacific cod TAC in the BSAI was set at 229,608 metric tons (mt) by the final 2011 and 2012 harvest specification for groundfish in the BSAI (76 FR 11139, March 1, 2011).

In December 2011, the Council recommended a 2012 Pacific cod TAC of 261,000 mt for the BSAI. This amount is more than the 229,608 mt established by the final 2011 and 2012 harvest specification for groundfish in the BSAI (76 FR 11139, March 1, 2011). The TAC recommended by the Council is based on the Stock Assessment and Fishery Evaluation report (SAFE), dated November 2011, which NMFS has determined is the best available scientific information for this fishery.

Regulations at § 679.20(a)(7)(i)(B) apportion the Pacific cod TAC allocated to the Bering Sea directed Pacific cod fisheries seasonally to distribute catch over time because Pacific cod is a principal prey species for Steller sea lions listed as endangered under the Endangered Species Act. The first seasonal apportionment can be harvested quickly, and must reflect the TAC based on the best available scientific information to provide the opportunity to harvest available TAC in a manner consistent with the established Steller sea lion protection measures.

In accordance with § 679.25(a)(1)(iii) and (a)(2)(i)(B), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that, based on the November 2011 SAFE report for this fishery, the current BSAI Pacific cod TAC is incorrectly specified. Consequently, the Regional Administrator is adjusting the 2012 Pacific cod TAC to 261,000 mt in the BSAI.

Pursuant to § 679.20(a)(7), Table 5b of the final 2011 and 2012 harvest specifications for groundfish in the BSAI (75 FR 11778, March 12, 2010) is revised for the 2012 Pacific cod TAC consistent with this adjustment.

TABLE 5b—FINAL 2012 GEAR SHARES AND SEASONAL ALLOWANCES OF THE BSAI PACIFIC COD TAC

[Amounts are in metric tons]

Gear sector	Percent	Share of gear sector total	Share of sector total	Seasonal apportionment	
				Dates	Amount
Total TAC	100	261,000	n/a	n/a	n/a.
CDQ	10.7	27,927	n/a	see § 679.20(a)(7)(i)(B)	n/a.
Total hook-and-line/pot gear	60.8	141,708	n/a	n/a	n/a.
Hook-and-line/pot ICA [1]	n/a	500	n/a	see § 679.20(a)(7)(ii)(B)	n/a.
Hook-and-line/pot sub-total	n/a	141,208	n/a	n/a	n/a.
Hook-and-line catcher/processor	48.7	n/a	113,106	Jan 1–Jun 10	57,684.
				Jun 10–Dec 31	55,422.
Hook-and-line catcher vessel ≥ 60 ft LOA.	0.2	n/a	465	Jan 1–Jun 10	237.
				Jun 10–Dec 31	228.
Pot catcher/processor	1.5	n/a	3,484	Jan 1–Jun 10	1,777.
				Sept 1–Dec 31	1,707.
Pot catcher vessel ≥ 60 ft LOA	8.4	n/a	19,509	Jan 1–Jun 10	9,950.
				Sept 1–Dec 31	9,559.
Catcher vessel < 60 ft LOA using hook-and-line or pot gear.	2	n/a	4,645	n/a	n/a.
Trawl catcher vessel	22.1	51,509	n/a	Jan 20–Apr 1	38,117.
				Apr 1–Jun 10	5,666.
				Jun 10–Nov 1	7,726.
AFA trawl catcher/processor	2.3	5,3610	n/a	Jan 20–Apr 1	4,021.
				Apr 1–Jun 10	1,340.
		;		Jun 10–Nov 1	0.
Amendment 80	13.4	31,232	n/a	Jan 20–Apr 1	23,424.
				Apr 1–Jun 10	7,808.
				Jun 10–Nov 1	0.
Alaska Groundfish Cooperative	n/a	n/a	5,816	Jan 20–Apr 1	4,362.
				Apr 1–Jun 10	1,454.
				Jun 10–Nov 1	0.
Alaska Seafood Cooperative	n/a	n/a	25,416	Jan 20–Apr 1	19,062.
				Apr 1–Jun 10	6,354.
				Jun 10–Nov 1	0.
Jig	1.4	3,263	n/a	Jan 1–Apr 30	1,958.
				Apr 30–Aug 31	653.
				Aug 31–Dec 31	653.

[1] The ICA for the hook-and-line and pot sectors will be deducted from the aggregate portion of Pacific cod TAC allocated to the hook-and-line and pot sectors. The Regional Administrator approves an ICA of 500 mt based on anticipated incidental catch in these fisheries.

Note: Seasonal or sector apportionments may not total precisely due to rounding.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) and § 679.25(c)(1)(ii) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would require harvests lower than the appropriate allocations for Pacific cod, based on the best scientific information available. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of December 13, 2011, and additional time for prior public comment would result in conservation concerns for the ESA-listed Steller sea lions.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until January 13, 2012.

This action is required by § 679.22 and § 679.25 and is exempt from review under Executive Order 12866.

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

Dated: December 22, 2011.

Alan D. Risenhoover,

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

[FR Doc. 2011–33436 Filed 12–28–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 101126521–0640–02]

RIN 0648–XA906

Fisheries of the Exclusive Economic Zone Off Alaska; Inseason Adjustment to the 2012 Bering Sea Pollock Total Allowable Catch Amount

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

ACTION: Temporary rule; inseason adjustment; request for comments.

SUMMARY: NMFS is adjusting the 2012 total allowable catch (TAC) amount for the Bering Sea pollock fishery. This action is necessary because NMFS has determined this TAC is incorrectly

specified. This action will ensure the Bering Sea pollock TAC is the appropriate amount based on the best available scientific information for pollock in the Bering Sea subarea. This action is consistent with the goals and objectives of the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), December 29, 2011, until the effective date of the final 2012 and 2013 harvest specifications for BSAI groundfish, unless otherwise modified or superseded through publication of a notification in the **Federal Register.**

Comments must be received at the following address no later than 4:30 p.m., A.l.t., January 13, 2012.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2011–0301, by any of the following methods:

• *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal *www.regulations.gov.* To submit comments via the e-Rulemaking Portal, first click the ''submit a comment'' icon, then enter NOAA–NMFS–2011–0301 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the ''Submit a Comment'' icon on that line.

• *Mail:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

• *Fax:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Fax comments to (907) 586–7557.

• *Hand delivery to the Federal Building:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Deliver comments to 709 West 9th Street, Room 420A, Juneau, AK.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, (907) 586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council (Council) under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2012 pollock TAC in the Bering Sea subarea was set at 1,253,658 metric tons (mt) by the final 2011 and 2012 harvest specification for groundfish in the BSAI (76 FR 11139, March 1, 2011). In December 2011, the Council recommended a 2012 pollock TAC of 1,200,000 mt for the Bering Sea subarea. This amount is less than the 1,253,658 mt established by the final 2011 and 2012 harvest specification for groundfish in the BSAI (76 FR 11139, March 1, 2011). The TAC recommended by the Council is based on the Stock Assessment and Fishery Evaluation report (SAFE), dated November 2011, which NMFS has determined is the best available scientific information for this fishery.

Regulations at § 679.20(a)(5)(i)(B) apportion the pollock TAC allocated to the Bering Sea directed pollock fisheries seasonally to distribute catch over time because pollock is a principal prey species for Steller sea lions listed as endangered under the Endangered Species Act. The first seasonal apportionment can be harvested quickly, and must reflect the TAC based on the best available scientific information to provide the opportunity to harvest available TAC in a manner consistent with the established Steller sea lion protection measures.

In accordance with § 679.25 (a)(1)(iii) and (a)(2)(i)(B), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that, based on the November 2011 SAFE report for this fishery, the current Bering Sea pollock TAC is incorrectly specified. Consequently, the Regional Administrator is adjusting the 2012 pollock TAC to 1,200,000 mt in the Bering Sea subarea.

Pursuant to § 679.20(a)(5), Table 3 of the final 2011 and 2012 harvest specifications for groundfish in the BSAI (76 FR 11139, March 1, 2011), as adjusted by a reallocation of a portion of the 2011 Aleutian Islands subarea (76 FR 12607, March 8, 2011), is revised for the 2012 pollock TACs consistent with this adjustment.

TABLE 3—FINAL 2011 AND 2012 ALLOCATIONS OF POLLOCK TACS TO THE DIRECTED POLLOCK FISHERIES AND TO THE CDQ DIRECTED FISHING ALLOWANCES (DFA) [1]

[All amounts in metric tons]

Area and sector	2011 Allocations	2011 A season [1]		2011 B season [1]	2012 Allocations	2012 A season [1]		2012 B season [1]
		A season DFA	SCA harvest limit [2]	B season DFA		A season DFA	SCA harvest limit [2]	B season DFA
Bering Sea subarea	1,266,400	n/a	n/a	n/a	1,200,000	n/a	n/a	n/a
CDQ DFA	127,100	50,840	35,588	76,260	120,000	48,000	33,600	72,000
ICA [1]	33,804	n/a	n/a	n/a	32,400	n/a	n/a	n/a
AFA Inshore	552,748	221,099	154,769	331,649	523,800	209,520	146,664	314,280
AFA Catcher/Processors [3]	442,198	176,879	123,816	265,319	419,040	167,616	117,331	251,424
Catch by C/Ps	404,612	161,845	n/a	242,767	383,422	153,369	n/a	230,053
Catch by CVs [3]	37,587	15,035	n/a	22,552	35,618	14,247	n/a	21,371
Unlisted C/P Limit [4]	2,211	884	n/a	1,327	2,095	838	n/a	1,257
AFA Motherships	110,550	44,220	30,954	66,330	104,760	41,904	29,333	62,856
Excessive Harvesting Limit [5]	193,462	n/a	n/a	n/a	183,330	n/a	n/a	n/a
Excessive Processing Limit [6]	331,649	n/a	n/a	n/a	314,280	n/a	n/a	n/a

TABLE 3—FINAL 2011 AND 2012 ALLOCATIONS OF POLLOCK TACS TO THE DIRECTED POLLOCK FISHERIES AND TO THE CDQ DIRECTED FISHING ALLOWANCES (DFA) [1]—Continued

[All amounts in metric tons]

Area and sector	2011 Allocations	2011 A season [1]		2011 B season [1]	2012 Allocations	2012 A season [1]		2012 B season [1]
		A season DFA	SCA harvest limit [2]	B season DFA		A season DFA	SCA harvest limit [2]	B season DFA
Total Bering Sea DFA	1,105,496	442,198	309,539	663,298	1,047,600	419,040	293,328	628,560
Aleutian Islands subarea [1]	4,600	n/a	n/a	n/a	19,000	n/a	n/a	n/a
CDQ DFA	0	0	n/a	0	1,900	760	n/a	1,140
ICA	1,600	800	n/a	800	1,600	800	n/a	800
Aleut Corporation	3,000	3,000	n/a	0	15,500	15,500	n/a	0
Bogoslof District ICA [7]	150	n/a	n/a	n/a	150	n/a	n/a	n/a

[1] Pursuant to § 679.20(a)(5)(i)(A), the Bering Sea subarea pollock, after subtraction for the CDQ DFA (10 percent) and the ICA (3 percent), is allocated as a DFA as follows: Inshore sector—50 percent, catcher/processor sector (C/P)—40 percent, and mothership sector—10 percent. In the Bering Sea subarea, 40 percent of the DFA is allocated to the A season (January 20–June 10) and 60 percent of the DFA is allocated to the B season (June 10–November 1). Pursuant to § 679.20(a)(5)(iii)(B)(*2*)(*i*) and (*ii*), the annual AI pollock TAC, after subtracting first for the CDQ directed fishing allowance (10 percent) and second the ICA (1,600 mt), is allocated to the Aleut Corporation for a directed pollock fishery. In the AI subarea, the A season is allocated 40 percent of the ABC and the B season is allocated the remainder of the directed pollock fishery.

[2] In the Bering Sea subarea, no more than 28 percent of each sector's annual DFA may be taken from the SCA before April 1. The remaining 12 percent of the annual DFA allocated to the A season may be taken outside of SCA before April 1 or inside the SCA after April 1. If less than 28 percent of the annual DFA is taken inside the SCA before April 1, the remainder will be available to be taken inside the SCA after April 1.

[3] Pursuant to § 679.20(a)(5)(i)(A)(*4*), not less than 8.5 percent of the DFA allocated to listed catcher/processors shall be available for harvest only by eligible catcher vessels delivering to listed catcher/processors.

[4] Pursuant to § 679.20(a)(5)(i)(A)(*4*)(*iii*), the AFA unlisted catcher/processors are limited to harvesting not more than 0.5 percent of the catcher/processors sector's allocation of pollock.

[5] Pursuant to § 679.20(a)(5)(i)(A)(*6*), NMFS establishes an excessive harvesting share limit equal to 17.5 percent of the sum of the non-CDQ pollock DFAs.

[6] Pursuant to § 679.20(a)(5)(i)(A)(7), NMFS establishes an excessive processing share limit equal to 30.0 percent of the sum of the non-CDQ pollock DFAs.

[7] The Bogoslof District is closed by the final harvest specifications to directed fishing for pollock. The amounts specified are for ICA only and are not apportioned by season or sector.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) and § 679.25(c)(1)(ii) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would require the Bering Sea pollock harvests to be higher than the appropriate allocations for pollock based on the best scientific information available. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of December 13, 2011, and additional time for prior public comment would result in conservation concerns for the ESA-listed Steller sea lions.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until January 13, 2012.

This action is required by § 679.22 and § 679.25 and is exempt from review under Executive Order 12866.

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

Dated: December 23, 2011.

Alan D. Risenhoover,

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

[FR Doc. 2011–33438 Filed 12–28–11; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 76, No. 250

Thursday, December 29, 2011

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0794; Directorate Identifier 2009–NM–035–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: We are revising an earlier proposed airworthiness directive (AD) for all The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes. The original NPRM proposed a general visual inspection to identify any existing structural repair manual repairs of the upper main sill outer chord of the left and right side main entry door number 1, as applicable; repetitive detailed inspections for cracks in the upper main sill of the door(s); and related investigative and corrective actions, if necessary. The original NPRM also proposed repetitive inspections for airplanes on which a certain repair is done, and corrective actions if necessary. The original NPRM was prompted by reports of cracks in the main entry door number 1 upper main sill outer chord, along the bend radius of the chord on several airplanes. This action revises the original NPRM by reducing certain compliance times. We are proposing this supplemental NPRM to detect and correct cracks in the main entry door number 1 upper main sill outer chord, along the bend radius of the chord, which could result in loss of structural integrity of the airplane. Since these actions impose an additional burden over that proposed in the original NPRM, we are reopening the comment period to allow the public the chance to comment on these proposed changes.

DATES: We must receive comments on this supplemental NPRM by February 13, 2012.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone (206) 544–5000, extension 1; fax (206) 766–5680; email *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call (425) 227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Ivan Li, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: (425) 917–6437; fax: (425) 917–6590; email: *ivan.li@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2009–0794; Directorate Identifier 2009–NM–035–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We issued a notice of proposed rulemaking (NPRM) (the ''original NPRM'') to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to all The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes. That original NPRM was published in the **Federal Register** on September 28, 2009 (74 FR 49351). That original NPRM proposed to require a general visual inspection to identify any existing structural repair manual (SRM) repairs of the upper main sill outer chord of the left and right side main entry door number 1, as applicable; repetitive detailed inspections for cracks in the upper main sill of the door(s); and related investigative and corrective actions, if necessary. The original NPRM also proposed to require repetitive inspections for airplanes on which a certain repair is done, and corrective actions if necessary.

Actions Since Previous NPRM Was Issued

Since we issued the original NPRM (74 FR 49351, September 28, 2009), Boeing has issued Boeing Alert Service Bulletin 747–53A2785, Revision 1, dated July 15, 2010. Among other things, Boeing Alert Service Bulletin 747–53A2785, Revision 1, dated July 15, 2010, makes certain grouping changes for the affected airplanes, and also describes procedures for reducing the compliance threshold and repetitive interval for inspections of Model 747–400 series airplanes modified to the large cargo freighter (LCF) configuration.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received from the commenters.

Request To Change Compliance Times for Certain Airplanes

Boeing requested that we revise paragraphs (g), (h)(1), and (i) of the original NPRM (74 FR 49351, September 28, 2009) to reduce the compliance times and repetitive inspection interval for certain Model 747–400 series airplanes modified to the LCF configuration. Boeing explained that those airplanes operate at higher stress levels, and that cracks may initiate sooner and grow faster. Boeing suggested using the compliance times in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2785, Revision 1, dated July 15, 2010, instead of the compliance times listed in paragraph 1.E. ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2785, dated February 12, 2009, which was referred to in the original NPRM.

We agree to revise this supplemental NPRM as requested by the commenter. The original NPRM (74 FR 49351, September 28, 2009) referred to Boeing Alert Service Bulletin 747–53A2785, dated February 12, 2009, as the appropriate source of service information. We have reviewed Boeing Alert Service Bulletin 747–53A2785, Revision 1, dated July 15, 2010. Among other things, this service information makes certain grouping changes for the affected airplanes. This service information also describes procedures for reducing the compliance threshold and repetitive interval for inspections of Model 747–400 series airplanes modified to the LCF configuration. This service information specifies that the reduced compliance threshold for those airplanes is 10,000 total flight cycles or within 1,500 flight cycles after the date of Boeing Alert Service Bulletin 747–53A2785, Revision 1, dated July 15, 2010 (whichever occurs later). The revised repetitive interval for those airplanes is 3,000 flight cycles.

In addition, Boeing Alert Service Bulletin 747–53A2785, Revision 1, dated July 15, 2010, specifies a compliance threshold for certain Model 747–400, –400D, and –400F series airplanes (i.e., Groups 6 and 7 airplanes) of 12,000 total flight cycles or within 1,500 flight cycles after the date of Boeing Alert Service Bulletin 747–53A2785, dated February 12, 2009, (whichever occurs later). The repetitive interval for those airplanes is 6,000 flight cycles.

In light of this revised service information, we have revised this supplemental NPRM to refer to Boeing Alert Service Bulletin 747–53A2785, Revision 1, dated July 15, 2010. In addition, we have reformatted this supplemental NPRM to specify certain required actions by airplane group.

We have also added paragraph (r) to this supplemental NPRM to give credit for accomplishing the inspections and repairs before the effective date of this AD, as specified in Boeing Alert Service Bulletin 747–53A2785, dated February 12, 2009.

Request To Refer to Service Information Instead of the Drawing

Boeing requested that we revise paragraph (h) of the original NPRM (September 28, 2009 (74 FR 49351)) to refer to ''the service bulletin repair drawing reference'' instead of ''drawing 691U0145.'' Boeing explained that they were in the process of revising Boeing Alert Service Bulletin 747–53A2785 to change Drawing 691U0145 into an orderable kit, which means that the repair drawing number will change.

We agree with the commenter's request to remove references to a particular drawing since the number will change. Based on Boeing's comment, we have revised this supplemental NPRM to refer to Boeing Alert Service Bulletin 747–53A2785, Revision 1, dated July 15, 2010, for the outer chord repair.

Requests To Add Acceptable Method of Compliance Information

Boeing requested that paragraph (j) of the original NPRM (September 28, 2009 (74 FR 49351)) (i.e., paragraph (o) of this supplemental NPRM) be revised to add that accomplishment of the inspections required by AD 2009–18–07, Amendment 39–16003 (74 FR 43629, August 27, 2009); or AD 2006–05–02, Amendment 39–14499 (71 FR 10605, March 2, 2006) (as superseded by AD 2010–01–01, Amendment 39–16157 (75 FR 1533, January 12, 2010)); as applicable; is acceptable for compliance with the inspection requirements of paragraphs (h) and (i) of the original NPRM.

Boeing explained that Boeing Alert Service Bulletin 747–53A2785, dated February 12, 2009, states that when the inspections ''per the fatigue test ADs 2009–18–07, Amendment 39–16003 (74 FR 43629, August 27, 2009) or 2006–05–02, Amendment 39–14499 (71 FR 10605, March 2, 2006)'' are accomplished, the inspections per the original NPRM (September 28, 2009 (74 FR 49351)) and Boeing Alert Service Bulletin 747–53A2785, dated February 12, 2009, are satisfied. Therefore, accomplishment of the inspections required by AD 2009–18–07 or 2006–05–02 (as superseded by AD 2010–01–01, Amendment 39–16157 (75 FR 1533, January 12, 2010)) is acceptable for compliance with the inspection requirements of paragraphs (g), (h), and (i) of the original NPRM. Boeing reasoned that the information should be included in paragraph (j) of the original NPRM.

Boeing also requested that we revise paragraph (j) of the original NPRM (September 28, 2009 (74 FR 49351)) to replace the reference to AD 2005–20–30, Amendment 39–14327 (70 FR 59252, October 12, 2005), with a reference to AD 2009–18–07, Amendment 39–16003 (74 FR 43629, August 27, 2009). Boeing explained that AD 2005–20–30 has been superseded by AD 2009–18–07.

All Nippon Airways (ANA) also requested that paragraph (j) of the original NPRM (September 28, 2009 (74 FR 49351)) be revised to refer to both paragraphs (g) and (h) of the original NPRM to clarify AMOC requirements. ANA explained that paragraph (j) of the original NPRM specifies that accomplishing the inspections required by AD 2005–20–30, Amendment 39–14327 (70 FR 59252, October 12, 2005) (which was superseded by AD 2009–18–07, Amendment 39–16003 (74 FR 43629, August 27, 2009)); or AD 2006–05–02, Amendment 39–14499 (71 FR 10605, March 2, 2006) (which was superseded by AD 2010–01–01, Amendment 39–16157 (75 FR 1533, January 12, 2010)); is an acceptable method of compliance for the inspections required by paragraph (g) of the original NPRM. ANA reasoned further, that paragraph (g) of the original NPRM refers only to the initial inspection, and paragraph (h) of the original NPRM refers to the repetitive inspection.

We agree that accomplishing the detailed inspections required by AD 2009–18–07, Amendment 39–16003 (74

FR 43629, August 27, 2009); or AD 2010–01–01, Amendment 39–16157 (75 FR 1533, January 12, 2010); as applicable; is acceptable for compliance with the detailed inspection requirements of paragraphs (g), (h), and (i) of this supplemental NPRM. Therefore, in paragraph (o) of this supplemental NPRM (which corresponds to paragraph (j) of the original NPRM (74 FR 49351, September 28, 2009)), we have referred to paragraphs (g), (h), (l), and (m), since the actions specified by paragraph (o) of this supplemental NPRM are acceptable for compliance with those paragraphs.

We also agree to revise paragraph (o) of this supplemental NPRM to reference to current AD 2009–18–07, Amendment 39–16003 (74 FR 43629, August 27, 2009); and AD 2010–01–01, Amendment 39–16157 (75 FR 1533, January 12, 2010). In addition, we have referenced the current ADs in paragraph (b) of this supplemental NPRM, since those ADs are affected by this supplemental NPRM.

Request To Include Latest Revision of Service Information

Boeing requested that we revise paragraph (j) of the original NPRM (September 28, 2009 (74 FR 49351)) (i.e., paragraph (o) of this supplemental NPRM), to refer to Boeing Alert Service Bulletin 747–53A2349, Revision 3, dated October 2, 2008, instead of Revision 2, dated April 3, 2003, of that service bulletin.

We agree that this supplemental NPRM should refer to the latest service information. We have revised paragraph (o) of this supplemental NPRM to refer to Boeing Alert Service Bulletin 747–53A2349, Revision 3, dated October 2, 2008.

Request To Revise Boeing Delegated Option Authorization (DOA) to Boeing Organization Designation Authorization (ODA)

Boeing requested that we revise any occurrence of the phrase ''Boeing DOA'' in the original NPRM (September 28, 2009 (74 FR 49351)) to ''Boeing ODA'' in this supplemental NPRM. Boeing explained that Boeing Commercial Airplanes has changed from ''DOA'' to ''ODA.''

We agree to revise ''Boeing DOA'' to ''Boeing ODA'' in this supplemental NPRM. Boeing Commercial Airplanes has received an ODA, which replaces their previous designation as a DOA holder. We have revised paragraph (s) of this supplemental NPRM to delegate the authority to approve an AMOC for any repair required by this AD to the Boeing Commercial ODA.

Clarification of ''PART 3—REPAIR''

The installation of a new outer chord repair specified in Section ''PART 3—REPAIR'' of Boeing Alert Service Bulletin 747–53A2785, Revision 1, dated July 15, 2010, includes replacing any existing SRM outer chord repair with a new repair, repairing cracked outer chords, replacing cracked frame attach angles or clips, and contacting Boeing for repair instructions and doing the repair for main upper sill web cracks.

Clarification of Service Bulletin

The ''detailed inspection of the upper main sill web and frame attachment angles (or clips) for crack(s)'' in the second column, sixth row down, on page 26 of Boeing Alert Service Bulletin 747–53A2785, Revision 1, dated July 15, 2010, is not in the Accomplishment Instructions of that document. PART 3—REPAIR of the Accomplishment Instructions in Boeing Alert Service Bulletin 747–53A2785, Revision 1, dated July 15, 2010, is correct; there is no detailed inspection necessary as part of the repair. We note that a detailed inspection of the upper main sill (including the sill web and frame attachment angles (or clips) for cracks) is already required in PART 2—INSPECTION of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2785, Revision 1, dated July 15, 2010.

FAA's Determination

We are proposing this supplemental NPRM because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of these same type designs. Certain changes described above expand the scope of the original NPRM (September 28, 2009 (74 FR 49351)). As a result, we have determined that it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this supplemental NPRM.

Proposed Requirements of the Supplemental NPRM

This supplemental NPRM would require accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between the Supplemental NPRM and the Service Information.''

Differences Between the Supplemental NPRM and the Service Information

Boeing Alert Service Bulletin 747–53A2785, Revision 1, dated July 15, 2010, specifies to contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions in one of the following ways:

- Using a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by an Authorized Representative for the Boeing Commercial Airplanes ODA whom we have authorized to make those findings.

Explanation of Change to Costs of Compliance

Since issuance of the original NPRM (September 28, 2009 (74 FR 49351)), we have increased the labor rate used in the Costs of Compliance from $80 per work-hour to $85 per work-hour. The Costs of Compliance information, below, reflects this increase in the specified labor rate.

Costs of Compliance

We estimate that this proposed AD affects 165 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Work hours	Parts cost	Cost per product	Number of U.S.-registered airplanes	Cost on U.S. operators
Inspection (Groups 1, 3, 5–6)	6 work-hours × $85 per hour = $510	$0	$510 per inspection cycle.	86	$43,860 per inspection cycle.
Inspection (Groups 2, 4, 7)	3 work-hours × $85 per hour = $255	$0	$255 per inspection cycle.	79	$20,145 per inspection cycle.

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this proposed AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

The Boeing Company: Docket No. FAA–2009–0794; Directorate Identifier 2009–NM–035–AD.

(a) Comments Due Date

We must receive comments by February 13, 2012.

(b) Affected ADs

AD 2009–18–07, Amendment 39–16003 (74 FR 43629, August 27, 2009); and AD 2010–01–01, Amendment 39–16157 (75 FR 1533, January 12, 2010); affect this AD.

(c) Applicability

This AD applies to all The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes; certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 53: Fuselage.

(e) Unsafe Condition

This AD was prompted by reports of cracks in the main entry door number 1 upper main sill outer chord, along the bend radius of the chord on several airplanes. We are issuing this AD to detect and correct such cracks, which could result in loss of structural integrity of the airplane.

(f) Compliance

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

(g) Inspection for Group 1 Through 4 Airplanes

For Group 1 through 4 airplanes as identified in Boeing Alert Service Bulletin 747–53A2785, Revision 1, dated July 15, 2010: At the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2785, Revision 1, dated July 15, 2010, except as provided by paragraphs (p) and (q) of this AD, do a one-time general visual inspection to identify any existing structural repair manual (SRM) repairs of the upper main sill outer chord of the left and right main entry door 1, as applicable. Remove any existing SRM outer chord repair that is found, before further flight, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2785, Revision 1, dated July 15, 2010. In addition, after doing the one-time general visual inspection to identify any existing SRM repairs of the upper main sill outer chord of the left and right main entry door 1, before further flight, do a detailed inspection for cracks of the main upper sill outer chord, web, and frame attachment angles (or clips) of the left and right main entry door 1, as applicable. Do all actions in accordance with Part 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2785, Revision 1, dated July 15, 2010. If no crack and no existing SRM outer chord repair is found during any inspection required by this paragraph, at the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2785, Revision 1, dated July 15, 2010, except as provided by paragraphs (p) and (q) of this AD, repeat thereafter the detailed inspection for cracks, at intervals specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2785, Revision 1, dated July 15, 2010, until the outer chord repair specified in Part 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2785, Revision 1, dated July 15, 2010, is installed.

(h) Inspection for Group 5 Through 7 Airplanes

For Group 5 through 7 airplanes as identified in Boeing Alert Service Bulletin 747–53A2785, Revision 1, dated July 15, 2010: At the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2785, Revision 1, dated July 15, 2010, except as provided by paragraphs (p) and (q) of this AD, do a detailed inspection for cracks of the main upper sill outer chord, web, and frame attachment angles (or clips) of the left and right main entry door 1, as applicable, in accordance with Part 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2785, Revision 1, dated July 15, 2010. If no crack is found during any inspection required by this paragraph, at the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2785, Revision 1, dated July 15, 2010, except as provided by paragraph (p) and (q) of this AD, repeat thereafter the detailed inspection for cracks, at intervals specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2785, Revision 1, dated July 15, 2010, until the outer chord repair specified in Part 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2785, Revision 1, dated July 15, 2010, is installed.

(i) Repair for Group 1 Through 4 Airplanes

For Group 1 through 4 airplanes as identified in Boeing Alert Service Bulletin 747–53A2785, Revision 1, dated July 15, 2010: If an existing SRM outer chord repair is found and removed during the inspection required by paragraph (g) of this AD, before further flight, install a new outer chord repair in accordance with Part 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2785, Revision 1, dated July 15, 2010.

(j) Repair of Outer Chord Crack or Cracked Frame Attachment Angles (or Clips)

If any outer chord crack or cracked frame attachment angles (or clips) is found during any inspection required by paragraph (g) or (h) of this AD, before further flight, repair, in

accordance with Part 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2785, Revision 1, dated July 15, 2010.

(k) Repair of Upper Main Sill Web Crack

If any upper main sill web crack is found during any inspection required by paragraph (g) or (h) of this AD, before further flight, repair the crack using a method approved in accordance with the procedures specified in paragraph (s) of this AD.

(l) Inspection

If any upper main sill web or frame attachment angles (or clips) have been repaired as specified in PART 3—REPAIR of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2785, Revision 1, dated July 15, 2010, and the outer chord repair specified in PART 3—REPAIR of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2785, Revision 1, dated July 15, 2010, has not been installed, at the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2785, Revision 1, dated July 15, 2010, except as provided by paragraphs (p) and (q) of this AD, do a detailed inspection for cracks as specified in paragraph (g) or (h) of this AD, as applicable, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2785, Revision 1, dated July 15, 2010. Repeat the inspections in paragraph (g) or (h) of this AD, as applicable, thereafter at intervals specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2785, Revision 1, dated July 15, 2010.

(m) Post-Repair Inspection

For airplanes having the outer chord repair installed as specified in PART 3—REPAIR of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2785, Revision 1, dated July 15, 2010: At the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2785, Revision 1, dated July 15, 2010, except as provided by paragraphs (p) and (q) of this AD, do a detailed inspection for cracks of the left and right main entry door 1 upper sill, as applicable, with the outer chord repair installed, in accordance with PART 5—AFTER-REPAIR INSPECTION of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2785, Revision 1, dated July 15, 2010. Repeat the inspection for cracks thereafter at the applicable intervals specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2785, Revision 1, dated July 15, 2010.

(n) Repair of Any Crack Found From Post-Repair Inspection

Repair any crack found during any inspection required by paragraph (m) of this AD, before further flight, using a method approved in accordance with the procedures specified in paragraph (s) of this AD.

(o) Credit for Inspections Required by AD 2009–18–07, Amendment 39–16003 (74 FR 43629, August 27, 2009), or AD 2010–01–01, Amendment 39–16157 (75 FR 1533, January 12, 2010)

Accomplishing the main entry door 1 cutout detailed inspection required by AD 2009–18–07, Amendment 39–16003 (74 FR 43629, August 27, 2009); or AD 2010–01–01, Amendment 39–16157 (75 FR 1533, January 12, 2010); as applicable; before the effective date of this AD is acceptable for compliance with the detailed inspection requirements of paragraphs (g), (h), (l), and (m) of this AD only. The one-time general visual inspection of paragraph (g) of this AD is still required.

Note 1: For all applicable airplanes that have accumulated 22,000 total flight cycles or more after October 1, 2009 (the effective date of AD 2009–18–07, Amendment 39–16003 (74 FR 43629, August 27, 2009)), AD 2009–18–07 requires accomplishing the main entry door 1 cutout detailed inspection in accordance with Boeing Alert Service Bulletin 747–53A2349, Revision 3, dated October 2, 2008. For all applicable airplanes (except 747–400 series airplanes modified to the 747–400 large cargo freighter (LCF) configuration) that have accumulated 22,000 total flight cycles or more after February 16, 2010 (the effective date of AD 2010–01–01, Amendment 39–16157 (75 FR 1533, January 12, 2010)), AD 2010–01–01 requires accomplishing the main entry door 1 cutout detailed inspection in accordance with Boeing Alert Service Bulletin 747–53A2500, Revision 1, dated September 25, 2008. For Model 747–400 series airplanes modified to the Model 747–400 LCF configuration and having accumulated 15,000 total flight cycles or more as of February 16, 2010, AD 2010–01–01 requires accomplishing the inspections in accordance with Boeing Alert Service Bulletin 747–53A2500, Revision 1, dated September 25, 2008.

(p) Exception to the Service Information

Where paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2785, Revision 1, dated July 15, 2010, specifies a compliance time ''after the original issue date of this service bulletin,'' or ''after the date on Revision 1 of this service bulletin,'' this AD requires compliance within the specified compliance time after the effective date of this AD.

(q) Exception to Compliance Time

Where 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2785, Revision 1, dated July 15, 2010, specifies a compliance time of ''within'' a specified ''total flight-cycles,'' this AD requires compliance ''before the accumulation'' of the specified total flight cycles.

(r) Credit for Actions Accomplished in Accordance With Previous Service Information

Doing the inspections and repairs, in accordance with Boeing Alert Service Bulletin 747–53A2785, dated February 12, 2009, before the effective date of this AD, is acceptable for compliance with the corresponding inspections and repairs required by paragraphs (g), (h), (i), (j), (k), (l), (m), and (n) of this AD.

(s) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane and the approval must specifically refer to this AD

(t) Related Information

(1) For more information about this AD, contact Ivan Li, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 917–6437; fax (425) 917–6590; email: *ivan.li@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P. O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone (206) 544–5000, extension 1; fax (206) 766–5680; email *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call (425) 227–1221.

Issued in Renton, Washington, on December 22, 2011.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–33376 Filed 12–28–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–1327; Directorate Identifier 2011–NM–091–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Airbus Model A330–200 freighter series airplanes; Model A330–200 and –300 series airplanes; and Model A340–200 and –300 series airplanes. This proposed AD was prompted by a report of corrosion found on the main fitting of the nose landing gear (NLG) leg in the vicinity of the dowel pin bushes retaining the lower steering flange. This proposed AD would require modifying the NLG main fitting by adding primer paint to the cadmium around the dowel bush holes. We are proposing this AD to prevent NLG main fitting rupture, which could result in an NLG collapse.

DATES: We must receive comments on this proposed AD by February 13, 2012.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330-A340@airbus.com;* Internet *http://www.airbus.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call (425) 227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: (425) 227–1138; fax: (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2011–1327; Directorate Identifier 2011–NM–091–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2011–0032, dated March 1, 2011 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Corrosion has been found on the main fitting of the NLG leg in the vicinity of the dowel pin bushes retaining the lower steering flange on A330/A340 aeroplanes. The majority of parts have been reworked and returned to service.
>
> This corrosion, if not avoided, could lead to the NLG main fitting rupture, possibly resulting in a NLG collapse, which would constitute an unsafe condition.
>
> In order to maintain the structural integrity of the NLG, this [EASA] AD requires the accomplishment of a modification which consists in adding primer paint to the cadmium around the dowel bush holes on the main fitting, in order to provide further protection against cadmium degradation.

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued Mandatory Service Bulletins A330–32–3241, dated November 26, 2010; and A340–32–4282, dated November 26, 2010. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 55 products of U.S. registry. We also estimate that it would take about 66 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $10,000 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $858,550, or $15,610 per product.

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that

section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Airbus: Docket No. FAA–2011–1327; Directorate Identifier 2011–NM–091–AD.

(a) Comments Due Date

We must receive comments by February 13, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Model A330–223F, –243F, –201, –202, –203, –223, –243, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes; and Model A340–211, –212, –213, –311, –312, and –313 airplanes; certificated in any category; all manufacturer serial numbers, except airplanes on which Airbus modification 200616 has been embodied in production.

(d) Subject

Air Transport Association (ATA) of America Code 32: Landing gear.

(e) Reason

This AD was prompted by a report of corrosion found on the main fitting of the nose landing gear (NLG) leg in the vicinity of the dowel pin bushes retaining the lower steering flange. We are issuing this AD to prevent NLG main fitting rupture, which could result in an NLG collapse.

(f) Compliance

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

(g) Actions

At the later of the times specified in paragraph (g)(1), (g)(2), or (g)(3) of this AD, as applicable, modify the NLG main fitting by adding primer paint to the cadmium around the dowel bush holes, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–32–3241, dated November 26, 2010 (for Model A330–200 and –300 airplanes); or A340–32–4282, dated November 26, 2010 (for Model A340–200 and –300 airplanes).

(1) Within 60 months since first flight of the NLG on any airplane.

(2) Within 60 months since first flight of the NLG on any airplane after the most recent overhaul of the NLG.

(3) Within 24 months after the effective date of this AD.

(h) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: (425) 227–1138; fax: (425) 227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(i) Related Information

Refer to MCAI European Aviation Safety Agency (EASA) Airworthiness Directive 2011–0032, dated March 1, 2011; Airbus Mandatory Service Bulletin A330–32–3241, dated November 26, 2010; and Airbus Mandatory Service Bulletin A340–32–4282, dated November 26, 2010; for related information.

Issued in Renton, Washington, on December 16, 2011.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–33341 Filed 12–28–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0223; Directorate Identifier 2010–NM–161–AD]

RIN 2120–AA64

Airworthiness Directives; Goodrich Evacuation Systems Approved Under Technical Standard Order (TSO) TSO–C69b and Installed on Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: We are revising an earlier proposed airworthiness directive (AD) for Goodrich Evacuation Systems approved under Technical Standard Order (TSO) TSO–C69b and installed on Airbus Model A330–200 and –300 series airplanes, Model A340–200 and –300 series airplanes, and Model A340–500 and –600 series airplanes. That NPRM proposed to supersede an existing AD. That NPRM proposed inspecting to determine the part number of the pressure relief valves on the affected Goodrich evacuation systems, replacing certain pressure relief valves, and adding airplanes to the applicability. That NPRM was prompted by reports that during workshop testing, certain pressure relief valves, which were required by the existing AD, did not seal

and allowed the pressure in certain slides/rafts to fall below the minimum raft mode pressure for the unit. This action revises that NPRM by adding certain airplanes to the applicability. We are proposing this supplemental NPRM to correct the unsafe condition on these products. Since these actions impose an additional burden over that proposed in the NPRM, we are reopening the comment period to allow the public the chance to comment on these proposed changes.

DATES: We must receive comments on this supplemental NPRM by February 13, 2012.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Goodrich Corporation, Aircraft Interior Products, ATTN: Technical Publications, 3414 South Fifth Street, Phoenix, Arizona 85040; phone: (602) 243–2270; email: *george.yribarren@goodrich.com;* Internet: *http://www.goodrich.com/TechPubs.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call (425) 227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Tracy Ton, Aerospace Engineer, Cabin Safety/Mechanical and Environmental Systems Branch, ANM–150L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; phone: (562) 627–5352; fax: (562) 627–5210; email: *Tracy.Ton@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2011–0223; Directorate Identifier 2010–NM–161–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We issued an NPRM to amend 14 CFR part 39 to include an AD that would apply to Goodrich evacuation systems approved under TSO–C69b and installed on certain Model A330–200 and –300 series airplanes, Model A340–200 and –300 series airplanes, and Model A340–541 and –642 airplanes. That NPRM was published in the **Federal Register** on March 21, 2011 (76 FR 15229). That NPRM proposed to supersede AD 2007–23–01, Amendment 39–15247 (72 FR 62568, November 6, 2007). That NPRM proposed to require inspecting to determine the part number of the pressure relief valves on the affected Goodrich evacuation systems, replacing certain pressure relief valves with new improved valves, and marking the system identification placard on the girt of the replaced part. That NPRM also proposed to add Model A330–223F and –243F airplanes to the applicability.

Actions Since AD 2007–23–01, Amendment 39–15247 (72 FR 62568, November 6, 2007) Was Issued

Since we issued AD 2007–23–01, Amendment 39–15247 (72 FR 62568, November 6, 2007, Model A330–302 and –303 have been added to the United States Type Certificate Data Sheet A46NM and we have determined they are affected by the identified unsafe condition.

Comments

We gave the public the opportunity to comment on the previous NPRM (76 FR 15229, March 21, 2011). The following presents the comments received on the NPRM and the FAA's response to each comment.

Support for NPRM (76 FR 15229, March 21, 2011)

Hawaiian Airlines concurred with the NPRM (76 FR 15229, March 21, 2011).

Request To Use Later Revisions of Goodrich Service Information

Airbus stated that there are later revisions of the service information that should be referenced in the NPRM (76 FR 15229, March 21, 2011). Airbus stated that these revisions are Goodrich Service Bulletin 7A1508/09/10/39–25–373, Revision 3, dated March 30, 2011; and Goodrich Service Bulletin 4A3928/4A3934–25–374, Revision 2, dated March 30, 2011. Airbus did not provided justification for the request.

We agree, because Goodrich Service Bulletin 7A1508/09/10/39–25–373, Revision 3, dated March 30, 2011; and Goodrich Service Bulletin 4A3928/4A3934–25–374, Revision 2, dated March 30, 2011; are the latest revisions and do not change the actions proposed in this supplemental NPRM. We have revised the supplemental NPRM to refer to these revisions. We have also revised paragraph (j) of the supplemental NPRM to give credit for doing the applicable actions specified in this supplemental NPRM before the effective date of the AD in accordance with Goodrich Service Bulletin 7A1508/09/10/39–25–373, Revision 2, dated May 8, 2009; and Goodrich Service Bulletin 4A3928/4A3934–25–374, Revision 1, dated May 8, 2009.

Request To Include Changing the Firing Pin Cable of Right Hand Configurations in This NPRM (76 FR 15229, March 21, 2011)

Airbus and the European Aviation Safety Agency (EASA) requested that the NPRM (76 FR 15229, March 21, 2011) be revised to include replacing certain firing pin cables. Airbus stated that they want the NPRM to include changing of the firing pin cable of right hand configurations of part number (P/N) 4A3928 series escape slides. Airbus stated that the NPRM preamble section ''Differences Between the Proposed AD and the Service Information'' makes a statement that changes to certain firing pin cables are not included in the AD. Airbus stated that the change to the firing pin cables improves the reliability of the automatic inflation as required by part 25 of the

Federal Aviation Regulations (25.810(a)(1)(i)). EASA stated that marking the modified slide unit without accomplishing this action would be impossible.

We do not agree. This supplemental NPRM proposes to supersede AD 2007–23–01, Amendment 39–15247, (72 FR 62568, November 6, 2007), to correct certain pressure relief valves that did not seal and allowed the pressure in slides/rafts to fall below the minimum raft mode pressure for the unit and add airplanes to the applicability. This supplemental NPRM is necessary to prevent loss of pressure in the escape slides/rafts after an emergency evacuation, which could result in inadequate buoyancy to support the raft's passenger capacity during ditching and increase the chance for injury to raft passengers. The purpose of an AD is to correct an identified unsafe condition in airplanes. We consider the firing pin cable replacement a design improvement and not an action that addresses the identified unsafe condition. Additionally, Goodrich Service Bulletin 4A3928/4A3934–25–374, Revision 1, dated May 8, 2009, included the replacement of firing pin cable P/N 4A3622–3 for only Model A340–500 Door 3 right hand slides (P/N 4A3928–4 and –6) as an improvement of the automatic inflation reliability. Goodrich Service Bulletin 4A3928/4A3934–25–374, Revision 1, dated May 8, 2009, did not specify replacement of firing pin cable for other airplanes in the applicability of this supplemental NPRM. We have not changed the supplemental NPRM in this regard.

Request To Use Generic Term Model A330–200 and –300, and Model A340–200 and –300 Airplanes

Airbus requested that the generic term Model A330–200 and –300 airplanes be used in lieu of Model A330–201, –202, –203, –223, –223F, –243, –243F, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes; and Model A340–200 and –300 airplanes be used in lieu of Model A340–211, –212, –213, –311, –312, and –313 airplanes; in paragraph (c) of the NPRM (76 FR 15229, March 21, 2011).

We agree. We have revised paragraph (c) of this AD accordingly.

Request To Use Generic Term Model A340–500 and –600 Airplanes

Airbus requested that generic term Model A340–500 and –600 airplanes be used in lieu of Model A340–541 and –642 in applicability paragraph (c) of the NPRM (76 FR 15229, March 21, 2011). As justification for its request, Airbus stated that evacuation slides and included equipment (pressure reducing valve) may be removed from Model A340–542 airplanes and be installed on Model A340–541 and –642 airplanes.

We agree. We have revised paragraph (c) of this AD accordingly.

Request To Include Model A340–542 and A340–643 Airplanes

EASA requested that Model A340–542 and A340–643 airplanes be included in the AD applicability. EASA requested the change to allow it to adopt future FAA ADs without changes.

We agree to revise the applicability of the AD. As stated previously, we have revised paragraph (c) of this AD to include the generic term Model A340–500 and –600 series airplanes.

FAA's Determination

We are proposing this supplemental NPRM because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design. Certain changes described above expand the scope of the NPRM (76 FR 15229, March 21, 2011). As a result, we have determined that it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this supplemental NPRM.

Proposed Requirements of the Supplemental NPRM

This supplemental NPRM would require accomplishing the actions specified in the service information described previously. The supplemental NPRM also adds Model A330–302 and –303 airplanes to the applicability.

Costs of Compliance

We estimate that this proposed AD affects 41 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection to determine part numbers	1 work-hour × $85 per hour = $85	$0	$85	Up to $3,485.

We estimate the following costs to do any necessary replacements that would be required based on the results of the proposed inspection. We have no way of determining the number of aircraft that might need these replacements.

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Valve replacement	1 work-hour × $85 per hour = $85	$775	$860 per slide.

According to the manufacturer, some of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation

is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing airworthiness directive

(AD) 2007–23–01, Amendment 39–15247 (72 FR 62568, November 6, 2007), and adding the following new AD:

Goodrich (Formerly BF Goodrich): Docket No. FAA–2011–0223; Directorate Identifier 2010–NM–161–AD.

(a) Comments Due Date

We must receive comments by February 13, 2012.

(b) Affected ADs

This AD supersedes AD 2007–23–01, Amendment 39–15247 (72 FR 62568, November 6, 2007).

(c) Applicability

This AD applies to Goodrich evacuation systems approved under Technical Standard Order (TSO) TSO–C69b, as installed on the Airbus airplanes, certificated in any category, identified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD.

(1) Model A330–200 and –300 series airplanes, and Model A330–200 freighter series airplanes, as identified in Goodrich Service Bulletin 7A1508/09/10/39–25–373, Revision 3, dated March 30, 2011.

(2) Model A340–200 and –300 series airplanes, as identified in Goodrich Service Bulletin 7A1508/09/10/39–25–373, Revision 3, dated March 30, 2011.

(3) Model A340–500 and –600 series airplanes, as identified in Goodrich Service Bulletins 7A1508/09/10/39–25–373, Revision 3, dated March 30, 2011; and 4A3928/4A3934–25–374, Revision 2, dated March 30, 2011.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 2560, Emergency Equipment.

(e) Unsafe Condition

This AD was prompted by reports that during workshop testing, certain pressure relief valves did not seal and allowed the pressure in certain slides/rafts to fall below the minimum raft mode pressure for the unit. We are issuing this AD to prevent loss of pressure in the escape slides/rafts after an emergency evacuation, which could result in inadequate buoyancy to support the raft's passenger capacity during ditching and increase the chance for injury to raft passengers.

(f) Compliance

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

(g) Inspection

Within 36 months after the effective date of this AD, inspect the evacuation systems to determine whether any pressure relief valve having part number (P/N) 4A3641–1, 4A3791–3, 4A3641–26, or 4A3791–6 is installed. A review of airplane maintenance records or the system identification placard on the girt is acceptable in lieu of this inspection if the part number of the pressure relief valve can be conclusively determined from that review.

(h) Part Replacement

If any valve having P/N 4A3641–1, 4A3791–3, 4A3641–26, or 4A3791–6 is identified during the inspection or review specified in paragraph (g) of this AD: Before further flight, do the applicable actions required by paragraphs (h)(1) and (h)(2) of this AD:

(1) Replace all pressure relief valves having P/Ns 4A3641–1 and 4A3791–3 with pressure relief valves having P/N 115815–1, and mark the system identification placard on the girt, in accordance with the Accomplishment Instructions of Goodrich Service Bulletin 7A1508/09/10/39–25–373, Revision 3, dated March 30, 2011.

(2) Replace all pressure relief valves having P/Ns 4A3641–26 and 4A3791–6 with pressure relief valves having P/N 115815–1 (for evacuation systems having P/N 4A3934 series units) or 115815–2 (for evacuation systems P/N 4A3928 series units); and mark the system identification placard on the girt; in accordance with the Accomplishment Instructions of Goodrich Service Bulletin 4A3928/4A3934–25–374, Revision 2, dated March 30, 2011.

(i) Parts Installation

As of the effective date of this AD, no person may install a pressure relief valve having P/N 4A3641–1, 4A3791–3, 4A3791–6, or 4A3641–26 in the evacuation system on any airplane.

(j) Credit for Actions Accomplished in Accordance With Previous Service Information

Actions accomplished before the effective date of this AD in accordance with Goodrich Service Bulletin 7A1508/09/10/39–25–373, dated March 31, 2008, Goodrich Service Bulletin 7A1508/09/10/39–25–373, Revision 1, dated August 1, 2008, or Goodrich Service Bulletin 7A1508/09/10/39–25–373, Revision 2, dated May 8, 2009; or Goodrich Service Bulletin 4A3928/4A3934–25–374, dated July 18, 2008, or Goodrich Service Bulletin 4A3928/4A3934–25–374, Revision 1, dated May 8, 2009; as applicable; are acceptable for compliance with the corresponding requirements of this AD.

(k) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Los Angeles Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD.

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

(l) Related Information

(1) For more information about this AD, contact Tracy Ton, Aerospace Engineer, Cabin Safety/Mechanical and Environmental Systems Branch, ANM–150L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; phone: (562) 627–5352; fax: (562) 627–5210; email:

(2) For service information identified in this AD, contact Goodrich Corporation, Aircraft Interior Products, ATTN: Technical Publications, 3414 South Fifth Street Phoenix, Arizona 85040; phone: (602) 243–2270; email: *http://www.george.yribarren@goodrich.com;* Internet: *http://www.goodrich.com/TechPubs.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For

information on the availability of this material at the FAA, call (425) 227–1221.

Issued in Renton, Washington, on December 16, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–33359 Filed 12–28–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–1410; Directorate Identifier 2011–NM–033–AD]

RIN 2120–AA64

Airworthiness Directives; Saab AB, Saab Aerosystems Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all Saab AB, Saab Aerosystems Model SAAB 2000 airplanes. This proposed AD was prompted by reports of hydraulic accumulator failure. This proposed AD would require replacing certain hydraulic accumulators with stainless steel hydraulic accumulators, and structural modifications in the nose landing gear bay. We are proposing this AD to prevent failure of hydraulic accumulators, which may result in damage to the airplane and injury to occupants.

DATES: We must receive comments on this proposed AD by February 13, 2012.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Saab AB, Saab Aerosystems, SE–581 88, Linköping, Sweden; telephone +46 13 18 5591; fax +46 13 18 4874; email *saab2000.techsupport@saabgroup.com;* Internet *http://www.saabgroup.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call (425) 227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Shahram Daneshmandi, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1112; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2011–1410; Directorate Identifier 2011–NM–033–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2011–0004, dated January 17, 2011 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Three cases of failure have been reported, affecting the same type of hydraulic accumulator as installed on SAAB 2000 aeroplanes, although all occurred on other aeroplane types. The reported cause of these failures has been traced to corrosion. Any of the end parts on the accumulator may depart from the pressure vessel if they are affected by corrosion.
>
> This condition, if not detected and corrected, may lead to fatigue failure of a hydraulic accumulator, possibly resulting in damage to the aeroplane and injury to occupants. In addition, a quality issue during the replacement of the base material in the end parts of the accumulator may have affected the service life of the accumulator.
>
> To address this unsafe condition, SAAB has introduced a new type of hydraulic accumulator, which is made of stainless steel.
>
> For the reasons described above, this [EASA] AD requires the replacement of all Part Number (P/N) 08 8423 030 1 hydraulic accumulators with stainless steel P/N 40800–2050 hydraulic accumulators and associated structural modifications in the nose landing gear bay.

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Saab has issued Service Bulletin 2000–29–024, Revision 01, dated November 5, 2010. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 8 products of U.S. registry. We also estimate that it would take about 12 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $9,995 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher

than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $88,120, or $11,015 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Saab AB, Saab Aerosystems: Docket No. FAA–2011–1410; Directorate Identifier 2011–NM–033–AD.

Comments Due Date

(a) We must receive comments by February 13, 2012.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Saab AB, Saab Aerosystems Model SAAB 2000 airplanes, all serial numbers; certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 29: Hydraulic Power.

Reason

(e) This AD was prompted by reports of hydraulic accumulator failure. We are issuing this AD to prevent failure of hydraulic accumulators, which may result in damage to the airplane and injury to occupants.

Compliance

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

Actions

(g) Within 12 months after the effective date of this AD, replace all hydraulic accumulators having part number (P/N) 08 8423 030 1, with stainless steel hydraulic accumulators having P/N 40800–2050, and do the structural modifications in the nose landing gear bay, in accordance with the Accomplishment Instructions of Saab Service Bulletin 2000–29–024, Revision 01, dated November 5, 2010.

Parts Installation

(h) After replacement of hydraulic accumulators having P/N 08 8423 030 1 with hydraulic accumulators having P/N 40800–2050, and doing the structural modifications in the nose landing gear bay, as required by paragraph (g) of this AD, no person may install any hydraulic accumulator having P/N 08 8423 030 1 on any airplane.

Credit for Actions Accomplished in Accordance With Previous Service Information

(i) Replacing the hydraulic accumulators and doing the structural modifications in the nose landing gear bay, in accordance with the Accomplishment Instructions of Saab Service Bulletin 2000–29–024, dated November 18, 2009, before the effective date of this AD, is acceptable for compliance with the corresponding replacement and structural modifications required by paragraph (g) of this AD.

Other FAA AD Provisions

(j) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, ANM–116, International Branch, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Shahram Daneshmandi, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1112; fax (425) 227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

Related Information

(k) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2011–0004, dated January 17, 2011; and Saab Service Bulletin 2000–29–024, Revision 01, dated November 5, 2010; for related information.

Issued in Renton, Washington, on December 19, 2011.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–33275 Filed 12–28–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–1326; Directorate Identifier 2010–NM–177–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede an existing airworthiness directive (AD) that applies to The Boeing Company Model 757–200, –200CB, and –300 series airplanes. The existing AD currently requires initial and repetitive inspections of the fuselage skin and bear strap at the forward, upper corner of the L1 entry door cutout for cracking, and repair if necessary. That action also provides an optional terminating action for the repetitive inspections. Since we issued that AD, we have received reports of additional cracking in the fuselage skin. This proposed AD would add inspections for airplanes having repairs or preventative modifications installed and supplemental inspections for certain airplanes. This proposed AD also would add airplanes to the applicability. We are proposing this AD to detect and correct cracking of the fuselage skin and bear strap at the forward, upper corner of the L1 entry door cutout, which could result in reduced structural integrity of the L1 entry door and consequent rapid decompression of the airplane.

DATES: We must receive comments on this proposed AD by February 13, 2012.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone (206) 544–5000, extension 1; fax (206) 766–5680; email *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call (425) 227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Nancy Marsh, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: (425) 917–6440; fax: (425) 917–6590; email: *nancy.marsh@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2011–1326; Directorate Identifier 2010–NM–177–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

On April 28, 2004, we issued AD 2004–09–32, Amendment 39–13622 (69 FR 25481, May 7, 2004), for certain Model 757–200 series airplanes. That AD requires initial and repetitive inspections of the fuselage skin and bear strap at the forward, upper corner of the L1 entry door cutout for cracking, and repair if necessary. That AD also provides an optional terminating action for the repetitive inspections. That AD resulted from reports of cracking in the fuselage skin and bear strap at the forward, upper corner of the L1 entry door cutout. We issued that AD to detect and correct cracking of the fuselage skin and bear strap at the forward, upper corner of the L1 entry door cutout, which could result in reduced structural integrity of the L1 entry door and consequent rapid decompression of the airplane.

Actions Since Existing AD Was Issued

Since we issued AD 2004–09–32, Amendment 39–13622 (69 FR 25481, May 7, 2004), we have received reports of additional cracking in the fuselage skin. We also have determined that all Model 757–200, –200CB, and –300 series airplanes may be subject to the unsafe condition, and that the existing actions may not adequately address the unsafe condition.

Relevant Service Information

We reviewed Boeing Special Attention Service Bulletin 757–53–0094, Revision 1, dated August 12, 2009. The service information describes procedures for the following repetitive inspections, depending on configuration:

- High frequency eddy current (HFEC) and low frequency eddy current (LFEC) inspections for cracking of the skin and bear strap at the forward upper corner of the L1 entry door cutout.
- Supplemental HFEC and LFEC inspections for cracking of the bear strap and inner chord strap on airplanes having a repair doubler, tripler, and quadrupler installed.
- Supplemental HFEC, LFEC, and detailed inspections for cracking of the skin, bear strap, doubler, tripler, and quadrupler on airplanes having a repair doubler, tripler, and quadrupler installed.
- Supplemental HFEC, LFEC, and detailed inspections for cracking of the skin, bear strap, inner chord strap, doubler, and tripler on airplanes having a repair doubler and tripler installed.
- Supplemental HFEC, LFEC, and detailed inspections for cracking of the skin, bear strap, and doubler on airplanes having a preventive modification doubler installed.
- Supplemental HFEC and LFEC inspections for cracking of the bear strap and inner chord strap on airplanes having a doubler installed.

That service bulletin also provides procedures for corrective actions, which include repairing certain cracks, and contacting Boeing for certain other repair instructions.

The compliance times for the initial inspections are either before 22,000 total flight cycles or within 500 flight cycles after the issue date on Boeing Special Attention Service Bulletin 757–53–0094, dated January 16, 2008, whichever occurs later; or within 12,000 flight cycles after the modification, or within 500 flight cycles after the issue date on Boeing Special Attention Service Bulletin 757–53–0094, Revision 1, dated August 12, 2009, whichever occurs later; depending on configuration. The

repetitive inspection interval for these inspections is 1,400 flight cycles.

The compliance times for the initial supplemental inspections are 37,500 total flight cycles (for inspection of the skin, bear strap, doubler, and tripler), or 50,000 total flight cycles (for inspection of the bear strap and inner chord strap). The repetitive inspection interval for these inspections is either 4,000 flight cycles or 12,000 flight cycles, depending on configuration.

FAA's Determination

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

Proposed AD Requirements

This proposed AD would retain all requirements of AD 2004–09–32, Amendment 39–13622 (69 FR 25481, May 7, 2004). This proposed AD would add inspections for airplanes having repairs or preventative modifications installed, and supplemental inspections for certain airplanes; and repair, if necessary. This proposed AD also would add airplanes to the applicability of the existing AD.

Exceptions to Certain Compliance Times

The service bulletin specifies to do certain HFEC, LFEC, and detailed inspections before the accumulation of 37,500 total flight cycles. However, in order to address airplanes that might have already exceeded that threshold, this proposed AD would require the inspections to be accomplished at the latest of the times below:

- Before the accumulation of 37,500 total flight cycles.
- Within 4,000 flight cycles since installation of the modification.
- Within 24 months after the effective date of this AD.

Changes to Existing AD

This proposed AD would retain all requirements of AD 2004–09–32, Amendment 39–13622 (69 FR 25481, May 7, 2004). Since AD 2004–09–32 was issued, the AD format has been revised, and certain paragraphs have been rearranged. As a result, the corresponding paragraph identifiers have changed in this proposed AD, as listed in the following table:

REVISED PARAGRAPH IDENTIFIERS

Requirement in AD 2004–09–32	Corresponding requirement in this proposed AD
paragraph (a)	paragraph (g)
paragraph (b)	paragraph (h)
paragraph (c)	paragraph (i)
paragraph (d)	paragraph (j)

Boeing Commercial Airplanes has received an Organization Designation Authorization (ODA). We have revised paragraph (i) of this proposed AD to delegate the authority to approve an alternative method of compliance for any repair required by this proposed AD to the Boeing Commercial Airplanes ODA rather than a Designated Engineering Representative (DER).

Costs of Compliance

We estimate that this proposed AD affects 591 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Work-hours	Average labor rate per hour	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspections (retained actions from existing AD).	2	$85	$170 per inspection cycle	57	$9,690 per inspection cycle.
Inspection (new proposed action).	3	85	$255 per inspection cycle	591	$150,705 per inspection cycle.
Supplemental inspection	15	85	$1,275 per inspection cycle ..	591	$753,525 per inspection cycle.

We estimate the following costs to do any necessary repairs that would be required based on the results of the proposed inspections. We have no way of determining the number of aircraft that might need these repairs:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Repair	Up to 26 work-hours × $85 = Up to $2,210	Up to $2,661	Up to $4,871 depending on configuration.
Preventive modification	18 work-hours × $85 = $1,530	$1,338	$2,868.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2004–09–32, Amendment 39–13622 (69 FR 25481, May 7, 2004), and adding the following new AD:

The Boeing Company: Docket No. FAA–2011–1326; Directorate Identifier 2010–NM–177–AD.

(a) Comments Due Date

The FAA must receive comments on this AD action by February 13, 2012.

(b) Affected ADs

This AD supersedes AD 2004–09–32, Amendment 39–13622 (69 FR 25481, May 7, 2004).

(c) Applicability

This AD applies to all The Boeing Company Model 757–200, –200CB, and –300 series airplanes; certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 53: Fuselage.

(e) Unsafe Condition

This AD was prompted by reports of cracks in the fuselage skin and bear strap at the forward upper corner of the L1 entry door cutout. We are issuing this AD to detect and correct cracking of the fuselage skin and bear strap at the forward, upper corner of the L1 entry door cutout, which could result in reduced structural integrity of the L1 entry door and consequent rapid decompression of the airplane.

(f) Compliance

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

RESTATEMENT OF REQUIREMENTS OF AD 2004–09–32, AMENDMENT 39–13622 (69 FR 25481, MAY 7, 2004), WITH NEW TERMINATING ACTION

(g) Initial Inspections

For airplanes having line numbers 1 through 90 inclusive: Within 500 flight cycles after May 24, 2004 (the effective date of AD 2004–09–32 Amendment 39–13622 (69 FR 25481, May 7, 2004)), or within 90 days after May 24, 2004, whichever occurs later, do the inspections of the forward, upper corner of the L1 entry door cutout specified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD, per Part 1 of the Work Instructions of Boeing Special Attention Service Bulletin 757–53–0089, dated March 18, 2004, until the initial inspection required by paragraph (k) of this AD has been done. Doing the repair specified in paragraph (i) or (l) of this AD, or doing the preventive modification specified in paragraph (j) of this AD, terminates the inspection required by this paragraph.

(1) Do a high frequency eddy current (HFEC) inspection for cracking of the fuselage skin around the adjacent fasteners.

(2) Do an HFEC inspection for cracking along the edge of the skin and bear strap.

(3) Do a low frequency eddy current (LFEC) inspection of the bear strap.

(h) No Crack Detected: Repetitive Inspections and New Terminating Modification

If no crack is detected during any inspection required by paragraph (g) of this AD: Repeat the inspections required by paragraph (g) of this AD at intervals not to exceed 1,400 flight cycles, until the requirements of paragraph (k) are done. Doing the repair specified in paragraph (l) of this AD, or doing the preventive modification specified in paragraph (j) of this AD, as applicable, terminates the repetitive inspections required by this paragraph.

(i) Any Crack Detected: Repair, With New Repair Option

If any crack is detected during any inspection required by paragraph (g) or (h) of this AD, and Boeing Special Attention Service Bulletin 757–53–0089, dated March 18, 2004, specifies to contact Boeing for appropriate action: Before further flight, repair, in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Organization Designation Authorization who has been authorized by the Manager, Seattle ACO, to make such findings, or using a method approved in accordance with the procedures specified in paragraph (q) of this AD. For a repair method to be approved, the approval must specifically reference this AD. Doing the repair terminates the inspections required by paragraphs (g) and (h) of this AD.

(j) Optional Preventive Modification

As an alternative to accomplishing the inspections required by paragraphs (g) and (h) of this AD, do the optional preventative modification of the forward, upper corner of the L1 entry door cutout, and do all applicable related investigative/corrective actions, by accomplishing all the actions specified in Part 2 of the Work Instructions of Boeing Special Attention Service Bulletin 757–53–0089, dated March 18, 2004. Accomplishment of the modification constitutes terminating action for the inspections required by paragraphs (g) and (h) of this AD.

New Requirements of This AD

(k) Inspections

For airplanes in Group 1, Configurations 1–2, and Group 2, Configuration 1, as identified in Boeing Special Attention Service Bulletin 757–53–0094, Revision 1, dated August 12, 2009: At the applicable times specified in paragraph 1.E, ''Compliance,'' of Boeing Special Attention Service Bulletin 757–53–0094, Revision 1, dated August 12, 2009, do HFEC and LFEC inspections for cracking of the skin and bear strap at the forward upper corner of the L1 entry door cutout, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–53–0094, Revision 1, dated August 12, 2009. Repeat the inspections thereafter at intervals not to exceed 1,400 flight cycles. Doing the initial inspection required by this paragraph terminates the inspections required by paragraphs (g) and (h) of this AD. Doing the repair specified in paragraph (l) of this AD, or doing the optional preventive modification specified in paragraph (m) of this AD, terminates the inspections required by this paragraph.

(l) Repair

If any cracking is found during any inspection required by paragraph (k) of this AD, before further flight, repair, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–53–0094, Revision 1, dated August 12, 2009; except as required by paragraph (p)(3) of this AD. Doing the repair terminates the repetitive inspections required by paragraph (k) of this AD.

(m) Optional Preventive Modification

Accomplishment of the optional preventive modification, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–53–0094, Revision 1, dated August 12, 2009, terminates the repetitive inspections required by paragraph (k) of this AD.

(n) Supplemental Inspections and Repair

For airplanes in Group 1, Configurations 3–5, and Group 2, Configurations 2–4 as identified in Boeing Special Attention Service Bulletin 757–53–0094, Revision 1, dated August 12, 2009; on which a repair doubler, tripler, or quadrupler is installed, or on which a preventive modification doubler

is installed: At the applicable times in paragraph 1.E, ''Compliance,'' of Boeing Special Attention Service Bulletin 757–53–0094, Revision 1, dated August 12, 2009, except as required by paragraph (p)(2) of this AD, do LFEC, HFEC, and detailed inspections, as applicable, for cracking of the doubler, tripler, quadrupler, skin, bear strap, and inner chord strap, as applicable, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–53–0094, Revision 1, dated August 12, 2009. Repeat the inspections thereafter at the applicable times specified in paragraph 1.E., ''Compliance,'' of Boeing Special Attention Service Bulletin 757–53–0094, Revision 1, dated August 12, 2009.

(o) Supplemental Repair

If any cracking is found during any inspection required by paragraph (n) of this AD, before further flight, repair the crack in accordance with the procedures specified in paragraph (q) of this AD.

(p) Exceptions to Service Bulletin Specifications

The following exceptions apply to this AD.

(1) Where Boeing Special Attention Service Bulletin 757–53–0094, Revision 1, dated August 12, 2009, specifies a compliance time after the ''original issue date'' or ''Revision 1 date of the service bulletin,'' this AD requires compliance after the effective date of this AD.

(2) Where Boeing Special Attention Service Bulletin 757–53–0094, Revision 1, dated August 12, 2009, specifies doing the HFEC, LFEC, and detailed inspections required by paragraph (n) of this AD before the accumulation of 37,500 total flight cycles, this AD requires the inspections to be accomplished at the latest of the times specified in paragraphs (p)(2)(i) and (p)(2)(ii) of this AD.

(i) Before the accumulation of 37,500 total flight cycles.

(ii) Within 24 months after the effective date of this AD.

(3) Where Boeing Special Attention Service Bulletin 757–53–0094, Revision 1, dated August 12, 2009, specifies contacting Boeing for repair instructions, this AD requires repairing in accordance with the procedures specified in paragraph (q) of this AD.

(q) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle ACO, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the ACO, send it to ATTN: Nancy Marsh, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: (425) 917–6440; fax: (425) 917–6432; email: *nancy.marsh@faa.gov.*

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) AMOCs approved for AD 2004–09–32, Amendment 39–13622 (69 FR 25481, May 7, 2004), are approved as AMOCs for the corresponding actions in paragraphs (g), (h), and (i) of this AD.

(r) Related Information

(1) For more information about this AD, contact Nancy Marsh, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: (425) 917–6440; fax: (425) 917–6432; email: *nancy.marsh@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone (206) 544–5000, extension 1; fax (206) 766–5680; email *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call (425) 227–1221.

Issued in Renton, Washington, on December 16, 2011.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–33355 Filed 12–28–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–1325; Directorate Identifier 2010–NM–250–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede an existing airworthiness directive (AD) that applies to all EMBRAER Model ERJ 170 airplanes. The existing AD currently requires revising the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness (ICA) to incorporate new structural inspection requirements. Since we issued that AD, during full scale fatigue testing, cracks were found in certain structural components of the airplane. Analysis of these cracks resulted in manufacturer modifications of the ALS of Embraer ERJ 170 Maintenance Review Board Report (MRBR), which include new inspections tasks, or modification of the current tasks and their respective thresholds and intervals. This proposed AD would revise the maintenance program to incorporate new or revised structural inspection requirements. We are proposing this AD to detect and correct fatigue cracking which could result in the loss of structural integrity of the airplane.

DATES: We must receive comments on this proposed AD by February 13, 2012.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), Technical Publications Section (PC 060), Av. Brigadeiro Faria Lima, 2170–Putim–12227–901 São Jose dos Campos–SP–BRASIL; telephone +55 12 3927–5852 or +55 12 3309–0732; fax +55 12 3927–7546; email: *distrib@embraer.com.br;* Internet: *http://www.flyembraer.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call (425) 227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The

street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Cindy Ashforth, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–2768; fax (425) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2011–1325; Directorate Identifier 2010–NM–250–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

On May 14, 2010, we issued AD 2010–11–13, Amendment 39–16318 (75 FR 30284, June 1, 2010). That AD required actions intended to address an unsafe condition on the products listed above.

Since we issued AD 2010–11–13, Amendment 39–16318 (75 FR 30284, June 1, 2010): The Agência Nacional de Aviação Civil (ANAC), which is the aviation authority for Brazil, has issued Brazilian Airworthiness Directive 2011–04–01, dated May 5, 2011 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> During the airplane full scale fatigue test, cracks were found in some structural components of the airplane. Analysis of these cracks resulted in modifications on the Airworthiness Limitation Section (ALS) of Embraer ERJ 170 Maintenance Review Board Report (MRBR), to include new inspections tasks or modification of existing ones and its respective thresholds and intervals.
>
> Failure to inspect these structural components, according to the new/revised tasks, thresholds and intervals, could prevent a timely detection of fatigue cracking. These cracks, if not properly addressed, could adversely affect the structural integrity of the airplane.
>
> * * * * *

The required action is revising the maintenance program to incorporate new structural inspection requirements. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

EMBRAER has issued Part 2—Airworthiness Limitation Inspection (ALI)—Structures, of Appendix A, Airworthiness Limitations of the EMBRAER 170 Maintenance Review Board Report (MRBR) MRB–1621, Appendix A, Part 2, Airworthiness Limitations, Revision 7, dated November 11, 2010; and Temporary Revision (TR) 7–1, dated February 11, 2011, to Part 2—Airworthiness Limitation Inspection (ALI)—Structures, of Appendix A, Airworthiness Limitations of the EMBRAER 170 MRBR MRB–1621, Revision 7, dated November 11, 2010. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 166 products of U.S. registry.

The actions that are required by AD 2010–11–13, Amendment 39–16318 (75 FR 30284, June 1, 2010) and retained in this proposed AD take about 1 work-hour per product, at an average labor rate of $85 per work hour. Based on these figures, the estimated cost of the currently required actions is $85 per product.

We estimate that it would take about 1 work-hour per product to comply with the new basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $14,110, or $85 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39–16318 (75 FR 30284, June 1, 2010) and adding the following new AD:

Empresa Brasileira de Aeronautica S.A. (EMBRAER): Docket No. FAA–2011–1325; Directorate Identifier 2010–NM–250–AD.

(a) Comments Due Date

We must receive comments by February 13, 2012.

(b) Affected ADs

This AD supersedes AD 2010–11–13, Amendment 39–16318 (75 FR 30284, June 1, 2010)

(c) Applicability

This AD applies to all Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model ERJ 170–100 LR, –100 STD, –100 SE, and –100 SU airplanes; and Model ERJ 170–200 LR, –200 SU, and –200 STD airplanes; certificated in any category.

Note 1: This AD requires revisions to certain operator maintenance documents to include new actions (*e.g.,* inspections). Compliance with these actions is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (k) of this AD. The request should include a description of changes to the required inspections that will ensure the continued damage tolerance of the affected structure. The FAA has provided guidance for this determination in Advisory Circular (AC) 25.1529–1A.

(d) Subject

Air Transport Association (ATA) of America Code 53: Fuselage; 57: Wings.

(e) Reason

This AD was prompted by cracks found in certain structural components during full scale fatigue testing of the airplane. Analysis of these cracks resulted in manufacturer modifications of the ALS of Embraer ERJ 170 Maintenance Review Board Report (MRBR), which include new inspections tasks, or modification of the current tasks and their respective thresholds and intervals. We are issuing this AD to detect and correct fatigue cracking which could result in the loss of structural integrity of the airplane.

(f) Compliance

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

Restatement of Requirements of AD 2010–11–13, Amendment 39–16318 (75 FR 30284, June 1, 2010):

(g) Actions

Within 90 days after July 6, 2010 (the effective date of AD 2010–11–13, Amendment 39–16318 (75 FR 30284, June 1, 2010)), revise the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness (ICA) to incorporate the inspection tasks identified in the EMBRAER temporary revisions (TRs) to Appendix A—Part 2 of the EMBRAER 170 Maintenance Review Board Report (MRBR) MRB–1621 listed in table 1 of this AD. The initial compliance times for the tasks start from the applicable threshold times specified in the TRs for the corresponding tasks of the maintenance review board report or within 500 flight cycles after July 6, 2010, whichever occurs later. For certain tasks, the compliance times depend on the pre-modification and post-modification status of the actions specified in the associated service bulletin, as specified in the ''Applicability'' column of the applicable TRs identified in table 1 of this AD. The threshold values stated in the TRs referenced in table 1 of this AD are total flight cycles on the airplane since the date of issuance of the original Brazilian airworthiness certificate or the date of issuance of the original Brazilian export certificate of airworthiness.

TABLE 1—INSPECTION TASKS

TR	Date	Subject	Task No.
TR 4–1	October 15, 2007	Ram air turbine compartment, support structure and cut-out structure-internal.	53–10–012–0002 53–10–012–0003
		Nose landing gear wheel well metallic structure	53–10–021–0005 53–10–021–0006
TR 4–3	December 6, 2007	Wing stub spar 3 side fitting—internal	57–01–012–001
		Wing upper skin panels—external	57–10–010–0002
		Fixed trailing edge lower skin panel—external	57–50–002–0002
		Fixed trailing edge rib 4A—external	57–50–005–0003
		Fixed trailing edge rib 6—internal	57–50–005–0004
TR 4–4	January 18, 2008	Wing stub main box lower—internal	57–01–002–003

(h) No Alternative Inspections for Paragraph (g) of This AD

Except as required by paragraph (i) of this AD, after accomplishing the actions specified in paragraph (g) of this AD, no alternative inspections or inspection intervals may be used unless the inspection or inspection interval is approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, or the Agência Nacional de Aviação Civil (ANAC) (or its delegated agent); or unless the inspection or interval is approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (k)(1) of this AD.

New Requirements of This AD

(i) Revision of the Maintenance Program

Within 60 days after the effective date of this AD: Revise the maintenance program to incorporate the new or revised tasks specified in Part 2—Airworthiness Limitation Inspection (ALI)—Structures, of Appendix A, Airworthiness Limitations of the EMBRAER 170 MRBR MRB–1621, Appendix A, Part 2, Airworthiness Limitations, Revision 7, dated November 11, 2010; and Temporary Revision (TR) 7–1, dated February 11, 2011, to Part 2—Airworthiness Limitation Inspection (ALI)—Structures, of Appendix A, Airworthiness Limitations of the EMBRAER 170 MRBR MRB–1621, Revision 7, dated November 11, 2010, with the initial compliance times and intervals stated in these documents. The initial compliance times for the tasks start from the date of issuance of the original Brazilian airworthiness certificate or the date of issuance of the original Brazilian export certificate of airworthiness of the applicable airplane at the applicable time specified in the tasks, or within 600 flight cycles after revising the maintenance program, whichever occurs later. For certain tasks, the compliance times depend on the pre-modification and post-modification status of the actions specified in the associated service bulletin, as specified in the ''Applicability'' column of Part 2—Airworthiness Limitation Inspection (ALI)—Structures, of Appendix A, Airworthiness Limitations of the EMBRAER 170 MRBR MRB–1621, Appendix A, Part 2, Airworthiness Limitations, Revision 7, dated November 11, 2010; and Temporary Revision (TR) 7–1, dated February 11, 2011, to Part 2—Airworthiness Limitation Inspection (ALI)—Structures, of Appendix A, Airworthiness Limitations of the EMBRAER 170 MRBR MRB–1621, Revision 7, dated November 11, 2010. For tasks identified in the documents identified in this paragraph, doing the initial task required by this paragraph terminates the requirements of paragraph (g) of this AD for that task.

(j) No Alternative Actions Intervals, and/or Critical Design Configuration Control Limitations (CDCCLs)

After accomplishing the revisions required by paragraph (i) of this AD, no alternative actions (e.g., inspections), intervals, and/or CDCCLs may be used other than those specified in Part 2—Airworthiness Limitation Inspection (ALI)—Structures, of Appendix A, Airworthiness Limitations of the EMBRAER 170 MRBR MRB–1621, Appendix A, Part 2, Airworthiness Limitations, Revision 7, dated November 11, 2010; and Temporary Revision (TR) 7–1, dated February 11, 2011, to Part 2—Airworthiness Limitation Inspection (ALI)—Structures, of Appendix A, Airworthiness Limitations of the EMBRAER 170 MRBR MRB–1621, Revision 7, dated November 11, 2010, unless the actions, intervals, and/or CDCCLs are approved as an AMOC in accordance with the procedures specified in paragraph (k)(1) of this AD.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Cindy Ashforth, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–2768; fax (425) 227–1320. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(l) Related Information

Refer to MCAI Brazilian Airworthiness Directive 2011–04–01, dated May 5, 2011; and Part 2—Airworthiness Limitation Inspection (ALI)—Structures, of Appendix A, Airworthiness Limitations of the EMBRAER 170 MRBR MRB–1621, Appendix A, Part 2, Airworthiness Limitations, Revision 7, dated November 11, 2010; and Temporary Revision (TR) 7–1, dated February 11, 2011, to Part 2—Airworthiness Limitation Inspection (ALI)—Structures, of Appendix A, Airworthiness Limitations of the EMBRAER 170 MRBR MRB–1621, Revision 7, dated November 11, 2010; for related information.

Issued in Renton, Washington, on December 19, 2011.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–33279 Filed 12–28–11; 8:45 a.m.]

BILLING CODE 4910–13–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DOD–2011–HA–0076]

RIN 0720–AB53

TRICARE; Extended Care Health Option

AGENCY: Office of the Secretary, Department of Defense.

ACTION: Proposed rule.

SUMMARY: The Department of Defense (DoD) is publishing this proposed rule to establish TRICARE coverage under the Extended Care Health Option (ECHO) of Applied Behavior Analysis (ABA) for Autism Spectrum Disorders (ASD).

DATES: Written comments received at the address indicated below by February 27, 2012 will be accepted.

ADDRESSES: Comments may be submitted, identified by docket number and/or Regulatory Information Number (RIN) and title by either of the following methods:

- *Federal Rulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, Room 3C843, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or RIN for **Federal Register** document. The General policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Kottyan, TRICARE Management Activity, Medical Benefits and Reimbursement Branch, telephone (303) 676–3520.

SUPPLEMENTARY INFORMATION:

I. Background

In response to Section 717 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (NDAA FY 2007) [Pub. L. 109–364, October 17, 2006], DoD submitted to Congress in July 2007 the ''Department of Defense Report and Plan on Services to Military Dependent Children with Autism.'' The plan included a proposal to use the authority under 10 U.S.C. 1092 to conduct a Demonstration within the ECHO with a view to improving the quality, efficiency, convenience and cost effectiveness of providing services to eligible Active Duty Family Members (ADFM) diagnosed with one of the Autism Spectrum Disorders (ASD). Central to the Demonstration was the authority under 10 U.S.C. 1092 to provide reimbursement for the one-on-one Applied Behavior Analysis (ABA) services rendered by an individual who is not a TRICARE-authorized provider. Such non-certified individual, referred to in the Demonstration as a ''Tutor,'' is referred to in this proposed rule as an ''ABA Tutor.'' This rule requires that ABA Tutors meet the minimum requirements set forth in the current demonstration or, at the discretion of the Director, TRICARE Management Activity (TMA), the DoD may either adopt standards established in the future by a qualified accreditation organization as defined in title 32, Code of Federal Regulations (CFR), 199.2 (32 CFR 199.2) or, after review and analysis of the effectiveness of ABA Tutors with various levels of training, establish additional education, training or certification requirements for ABA Tutors. Although it is common practice to use ABA Tutors to render direct ''hands-on'' contact with those diagnosed with an ASD, currently there is no national certification process or governance body that sets uniform education, experience, oversight and disciplinary standards for Tutors.

The purpose of the Demonstation was to test whether a tiered delivery and reimbursement methodology for ABA services would (1) provide increased access to ABA services, (2) provide ABA services to those most likely to benefit from them, (3) ensure the quality of ABA services by utilizing a professional community of providers including providers certified by the Behavior Analyst Certification Board (BACB), and 4) determine whether requirements are being met for State licensure or certification where such exists.

Following publication of the ''Notice'' in the **Federal Register** on December 4, 2007 (72 FR 68130) the Department of Defense Enhanced Access to Autism Services Demonstration [the ''Demonstration''] was implemented on March 15, 2008 for a two-year period.

To provide the DoD with information necessary to make sound judgments regarding payment for ABA services, it was determined that the Demonstration should be extended to collect sufficient comprehensive data. By ''Notice'' published in the **Federal Register** on February 26, 2010 (75 FR 8927) the Demonstration was extended until March 14, 2012, under the same terms and conditions in the original notice.

As required by 10 U.S.C. 1092, the DoD's evaluation of the results of the Demonstration concluded that it was successful and upon final implementation of this rule intends to adopt a tiered ABA services delivery and reimbursement methodology.

Additionally, DoD found that the Demonstration:

- Contributed to parental perception of positive outcomes for eligible dependents, as evidenced by parental responses to the DoD survey;
- Increased the number of and access to the services of authorized ABA providers, as evidenced by the sustained three to five percent (3–5%) monthly growth in the number of Demonstration enrollees; and
- Contributed to improved military family readiness and retention as evidenced by parents of children enrolled in the Demonstration were more likely to say they will stay in the military as a result of the ABA services received by their child.

DoD believes the evaluation provides evidence supporting the position that the ABA services provided in the Demonstration may generally have had a positive impact on the lives of some of the children with autism and their families. The evaluation shows that the parents of dependent children with autism who responded to the DoD survey have a perception of positive impacts.

Therefore, to increase access to ABA services for ECHO-registered dependents who are diagnosed with an ASD, DoD is promulgating this rule to adopt the provider model of the Demonstration under the authority of 10 U.S.C. 1079(e) and to establish the requirements for ABA providers and reimbursement for ABA services.

This rule also proposes to establish that certain individual professional providers, specifically, psychiatrists, clinical psychologists, certified psychiatric nurse specialists, and clinical social workers, and other individuals who maintain current certification by the Behavior Analyst Certification Board (BACB) or comparable certifying entity as may be approved by the Director, TMA, and, who maintain a current Participation Agreement with the Director, TMA, are eligible to be applied behavior analysis authorized providers.

This rule indicates that TRICARE coverage of ABA services is subject to the requirement in 32 CFR 199.5(d)(10). That is, services or items paid for, or eligible for payment, directly or indirectly by a public facility, as defined in 32 CFR 199.2, or by the Federal government, other than the Department of Defense, are excluded except when such services or items are eligible for payment under a state plan for medical assistance under Title XIX of the Social Security Act (Medicaid).

This rule also proposes to establish that the Director, TRICARE Management Activity will determine the requirements for ABA Authorized Providers and ABA Tutors, and the allowed amount of reimbursement for ABA services.

II. Summary of Regulatory Revisions

32 CFR 199.5 addresses the DoD Extended Care Health Option (ECHO).

Section 199.5 is proposed to be revised to establish that Applied Behavior Analysis provided to address the effects of Autism Spectrum Disorders is an ''Other service,'' as that term is used in 10 U.S.C. 1079(e).

32 CFR 199.6 addresses TRICARE-authorized providers.

Section 199.6 is proposed to be revised to establish the requirements for designation as an ''Applied Behavior Analysis (ABA) Authorized Provider'' of ABA services to ECHO-registered beneficiaries diagnosed with an Autism Spectrum Disorder.

This rule also indicates that reimbursement may be made to an Applied Behavior Analysis Authorized Provider for ABA services rendered by ABA Tutors who work under the supervision and direction of an Applied Behavior Analysis (ABA) Supervisor.

III. Regulatory Procedures

Executive Order 12866, ''Regulatory Planning and Review'' and Executive Order 13563, ''Improving Regulation and Regulatory Review''

Section 801 of title 5, United States Code, and Executive Orders (E.O.) 12866 and 13563 require certain regulatory assessments and procedures for any major rule or significant regulatory action, defined as one that would result in an annual effect of $100 million or more on the national economy or which would have other substantial impacts. It has been certified that this rule is not a significant regulatory action.

Public Law 104–4, Section 202, ''Unfunded Mandates Reform Act''

Section 202 of Public Law 104–4, ''Unfunded Mandates Reform Act,'' requires that an analysis be performed to determine whether any Federal mandate may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector of $100 million in any one year. It has been certified that this proposed rule does not contain a Federal mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year, and thus this rule is not subject to this requirement.

Public Law 96–354, ''Regulatory Flexibility Act'' (RFA) (5 U.S.C. 601)

Public Law 96–354, ''Regulatory Flexibility Act'' (RFA) (5 U.S.C. 601), requires that each Federal agency prepare a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities. This rule is not an economically significant regulatory action, and it has been certified that it will not have a significant impact on a substantial number of small entities. Therefore, this rule is not subject to the requirements of the RFA.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

This rule does not contain a ''collection of information'' requirement, and will not impose additional information collection requirements on the public under Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35).

Executive Order 13132, ''Federalism''

E.O. 13132, ''Federalism,'' requires that an impact analysis be performed to determine whether the rule has Federalism implications that would 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. It has been certified that this rule does not have Federalism implications, as set forth in E.O. 13132.

List of Subjects in 32 CFR Part 199

Extended benefits for family members of Active Duty Service members, Health care, Autism spectrum disorders, Applied behavior analysis, Military personnel.

Accordingly, 32 CFR part 199 is amended as follows:

PART 199—[AMENDED]

1. The authority citation for Part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55.

2. Section 199.5 is amended by adding paragraph (c)(8)(iv) to read as follows:

§ 199.5 TRICARE Extended Care Health Option (ECHO).

* * * * *

(c) * * *

(8) * * *

(iv) *Applied Behavior Analysis (ABA) for ECHO-registered beneficiaries with an Autism Spectrum Disorder.* Applied Behavior Analysis (ABA) is an ''Other service'' as that term is used in 10 U.S.C. 1079(e), that may be reimbursed to an applied behavior analysis authorized provider to address the effects of an Autism Spectrum Disorder. Reimbursement for ABA services will be as determined by the Director, TRICARE Management Activity.

(A) Services provided by this paragraph are subject to the requirements of paragraph (d)(10) of this section.

(B) Definition of specific terms used in this paragraph and Section 199.6 of this part.

(*1*) *Applied Behavior Analysis (ABA) Authorized Provider.* An individual, a corporation, a foundation, or a public entity meeting the requirements of § 199.6(e)(2)(iv) of this part who or that provides ABA services to ECHO-registered beneficiaries diagnosed with an Autism Spectrum Disorder.

(*2*) *Applied Behavior Analysis (ABA) Services.* Such non-medical services determined by the Director, TMA to be appropriate to reduce the disabling effects of ASD for ECHO-registered beneficiaries, which may include, but are not limited to: conducting the initial and ongoing Functional Behavioral Assessments and Analysis; developing and revising as necessary the Behavior Plan that details the ABA intervention services and methods to be used; supervising or directing ABA Tutor(s); training the beneficiary's primary caregivers to reinforce the interventions detailed in the Behavior Plan; and periodically reporting the beneficiary's progress to the primary caregivers.

(*3*) *Applied Behavior Analysis (ABA) Supervisor.* An individual Applied Behavior Analysis (ABA) Authorized Provider who provides ABA Services through the supervision and direction of ABA Tutors. Only individuals who are Applied Behavior Analysis (ABA) Authorized Providers may act as Supervisors. Corporations, foundations or public entities may not act as ABA Supervisors.

(*4*) *Applied Behavior Analysis (ABA) Tutor.* An individual who renders one-on-one ABA interventions to a TRICARE beneficiary diagnosed with an Autism Spectrum Disorder. ABA Tutors are not considered an ''Authorized Provider'' (refer to § 199.2 of this part) or an ''Authorized Applied Behavior Analysis (ABA) Provider'' and are not eligible for direct reimbursement by TRICARE.

(*5*) *Autism Spectrum Disorders.* The Pervasive Development Disorders listed in the *Diagnostic and Statistical Manual of Mental Disorders,* [DSM–IV–TR (fourth edition, text revision), 2000], or a superseding current edition of the DSM, specifically, ''Autistic Disorder'', ''Rett's Disorder'', Childhood Disintegrative Disorder'', ''Asperger's Disorder'', and ''Pervasive Development Disorder Not Otherwise Specified (including Atypical Autism)''*Applied Behavior Analysis (ABA) Authorized Provider.*

* * * * *

3. Section 199.6 is amended by adding paragraphs (e)(2)(iv) through (e)(2)(iv)(D) in to read as follows:

§ 199.6 TRICARE-Authorized Providers.

* * * * *

(e) * * *

(2) * * *

(iv) *ECHO Applied Behavior Analysis (ABA) Authorized Provider.*

(A) The following are authorized providers of Applied Behavior Analysis (ABA) services authorized by § 199.5(c)(8)(iv) of this part to address the effects of a diagnosed Autism Spectrum Disorder (ASD):

(*1*) Psychiatrists, clinical psychologists, certified psychiatric nurse specialists, and clinical social workers who provide ABA services within the scope of their license as an individual professional provider.

(*2*) Individuals who meet all ABA-related applicable licensing or other regulatory requirements of the state, county, municipality, or other political jurisdiction in which ABA services are rendered.

(*3*) Where such licensing or regulatory requirements referenced in paragraph (e)(2)(iv)(A)(*2*) of this section do not exist, an individual who maintains current certification by the Behavior Analyst Certification Board (BACB).

(*4*) A corporation, foundation, or public entity that renders ABA services and that meets all applicable licensing or other regulatory requirements of the state, county, municipality, or other political jurisdiction in which ABA services are rendered.

(B) All providers under paragraph (e)(2)(iv)(A) of this section shall maintain a current Participation Agreement with the Director, TRICARE Management Activity.

(C) Reimbursement for ABA Services may be made to the following:

(*1*) ABA Authorized Providers under paragraphs (e)(2)(iv)(A)(*1*) through (*3*) of this section for ABA Services provided by themselves directly to ECHO-registered beneficiaries or for the ABA Services rendered by ABA Tutors under their supervision and direction.

(*2*) ABA Authorized Providers under paragraph (e)(2)(iv)(A)(*4*) of this section for ABA Services provided to ECHO-registered beneficiaries when rendered in accordance with the requirements of this Section by individuals employed by or under contract with an ABA Authorized Provider described in paragraph (e)(2)(iv)(A)(*4*) of this section.

Note: Tutors shall meet all requirements established by the Director, TRICARE Management Activity. Tutors are not ''ECHO Applied Behavior Analysis (ABA) Authorized Providers'' and are not eligible for direct TRICARE reimbursement for ABA services they render.

(D) TRICARE reimbursement for ABA services shall be the TRICARE allowed amount as determined by the Director, TRICARE Management Activity.

* * * * *

Dated: December 23, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–33384 Filed 12–28–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[DOD–2011–HA–0085]

RIN 0720–AB54

32 CFR Part 199

TRICARE; Removal of the Prohibition to Use Addictive Drugs in the Maintenance Treatment of Substance Dependence in TRICARE Beneficiaries

AGENCY: Office of the Secretary, Department of Defense.

ACTION: Proposed rule.

SUMMARY: This rule proposes revisions to remove the exclusion of drug abuse maintenance programs and allow as part of a comprehensive treatment plan for an individual with substance dependence, the substitution of a therapeutic drug with addictive potential for a drug of addiction (*e.g.* the

substitution of methadone for heroin). The current regulation prohibits drug maintenance programs where one addictive substance is substituted for another. However, this prohibition of maintenance treatment of substance dependence utilizing a specific category of psychoactive agent is outdated and fails to recognize the accumulated medical evidence supporting certain maintenance programs as one component of the continuum of care necessary for the effective treatment of substance dependence. Current medical evidence shows that this is medically or psychologically necessary and integral to the safe and effective treatment of drug abuse as is generally required for all treatment benefits for inclusion in the TRICARE benefit.

DATES: Written comments received at the address indicated below by February 27, 2012 will be accepted.

ADDRESSES: You may submit comments, identified by docket number and or Regulatory Information Number (RIN) number and title, by either of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, OSD Mailroom 3C843, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or RIN for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: CAPT Robert DeMartino, TRICARE Management Activity, Office of the Chief Medical Officer, telephone (703) 681–0070.

SUPPLEMENTARY INFORMATION:

Contingency operations involving DoD personnel are now in their tenth year. The advances in battlefield injury protection and medicine have drastically reduced the number of battlefield deaths and have returned our Service members home, injured, but prepared to recover. For many, pain related to injuries must be treated for many months and such long-term use of pain medications has put our Service members using those medicines at risk for dependence. This reality makes it ever more important to ensure that all safe and effective treatments for substance dependence are available to our Service members.

The current TRICARE regulation prohibits drug maintenance programs where a therapeutic drug with addictive potential is substituted for a drug of addiction. However, medicine is constantly evolving including in the area of drug addiction treatments. In the past, there was not sufficient reliable evidence as that term is used in the TRICARE regulations at 32 CFR 199.4(g)(15), to establish that the substitution of one addictive drug for another was an effective part of a drug treatment program.

The changes proposed to the CFR will remove the specific prohibition on coverage of drug maintenance programs when one addictive drug is substituted for another, thereby allowing treatment regimens involving the substitution of one addictive drug for another when it is a medical necessity and appropriate for an individual beneficiary.

Regulatory Procedures

Executive Order 12866 and Executive Order 13563

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a ''significant regulatory action'' although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

Public Law 104–4, Section 202, ''Unfunded Mandates Reform Act''

Section 202 of Public Law 104–4, ''Unfunded Mandates Reform Act,'' requires that an analysis be performed to determine whether any federal mandate may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector of $100 million in any one year. It has been certified that this proposed rule does not contain a Federal mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year, and thus this proposed rule is not subject to this requirement.

Public Law 96–354, ''Regulatory Flexibility Act'' (RFA) (5 U.S.C. 601)

Public Law 96–354, ''Regulatory Flexibility Act'' (RFA) (5 U.S.C. 601), requires that each Federal agency prepare a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities. This proposed rule is not an economically significant regulatory action, and it has been certified that it will not have a significant impact on a substantial number of small entities. Therefore, this proposed rule is not subject to the requirements of the RFA.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

This rule does not contain a ''collection of information'' requirement, and will not impose additional information collection requirements on the public under Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. chapter 35).

Executive Order 13132, ''Federalism''

E.O. 13132, ''Federalism,'' requires that an impact analysis be performed to determine whether the rule has federalism implications that would 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. It has been certified that this proposed rule does not have federalism implications, as set forth in E.O. 13132.

List of Subjects in 32 CFR Part 199

Claims, Dental health, Health care, Health insurance, Individuals with disabilities, Military personnel.

Accordingly, 32 CFR part 199 is proposed to be amended as follows:

PART 199—[AMENDED]

1. The authority citation for Part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55.

2. Section 199.4 is amended by revising paragraph (e)(11) introductory text, and removing and reserving paragraph (e)(11)(ii), to read as follows:

§ 199.4 Basic program benefits. * * *

* * * * *

(e) * * *

(11) *Drug abuse.* Under the Basic Program, benefits may be extended for medically necessary prescription drugs

required in the treatment of an illness or injury or in connection with maternity care (refer to paragraph (d) of this section). However, CHAMPUS benefits cannot be authorized to support or maintain an existing or potential drug abuse situation whether or not the drugs (under other circumstances) are eligible for benefit consideration and whether or not obtained by legal means. Drugs, including addictive drugs, prescribed to beneficiaries undergoing medically supervised treatment for a substance use disorder are not considered to be in support of, or to maintain, an existing or potential drug abuse situation and are allowed. The Director, TRICARE Management Activity may prescribe appropriate policies to implement this prescription drug benefit for those undergoing medically supervised treatment for a substance use disorder.

* * * * *

(ii) [Reserved]

* * * * *

Dated: December 21, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–33106 Filed 12–28–11; 8:45 am]

BILLING CODE 5001–06–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2011–0029–201163; FRL–9613–1]

Approval and Promulgation of Implementation Plans and Designations of Areas for Air Quality Planning Purposes; North Carolina and South Carolina; Charlotte; Determination of Attainment by Applicable Attainment Date for the 1997 8-Hour Ozone Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to determine pursuant to the Clean Air Act (CAA), that the Charlotte-Gastonia-Rock Hill, North Carolina-South Carolina, ozone nonattainment area (hereafter referred to as ''the bi-state Charlotte Area'' or ''the Area'') has attained the 1997 8-hour ozone national ambient air quality standards (NAAQS) *by its applicable attainment date of June 15, 2011.* The determination of attainment was made by EPA on November 15, 2011, based on quality-assured and certified monitoring data for the 2008–2010 monitoring period. EPA is now proposing to find that the bi-state Charlotte Area attained the 1997 8-hour ozone NAAQS *by its applicable attainment date.* EPA is proposing this action because it is consistent with the CAA and its implementing regulations.

DATES: Comments must be received on or before January 30, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2011–0029, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: benjamin.lynorae@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* EPA–R04–OAR–2011–0029, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Ms. Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. ''EPA–R04–OAR–2011–0029.'' EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or email, information that you consider to be CBI or otherwise protected. The *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 email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *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 *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: For information regarding this attainment determination, contact Mr. Sean Lakeman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Telephone number: (404) 562–9043; email address: *lakeman.sean@epa.gov.* For information regarding 8-hour ozone NAAQS, contact Ms. Jane Spann, Regulatory Development Section, at the same address above. Telephone number: (404) 562–9029; email address: *spann.jane@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What action is EPA taking?

Based on EPA's review of the quality-assured and certified monitoring data for 2008–2010, and in accordance with section 179(c)(1) of the CAA and EPA's regulations, EPA proposes to determine that the bi-state Charlotte Area has attained the 1997 8-hour ozone NAAQS *by the applicable attainment date of June 15, 2011.*[1] The bi-state Charlotte Area is comprised of Cabarrus, Gaston, Lincoln, Mecklenburg, Rowan, Union and a portion of Iredell (Davidson and Coddle Creek Townships) Counties in North Carolina; a portion of York County in South Carolina; and the Catawba Indian Nation Reservation. On November 15, 2011, EPA published a final rulemaking making a determination of attainment to suspend the requirements for the bi-state Charlotte Area to submit an attainment demonstration and associated reasonably available control measures (RACM), a reasonable further progress (RFP) plan, contingency measures, and other planning State Implementation Plan (SIP) revisions related to attainment of the 1997 8-hour ozone NAAQS so long as the Area continues to attain the 1997 8-hour ozone NAAQS. *See* 76 FR 70656. Today's proposed action merely makes a determination that the bi-state Charlotte Area has attained the 1997 8-hour ozone NAAQS by its applicable attainment date. This action is not a re-proposal of the attainment determination to suspend the requirements for the bi-state Charlotte Area to submit an attainment demonstration and associated RACM, a RFP plan, contingency measures, and other planning SIP revisions related to attainment of the standard. More information regarding the 1997 8-hour ozone NAAQS and the Area's attainment of that NAAQS is available at 76 FR 70656 (November 15, 2011).

II. What is the background for this action?

As a nonattainment area for the 1997 8-hour ozone NAAQS, the bi-state Charlotte Area had an applicable attainment date of June 15, 2011 (based on 2008–2010 monitoring data). Pursuant to section 179(c) of the CAA, EPA is required to make a determination on whether the Area attained the standard by its applicable attainment date. Specifically, section 179(c)(1) of the CAA reads as follows: ''As expeditiously as practicable after the applicable attainment date for any nonattainment area, but not later than 6 months after such date, the Administrator shall determine, based on the area's air quality as of the attainment date, whether the area attained the standard by that date.''

III. What is the air quality in the bi-state Charlotte Area for the 1997 8-Hour ozone NAAQS for the 2008–2010 monitoring period?

Pursuant to EPA regulation 40 CFR 50.10, the 1997 8-hour ozone NAAQS is met when the 3-year average of the annual fourth highest daily maximum 8-hour average ambient air quality ozone concentrations, as determined in accordance with 40 CFR part 50, Appendix I, is less than or equal to 0.08 parts per million (ppm) (*i.e.,* 0.084 ppm when rounding is considered) in the subject area.

EPA reviewed the ambient air monitoring data for the bi-state Charlotte Area in accordance with the provisions of 40 CFR part 50, Appendix I. All data considered have been quality-assured, certified, and recorded in EPA's Air Quality System database. This review addresses air quality data collected in the 3-year period from 2008–2010, which is the period that EPA must consider for areas with an applicable attainment date of June 15, 2011.

TABLE 1—DESIGN VALUES FOR COUNTIES IN THE BI-STATE CHARLOTTE, NORTH AND SOUTH CAROLINA NONATTAINMENT AREA FOR THE 1997 8-HOUR OZONE NAAQS

Location	AQS site ID	2008 (ppm)	2009 (ppm)	2010 (ppm)	2008–2010 Design value (ppm)
Lincoln County (NC)	1487 Riverview Rd. (37–109–0004)	0.079	0.065	0.072	0.072
Mecklenburg County (NC)	1130 Eastway Dr. (37–119–0041)	0.085	0.069	0.082	0.078
Mecklenburg County (NC)	400 Westinghouse Blvd. (37–119–1005).	0.073	0.068	0.078	0.073
Mecklenburg County (NC)	29 N @ Mecklenburg Cab Co. (37–119–1009).	0.093	0.071	0.082	0.082
Rowan County (NC)	301 West St & Gold Hill Ave. (37–159–0021).	0.084	0.071	0.077	0.077
Rowan County (NC)	925 N Enochville Ave. (37–159–0022).	0.082	0.073	0.078	0.077
Union County (NC)	701 Charles St. (37–179–0003)	0.08	0.067	0.071	0.072

As shown above in Table 1, during the 2008–2010 design period, the bi-state Charlotte Area met the 1997 8-hour ozone NAAQS. The official annual design value for the bi-state Charlotte Area for the 2008–2010 period is 0.082 ppm. More detailed information on the monitoring data for the bi-state Charlotte Area during the 2008–2010 design period is provided in EPA's November 15, 2011, final rulemaking to approve the clean data determination for the bi-state Charlotte Area for the 1997 8-hour ozone NAAQS. *See* 76 FR 70656.

IV. What is the proposed action and what is the effect of this action?

This action is a proposed determination that the bi-state Charlotte Area has attained the 1997 8-hour ozone NAAQS *by its applicable attainment date of June 15, 2011,* consistent with the CAA section 179(c)(1). Finalizing this proposed action would not constitute a redesignation of the bi-state Charlotte Area to attainment of 1997 8-hour ozone NAAQS under section 107(d)(3) of the CAA. Further, finalizing this proposed action would not involve approving a maintenance plan for the bi-state Charlotte Area as required under section 175A of the CAA, nor would it

[1] Effective June 15, 2004, EPA designated the bi-state Charlotte Area as a moderate area under the 1997 8-hour ozone NAAQS. Moderate areas for the 1997 8-hour ozone NAAQS had an applicable attainment date of June 15, 2010, unless the Area qualified for an extension. On May 31, 2011, EPA took final action to extend the applicable attainment date for the bi-state Charlotte Area to June 15, 2011. *See* 76 FR 31245 for more information.

constitute a determination that the bi-state Charlotte Area has met all other requirements for redesignation. Even if EPA finalizes today's proposed action, the designation status of the bi-state Charlotte Area would remain nonattainment for the 1997 8-hour ozone NAAQS until such time as EPA determines that the Area meets the CAA requirements for redesignation to attainment and takes action to redesignate the Area.

V. Statutory and Executive Order Reviews

This action proposes to make a determination of attainment based on air quality, and would not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

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

Consistent with Executive Order 13175 (65 FR 67,249, November 9, 2000) and EPA's Policy on Consultation and Coordination with Indian Tribes, EPA has consulted with Catawba Indian Nation regarding today's proposed action.[2] In a letter dated October 13, 2011, EPA extended the Catawba Indian Nation an opportunity to consult with EPA regarding this and other actions related to the Charlotte Area. Consultation with the Catawba Indian Nation began on October 14, 2011, and ended on October 31, 2011. The views and concerns raised by the Tribe during consultation have been taken into account in this direct final rule. EPA notes today's action will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

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

Dated: December 19, 2011.

Gwendolyn Keyes Fleming,

Regional Administrator, Region 4.

[FR Doc. 2011–33273 Filed 12–28–11; 8:45 am]

BILLING CODE 6560–50–P

[2] The Catawba Indian Nation Reservation is located within the South Carolina portion of the bi-state Charlotte nonattainment area. Generally, SIPs do not apply in Indian country throughout the United States. However, for purposes of the Catawba Indian Nation Reservation in Rock Hill, the South Carolina SIP does apply within the Reservation pursuant to the Catawba Indian Claims Settlement Act, S.C. Code Ann. 27–16–120 (providing that ''all state and local environmental laws and regulations apply to the [Catawba Indian Nation] and Reservation and are fully enforceable by all relevant state and local agencies and authorities.'')

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2010–0895; FRL–9614–1]

RIN 2060–AQ11

National Emission Standards for Hazardous Air Pollutants: Ferroalloys Production; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of public comment period.

SUMMARY: The EPA is announcing that the period for providing public comments on the November 23, 2011, proposed Rule Titled ''National Emission Standards for Hazardous Air Pollutants: Ferroalloys Production'' is being extended for 22 days.

DATES: *Comments.* The public comment period for the proposed rule published November 23, 2011 (76 FR 72508), is being extended for 22 days to January 31, 2012, in order to provide the public additional time to submit comments and supporting information.

ADDRESSES: *Comments.* Written comments on the proposed rule may be submitted to EPA electronically, by mail, by facsimile or through hand delivery/courier. Please refer to the proposal for the addresses and detailed instructions.

Docket. Publicly available documents relevant to this action are available for public inspection either electronically at *http://www.regulations.gov* or in hard copy at the EPA Docket Center, Room 3334, 1301 Constitution Avenue NW., Washington, DC The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying.

World Wide Web. The EPA Web site for this rulemaking is at: *http://www.epa.gov/ttn/atw/ferroa/ferropg.html.*

FOR FURTHER INFORMATION CONTACT: Mr. Conrad Chin, Metals and Inorganic Chemicals Group (D243–02), Sector Policies and Programs Division, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; Telephone number: (919) 541–1512; Fax number (919) 541–3207; Email address: *chin.conrad@epa.gov.*

SUPPLEMENTARY INFORMATION:

Comment Period

Due to requests received from industry to extend the public comment period, the EPA is extending the public comment period for an additional 22 days. Therefore, the public comment period will end on January 31, 2012, rather than January 9, 2012.

How can I get copies of this document and other related information?

The EPA has established the official public docket No. EPA–HQ–OAR–2010–0895. The EPA has also developed Web sites for the proposed rulemaking at the addresses given above.

Dated: December 22, 2011.

Gina McCarthy,

Assistant Administrator, Office of Air and Radiation.

[FR Doc. 2011–33460 Filed 12–28–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–R04–SFUND–2011–0574; FRL–9612–6]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Deletion of the Hipps Road Landfill Superfund Site

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; notice of intent.

SUMMARY: The Environmental Protection Agency (EPA) Region 4 is issuing a Notice of Intent to Delete the Hipps Road Landfill Superfund Site (Site) located in Jacksonville, Florida, from the National Priorities List (NPL) and requests public comments on this proposed action. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of Florida, through the Florida Department of Environmental Protection, have determined that all appropriate response actions under CERCLA, other than operation, maintenance, and five-year reviews have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: Comments must be received by *January 30, 2012.*

ADDRESSES: Submit your comments, identified by Docket ID no. EPA–HQ–SFUND–2011–0574, by one of the following methods:

- *http://www.regulations.gov.* Follow on-line instructions for submitting comments.
- *Email: miller.scott@epa.gov.*
- *Fax:* (404) 562–8896.
- *Mail:* Scott Miller, Remedial Project Manager, Superfund Remedial Branch, Section C, Superfund Division, U.S. EPA Region 4, 61 Forsyth Street SW., Atlanta, GA 30303.
- *Hand delivery:* Same address as above. 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–R04–SFUND–2011–0574. 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 email. 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 email comment directly to EPA without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statue. Certain other material, such as copyrighted material, will be publicly available only in the hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at: U.S. EPA Record Center, 61 Forsyth Street SW., Atlanta, GA 30303, Hours: 8 a.m. to 4 p.m., Monday through Friday. Jacksonville Public Library, 6886 103rd Street Jacksonville, FL 32210, Monday–Thursday: 10 a.m.–9 p.m., Friday & Saturday: 10 a.m.–6 p.m. Sunday: 1 p.m.–6 p.m.

FOR FURTHER INFORMATION CONTACT: Scott Miller, Remedial Project Manager, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, GA 30303, (404) 562–9120, email: *miller.scott@epa.gov.*

SUPPLEMENTARY INFORMATION: In the ''Rules and Regulations'' Section of today's **Federal Register**, we are publishing a direct final Notice of Deletion of the Hipps Road Landfill Superfund Site without prior Notice of Intent to Delete because we view this as a noncontroversial revision and anticipate no adverse comment. We have explained our reasons for this deletion in the preamble to the direct final Notice of Deletion, and those reasons are incorporated herein. If we receive no adverse comment(s) on this deletion action, we will not take further action on this Notice of Intent to Delete. If we receive adverse comment(s), we will withdraw the direct final Notice of Deletion, and it will not take effect. We will, as appropriate, address all public comments in a subsequent final Notice of Deletion based on this Notice of Intent to Delete. We will not institute a second comment period on this Notice of Intent to Delete. Any parties interested in commenting must do so at this time.

For additional information, see the direct final Notice of Deletion which is located in the *Rules* section of this **Federal Register**.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Dated:November 21, 2011.

A. Stanley Meiburg,

Acting Regional Administrator, EPA Region 4.

[FR Doc. 2011–33470 Filed 12–28–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

42 CFR Part 1001

Solicitation of New Safe Harbors and Special Fraud Alerts

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notice of intent to develop regulations.

SUMMARY: In accordance with section 205 of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), this annual notice solicits proposals and recommendations for developing new and modifying existing safe harbor provisions under the Federal anti-kickback statute (section 1128B(b)

of the Social Security Act), as well as developing new OIG Special Fraud Alerts.

DATES: To assure consideration, public comments must be delivered to the address provided below by no later than 5 p.m. on February 27, 2012.

ADDRESSES: In commenting, please refer to file code OIG–120–N. Because of staff and resource limitations, we cannot accept comments by facsimile (fax) transmission.

You may submit comments in one of three ways (no duplicates, please):

1. *Electronically.* You may submit electronic comments on specific recommendations and proposals through the Federal eRulemaking Portal at *http://www.regulations.gov.*

2. *By regular, express, or overnight mail.* You may send written comments to the following address: Office of Inspector General, Congressional and Regulatory Affairs, Department of Health and Human Services, Attention: OIG–120–N, Room 5541, Cohen Building, 330 Independence Avenue SW., Washington, DC 20201. Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By hand or courier.* If you prefer, you may deliver, by hand or courier, your written comments before the close of the comment period to Office of Inspector General, Department of Health and Human Services, Cohen Building, Room 5541, 330 Independence Avenue SW., Washington, DC 20201. Because access to the interior of the Cohen Building is not readily available to persons without Federal Government identification, commenters are encouraged to schedule their delivery with one of our staff members at (202) 619–1343.

For information on viewing public comments, please see the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Traci Bone, Congressional and Regulatory Affairs Liaison, Office of Inspector General, (202) 708–9884.

SUPPLEMENTARY INFORMATION:

Submitting Comments: We welcome comments from the public on recommendations for developing new or revised safe harbors and Special Fraud Alerts. Please assist us by referencing the file code OIG–120–N.

Inspection of Public Comments: All comments received before the end of the comment period are available for viewing by the public. All comments will be posted on *http://www.regulations.gov* as soon as possible after they have been received. Comments received timely will also be available for public inspection as they are received at Office of Inspector General, Department of Health and Human Services, Cohen Building, 330 Independence Avenue SW., Washington, DC 20201, Monday through Friday from 9:30 a.m. to 5 p.m. To schedule an appointment to view public comments, phone (202) 619–1368.

I. Background

A. OIG Safe Harbor Provisions

Section 1128B(b) of the Social Security Act (the Act) (42 U.S.C. 1320a–7b(b)) provides criminal penalties for individuals or entities that knowingly and willfully offer, pay, solicit, or receive remuneration to induce or reward business reimbursable under the Federal health care programs. The offense is classified as a felony and is punishable by fines of up to $25,000 and imprisonment for up to 5 years. OIG may also impose civil money penalties, in accordance with section 1128A(a)(7) of the Act (42 U.S.C. 1320a–7a(a)(7)), or exclusion from the Federal health care programs, in accordance with section 1128(b)(7) of the Act (42 U.S.C. 1320a–7(b)(7)).

Since the statute on its face is so broad, concern has been expressed for many years that some relatively innocuous commercial arrangements may be subject to criminal prosecution or administrative sanction. In response to the above concern, section 14 of the Medicare and Medicaid Patient and Program Protection Act of 1987, Public Law 100–93 § 14, the Act, § 1128B(b), 42 U.S.C. 1320a–7b(b), specifically required the development and promulgation of regulations, the so-called ''safe harbor'' provisions, specifying various payment and business practices that, although potentially capable of inducing referrals of business reimbursable under the Federal health care programs, would not be treated as criminal offenses under the anti-kickback statute and would not serve as a basis for administrative sanctions. OIG safe harbor provisions have been developed ''to limit the reach of the statute somewhat by permitting certain non-abusive arrangements, while encouraging beneficial and innocuous arrangements'' (56 FR 35952, July 29, 1991). Health care providers and others may voluntarily seek to comply with these provisions so that they have the assurance that their business practices will not be subject to liability under the anti-kickback statute or related administrative authorities. The OIG safe harbor regulations are found at 42 CFR 1001.

B. OIG Special Fraud Alerts

OIG has also periodically issued Special Fraud Alerts to give continuing guidance to health care providers with respect to practices OIG finds potentially fraudulent or abusive. The Special Fraud Alerts encourage industry compliance by giving providers guidance that can be applied to their own practices. OIG Special Fraud Alerts are intended for extensive distribution directly to the health care provider community, as well as to those charged with administering the Federal health care programs.

In developing Special Fraud Alerts, OIG has relied on a number of sources and has consulted directly with experts in the subject field, including those within OIG, other agencies of the Department, other Federal and State agencies, and those in the health care industry.

C. Section 205 of the Health Insurance Portability and Accountability Act of 1996

Section 205 of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104–191 § 205, the Act, § 1128D, 42 U.S.C. 1320a–7d, requires the Department to develop and publish an annual notice in the **Federal Register** formally soliciting proposals for modifying existing safe harbors to the anti-kickback statute and for developing new safe harbors and Special Fraud Alerts.

In developing safe harbors for a criminal statute, OIG is required to engage in a thorough review of the range of factual circumstances that may fall within the proposed safe harbor subject area so as to uncover potential opportunities for fraud and abuse. Only then can OIG determine, in consultation with the Department of Justice, whether it can effectively develop regulatory limitations and controls that will permit beneficial and innocuous arrangements within a subject area while, at the same time, protecting the Federal health care programs and their beneficiaries from abusive practices.

II. Solicitation of Additional New Recommendations and Proposals

In accordance with the requirements of section 205 of HIPAA, OIG last published a **Federal Register** solicitation notice for developing new safe harbors and Special Fraud Alerts on December 28, 2010 (75 FR 81556). As required under section 205, a status report of the public comments received in response to that notice is set forth in

Appendix F.[1] OIG is not seeking additional public comment on the proposals listed in Appendix F at this time. Rather, this notice seeks additional recommendations regarding the development of new or modified safe harbor regulations and new Special Fraud Alerts beyond those summarized in Appendix F.

A detailed explanation of justifications for, or empirical data supporting, a suggestion for a safe harbor or Special Fraud Alert would be helpful and should, if possible, be included in any response to this solicitation.

A. Criteria for Modifying and Establishing Safe Harbor Provisions

In accordance with section 205 of HIPAA, we will consider a number of factors in reviewing proposals for new or modified safe harbor provisions, such as the extent to which the proposals would affect an increase or decrease in:

- Access to health care services,
- The quality of health care services,
- Patient freedom of choice among health care providers,
- Competition among health care providers,
- The cost to Federal health care programs,
- The potential overutilization of health care services, and
- The ability of health care facilities to provide services in medically underserved areas or to medically underserved populations.

In addition, we will also take into consideration other factors, including, for example, the existence (or nonexistence) of any potential financial benefit to health care professionals or providers that may take into account their decisions whether to (1) order a health care item or service or (2) arrange for a referral of health care items or services to a particular practitioner or provider.

B. Criteria for Developing Special Fraud Alerts

In determining whether to issue additional Special Fraud Alerts, we will consider whether, and to what extent, the practices that would be identified in a new Special Fraud Alert may result in any of the consequences set forth above, as well as the volume and frequency of the conduct that would be identified in the Special Fraud Alert.

[1] The OIG *Semiannual Report to Congress* can be accessed through the OIG Web site at *http://oig.hhs.gov/publications/semiannual.asp.*

Dated: December 22, 2011.

Daniel R. Levinson,

Inspector General.

[FR Doc. 2011–33345 Filed 12–28–11; 8:45 am]

BILLING CODE 4152–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2800

[WO–300–1430–PQ]

RIN 1004–AE24

Advance Notice of Proposed Rulemaking Regarding a Competitive Process for Leasing Public Lands for Solar and Wind Energy Development

AGENCY: Bureau of Land Management.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Bureau of Land Management (BLM) is issuing this Advance Notice of Proposed Rulemaking (ANPR) to solicit public comments and suggestions that will be used in preparing a proposed rule to establish a competitive process for leasing public lands for solar and wind energy development.

DATES: The BLM will accept comments and suggestions on the ANPR until February 27, 2012.

ADDRESSES: You may submit comments by any of the following methods:

Mail: Director (630) Bureau of Land Management, U.S. Department of the Interior, Room 2134LM, 1849 C St. NW., Washington, DC 20240, Attention: 1004–AE24.

Personal or messenger delivery: U.S. Department of the Interior, Bureau of Land Management, 20 M Street SE., Room 2134LM, Attention: Regulatory Affairs, Washington, DC 20003.

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions at this Web site.

FOR FURTHER INFORMATION CONTACT: Ray Brady at (202) 912–7312 or Linda Resseguie at (202) 912–7337 regarding the substance of this ANPR. For information on procedural matters or the rulemaking process generally, you may contact Joseph Berry at (202) 912–7442. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–(800) 877–8339, 24 hours a day, seven days a week to contact the above individuals.

SUPPLEMENTARY INFORMATION: In order to foster the growth and development of the renewable energy sector of the economy and to administer the public lands in a more orderly manner, the BLM believes that a rulemaking is needed to enhance the Agency's ability to establish an efficient competitive process for issuing Right-of-Way (ROW) leases for solar and wind energy development that is based upon the Agency's authority under the Federal Land Policy and Management Act (FLPMA) (43 U.S.C. 1701 *et seq.*).

The BLM believes that a competitive process would enhance its ability to capture fair market value for the use of public lands, as required under Section 504(g) of FLPMA (43 U.S.C. 1764(g)), and ensure fair access to leasing opportunities for renewable energy development. This rulemaking would establish competitive bidding procedures for lands within designated solar and wind energy development leasing areas, define qualifications for potential bidders, and structure the financial arrangements necessary for the process.

The purpose of this ANPR is to solicit public comments that will be helpful to the BLM in preparing a subsequent proposed rule, as well as to gather the input that is needed to develop an efficient competitive process for ROW leasing. The scope of the proposed rule will include existing BLM wind and solar policies and guidelines, and terms and conditions of lease authorizations as well as the competitive process.

To help the BLM prepare the proposed rule, the Agency is seeking public comments and suggestions on the scope of the competitive process. See section III of this ANPR for a list of specific questions relating to this topic.

I. Public Comment Procedures

Commenting on the ANPR

Written comments and suggestions should:

—Be specific;
—Explain the reasoning behind your comments and suggestions; and
—Address the issues outlined in the ANPR.

For comments and suggestions to be the most useful, and most likely to inform decisions on the content of the proposed rule, they should:

—Be substantive; and
—Facilitate the development and implementation of an environmentally and fiscally responsible process for leasing public lands for solar and wind energy development.

The BLM is particularly interested in receiving comments and suggestions in response to the questions listed in

section III of this ANPR. These specific questions will focus the feedback on matters most in need of public input for the development of the regulations. This public input will assist the BLM in creating a fair and workable competitive process. All communications on these topics should refer to RIN 1004–AE24 and may be submitted by the methods listed under the **ADDRESSES** section of this ANPR.

Comments received after the close of the comment period (see **DATES** section of this ANPR) may not necessarily be considered or included in the Administrative Record for the proposed rule. Likewise, comments delivered to an address other than those listed under the **ADDRESSES** section of this ANPR may not necessarily be considered or included in the Administrative Record for the proposed rule.

Reviewing Comments Submitted by Others

Comments, including names and street addresses of respondents, will be available for public review at the personal or messenger delivery address listed under **ADDRESSES**, during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday, except holidays. Individual respondents may request confidentiality, which will be honored to the extent allowable by law. Those wishing to withhold their name or address (except for the city or town) must state this request prominently at the beginning of their comment, and state a reason for the request. Submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

II. Background

Congress has directed the Department of the Interior (Department) to facilitate the development of renewable energy resources. In Section 211 of the Energy Policy Act of 2005 (EPAct), Congress declared that before 2015, the Secretary of the Interior (Secretary) should seek to have approved non-hydropower renewable energy projects (solar, wind, and geothermal) on public lands with a total combined generation capacity of at least 10,000 megawatts of electricity.

Since passage of the EPAct, the Secretary has issued several orders that emphasize the importance of renewable energy development on public lands and the Department's efforts to achieve the goal Congress established in Section 211 of the EPAct. The most recent Secretarial Order 3285A1, ''Renewable Energy Development by the Department of the Interior,'' was issued in February 2010 by Secretary Ken Salazar. The Order established the development of renewable energy on public lands as one of the Department's highest priorities.

The FLPMA provides comprehensive authority and guidelines for the administration and protection of the public lands and their resources, and directs that the public lands be managed ''on the basis of multiple use and sustained yield'' (43 U.S.C. 1701(a)(7)). One of the principal or major uses defined by FLPMA includes the issuance of ROWs on public lands. The FLPMA also mandates that ''the United States receive fair market value of the use of the public lands and their resources unless otherwise provided for by statute'' (43 U.S.C. 1701(a)(9)).

Competitive Right-of-Way Procedures

Title V of FLPMA authorizes the BLM to issue ROWs for electric generation systems on the public lands (including solar and wind energy generation systems). Title V includes the authority to issue a ROW easement, lease, permit, or license as defined by Section 103(f) of FLPMA.

In June 2005, the BLM completed the Final Programmatic Environmental Impact Statement (PEIS) on Wind Energy Development relating to the authorization of wind energy projects on public lands. This Final PEIS provided an analysis of the environmental impact of the development of wind energy projects on public lands in the West and identified approximately 20.6 million acres of BLM public lands with wind energy development potential. However, the Final PEIS did not identify wind energy development leasing areas.

On December 17, 2010, the Department of the Interior and the Department of Energy as co-lead agencies published the Draft PEIS for Solar Energy Development in Six Southwestern States. The Draft Solar PEIS assessed the environmental, social, and economic impacts associated with solar energy development on public lands in Arizona, California, Colorado, Nevada, New Mexico, and Utah (*http://solareis.anl.gov*). Under the Preferred Alternative identified in the Draft Solar PEIS, the BLM would establish Solar Energy Zones (SEZs), which are areas that have been identified as the most appropriate for development because they contain the highest solar energy potential and fewest environmental and resource conflicts. The BLM included in the Draft Solar PEIS an option to offer lands within SEZs on a competitive basis. This option is further discussed in the Supplement to the Draft Solar PEIS published on October 28, 2011 (*http://solareis.anl.gov*). The designation of any SEZs for solar development would be made final upon the approval of a Record of Decision, following completion of a final EIS. Additional solar energy development leasing areas could also be identified and designated in the future through other BLM land use planning efforts.

The FLPMA does not limit the term of a solar or wind energy ROW lease. In accordance with Title V of FLPMA and the BLM's existing ROW regulations, a solar or wind energy ROW authorization is limited to a ''reasonable term'' (43 U.S.C. 1764(b) and 43 CFR 2805.11(b)). The regulations further articulate a number of factors that the BLM considers in determining a reasonable term, including the overall costs and useful life of the project. Most major ROW authorizations also include provisions for renewal of the authorization consistent with the provisions of the existing regulations (43 CFR 2805.15(d) and 2807.22). The BLM has established policies related to terms for current solar and wind energy authorizations, but it believes a rule would help further clarify the term of solar and wind energy leasing.

Due to the substantial investments required for typical solar or wind energy projects and the projected life of these facilities (generally in excess of 20 years), it is in the public interest to provide for a term for solar or wind energy ROW leases that would allow a reasonable period of time for construction, development, and continued operations of sufficient duration to make projects economically feasible. In addition, many Power Purchase Agreements (PPAs) for the purchase of electricity generated from solar or wind energy facilities are for terms of 20 years or longer. The BLM currently issues all solar energy ROW authorizations for a term not to exceed 30 years. A wind energy development authorization is generally for a term of 25–30 years.

The existing ROW regulations (43 CFR 2804.23) provide authority for conducting a competitive process but only to resolve competing applications for the same facility or system. For public lands outside of designated solar or wind energy development leasing areas, the BLM expects to continue to use this existing regulatory authority.

The BLM believes a rulemaking would help to establish a more comprehensive and efficient competitive process for public lands with designated solar and wind energy development leasing areas. This

rulemaking would provide the authority to offer lands through a nomination and competitive process instead of simply through an application process. The new regulations could include the following provisions for leasing within designated solar or wind energy development leasing areas.

• *Call for Nominations.* A call for nominations would be published to solicit expressions of interest for parcels of land within designated solar or wind energy development leasing areas. Nomination of a specific parcel would require payment of a nomination fee to be determined by the regulations. (Section 304 of FLPMA provides authority to the BLM to establish reasonable filing fees.)

• *Review of Nominations.* The BLM would review the nominations to identify parcels of land within designated solar or wind energy development leasing areas that are suitable to be offered competitively and then complete the work necessary, including the National Environmental Policy Act (NEPA) and other required reviews, to prepare the selected parcels for the competitive offer. At this lease stage, the NEPA analysis for parcels would likely tier to the Final Solar PEIS, once it is published, and the BLM's 2005 Wind Energy Development PEIS. Because the 2005 Wind Energy Development PEIS and associated Record of Decision did not identify wind energy development leasing areas, the BLM would designate these areas before considering nominations for a competitive wind energy ROW leasing process.

• *Notice of Competitive Offer.* A notice would be published at least 30 days prior to the competitive offer. The notice would include a legal description of the lands involved, the process for conducting the competitive offer, a minimum bid requirement, the qualifications for potential bidders, and the due diligence requirements for the successful bidder to submit a Plan of Development (POD) for the lands involved in the competitive offer. The POD defines the specific development plans of the lease holder.

• *Bonus Bid Competitive Process or Other Competitive Procedures.* A variety of competitive bid procedures could be defined by the new regulations. These competitive procedures could include sealed bids, oral auctions or ascending bidding, two-stage (combination of sealed and oral auctions) bidding, or multiple-factor bidding methods. Multiple-factor bidding could include monetary or nonmonetary factors and could be structured similarly to the method that the Bureau of Ocean Energy Management provides for offshore wind leasing (30 CFR 285.220). Multiple-factor variables for competitive wind and solar could include, but are not limited to, qualified bidder or other fees, variable cash bonuses, technical merit of the applicant, timeliness, financing and economics, environmental impact, and public benefits. Bonus bids would be deposited into the U.S. Treasury. The bonus bid from the successful bidder would be nonrefundable. All other bids would be returned. The new regulations could define a fee structure and determine whether particular fees might be deposited into the Treasury or be used to reimburse the BLM for administrative and other costs.

• *Issuance of Competitive ROW Leases.* A ROW lease would be issued to the successful bidder. The successful bidder would be required to submit a POD within the timeframes specified in the Notice of Competitive Offer and to pay cost recovery fees for review and approval of the POD. The review and approval process for the POD would require compliance with the NEPA and other Federal laws and regulations.

• *Administration of Competitive ROW Leases.* To reduce uncertainty about future changes in the terms and conditions of the lease, the competitive ROW lease could be a 30-year fixed-term lease, with specific terms and conditions, and be available for renewal.

In order to facilitate the efficient development of solar and wind energy within designated energy development leasing areas, the BLM would include a requirement in each ROW lease that the holder submit a POD within a specified period of time and begin construction within the approved timeframes. Each ROW lease would also include terms and conditions requiring the holder to maintain all facilities in accordance with the design standards in the approved POD. There are no specific provisions in the existing regulations regarding such diligent development requirements and the BLM believes a rule would help further define the due diligence development requirements for competitive solar and wind energy leases.

The BLM also would require that a minimum performance bond be provided for all competitive solar and wind energy ROW leases to ensure compliance with the provisions of the regulations and the terms and conditions of the lease. The BLM believes a rule would be appropriate for defining the performance bonding requirements for competitive solar and wind energy leases.

III. Description of the Information Requested

The BLM is particularly interested in receiving comments on the following questions relating to regulations for a competitive process for solar and wind energy development on the public lands:

1. How should a competitive process be structured for leasing lands within designated solar or wind energy development leasing areas?

2. Should a competitive leasing process be implemented for public lands outside of designated solar or wind energy development leasing areas? If so, how should such a competitive leasing process be structured?

3. What competitive bidding procedures should the BLM adopt?

4. What is the appropriate term for a competitive solar energy ROW lease?

5. What is the appropriate term for a competitive wind energy ROW lease?

6. Should nomination fees be established for the competitive process? If so, how should the fees be determined?

7. How should the bidding process for competitive solar and wind energy ROW leases be structured to ensure receipt of fair market value?

8. Should a standard performance bond be required for competitive solar and wind energy ROW leases and how should the bond amount be determined?

9. What diligent development requirements should be included in competitive solar and wind energy ROW leases?

The BLM is also interested in receiving any other comments regarding the content and structure of the competitive process for solar and wind energy development. Because this discussion is specifically focused on the development of the competitive process, comments are not being requested regarding solar or wind energy environmental issues.

Marcilynn A. Burke,

Acting Assistant Secretary of the Interior, Land and Minerals Management.

[FR Doc. 2011–33429 Filed 12–28–11; 8:45 am]

BILLING CODE 4310–84–P

Notices

Federal Register
Vol. 76, No. 250
Thursday, December 29, 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

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Business and Cooperative Programs, USDA.

ACTION: Proposed collection; Comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Business and Cooperative Programs' intention to request an extension for a currently approved information collection in support of the program for the Business and Industry Loan Program.

DATES: Comments on this notice must be received by February 27, 2012 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Brenda Griffin, Business and Industry Division, Business and Cooperative Programs, U.S. Department of Agriculture, Stop 3224, telephone (202) 720–6802, or email *brenda.griffin@wdc.usda.gov.* The Federal Information Relay service on (800) 887–8339 is available for TDD users.

SUPPLEMENTARY INFORMATION:

Title: Business and Industry Loan Program.

OMB Number: 0570–0014.

Expiration Date of Approval: July 31, 2012.

Type of Request: Extension of a currently approved information collection and recordkeeping requirements.

Abstract: The collected information is submitted to the B&I loan official by loan applicants and commercial lenders for use in making program eligibility, financial feasibility determinations and loan security determinations as required by the Con Act.

Estimate of Burden: Public reporting for this collection of information is estimated to average 3 hours per response.

Respondents: Individuals, rural businesses, for profit businesses, non-profit businesses, Indian tribes, public bodies, cooperatives.

Estimated Number of Respondents: 152.

Estimated Number of Responses per Respondent: 2.

Estimated Number of Responses: 325.

Estimated Total Annual Burden on Respondents: 835 hours.

Copies of this information collection can be obtained from Jeanne Jacobs, Regulations and Paperwork Management Branch, Support Services Division, at (202) 692–0040.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of Business and Cooperative Programs, including whether the information will have practical utility; (b) the accuracy of Business and Cooperative Programs 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 through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Jeanne Jacobs, Regulations and Paperwork Management Branch, Support Services Division, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave. SW., Washington, DC 20250. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: December 12, 2011.

Judith A. Canales,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 2011–33431 Filed 12–28–11; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request; Withdrawn

December 22, 2011.

AGENCY: National Agricultural Statistics Service.

ACTION: Notice: Withdrawal.

SUMMARY: The Department of Agriculture published a document in the **Federal Register** on December 22, 2011, page number 79646 concerning a request for comments on information collection 0535–0039 ''Fruits, Nut, and Specialty Crops.'' The document is being withdrawn.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2011–33360 Filed 12–28–11; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Abolishment of Privacy Act System of Records

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of abolishment of records systems.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Agriculture (USDA) is abolishing an existing Forest Service Privacy Act system of records. A review of USDA/FS–35 Congressional Correspondence has concluded that the records in the system are covered under another USDA SORN entitled USDA/OES–1 USDA Enterprise Content Management (ECM), and therefore is being abolished.

DATES: This notice is effective on December 29, 2011.

ADDRESSES: For additional information contact Forest Service Privacy Act Officer, USDA Forest Service, 1400 Independence Avenue SW, Mail Stop 1143, Washington, DC 20250–1143, *wo_foia@fs.fed.us,* facsimile to (202) 260–3245. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–(800) 877–8339 between 8 a.m. and 8 p.m., Eastern Standard time, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Correspondence

Records Management, USDA, Forest Service, 1400 Independence Avenue SW, Mailstop 1152, Washington, DC 20250–1112, (202) 401–4071.

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act, and as part of the Forest Service's ongoing effort to review and update system of records notices, we are abolishing one record system: Congressional Correspondence. This notice identifies a Forest Service system of records that is now maintained in another Privacy Act System of Records, USDA/OES–1 USDA Enterprise Content Management; as published in the **Federal Register** on October 3, 2006. This system is abolished and removed from the inventory of the USDA System of Records.

Dated: December 5, 2011.

Thomas J. Vilsack,

Secretary.

[FR Doc. 2011–33459 Filed 12–28–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Abolishment of Privacy Act System of Records

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of abolishment of records systems.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Agriculture (USDA) is abolishing an existing Forest Service Privacy Act system of records. A review of USDA/FS–9 Employee Assistance Program CONCERN has concluded that the system is no longer in effect and is therefore being abolished.

DATES: This notice is effective on December 29, 2011.

ADDRESSES: For additional information contact Forest Service Privacy Act Officer, USDA Forest Service, 1400 Independence Avenue SW., Mail Stop 1143, Washington, DC 20250–1143, *wo_foia@fs.fed.us,* facsimile to (202) 260–3245. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–(800) 877–8339 between 8 a.m. and 8 p.m., Eastern Standard time, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Wellness Program Manager, USDA, Forest Service, Office of Safety and Occupational and Health, 1400 Independence Avenue SW., Mailstop 1152, Washington, DC 20250–1152, (703) 605–0884.

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, and as part of the Forest Service's ongoing effort to review and update system of records notices, we are abolishing one record system: Employee Assistance Program CONCERN (40 FR 38939 August 27, 1975). This notice identifies a Forest Service system of records that is no longer in use. There are no records in this system of records. The records formerly included in this system of records have destroyed according to the Federal Records Disposal Act of 1943 (44 U.S.C. 366–380) and the Federal Records Act of 1950, and as designated in the Forest Service Records Management Handbook (FSH) 6209.11. This system is abolished and removed from the inventory of the USDA System of Records.

Dated: December 5, 2011.

Thomas J. Vilsack,

Secretary.

[FR Doc. 2011–33457 Filed 12–28–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Request for Extension of a Currently Approved Information Collection; End-Use Certificate Program

AGENCY: Farm Service Agency, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Farm Service Agency (FSA) is seeking comments from all interested individuals and organizations on an extension of a currently approved information collection that supports the End-Use Certificate Program.

DATES: We will consider comments that we receive by February 27, 2012.

ADDRESSES: We invite you to submit comments on this notice. In your comments, include date, OMB control number, volume, and page number of this issue of the **Federal Register**. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Sharon Miner, USDA, Farm Service Agency, Commodity Operations Division, 1400 Independence Avenue SW., STOP 0553, Washington, DC 20250–0553.
- *Email:* Send comment to: *Sharon.Miner@wdc.usda.gov.*
- *Fax:* (202) 690–3123.

Comments also should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Sharon Miner, Commodity Operations Division, telephone (202) 720–6266.

SUPPLEMENTARY INFORMATION:

Title: End-Use Certificate Program.

OMB Control Number: 0560–0151.

Expiration Date of Approval: June 30, 2012.

Type of Request: Extension.

Abstract: This information collection is to ensure that Canadian wheat imported into the U.S. does not benefit from International Food Assistance programs. To comply with the provisions of the North American Free Trade Agreement Implementation Act, FSA requires information from the importers, subsequent buyers, and end-users that assists in tracking the Canadian wheat within the U.S. marketing system.

Estimate of Burden: Public reporting burden for this information collection is estimated to average 0.175 hours per response.

Respondents: Wheat importers, traders, and end-users.

Estimated Number of Respondents: 67.

Estimated Number of Responses per Respondent: 345.

Estimated Total Annual Burden on Respondents: 4,068 hours.

We are requesting comments on all aspects of this information collection and to help us to:

(1) Determine whether the continued collection of information in the current form is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Assess the accuracy of the FSA's estimate of burden including validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information collected; or

(4) Minimize the burden of the collection of the information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will become a matter of public record. Comments will be summarized and included in the submission for Office of Management and Budget approval.

Signed on December 22, 2011.

Carolyn B. Cooksie,

Acting Administrator, Farm Service Agency.

[FR Doc. 2011–33443 Filed 12–28–11; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

National Advisory Committee for Implementation of the National Forest System Land Management Planning Rule

AGENCY: USDA Forest Service.

ACTION: Notice of intent to establish an advisory committee and call for nominations.

SUMMARY: The Secretary of Agriculture intends to establish the National Advisory Committee for Implementation of the National Forest System Land Management Planning Rule (Committee). In accordance with provisions of the Federal Advisory Committee Act (FACA), the Committee is being established to provide advice and recommendations on the implementation of the National Forest System Land Management Planning Rule (Planning Rule). The Committee is necessary and in the public interest. Therefore, the Secretary of Agriculture is seeking nominations for individuals to be considered as committee members. The public is invited to submit nominations for membership.

DATES: Written nominations must be received by February 13, 2012. Nominations must contain a completed application packet that includes the nominee's name, resume, and completed form AD–755 (Advisory Committee Membership Background Information). The form AD–755 may be obtained from Forest Service contact person or from the following Web site: *http://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5203568.pdf.* The package must be sent to the address below.

ADDRESSES: Send nominations and applications to Angela Gee, USDA Forest Service, National Forest System, Mail Stop 1106, 201 14th Street SW., Washington, DC 20025 by express mail or overnight courier service. If sent via the U.S. Postal Service, they must be sent to the following address: U.S. Department of Agriculture, Forest Service, National Forest System, Mail Stop 1106, 1400 Independence Avenue SW., Washington, DC 20250–1106.

FOR FURTHER INFORMATION CONTACT: Tony Tooke, U.S. Department of Agriculture, Forest Service, National Forest System, Ecosystem Management Coordination; telephone: (202) 205–0830, fax: (202) 205–1758, or email: *ttooke@fs.fed.us.* Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–(800) 877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

In accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended (5 U.S.C. App. 2) and with the concurrence of the General Services Administration (GSA), the Secretary of Agriculture intends to establish the National Advisory Committee for Implementation of the National Forest System Land Management Planning Rule. The Committee will be a discretionary advisory committee. The Committee will operate under the provisions of FACA and will report to the Secretary of Agriculture through the Chief of the Forest Service.

The purpose of the Committee is to provide advice and recommendations on implementation of the planning rule. The Committee will be asked to perform the following duties or other requests made by the Secretary of Agriculture or the Chief of the Forest Service:

1. Review the content of and provide recommendations on directives related to implementation of the planning rule;
2. Offer recommendations on implementation of the planning rule, based on lessons learned and best practices from on-going or completed assessments, revisions, and monitoring strategies;
3. Offer recommendations on new best practices that could be implemented based on lessons learned;
4. Offer recommendations for consistent interpretation of the rule where ambiguities cause difficulty in implementation of the rule;
5. Offer recommendations for effective ongoing monitoring and evaluation, including broadscale monitoring, for implementation of the planning rule;
6. Offer recommendations on how to foster an effective ongoing collaborative framework to ensure engagement of Federal, State, local and Tribal governments; private organizations and affected interests; the scientific community; and other stakeholders; and
7. Offer recommendations for integrating the land management planning process with landscape scale restoration activities through implementation of the planning rule.

Advisory Committee Organization

This Committee will be comprised of not more than 21 members who provide balanced and broad representation within each of the following three categories of interests:

1. Up to 7 members who represent one or more of the following:
   a. Represent the affected public at-large
   b. Hold State-elected office (or designee)
   c. Hold county or local elected office
   d. Represent American Indian Tribes
   e. Represent Youth
2. Up to 7 members who represent one or more of the following:
   a. National, regional, or local environmental organizations
   b. Conservation organizations or watershed associations
   c. Dispersed recreation interests
   d. Archaeological or historical interests
   e. Scientific Community
3. Up to 7 members who represent one or more of the following:
   a. Timber Industry
   b. Grazing or other land use permit holders or other private forest landowners
   c. Energy and mineral development
   d. Commercial or recreational hunting and fishing interests
   e. Developed outdoor recreation, off-highway vehicle users, or commercial recreation interests

No individual who is currently registered as a Federal lobbyist is elegible to serve as a member of the Committee.

The Committee will meet three to four times annually or as often as necessary and at such times as designated by the Designated Federal Official (DFO).

The appointment of members to the Committee will be made by the Secretary of Agriculture. Any individual or organization may nominate one or more qualified persons to serve on the National Advisory Committee for Implementation of the Planning Rule. Individuals may also nominate themselves. To be considered for membership, nominees must submit a:

1. Resume describing qualifications for membership to the Committee;
2. Cover letter with a rationale for serving on the committee and what you can contribute; and
3. Complete form AD–755, Advisory Committee Membership Background Information.

Letters of recommendation are welcome. The form AD–755 may be obtained from Forest Service contact person or from the following Web site: *http://www.fs.usda.gov/Internet/*

FSE_DOCUMENTS/ stelprdb5203568.pdf. All nominations will be vetted by USDA. The Secretary of Agriculture will appoint committee members to the National Advisory Committee for Implementation of the National Forest System Land Management Planning Rule from the list of qualified applicants.

Members of the Committee will serve without compensation, but may be reimbursed for travel expenses while performing duties on behalf of the Committee, subject to approval by the DFO.

Equal opportunity practices in accordance with U.S. Department of Agriculture (USDA) policies will be followed in all appointments to the committee. To ensure that the recommendations of the Committee have taken into account the needs of the diverse groups served by USDA, membership shall include to the extent possible, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

Dated: December 23, 2011.

Pearlie S. Reed,

Assistant Secretary of Administration.

[FR Doc. 2011–33535 Filed 12–27–11; 11:15 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice and Opportunity for Public Comment.

Pursuant to Section 251 of the Trade Act of 1974, as amended (19 U.S.C. 2341 *et seq.*), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of these firms contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE

[11/18/2011 through 12/21/2011]

Firm name	Address	Date accepted for investigation	Products
Anova, Inc	2400 Kerper Blvd. Ste. D90, Dubuque, IA 52001.	12/8/2011	The firm manufactures custom injection molded plastic parts and components such as plugs, clips, rings, handles and small doors.
Applied Engineering, Inc	2008 East Highway 50, Yankton, SD 57078.	12/7/2011	The firm manufactures aluminum precision machined components for commercial, aerospace, defense and medical markets.
Black Hills Nanosystems Corp	2445 Dyess Ave. Rapid City, SD 57701.	12/1/2011	The firm manufactures semiconductor devices, nanotechnology-based EFI devices to improve the safety and effectiveness of munitions.
My Music Machines, Inc	1038 Tomahawk Trail Scotia, NY 12302.	12/14/2011	The firm manufacturers wind controlled musical instruments that are amplified electrically.
PJ Maxwell	700 East Park Avenue Libertyville, IL 60048.	11/15/2011	The firm manufactures kitchen utensils for the retail kitchen industry.
Poly Plastic Products, Inc	1751 S. Interstate Hwy. 45, Ferris, TX 75125.	12/21/2011	The firm prints, laminates, and converts printed or plain plastics and specialty films into bags, rolls, pouches, and sheets.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance for Firms Division, Room 7106, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.9 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

Dated: December 21, 2011.

Miriam Kearse,

Eligibility Certifier.

[FR Doc. 2011–33403 Filed 12–28–11; 8:45 am]

BILLING CODE 3510–WH–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 84–2011]

Foreign-Trade Zone 226—Merced, Madera, Fresno and Tulare Counties, CA; Application for Reorganization Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the County of Merced, California, grantee of FTZ 226, requesting authority to reorganize the zone under the alternative site framework (ASF) adopted by the Board (74 FR 1170, 01/12/2009 (correction 74 FR 3987, 01/22/2009); 75 FR 71069–71070, 11/22/2010). The ASF is an option for grantees for the establishment or reorganization of general-purpose zones and can permit significantly greater flexibility in the designation of new ''usage-driven'' FTZ sites for operators/users located within a grantee's ''service area'' in the context of the Board's standard 2,000-acre activation limit for a general-purpose zone project. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on December 23, 2011.

FTZ 226 was approved by the Board on December 22, 1997 (Board Order 946, 63 FR 778–779, 01/07/1998) and expanded on May 14, 2003 (Board Order 1276, 68 FR 27985, 05/22/2003).

The current zone project includes the following sites: Site 1 (791 acres)—Castle Airport/Morimoto Industrial Park, 2507 Heritage Drive, Atwater (Merced County); Site 2 (242 acres)—within the MidState 99 Distribution Center, Visalia (Tulare County) (includes 65 acres located at 2525 North Plaza Drive approved on a temporary basis until 12/31/2013); Site 3 (191 acres)—Mid Cal Business Park, Highway 33, Gustine (Merced County); Site 4 (101 acres)—within the Applegate Business Park, Highway 33 and Air Park Road, Atwater (Merced County); Site 6 (87 acres)—City of Madera Airport Industrial Park/State Center Commerce Park, Falcon Drive, Madera (Madera County); Site 7 (10 acres)—City of Madera Industrial Park, 2500 West Industrial Avenue, Madera (Madera County); Site 8 (27.56 acres)—Airways East Business Park, East Shields Avenue and North Business Park Avenue, Fresno (Fresno County); Site 9 (225 acres)—Central Valley Business Park, East North Avenue, Fresno (Fresno County); Site 10 (492 acres)—Fresno Airport Industrial Park, East Airways Boulevard and East Anderson and East Clinton Avenues, Fresno, and adjacent City of Clovis Industrial Park located at West Dakota Avenue & West Pontiac Way, Clovis (Fresno County); Site 11 (35 acres)—Reedley Industrial Park II, 1301 South Buttonwillow Avenue, Reedley (Fresno County); Site 12 (128 acres)—City of Selma Industrial Park, East Nebraska Avenue, Selma (Fresno County); and, Site 13 (15 acres)—810 East Continental Avenue, Tulare, (Tulare County).

The grantee's proposed service area under the ASF would be portions of Fresno, Kings, Madera, Mariposa, Merced, Stanislaus and Tulare Counties, California, as described in the application. If approved, the grantee would be able to serve sites throughout the service area based on companies' needs for FTZ designation. The proposed service area is both within and adjacent to the Fresno U.S. Customs and Border Protection port of entry.

The applicant is requesting authority to reorganize its existing zone project to include Sites 1, 2 and 9 through 11 as ''magnet'' sites. The ASF allows for the possible exemption of one magnet site from the ''sunset'' time limits that generally apply to sites under the ASF, and the applicant proposes that Site 1 be so exempted. The applicant is also requesting authority to include existing Site 8 as a usage-driven site. Additionally, the applicant is requesting authority to reduce acreage at Site 1 and remove Sites 3, 4, 6, 7, 12 and 13 from the zone project due to changed circumstances. The applicant is not proposing any additional new sites.

In accordance with the Board's regulations, Christopher Kemp of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is February 27, 2012. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to March 13, 2012.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *www.trade.gov/ftz.* **FOR FURTHER INFORMATION CONTACT** Christopher Kemp at *Christopher.Kemp@trade.gov* or (202) 482–0862.

Dated: December 23, 2011.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2011–33486 Filed 12–28–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–801]

Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Extension of Time Limit for the Final Results of the Seventh Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* December 29, 2011.

FOR FURTHER INFORMATION CONTACT: Javier Barrientos or Alexis Polovina, 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) 482–2243, or (202) 482–3927, respectively.

Background

On September 9, 2011, the Department of Commerce (''Department'') published in the **Federal Register** its *Preliminary Results* of the antidumping duty order on certain frozen fish fillets from the Socialist Republic of Vietnam.[1] Subsequent to the publication of the *Preliminary Results,* the Department extended the deadlines for submission of surrogate values, rebuttal comments and case briefs.[2] On December 11, 2011, the Department issued a request for information to the United Nations Food and Agricultural Organization.[3] The period of review is August 1, 2009, through July 31, 2010. The final results are currently due no later than January 7, 2012.

Extension of Time Limit for the Final Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''Act''), requires that the Department issue the final results of an administrative review within 120 days after the date on which the preliminary results are published. If it is not practicable to complete the review within that time period, section 751(a)(3)(A) of the Act allows the Department to extend the deadline for the final results to a maximum of 180 days after the date on which the preliminary results are published.

Due to the issuance of the request for information, voluminous surrogate value data on the record, and additional time provided to parties to review and submit rebuttal comments and case briefs, the Department finds that it is not practicable to review the post-preliminary questionnaires, surrogate value data and analyze the case brief comments within the scheduled time limit. Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is partially extending the time for the completion of the final

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[1] *See Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Preliminary Results and Partial Rescission of the Seventh Antidumping Duty Administrative Review,* 76 FR 55872 (September 9, 2011) (''*Preliminary Results*'').

[2] *See* Memoranda to Interested Parties: Extending Surrogate Value Submission & Briefing Schedule for 7th Antidumping Administrative Reviews of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam, dated September 27, 2011, October 20, 2011, and November 22, 2011.

[3] *See* Letter from Matthew Renkey, Acting Program Manager, Import Administration, Office 9, to the FAO; RE: Questions for the United Nations Food and Agricultural Organization (''FAO'') Regarding Price Data for Pangasius Fish, dated (December 11, 2011).

results of this review by 60 days to March 7, 2012.

We are issuing and publishing this notice in accordance with sections 751(a) and 777(i)(1) of the Act.

Dated: December 21, 2011.

Gary Taverman,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–33490 Filed 12–28–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–980]

Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Postponement of Preliminary Determination in the Countervailing Duty Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Gene Calvert, Jun Jack Zhao, or Emily Halle, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3586, (202) 482–1396 or (202) 482–0176, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 8, 2011, the Department of Commerce (the Department) initiated the countervailing duty investigation of crystalline silicon photovoltaic cells, whether or not assembled into modules, from the People's Republic of China.[1] Currently, the preliminary determination is due no later than January 12, 2012.

Postponement of Due Date for the Preliminary Determination

Section 703(b)(1) of the Tariff Act of 1930, as amended (the Act), requires the Department to issue the preliminary determination in a countervailing duty investigation within 65 days after the date on which the Department initiated the investigation. However, section 703(c)(1)(A) of the Act permits the Department to postpone making the preliminary determination until no later than 130 days after the date on which it initiated the investigation if, among other reasons, the petitioner makes a timely request for an extension. In the instant investigation, the petitioner, SolarWorld Industries America, Inc., made a timely request on December 16, 2011, requesting a postponement of the preliminary countervailing duty determination to 95 days from the initiation date.[2]

The Department notes that 95 days from the initiation date is February 11, 2012. February 11, 2012 falls on a Saturday, and it is the Department's long-standing practice to issue a determination the next business day when the statutory deadline falls on a weekend, federal holiday, or any other day when the Department is closed.[3] Therefore, pursuant to the discretion afforded to the Department under section 703(c)(1)(A) of the Act, and because the Department does not find any compelling reason to deny the request, we are extending the due date for the preliminary determination to no later than February 13, 2012, the first business day after the 95th day from initiation.

This notice is issued and published pursuant to section 703(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: December 21, 2011.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2011–33495 Filed 12–28–11; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Initiation of Countervailing Duty Investigation,* 76 FR 70966 (November 16, 2011).

[2] *See* 19 CFR 351.205(e) and the petitioner's December 16, 2011 letter requesting postponement of the preliminary determination.

[3] *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005).

DEPARTMENT OF COMMERCE

International Trade Administration

[Application No. 97–11A03]

Export Trade Certificate of Review

ACTION: Notice of application (97–11A03) to amend the Export Trade Certificate of Review issued to Association for the Administration of Rice Quotas, Inc. (AARQ).

SUMMARY: The Office of Competition and Economic Analysis (''OCEA'') of the International Trade Administration, Department of Commerce, has received an application to amend an Export Trade Certificate of Review (''Certificate''). This notice summarizes the proposed amendment and requests comments relevant to whether the amended Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Monica Barnes, Office of Competition and Economic Analysis, International Trade Administration, (202) 482–5131 (this is not a toll-free number) or email at *etca@trade.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from State and Federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked as privileged or confidential business information will be deemed to be nonconfidential.

An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Export Trading Company Affairs, International Trade Administration, U.S. Department of Commerce, Room 7021–X, Washington, DC 20230.

Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as ''Export Trade Certificate of Review, application number 97–11A03.''

AARQ's original Certificate was issued on January 21, 1998 (63 FR 4220, January 28, 1998). A summary of the current application for an amendment follows.

Summary of the Application

Applicant: Association for the Administration of Rice Quotas, Inc., c/o Marvin Baden, AARQ Chairman, Producers Rice Mill, Inc., 518 East Harrison Street, Stuttgart, Arkansas, 72160.

Contact: M. Jean Anderson, Counsel, Weil, Gotshal & Manges LLP, 1300 Eye Street NW., Suite 900, Washington, DC 20005, Telephone: (202) 682–7217.

Application No.: 97–11A03.

Date Deemed Submitted: December 16, 2011.

Proposed Amendment: AARQ seeks to amend its Export Trade Certificate to update the list of Members to reflect changes in ownership, corporate structures, names and locations:

1. ''American Rice, Inc., Houston, Texas (a subsidiary of SOS Corporation Alimentaria, SA)'' should be amended to read ''American Rice, Inc., Houston, Texas (a subsidiary of Ebro Foods, S.A. (Spain))''

2. ''Associated Rice Marketing Cooperative, Durham, California'' should be amended to read ''Associated Rice Marketing Cooperative (ARMCO), Richvale, California''

3. ''Busch Agricultural Resources, LLC, St. Louis, Missouri, and its subsidiary, Pacific International Rice Mills, LLC, Woodland, California'' should be amended to read ''Bunge Milling, Saint Louis, Missouri (a subsidiary of Bunge North America, White Plains, New York), dba PIRMI (Pacific International Rice Mills), Woodland, California''

4. ''Gulf Rice Arkansas, LLC (a subsidiary of Ansera Marketing, Inc.), Houston, Texas'' should be deleted, as Gulf Rice Arkansas II, LLC, a successor to Gulf Rice Arkansas, LLC, is now a subsidiary of another member, TRC Trading Corporation (see below)

5. ''Louis Dreyfus Corporation, Wilton, Connecticut'' should be amended to read ''LD Commodities Rice Merchandising LLC, Wilton, Connecticut, and LD Commodities Interior Rice Merchandising LLC, Kansas City, Missouri (subsidiaries of Louis Dreyfus Commodities LLC, Wilton, Connecticut)''

6. ''Nidera, Inc., Wilton, Connecticut (a subsidiary of Nidera Handelscompagnie BV (Netherlands))'' should be amended to read ''Nidera US LLC, Wilton, Connecticut (a subsidiary of Nidera Handelscompagnie BV (Netherlands))''

7. ''Noble Logistics USA Inc., Portland, Oregon'' should be corrected to read ''Noble Logistic USA Inc., Portland, Oregon''

8. ''PS International, Ltd., Chapel Hill, North Carolina'' should be amended to read ''PS International LLC dba PS International, Ltd., Chapel Hill, North Carolina (jointly owned by Seaboard Corporation, Kansas City, Missouri, and PS Trading Inc., Chapel Hill, North Carolina)''

9. ''Riviana Foods Inc., Houston, Texas (a subsidiary of Ebro Puleva, S.A. (Spain)'' should be amended to read ''Riviana Foods Inc., Houston, Texas (a subsidiary of Ebro Foods, S.A. (Spain))''

10. ''TRC Trading Corporation, Roseville, California (a subsidiary of The Rice Company)'' should be amended to read ''TRC Trading Corporation, Roseville, California (a subsidiary of TRC Group, Inc., Roseville, California) and its subsidiary, Gulf Rice Arkansas II, LLC, Houston, Texas''

11. ''Veetee Rice, Inc., Springfield, Virginia (a subsidiary of Veetee Investments (Bahamas))'' should be amended to read ''Veetee Rice Inc., Great Neck, New York (a subsidiary of Veetee Investments Corporation (Bahamas))''

Dated: December 22, 2011.

Joseph E. Flynn,

Director, Office of Competition and Economic Analysis.

[FR Doc. 2011–33387 Filed 12–28–11; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

Minority Business Development Agency

Proposed Information Collection; Comment Request; National Minority Enterprise Development (MED) Week Awards Program Requirements

AGENCY: Minority Business Development Agency.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before February 27, 2012.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Venice Harris, MED Week Awards Manager, Minority Business Development Agency, U.S. Department of Commerce, Room 5063, 1401 Constitution Avenue NW, Washington, DC, 20230; telephone: (202) 482–1617, and email: *vharris@mbda.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Minority Business Development Agency (MBDA) is the only federal agency created exclusively to foster the establishment and growth of minority-owned businesses in the United States. For this purpose, a minority-owned business must be owned or controlled by one of the following persons or groups of persons: African American, American Indian, Alaska Native, Asian, Hispanic, Native Hawaiian, Pacific Islander, Asian Indian, and Hasidic Jew. MBDA actively promotes the growth and competitiveness of large, medium, and small minority business enterprises by offering management and technical assistance through a network of regional and local business centers throughout the United States.

One of MBDA's largest initiatives is the annual Regional and National Minority Enterprise Development (MED) Week Conferences. The conferences recognizes the role that minority entrepreneurs play in building the Nation's economy through the creation of jobs, products and services, in addition to supporting their local communities. It includes the private, non-profit, and government sectors and provides a venue to discuss critical business issues affecting minority business as well as strategies to foster the growth and competitiveness of the minority business community. The MED Week Awards Program is a key element of the conferences and celebrates the outstanding achievements of minority entrepreneurs. MBDA may make awards in the following categories: Minority Construction Firm of the Year, Minority Manufacturer of the Year, Minority Retail Energy Firm of the Year, Minority Global Technology Firm of the Year, Minority Global Supplier Distributer of the Year, Advocate of the Year, Media Award, Distinguished Supplier Diversity Award, Access to Capital Award, Ronald H. Brown Leadership Award, and the Abe Venable Legacy Award for Lifetime Achievement. All awards with the exception of the Ronald H. Brown Leadership Award and the Abe Venable Legacy Award for Lifetime

Achievement will be presented at both MBDA Regional and National MED Weeks. The Ronald H. Brown Leadership Award and the Abe Venable Legacy Award for Lifetime Achievement will be presented only at National MED Week.

Nominations for these awards are open to the public. MBDA must collect two types of information: (a) Information identifying the nominee and nominator, and (b) information explaining why the nominee should be given the award. The information will be used to determine those applicants best meeting the preannounced evaluation criterion. Use of a nomination form standardizes and limits the information collected as part of the nomination process. This makes the competition fair and eases the burden on applicants and reviewers. Participation in the MED Week Awards Program competition is voluntary and the awards are strictly honorary.

II. Method of Collection

The form may be submitted electronically or in paper format.

III. Data

OMB Control Number: 0640–0025.

Form Number(s): Not applicable.

Type of Review: Regular submission (extension of a currently approved information collection).

Affected Public: Business or other for-profit organizations, Not-for-profit institutions, State, Local, or Tribal government, and Federal government.

Estimated Number of Respondents: 100.

Estimated Time per Response: 2 hours.

Estimated Total Annual Burden Hours: 200.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 22, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–33381 Filed 12–28–11; 8:45 am]

BILLING CODE 3510–21–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA772

Marine Mammals; File No. 16685

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

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that a permit has been issued to Thomas A. Jefferson, Ph.D., Clymene Enterprises, 5495 Camino Playa Malaga, San Diego, CA 92124 to conduct research on nine cetacean species off the California coast.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376; and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562) 980–4001; fax (562) 980–4018.

FOR FURTHER INFORMATION CONTACT: Laura Morse or Carrie Hubard, (301) 427–8401.

SUPPLEMENTARY INFORMATION: On October 24, 2011, notice was published in the **Federal Register** (76 FR 65697) that a request for a permit to conduct research on nine cetacean species off of the California coast had been submitted by the above-named applicant. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The permit authorizes photo-identification, behavioral studies and biopsy sampling of bottlenose (*Tursiops truncatus*), Risso's (*Grampus griseus*), short-beaked common (*Delphinus delphis*), long-beaked common (*D. capensis*), Pacific white-sided (*Lagenorhynchus obliquidens*), and northern right whale dolphins (*Lissodelphis borealis*); killer whale (*Orcinus orca,* excluding Southern resident stock); Dall's porpoise (*Phocoenoides dalli*) and harbor porpoise (*Phocoena phocoena*) along the California coast. The permit expires on January 1, 2017.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: December 22, 2011.

Tammy C. Adams,

Acting Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–33441 Filed 12–28–11; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Renew Collection, Regulations Governing Bankruptcies of Commodity Brokers

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (CFTC) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 et seq., Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on collections of information provided for by Regulations Governing Bankruptcies of Commodity Brokers.

DATES: Comments must be submitted on or before February 27, 2012.

ADDRESSES: Comments may be mailed to Robert Wasserman, Division of Clearing & Risk, Commodity Futures Trading Commission, 1155 21st Street NW., Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Robert Wasserman, (202) 418–5092; FAX: (202) 418–5547; email: *rwasserman@cftc.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of 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.

Regulations Governing Bankruptcies of Commodity Brokers, OMB control number 3038–0021—Extension.

This collection of information involves recordkeeping and notice requirements in the CFTC's bankruptcy rules for commodity broker liquidations, 17 CFR Part 190. These requirements are intended to facilitate the effective, efficient, and fair conduct of liquidation proceedings for commodity brokers and to protect the interests of customers in these proceedings. Commodity broker liquidations occur at unpredictable and irregular intervals; for purposes of estimating information collection burden this notice assumes an average of one commodity broker liquidation every three years. The CFTC further notes that the information collection burden will vary in particular commodity broker liquidations depending on the size of the commodity broker, the extent to which accounts are able to be quickly transferred, and other factors specific to the circumstances of the liquidation. The Commission estimates the average burden of this collection of information as follows:

Rule 190.02(a)(1)

Estimated Respondents or Recordkeepers per Year: .33.
Estimated Reports Annually per Respondent or Recordkeeper: 2.
Estimated Hours per Response: .5.
Estimated Total Hours per Year: .33.

Rule 190.02(a)(2)

Estimated Respondents or Recordkeepers per Year: .33.
Estimated Reports Annually per Respondent or Recordkeeper: 1.
Estimated Hours per Response: 2.
Estimated Total Hours per Year: .67.

Rule 190.02(b)(1)

Estimated Respondents or Recordkeepers per Year: .33.
Estimated Reports Annually per Respondent or Recordkeeper: 4.
Estimated Hours per Response: 1.
Estimated Total Hours per Year: 1.32.

Rule 190.02(b)(2)

Estimated Respondents or Recordkeepers per Year: .33.
Estimated Reports Annually per Respondent or Recordkeeper: 10,000.
Estimated Hours per Response: .1.
Estimated Total Hours per Year: 330.

Rule 190.02(b)(3)

Estimated Respondents or Recordkeepers per Year: .05 (rarely if ever occurs).
Estimated Reports Annually per Respondent or Recordkeeper: 10,000.
Estimated Hours per Response: .2.
Estimated Total Hours per Year: 100.

Rule 190.02(b)(4)

Estimated Respondents or Recordkeepers per Year: .33.
Estimated Reports Annually per Respondent or Recordkeeper: 10,000.
Estimated Hours per Response: .2.
Estimated Total Hours per Year: 660.

Rule 190.02(c)

Estimated Respondents or Recordkeepers per Year: .33.
Estimated Reports Annually per Respondent or Recordkeeper: 10.
Estimated Hours per Response: 10.
Estimated Total Hours per Year: 33.

Rule 190.03(a)(1)

Estimated Respondents or Recordkeepers per Year: .33.
Estimated Reports Annually per Respondent or Recordkeeper: 20,000.
Estimated Hours per Response: .01.
Estimated Total Hours per Year: 66.

Rule 190.03(a)(2)

Estimated Respondents or Recordkeepers per Year: .33.
Estimated Reports Annually per Respondent or Recordkeeper: 20,000.
Estimated Hours per Response: .02.
Estimated Total Hours per Year: 132.

Rule 190.04(b)

Estimated Respondents or Recordkeepers per Year: .33.
Estimated Reports Annually per Respondent or Recordkeeper: 40,000.
Estimated Hours per Response: .01.
Estimated Total Hours per Year: 132.

Rule 190.06(b)

Estimated Respondents or Recordkeepers per Year: .33.
Estimated Reports Annually per Respondent or Recordkeeper: 1.
Estimated Hours per Response: 1.
Estimated Total Hours per Year: .33.

Rule 190.06(d)

Estimated Respondents or Recordkeepers per Year: 125.
Estimated Reports Annually per Respondent or Recordkeeper: 1000.
Estimated Hours per Response: .05.
Estimated Total Hours per Year: 6,250.

Rule 190.10(c)

Estimated Respondents or Recordkeepers per Year: 125.
Estimated Reports Annually per Respondent or Recordkeeper: 1000.
Estimated Hours per Response: .05.
Estimated Total Hours per Year: 6,250.

There are estimated to be no capital costs or operating and maintenance costs associated with this collection.

Dated: December 23, 2011.

David Stawick,

Secretary of the Commission.

[FR Doc. 2011–33474 Filed 12–28–11; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2010–OS–0174]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by January 30, 2012.

Title, Form, and OMB Number: Department of Defense Focus Groups of Employers; OMB Control Number 0704–TBD.

Type of Request: New.

Number of Respondents: 150.

Responses per Respondent: 1.

Annual Responses: 150.

Average Burden per Response: 1.5 hours.

Annual Burden Hours: 225 hours.

Needs and Uses: The Department of Defense Focus Groups of Employers are designed to identify ways of supporting employers when Guard and Reserve employees are absent due to military duties and targeting such support, explore the characteristics of duty-related absences (such as frequency and duration) that have the greatest impact on employers, characterize the attitudes of employers toward Guard and Reserve employees, and examine knowledge of and compliance with Uniformed Services Employment and Reemployment Rights Act (USERRA) and other ESGR programs. The Department of Defense Focus Groups of Employers are intended to complement information gathered through the Department of Defense National Survey of Employers. The Department of Defense will use these data to inform decisions related to the management of Guard and Reserve.

Affected Public: Business or other for-profit; Not-for-profit institutions; Federal Government; State, local or tribal government organizations.

Frequency: One-time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 4800 Mark Center Drive, 2nd Floor, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Dated: December 23, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–33487 Filed 12–28–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2011–HA–0033]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by January 30, 2012.

Title, Form, and OMB Number: ACAM2000® Myopericarditis Registry; OMB Control Number 0720–TBD.

Type of Request: New.

Number of Respondents: 20.

Responses per Respondent: 2.

Annual Responses: 40.

Average Burden per Response: 30 minutes.

Annual Burden Hours: 20 hours.

Needs and Uses: The Food and Drug Administration required the establishment of several Phase IV post licensure studies to evaluate the long term safety of ACAM2000® smallpox vaccine. Among the required post licensure studies is the establishment of a myopericarditis registry. The ACAM2000® Myopericarditis Registry is designed to study the natural history of myopericarditis following receipt of the ACAM2000® vaccine, including evaluating factors that may influence disease prognosis, thus addressing the FDA post-licensure requirement and ensuring the continued licensing of this vaccine.

Affected Public: Individuals or households.

Frequency: Semi-annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. John Kraemer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Kraemer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 4800 Mark Center Drive, 2nd Floor, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Dated: December 23, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–33476 Filed 12–28–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Strategic Environmental Research and Development Program (SERDP), Scientific Advisory Board; Notice of Meeting

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: This Notice is published in accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463). The topic of the meeting on March 13–14, 2012 is to review new start research and development projects requesting Strategic Environmental Research and Development Program (SERDP) funds in excess of $1M. This meeting is open to the public. Any interested person may attend, appear before, or file statements with the Scientific Advisory Board at the time and in the manner permitted by the Board.

DATES: Tuesday, March 13, 2012 from 12:45 p.m. to 5 p.m. & Wednesday, March 14 from 8 a.m. to 1 p.m.

ADDRESSES: SERDP Office Conference Center, 901 North Stuart Street, Suite 804, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Mr. Jonathan Bunger, SERDP Office, 901 North Stuart Street, Suite 303, Arlington, VA or by telephone at (703) 696–2126.

Dated: December 22, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–33340 Filed 12–28–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Limited Public Interest Waiver Under Section 1605 (Buy American) of the American Recovery and Reinvestment Act of 2009 (Recovery Act)

AGENCY: Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy (DOE).

ACTION: Notice of Limited Waiver.

SUMMARY: The U.S. Department of Energy (DOE) is hereby granting a determination of inapplicability (unreasonable cost waiver) of section 1605 of the American Reinvestment and Recovery Act of 2009 (Recovery Act Buy American provisions) to the Commonwealth Utilities Corporation's (CUC) located in the Commonwealth of the Northern Mariana Islands (CNMI), recipient of the EECBG grant DE–EE0000762, for 5 diesel engine radiators to be installed at the CUC's main power plant located in Saipan, CNMI. This waiver applies only to this project.

DATES: *Effective Date:* December 6, 2011.

FOR FURTHER INFORMATION CONTACT: Christine Platt-Patrick, Weatherization and Intergovernmental Program, Office of Energy Efficiency and Renewable Energy (EERE), (202) 287–1553, buyamerican@ee.doe.gov, Department of Energy, 1000 Independence Avenue SW., Mailstop EE–2K, Washington, DC 20585.

SUPPLEMENTARY INFORMATION: Under the authority of the Recovery Act, section 1605(b)(3), the head of a Federal department or agency may issue a ''determination of inapplicability'' (a waiver of the Buy American provisions) if the application of section 1605 would represent an 'unreasonable cost.' The authority of the Secretary of Energy to make all inapplicability determinations was re-delegated to the Assistant Secretary for Energy Efficiency and Renewable Energy (EERE), for EERE projects under the Recovery Act, in Redelegation Order No. 00–002.01E, dated April 25, 2011, for EERE Recovery Act projects.

Pursuant to this delegation, the Acting Assistant Secretary has determined that application of section 1605 restrictions represents an 'unreasonable cost' for the project described herein.

Specifically, this unreasonable cost determination waives the Buy American requirements for the diesel engine radiators needed for the Commonwealth Utilities Corporation's (CUC) located in the Commonwealth of the Northern Mariana Islands (CNMI), recipient of the EECBG grant DE–EE0000762, for 5 diesel engine radiators to be installed at the CUC's main power plant located in Saipan, CNMI EERE has developed a robust process to ascertain in a systematic and expedient manner whether or not there is domestic manufacturing capacity for the items submitted for a waiver of the Recovery Act Buy American provision. This process involves a close collaboration with the United States Department of Commerce National Institute of Standards and Technology (NIST) Manufacturing Extension Partnership (MEP), in order to scour the domestic manufacturing landscape in search of producers before making any nonavailability or unreasonable cost determinations.

The NIST MEP has 59 regional centers with substantial knowledge of, and connections to, the domestic manufacturing sector. MEP uses their regional centers to 'scout' for current or potential manufacturers of the product(s) submitted in a waiver request. In the course of this interagency collaboration, MEP has been able to find exact or partial matches for manufactured goods that EERE grantees had been unable to locate. As a result, in those cases, EERE was able to work with the grantees to procure American-made products rather than granting a waiver.

Upon receipt of completed waiver requests for the product in the current waiver, EERE reviewed the information provided and submitted the relevant technical information to the NIST MEP. The MEP then used their network of nationwide centers to scout for domestic manufacturers.

In addition to the MEP collaboration outlined above, the EERE Buy American Team worked with labor unions, trade associations and other manufacturing stakeholders to scout for domestic manufacturing capacity or an equivalent product for the 5 diesel engine radiators contained in this waiver. EERE also conducted significant amounts of independent research to supplement MEP's scouting efforts.

As a result of EERE's efforts and MEP's scouting process, a quote was obtained from the only domestic manufacturer that has the capabilities to produce a similar item. That quote is reflected in the price cited infra, and supports the finding that this item, if purchased domestically, will increase the total project cost by more than 25%.

This ARRA supported project involves the Commonwealth Utilities Corporation's (CUC) main power plant-1. It was built in 1979 with the installation of four 7.2MW–18V 40/54A diesel engines. Four larger 13.0MW–18V 52/55B engines were installed in 1990. Over the years, radiator fin corrosion and fouling have deteriorated to a point where inadequate cooling limited generator loads to just 60% of design capacity.

Radiator deterioration on engines #5 and #6 were so advanced (generators de-rated to 30% of design capacity), the radiator sets on both engines were replaced in 2009. The performance of these new radiator sets since 2009 can be described as excellent.

The 40% reduction in loading capacity on engines #1,2,3, 7 and 8 have cost the Utility severely in terms of fuel efficiency and cost, which unfortunately continues to be passed on to the rate-payers. This 40% loss in engine capacity plus the unavailability of engines 5 and 7 in 2008—resulted rolling blackouts and the eventual collapse of power plant-1 in 2008.

In mid 2008, CUC contracted a rental generator company to supply 15MW of generators for a period of 12 months at a total cost of $6,000,000 dollars.

Power plant-1 rehabilitation work began in 2009 and although surplus power is now available—the 60% load limitation on engines 1,2,3, 7 and 8 is costing CUC and its rate-payers dearly, in terms of fuel efficiency and cost.

The diesel engines utilized in the facility are designed to operate between 70% to 100% of name plate rating. Fuel efficiency is at its maximum at this load range. De-rated gen-sets 1,2,3,7 and 8 currently operate at an average fuel efficiency of 14.0 kWh per gallon of diesel. Engines operated between 70% to 100% load do so at a higher fuel efficiency of 15.0 to 15.6kWh per gallon—a 7% better fuel consumption.

CUC's power plant-1 burns an average of 1,000,000 gallons of diesel per month. Radiator replacement on engines 1,2,3,7 and 8 will enable CUC to increase the

load on the affected generator sets to 70% or higher of nameplate rating, and thereby reduce fuel consumption by approximately 70,000 gallon per month. This represents a saving of $246,000 per month or $2.96m per year at the current fuel price of $3.52 per gallon. This saving will automatically be passed on to the rate-payers as required by the rate setting process.

With the ability to operate generators at loads of 70% or more, fewer generators need to be on-line to supply demand. This will result in lower running hours per engine and as a result, lower maintenance cost per year. Savings in engine maintenance cost as a result of the radiator replacement project is expected to be at least $876,000 per year.

Power plant-1 continues to be CUC's main power plant on the main island of Saipan. This radiator replacement project will reduce fuel consumption and overall engine run hours—by allowing generator loads to be operated at optimum levels. This in turn will reduce fuel and maintenance cost and provide some relief to rate payers in the CNMI, by way of electricity rate reduction.

If for some reason the design of the radiators is ineffective, the current radiators are in such a severely decayed state that they cannot be reconnected one de-commissioned. If the project does not proceed on schedule, or if there is any flaw in the design, CNMI may be forced to resort to back-up power, similar to the 2008 scenario.

The project to replace the radiators involves two 13.0MW–18V 52/55B and three 7.2MW–18V 40/54A diesel engines. $2,400,000 dollars in ARRA grant funds are allocated to the project. The proposed price of the only US manufacturer to come forward with a bid was $3 million dollars, including freight to Saipan. The proposed price by the manufacturer of the radiators used in the prior installation was $2,167,060. The total installation cost for the radiators is approximately $225,000.

In addition to the price concerns, the only US bidder revealed that its largest previous project was for engines with continuous rating of less than 2.0MW. In addition, the foreign manufacturer is the supplier of choice for the 24 island countries who are members of the Pacific Power Association. All these island utilities have similar type of temperatures and salty environment as in the CNMI. All 24 island countries operate diesel engines to generate electricity.

CFR 2 176.110, entitled ''Evaluating proposals of foreign iron, steel, and/or manufactured goods'', states that if ''the award official receives a request for an exception based on the cost of certain domestic iron, steel, and/or manufactured goods being unreasonable, in accordance with § 176.80, then the award official shall apply evaluation factors to the proposal to use such foreign iron, steel, and/or manufactured goods.''

Per that section, the total evaluated cost = project cost estimate + (.25 × project cost estimate).

The total cost of the project including the foreign manufactured radiators is $2,317,060. The total evaluated cost is $2,392,060 + (.25 × $2,392,060) or $2990075. The minimum cost for the project with US collectors is $3,225,000, a cost increase of 34.8%. Thus, the diesel engine radiators needed for this project that are domestically manufactured will increase the cost of the overall project by more than 25 percent.

In light of the foregoing, and under the authority of section 1605(b)(3) of Public Law No. 111–5 and the Re-delegation Order dated April 25, 2011, with respect to Recovery Act projects funded by EERE, on October 24, 2011, the Acting Assistant Secretary issued a determination of inapplicability (unreasonable cost waiver) of section 1605 of the American Reinvestment and Recovery Act of 2009 (Recovery Act Buy American provisions) to the to the Commonwealth Utilities Corporation's (CUC) located in the Commonwealth of the Northern Mariana Islands(CNMI), recipient of the EECBG grant DE–EE0000762, for 5 diesel engine radiators to be installed at the CUC's main power plant located in Saipan, CNMI. This waiver applies only to this project.

This waiver determination was made pursuant to the delegation of authority by the Secretary of Energy to the Acting Assistant Secretary for Energy Efficiency and Renewable Energy with respect to expenditures within the purview of his responsibility. Consequently, this waiver applies only to EERE projects carried out under the Recovery Act; and only to this project specifically, waiver requests, even for the same or similar items, will be handled individually, because individual factors apply to each project.

Authority: Pub. L. 111–5, section 1605.

Issued in Washington, DC on December 6, 2011.

Henry Kelly,

Acting Assistant Secretary for Energy Efficiency and Renewable Energy, U.S. Department of Energy.

[FR Doc. 2011–33407 Filed 12–28–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Nationwide Categorical Waivers Under Section 1605 (Buy American) of the American Recovery and Reinvestment Act of 2009 (Recovery Act)

AGENCY: Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy (DOE).

ACTION: Notice of Limited Waivers.

SUMMARY: The U.S. Department of Energy (DOE) is hereby granting a nationwide limited waiver of the Buy American requirements of section 1605 of the Recovery Act under the authority of Section 1605(b)(2), (iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality), with respect to Recovery Act projects funded by EERE for (1) Multi-colored Full Wave Rectified strands of 5mm, conical shaped LED mini bulbs in molded sockets with 4″ spacing between bulbs, UL listed with a minimum 50,000 hour lamp life; (2) Ancillary items needed for a T–12 to T–8 retrofit, including the ballast disconnects, ancillary wiring and welding materials where needed, and the spacing clip to accommodate T–8 bulbs into a T–12 fixture; and (3) Roof integrated flat plate collectors producing 1250 btu/square foot, where the installation requires a roof integrated solar collector to meet local historic preservation or local building standards.

DATES: *Effective Date:* 9/12/2011.

FOR FURTHER INFORMATION CONTACT: Benjamin Goldstein, Energy Technology Program Specialist, Office of Energy Efficiency and Renewable Energy (EERE), (202) 287–1553, Department of Energy, 1000 Independence Avenue SW., Mailstop EE–2K, Washington, DC 20585.

SUPPLEMENTARY INFORMATION: Under the authority of American Recovery and Reinvestment Act of 2009 (Recovery Act), Public Law 111–5, section 1605(b)(2), the head of a Federal department or agency may issue a ''determination of inapplicability'' (a waiver of the Buy American provision) if the iron, steel, or relevant manufactured good is not produced or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality (''nonavailability''). The authority of the Secretary of Energy to make all inapplicability determinations was re-delegated to the Assistant Secretary for

Energy Efficiency and Renewable Energy (EERE), for EERE projects under the Recovery Act, in Redelegation Order No. 00–002.01E, dated April 25, 2011. Pursuant to this delegation the Acting Assistant Secretary, EERE, has concluded that: (1) Multi-colored Full Wave Rectified strands of 5mm, conical shaped LED mini bulbs in molded sockets with 4″ spacing between bulbs, UL listed with a minimum 50,000 hour lamp life; (2) Ancillary items needed for a T–12 to T–8 retrofit, including the ballast disconnects, ancillary wiring and welding materials where needed, and the spacing clip to accommodate T–8 bulbs into a T–12 fixture; and (3) Roof integrated flat plate collectors producing 1250 btu/square foot, where the installation requires a roof integrated solar collector to meet local historic preservation or local building standards, are not produced or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality. The above items, when used on eligible EERE Recovery Act-funded projects, qualify for the ''nonavailability'' waiver determination.

EERE has developed a robust process to ascertain in a systematic and expedient manner whether or not there is domestic manufacturing capacity for the items submitted for a waiver of the Recovery Act Buy American provision. This process involves a close collaboration with the United States Department of Commerce National Institute of Standards and Technology (NIST) Manufacturing Extension Partnership (MEP), in order to scour the domestic manufacturing landscape in search of producers before making any nonavailability determinations.

The MEP has 59 regional centers with substantial knowledge of, and connections to, the domestic manufacturing sector. MEP uses their regional centers to 'scout' for current or potential manufacturers of the product(s) submitted in a waiver request. In the course of this interagency collaboration, MEP has been able to find exact or partial matches for manufactured goods that EERE grantees had been unable to locate. As a result, in those cases, EERE was able to work with the grantees to procure American-made products rather than granting a waiver.

Upon receipt of completed waiver requests for the four products in the current waiver, EERE reviewed the information provided and submitted the relevant technical information to the MEP. The MEP then used their network of nationwide centers to scout for domestic manufacturers. The MEP reported that their scouting process did not locate any domestic manufacturers for these exact or equivalent items.

In addition to the MEP collaboration outlined above, the EERE Buy American Coordinator worked with other manufacturing stakeholders to scout for domestic manufacturing capacity or an equivalent product for each item contained in this waiver. EERE also conducted significant amounts of independent research to supplement MEP's scouting efforts, including utilizing the solar experts employed by the Department of Energy's National Renewable Energy Laboratory. EERE's research efforts confirmed the MEP findings that the goods included in this waiver are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality.

The nonavailability determination is also informed by the inquiries and petitions to EERE from recipients of EERE Recovery Act funds, and from suppliers, distributors, retailers and trade associations—all stating that their individual efforts to locate domestic manufacturers for these items have been unsuccessful.

Specific technical information for the manufactured goods included in this non-availability determination is detailed below:

(1) Multi-colored Full Wave Rectified strands of 5mm, conical shaped LED mini bulbs in molded sockets with 4″ spacing between bulbs, UL listed with a minimum 50,000 hour lamp life.

Through market research and a referral to MEP no American made product was located. No decorative LED bulbs of any kind are made in the United States. In projects where decorative lights are used for extended periods of time, the energy savings is significant.

(2) Ancillary items needed for a T–12 to T–8 retrofit, including the ballast disconnects, ancillary wiring and welding materials where needed, and the spacing clip to accommodate T–8 bulbs into a T–12 fixture.

Extensive market research revealed these items are not manufactured domestically. The remaining items utilized in the retrofit, including bulbs, or in cases where the entire fixture is being replaced, the fixture as a whole, must be compliant with Buy American.

(3) Roof integrated flat plate collectors producing 1250 btu/square foot, where the installation requires a roof integrated solar collector to meet local historic preservation or local building standards.

This is reserved for cases in which a roof integrated collector is required, neither NREL nor MEP located domestic producers of flat plate collectors that could meet this need. The remaining parts of each system must be compliant with Buy American. In light of the foregoing, and under the authority of section 1605(b)(2) of Public Law 111–5 and Redelegation Order 00–002–01E, with respect to Recovery Act projects funded by EERE, I hereby issue a ''determination of inapplicability'' (a waiver under the Recovery Act Buy American provision) for: (1) Multi-colored Full Wave Rectified strands of 5mm, conical shaped LED mini bulbs in molded sockets with 4″ spacing between bulbs, UL listed with a minimum 50,000 hour lamp life; (2) Ancillary items needed for a T–12 to T–8 retrofit, including the ballast disconnects, ancillary wiring and welding materials where needed, and the spacing clip to accommodate T–8 bulbs into a T–12 fixture; and (3) Roof integrated flat plate collectors producing 1250 btu/square foot, where the installation requires a roof integrated solar collector to meet local historic preservation or local building standards.

Having established a proper justification based on domestic nonavailability, EERE hereby provides notice that on September 12, 2011, three (3) nationwide categorical waivers of section 1605 of the Recovery Act were issued as detailed supra. This notice constitutes the detailed written justification required by Section 1605(c) for waivers based on a finding under subsection (b).

This waiver determination is pursuant to the delegation of authority by the Secretary of Energy to the Assistant Secretary for Energy Efficiency and Renewable Energy with respect to expenditures within the purview of his responsibility. Consequently, this waiver applies to all EERE projects carried out under the Recovery Act.

Authority: Pub. L. 111–5, section 1605.

Issued in Washington, DC on September 12, 2011.

Henry Kelly,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy, U.S. Department of Energy.

[FR Doc. 2011–33416 Filed 12–28–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Nationwide Categorical Waivers Under Section 1605 (Buy American) of the American Recovery and Reinvestment Act of 2009 (Recovery Act)

AGENCY: Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy (DOE).

ACTION: Notice of Limited Waivers.

SUMMARY: The U.S. Department of Energy (DOE) is hereby granting a nationwide limited waiver of the Buy American requirements of section 1605 of the Recovery Act under the authority of Section 1605(b)(2), (iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality), with respect to Recovery Act projects funded by EERE for (1) Absorption chillers rated at 205 and 250 tons; (2) Thermostatic Regulator Valves that regulate the flow of hot water or low pressure steam through free-standing radiators, baseboards, or convectors in hot water and two-pipe steam systems; (3) 28 and 30 W 180 degree LED replacement bulbs for HID street lights; (4) 100% Oil free rotary screw variable speed drive water cooled air compressor with a factory installed dryer capable of supplying air at < − 20 degree dew point temperature; (5) high speed electronic governors with actuators to replace existing mechanical UG8 and UG40 engine governors; upgraded fuel injectors and regulators; and replacement engine pistons and cylinder liners; for energy efficiency upgrades in an existing Mitsubishi 52/55B or 40/54A diesel generator engine; and (6) Universal control modules for use with Novar proprietary communication protocols.

DATES: *Effective Date:* 10/24/2011.

FOR FURTHER INFORMATION CONTACT: Christine Platt-Patrick, Office of Energy Efficiency and Renewable Energy (EERE), (202) 287–1553, Department of Energy, 1000 Independence Avenue SW., Mailstop EE–2K, Washington, DC 20585.

SUPPLEMENTARY INFORMATION: Under the authority of American Recovery and Reinvestment Act of 2009 (Recovery Act Public Law 111–5, section 1605(b)(2), the head of a Federal department or agency may issue a ''determination of inapplicability'' (a waiver of the Buy American provision) if the iron, steel, or relevant manufactured good is not produced or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality (''nonavailability''). The authority of the Secretary of Energy to make all inapplicability determinations was re-delegated to the Assistant Secretary for Energy Efficiency and Renewable Energy (EERE), for EERE projects under the Recovery Act, in Redelegation Order No. 00–002.01E, dated April 25, 2011. Pursuant to this delegation the Acting Assistant Secretary, EERE, has concluded that: (1) Absorption chillers rated at 205 and 250 tons; (2) Thermostatic Regulator Valves that regulate the flow of hot water or low pressure steam through free-standing radiators, baseboards, or convectors in hot water and two-pipe steam systems; (3) 28 and 30 W 180 degree LED replacement bulbs for HID street lights; (4) 100% Oil free rotary screw variable speed drive water cooled air compressor with a factory installed dryer capable of supplying air at < − 20 degree dew point temperature; (5) high speed electronic governors with actuators to replace existing mechanical UG8 and UG40 engine governors; upgraded fuel injectors and regulators; and replacement engine pistons and cylinder liners; for energy efficiency upgrades in an existing Mitsubishi 52/55B or 40/54A diesel generator engine; and (6) Universal control modules for use with Novar proprietary communication protocols, are not produced or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality. The above items, when used on eligible EERE Recovery Act-funded projects, qualify for the ''nonavailability'' waiver determination.

EERE has developed a robust process to ascertain in a systematic and expedient manner whether or not there is domestic manufacturing capacity for the items submitted for a waiver of the Recovery Act Buy American provision. This process involves a close collaboration with the United States Department of Commerce National Institute of Standards and Technology (NIST) Manufacturing Extension Partnership (MEP), in order to scour the domestic manufacturing landscape in search of producers before making any nonavailability determinations.

The MEP has 59 regional centers with substantial knowledge of, and connections to, the domestic manufacturing sector. MEP uses their regional centers to 'scout' for current or potential manufacturers of the product(s) submitted in a waiver request. In the course of this interagency collaboration, MEP has been able to find exact or partial matches for manufactured goods that EERE grantees had been unable to locate. As a result, in those cases, EERE was able to work with the grantees to procure American-made products rather than granting a waiver.

Upon receipt of completed waiver requests for the four products in the current waiver, EERE reviewed the information provided and submitted the relevant technical information to the MEP. The MEP then used their network of nationwide centers to scout for domestic manufacturers. The MEP reported that their scouting process did not locate any domestic manufacturers for these exact or equivalent items.

In addition to the MEP collaboration outlined above, the EERE Buy American Coordinator worked with other manufacturing stakeholders to scout for domestic manufacturing capacity or an equivalent product for each item contained in this waiver. EERE also conducted significant amounts of independent research to supplement MEP's scouting efforts, including utilizing the solar experts employed by the Department of Energy's National Renewable Energy Laboratory. EERE's research efforts confirmed the MEP findings that the goods included in this waiver are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality.

The nonavailability determination is also informed by the inquiries and petitions to EERE from recipients of EERE Recovery Act funds, and from suppliers, distributors, retailers and trade associations—all stating that their individual efforts to locate domestic manufacturers for these items have been unsuccessful.

Specific technical information for the manufactured goods included in this non-availability determination is detailed below:

(1) Absorption chillers rated at 205 and 250 tons.

This is the third waiver request for absorption chillers, but we had not examined the market for US manufacturers of this size in the past, there were no US responses to either rfp nor to the MEP request, EERE could identify no US manufacturers that could produce chillers meeting the specifications.

(2) Thermostatic Regulator Valves regulate the flow of hot water or low pressure steam through free-standing radiators, baseboards, or convectors in hot water and two-pipe steam systems.

These valves provide fast acting modulating control of the space temperature through a vapor charge, ensuring the highest level of comfort

control. They are an inexpensive item, a search through the library at a local plumbing supply company revealed 12 potential suppliers, none of whom manufacture these valves in the US. MEP did not reveal any potential or current manufacturers.

(3) 28 and 30 W 180 degree LED replacement bulbs for HID street lights.

Only for these unique wattages where no other bulbs will fit. No US manufacturer was identified that produced a product with this wattage by MEP or EERE.

(4) 100% Oil free rotary screw variable speed drive water cooled air compressor with a factory installed dryer capable of supplying air at < -20 degree dew point temperature.

The compressed air needs to be oil free and supplied with no humidity because it will damage the process equipment connected to the system, and in addition, as the product manufactured is hygroscopic in nature, it will tend to absorb humidity of the air thus damaging the product. MEP and DOE originally identified 2 possible matches, however, neither could provide air with the required humidity levels.

(5) High speed electronic governors with actuators to replace existing mechanical UG8 and UG40 engine governors; upgraded fuel injectors and regulators; and replacement engine pistons and cylinder liners; for energy efficiency upgrades in an existing Mitsubishi 52/55B or 40/54A diesel generator engine.

These upgrades will improve fuel efficiency and to allow the plant to begin using ultra-low sulfur diesel fuel (<15 ppm)—to comply with US EPA 2010 Emissions Regulation—because the engines were originally made in Japan, the only suppliers of these parts identified were Japanese or German.

(6) Universal control modules for use with Novar proprietary communication protocols, where a Novar system was installed previously, and where utilizing a domestic control module would mean that the existing energy management controls would have to be removed and a new energy management controls system would have to replace the existing Novar system.

In these cases, the grantee is unable to use a domestic control module because the existing system runs off of a proprietary communication protocol (rather than LON or BACnet), and the entire system would have to be replaced to install additional controllers. Trade organizations, DOE and MEP all agreed that this was the only controller capable of properly interfacing with this protocol.

In light of the foregoing, and under the authority of section 1605(b)(2) of Public Law 111–5 and Redelegation Order 00–002–01E, with respect to Recovery Act projects funded by EERE, I hereby issue a ''determination of inapplicability'' (a waiver under the Recovery Act Buy American provision) for: (1) Absorption chillers rated at 205 and 250 tons; (2) Thermostatic Regulator Valves that regulate the flow of hot water or low pressure steam through free-standing radiators, baseboards, or convectors in hot water and two-pipe steam systems; (3) 28 and 30 W 180 degree replacement bulbs for HID street lights for use in Northern Mariana Islands; (4) 100% Oil free rotary screw variable speed drive water cooled air compressor with a factory installed dryer capable of supplying air at < -20 degree dew point temperature; (5) high speed electronic governors with actuators to replace existing mechanical UG8 and UG40 engine governors; upgraded fuel injectors and regulators; and replacement engine pistons and cylinder liners; for energy efficiency upgrades in an existing Mitsubishi 52/55B or 40/54A diesel generator engine; and (6) Universal control modules for use with Novar proprietary communication protocols.

Having established a proper justification based on domestic nonavailability, EERE hereby provides notice that on October 24, 2011, six (6) nationwide categorical waivers of section 1605 of the Recovery Act were issued as detailed *supra.* This notice constitutes the detailed written justification required by Section 1605(c) for waivers based on a finding under subsection (b).

This waiver determination is pursuant to the delegation of authority by the Secretary of Energy to the Assistant Secretary for Energy Efficiency and Renewable Energy with respect to expenditures within the purview of his responsibility. Consequently, this waiver applies to all EERE projects carried out under the Recovery Act.

Authority: Pub. L. 111–5, section 1605.

Issued in Washington, DC on October 24, 2011.

Henry Kelly,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy, U.S. Department of Energy.

[FR Doc. 2011–33415 Filed 12–28–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL12–14–000]

Trans-Allegheny Interstate Line Company; Notice of Amendment To Petition for Declaratory Order

Take notice that on December 20, 2011, Trans-Allegheny Interstate Line Company (TrAILCo) filed an amendment to its December 14, 2011 filing of Petition for Declaratory Order, in response to the Federal Energy Regulatory Commission Staff's informal request.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on December 27, 2011.

Dated: December 21, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–33317 Filed 12–28–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP12–35–000]

East Cheyenne Gas Storage, LLC; Notice of Amendment

Take notice that on December 16, 2011, East Cheyenne Gas Storage, LLC (East Cheyenne), 10901 W. Toller Drive, Suite 200, Littleton, Colorado 80127, filed in the captioned docket an application under section 7 of the Natural Gas Act (NGA), as amended, and Part 157 of the Commission's regulations for an order amending the certificate of public convenience and necessity issued by the Commission in Docket No. CP10–34–000, as amended in Docket No. CP11–40–000. Specifically, East Cheyenne requests authorization to increase the maximum reservoir pressure for the D Sand zone in the West Peetz Field of its East Cheyenne Gas Storage Project to a maximum bottom-hole pressure of 2,338 pounds per square inch gauge (2,353 pounds per square inch absolute), all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Any questions concerning this application may be directed to William A. Lang, President, East Cheyenne Gas Storage, LLC, 10370 Richmond Avenue, Suite 510, Houston, Texas 77042, by Telephone: (713) 403–6460 or Facsimile: (713) 403–6461.

East Cheyenne requests that the Commission grant the requested authorizations and related approvals prior to February 1, 2012. By issuing an order by this date, the Commission will facilitate East Cheyenne's efficient and timely development of storage capacity at its East Cheyenne Gas Storage Project. East Cheyenne states that it does not propose any change in capacity, injection rates or withdrawal rates authorized by the Commission in the original certificate order, as amended, in this Application.

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 email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on January 11, 2012

Dated: December 21, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–33315 Filed 12–28–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP12–34–000]

Pine Prairie Energy Center, LLC; Notice of Application

Take notice that on December 15, 2011, Pine Prairie Energy Center, LLC (Pine Prairie), 333 Clay Street, Suite 1500, Houston, TX 77002, filed an application in Docket No. CP12–34–000 pursuant to Section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's Regulations, for a

certificate of public convenience and necessity to amend its certificate authority previously granted in CP04–379–000, et al. Pine Prairie proposes to reallocate the previously certificated natural gas storage capacity of its storage facility among authorized Cavern Nos. 1 through 5. Pine Prairie states that it does not request any increase in total storage capacity beyond the 48 Bcf/day of working gas capacity (60.8 total storage capacity) authorized in CP04–379–002 [1] as described in more detail in the application which is on file with the Commission and open for public inspection. This filing 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 ''e-Library'' 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 for TTY, (202) 502–8659.

Any questions concerning this Application may be directed to James F. Bowe, Jr., Dewey & LeBoeuf LLP, 1101 New York Avenue NW., Washington, DC 20005, (202) 346–8000 (phone) (202) 346–8102 (fax), *jbowe@dl.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 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 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 14 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. 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 commenters 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 commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters 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.

Protests and interventions may be filed electronically via the Internet in lieu of paper; see, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: January 11, 2012.

Dated: December 21, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–33314 Filed 12–28–11; 8:45 am]

BILLING CODE 6717–01–P

[1] 128 FERC 61,136 (2009).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP12–29–000]

Freeport LNG Development, L.P.; Notice of Application

Take notice that on December 9, 2011, Freeport LNG Development, L.P. (Freeport LNG), filed an application pursuant to Section 3(a) of the Natural Gas Act and Parts 153 and 380 of the Commission's Regulations, requesting authorization to modify the certificated LNG facilities located on Quintana Island, Texas. 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@gerc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Freeport LNG seeks Commission authorization to modify the Phase II facilities which were certificated by the Commission Order dated September 26, 2006 in Docket No. CP05–361–000. Freeport LNG proposes the following: (1) Reorientation of the marine berthing dock, (2) elimination of one of the four authorized LNG unloading arms and, (3) reduction of the diameter of the two LNG transfer pipelines from 32-inch to 26-inch. Also, Freeport LNG proposes to construct a new approximately 7,000 foot-long access road system to facilitate access to the Phase II dock. Freeport LNG estimates to place the Phase II facilities, as modified, in service by January 2016.

Any questions regarding this application should be directed to Lisa M. Tonery, Fulbright & Jaworski L.L.P., 666 Fifth Avenue, New York, New York 10103. Telephone (212) 318–3009, fax (212) 318–3400, and email: *ltonery@fulbright.com.*

Any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the below listed comment date, file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR

385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit original and 7 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

Motions to intervene, protests and comments may be filed electronically via the Internet in lieu of paper, see, 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: 5 p.m. Eastern Time on January 11, 2011.

Dated: December 21, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–33313 Filed 12–28–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Effectiveness of Exempt Wholesale Generator Status

	Docket Nos.
Alliant Energy Corporate Services, Inc	EG11–125–000
Full Circle Renewables, LLC	EG11–126–000
Invenergy Illinois Solar I LLC	EG11–127–000
Record Hill Wind LLC	EG11–128–000
Vasco Winds, LLC	EG11–129–000
NexEra Energy Montezuma II Wind, LLC	EG11–130–000
Richard-Stryker Generation LLC	EG11–131–000
Pioneer Trail Wind Farm, LLC	EG11–132–000
GSG 6, LLC	EG11–133–000

Take notice that during the month of November 2011, the status of the above-captioned entities as Exempt Wholesale Generators became effective by operation of the Commission's regulations. 18 CFR 366.7(a).

Dated: December 21, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–33316 Filed 12–28–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–512–000]

National Fuel Gas Supply Corporation; Notice of Availability of the Environmental Assessment for the Proposed Line N 2012 Expansion Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) for the Line N 2012 Expansion Project (Project), proposed by National Fuel Gas Supply Corporation (National Fuel) in the above referenced docket. National Fuel proposes to construct and operate the Project in Washington County, Pennsylvania to create new transportation capacity on the existing Line N for emerging Marcellus Shale gas production, as well as to generate adequate pressure to redeliver this gas to Texas Eastern Transmission Corporation. The Project would increase available capacity by approximately 150,000 dekatherms per day.

The EA assesses the potential environmental effects of the construction and operation of the Project in accordance with the requirements of the National Environmental Policy Act (NEPA). The FERC staff concludes that approval of the proposed Project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The proposed Line N 2012 Expansion Project includes the following facilities:

- Replacement of 4.85 miles of 24-inch-diameter natural gas pipeline;
- Installation of two 10,280 horsepower gas-fired turbine-driven compressors at the existing Buffalo Compressor Station;
- The construction of a pig launcher/receiver [1] at milepost 4.85; and
- The replacement of 20-inch-diameter pipeline at four road crossings south of the Buffalo Compressor Station.

The FERC staff mailed copies of the EA to Federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; newspapers and libraries in the project area; and parties to this proceeding. In addition, the EA is available for public viewing on the FERC's Web site (*www.ferc.gov*) using the eLibrary link. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Any person wishing to comment on the EA may do so. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that the Commission has the opportunity to consider your comments prior to making its decision on this project, it is important that we receive your comments in Washington, DC on or before January 25, 2012.

For your convenience, there are three methods you can use to file your comments to the Commission. In all instances, please reference the project docket number (CP11–512–000) with your submission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.*

(1) You can file your comments electronically using the eComment feature on the Commission's Web site (*www.ferc.gov*) under the link to Documents and Filings. This is an easy method for submitting brief, text-only comments on a project;

(2) You can also file your comments electronically using the eFiling feature

[1] A ''pig'' is a tool that is inserted into and moves through the pipeline, and is used for cleaning the pipeline, internal inspections, or other purposes.

on the Commission's Web site (*www.ferc.gov*) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You must select the type of filing you are making. If you are filing a comment on a particular project, please select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).[2] Only intervenors have the right to seek rehearing of the Commission's decision. The Commission grants affected landowners and others with environmental concerns intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which no other party can adequately represent. Simply filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search,'' and enter the docket number excluding the last three digits in the Docket Number field (i.e., CP11–512). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/esubscribenow.htm.*

[2] See the previous discussion on the methods for filing comments.

Dated: December 21, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–33312 Filed 12–28–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR10–30–002]

EasTrans, LLC; Notice of Motion for Extension of Rate Case Filing Deadline

Take notice that on December 16, 2011, EasTrans, LLC (EasTrans) filed a request for an extension consistent with the Commission's revised policy of periodic review from a triennial to a five year period. The Commission in Order No. 735 modified its policy concerning periodic reviews of rates charges by section 311 and Hinshaw pipelines to extend the cycle for such reviews from three to five years.[1] Therefore, EasTrans requests that the date for its next rate filing be extended to March 31, 2014, which is five years from the date of EasTrans' most recent rate filing with this Commission.

Any person desiring to participate in this rate proceeding must file a motion to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 3, 2012.

[1] Contract Reporting Requirements of Intrastate Natural Gas Companies, Order No. 735, 131 FERC ¶ 61,150 (May 20, 2010).

Dated: December 21, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–33309 Filed 12–28–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL12–15–000]

Shiloh III Wind Project, LLC; Notice of Petition for Declaratory Order

Take notice that on December 15, 2011, pursuant to section 201 of the Federal Power Act, 16 U.S.C. 824, Shiloh III Wind Project, LLC filed a Petition for Declaratory Order, requesting that the Federal Energy Regulatory Commission (Commission) disclaim jurisdiction over the Owner-Lessor in a structure lease financing transaction for wind powered generation and related interconnection facilities located in Solano County, California, as set forth in the above-referenced proceeding.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and

interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on January 20, 2012.

Dated: December 21, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–33318 Filed 12–28–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TS12–1–000]

Kansas City, KS, Board of Public Utilities; Notice of Petition for Waiver

Take notice that on November 15, 2011, The Board of Public Utilities of Kansas City, Kansas (KCBPU) tendered for filing a request for waiver of the requirements to establish an open access same-time information system (OASIS) and adhere to the Commission's Standard of Conduct for Transmission Providers established in Order Nos. 889 [1], 2004 [2] and 717 [3] as such requirements apply to municipal electric system through reciprocity obligation in Section 6 of the Commission's *pro forma* Open Access Transmission Tariff [4], as adopted and implemented by public utilities.

Any person desiring to intervene or to protest in the above referenced proceeding must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filing in the above 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 email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on Friday, December 30, 2011.

Dated: December 21, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–33306 Filed 12–28–11; 8:45 am]

BILLING CODE 6717–01–P

[1] *Open Access Same-Time Information System and Standards of Conduct,* Order No. 889, FERC Stats. & Regs. ¶ 31,035 (1996), *order on reh'g,* Order No. 889–A, FERC Stats. & Regs. ¶ 31,049 (1997), reh'g denied, Order No. 889–B, 81 FERC ¶ 61,253 (1997), *aff'd in relevant part sub nom. Transmission Access Policy Study Group* v. *FERC,* 225 F.3d 667 (DC Cir. 2000).

[2] *Standards of Conduct for Transmission Providers,* Order No. 2004, FERC Stats. & Regs. ¶ 31,155 (2003), *order on reh'g,* Order No. 2004–A, FERC Stats. & Regs. ¶ 31,161 (2004), *order on reh'g,* Order No. 2004–B, FERC Stats. & Regs. ¶ 31,166 (2004), *order on reh'g,* Order No. 2004–C, FERC Stats. & Regs. ¶ 31,172 (2004), *order on reh'g,* Order No. 2004–D, 110 FERC ¶ 61,320 (2005), *vacated and remanded as it applies to natural gas pipelines sub nom. National Fuel Gas Supply Corp.* v. *FERC,* 468 F.3d 831 (DC Cir. 2006).

[3] *Standards of Conduct for Transmission Providers,* Order No. 717, FERC Stats. & Regs. ¶ 31,280 (2008), order on reh'g, Order No. 717–A, 129 FERC ¶ 61,043 (2009), *order on reh'g,* Order No. 717–B, 129 FERC ¶ 61,123 (2009), *order on reh'g,* Order No. 717–C, 131 FERC ¶ 61,045 (2010).

[4] *Preventing Undue Discrimination and Preference in Transmission Service,* Order No. 890, FERC Stats. & Regs. ¶ 31,241 (2007), *order on reh'g,* Order No. 890–A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g,* Order No. 890–B, 123 FERC ¶ 61,299, Appendix B at Original Sheet No. 33 (2008), *order on reh'g,* Order No. 890–C, 126 FERC ¶ 61,228 (2009).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR12–5–000]

ONEOK Rockies Midstream, L.L.C.; Notice for Temporary Waiver of Filing and Reporting Requirements

Take notice that on December 15, 2011, pursuant to Rule 204 of the Rules of Practices and Procedures of the Federal Energy Regulatory Commission, 18 CFR 385.204 (2011), ONEOK Rockies Midstream, L.L.C. (ONEOK) submitted a request for temporary waiver of the tariff-filing requirements set forth in section 6 of the Interstate Commerce Act; [1] the reporting requirements set forth in section 20 of the Act; [2] and the filing and reporting requirements set forth in Parts 341 and 357 of the Commission's regulations [3] with respect to a pipeline that ONEOK plans to construct for the transportation of ''raw mix'' natural gas liquids between certain Stateline plants in Williams County, North Dakota, and the Riverview Rail Terminal in Richland County, Montana.

Any person desiring to intervene or to protest in the above reference proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

[1] 49 U.S.C. 6(1) AND 6(5) (Supp. 1982).

[2] 49 U.S.C. 20(1), 20(3), and 20(5) (Supp. 1982).

[3] 18 CFR Parts 341 and 357 (2009) .

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 3, 2012.

Dated: December 21, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–33310 Filed 12–28–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD09–9–000]

Small Hydropower Development in the United States; Notice of Small/Low-Impact Hydropower Webinar

The Federal Energy Regulatory Commission will host a Small/Low-Impact Hydropower Webinar on January 25, 2012, from 12:00 noon to 1:30 p.m. Eastern Standard Time. The webinar will be open to the public and advance registration is required.

The purpose of this webinar is to provide guidance on small/low-impact hydropower projects being developed in the Northeast region of the United States. Specifically, the webinar will provide the opportunity for participants to learn what types of hydropower projects qualify as a 5-megawatt (MW) exemption, how to file a complete application for these types of projects, and what to do if a project does not qualify for an exemption. Additionally, participants have the opportunity to ask questions and learn how to get more information and assistance from FERC staff.

To register for this webinar, please go to *https://www.ferc.gov/whats-new/registration/hydro-webinar-1–25–12-form.asp.* Registration will be open until January 18, 2012. Once registered, you will receive a confirmation email containing information about joining the webinar.

For more information about this webinar, please contact Shana Murray at (202) 502–8333 or *shana.murray@ferc.gov.*

Dated: December 21, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–33311 Filed 12–28–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 199–205]

South Carolina Public Service Authority; Notice of Workshop for Santee Cooper Hydroelectric Project

On May 26 and November 8, 2011, Commission staff met with representatives of the National Marine Fisheries Service (NMFS) and the South Carolina Public Service Authority (SCPSA), licensee for the Santee-Cooper Hydroelectric Project No. 199, to discuss what is needed to complete formal consultation for shortnose sturgeon (*Acipenser brevirostrum*) under section 7 of the Endangered Species Act (ESA). At the November 8, 2011 meeting, the parties agreed that additional dialogue was necessary to understand the project, its operations, and the technical feasibility of implementing measures at the project's two developments. Accordingly, Commission staff will meet with representatives of NMFS and SCPSA on Wednesday and Thursday, January 11 and 12, 2012, respectively. The focus of each day is as follows:

a. January 11 will be devoted to touring and discussing ESA issues at Wilson Dam, and for the Santee River and the Re-Diversion Canal; and

b. January 12 will be devoted to touring and discussing issues at Pinopolis (Jefferies Station) and the U.S. Army Corps of Engineers' (Corps) St. Stephen Project.

Each day will begin at 9 a.m. at SCPSA's headquarters, located at 1 Riverwood Drive, Moncks Corner, South Carolina. Participation at the workshop will be limited to Commission staff, NMFS, SCPSA, and the Corps; all local, state, and federal agencies, and interested parties, are invited to attend. Questions concerning the workshop should be directed to John Inabinet of SCPSA at (843) 761–4069. The workshop is posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx,* along with other related information.

For further information, contact Allan Creamer at (202) 502–8365, or by email at *allan.creamer@ferc.gov.*

Dated: December 21, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–33307 Filed 12–28–11; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9613–9]

San Fernando Valley Area 2; Notice of Proposed Administrative Order on Consent Re: 4057 and 4059 Goodwin Avenue, Los Angeles, CA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: The EPA is hereby providing notice of a proposed administrative order on consent (Agreement)with the Spirito Family Trust and Alice C. Clarno, Trustee, concerning 4057 and 4059 Goodwin Avenue, Los Angeles, California (Property). The Agreement is entered into pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9601, *et seq.* The Agreement provides for a settlement with the Trust on ability to pay grounds. Under the Agreement, the Trust will pay $1500 (one thousand five hundred dollars) to EPA in settlement of its potential liability for contamination at the Property.

DATES: EPA will receive written comments relating to the settlement until January 30, 2012. EPA will consider all comments it receives during this period, and may modify or withdraw consent to the settlement if any comments disclose facts or considerations indicating that the

settlement is inappropriate, improper, or inadequate.

A copy of the settlement document may be obtained by calling the Region IX Superfund Records Center at (415) 820–4700 and requesting a copy of the document.

ADDRESSES: Written comments should be addressed to Marie Rongone, U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street (mail code ORC–3), San Francisco, California 94105–3901, or may be faxed to her at (415) 947–3570 or sent by email to *Rongone.Marie@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Additional information about the Proposed Administrative Order on Consent re 4057 and 4059 Goodwin Avenue, Los Angeles, California, may be obtained by calling Marie Rongone at (415) 972–3891 or Lisa Hanusiak at (415) 972–3152.

Dated: December 20, 2011.

Kathleen Salyer,

Acting Director, Superfund Division, U.S. EPA Region IX.

[FR Doc. 2011–33467 Filed 12–28–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9612–4]

Notice of Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, As Amended by the Superfund Amendments and Reauthorization Act

AGENCY: Environmental Protection Agency.

ACTION: Notice; Request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended by the Superfund Amendments and Reauthorization Act (''CERCLA''), notice is hereby given that a proposed administrative cost recovery settlement concerning the Abbott Mine/Turkey Run Mine Superfund Site (Site) in Lake County, California was executed by the Agency on November 14, 2011. The proposed settlement resolves an EPA claim under Section 107 of CERCLA against Respondent, El Paso Merchant Energy—Petroleum Company. The proposed settlement was entered into under the authority granted EPA in Section 122(h) of CERCLA, and requires the Respondent to pay $237,878.07 to the Hazardous Substances Superfund in settlement of past costs. For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency's response to any comments received will be available for public inspection at: U.S. Environmental Protection Agency, Superfund Records Center, 95 Hawthorne Street, Suite 403S, San Francisco, CA 94105, Phone (415) 536–2000.

DATES: Comments must be submitted on or before January 30, 2012.

ADDRESSES: The proposed settlement as set forth in the Administrative Agreement for Recovery of Past Response Costs, Docket No. 2011–13 is available for public inspection at the U.S. Environmental Protection Agency at U.S. Environmental Protection Agency, Superfund Records Center, 95 Hawthorne Street, Suite 403S, San Francisco, CA 94105, Phone (415) 536–2000. A copy of the Administrative Settlement Agreement for Recovery of Past Costs may be obtained from the U.S. Environmental Protection Agency Region IX, Superfund Records Center at the above address. Comments regarding the proposed settlement should be addressed to Larry Bradfish at the address below, and should reference the Abbott Mine/Turkey Run Mine Site located in Lake County, California (EPA Docket No. 2011–13).

FOR FURTHER INFORMATION CONTACT: Larry Bradfish, Assistant Regional Counsel, Office of Regional Counsel (ORC–3), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Phone (415) 972–3934, E–Mail: *bradfish.larry@epa.gov.*

Dated: December 7, 2011.

Dustin Minor,

Acting Director, Superfund Division.

[FR Doc. 2011–33454 Filed 12–28–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9614–3]

Proposed Settlement Agreement, Clean Air Act Citizen Suit

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 (''CAA'' or the ''Act''), notice is hereby given of a proposed settlement agreement between Sierra Club and the U.S. Environmental Protection Agency. On March 2, 2011, Sierra Club submitted to Lisa Jackson, Administrator, United States Environmental Protection Agency (''EPA'') a Notice of intent to sue, pursuant to CAA section 304(b)(2), for alleged failure to make determinations of whether certain areas designated nonattainment for the 1997 8-hour ozone national ambient air quality standard (''8-Hour ozone standard'') have attained that standard, pursuant to section 181(b)(2) of the CAA. Sierra Club's Notice alleged that EPA failed to perform nondiscretionary duties under the CAA as to whether seven 1997 8-hour ozone areas: (1) Boston-Lawrence-Worcester (Eastern Massachusetts), (2) Chicago-Gary-Lake County (Illinois portion), (3) New York-Northern New Jersey-Long Island (New York, New Jersey, and Connecticut portions), (4) Springfield (Western Massachusetts), (5) St. Louis (Illinois and Missouri portions), (6) Charlotte-Gastonia-Rock Hill (North Carolina and South Carolina portions), and (7) Boston-Manchester-Portsmouth (New Hampshire portion) attained the 1997 8-hour ozone standard by the applicable attainment date. The proposed settlement agreement includes the Parties' agreement that EPA has taken actions with respect to three of these areas—the Boston-Manchester-Portsmouth, Charlotte-Gastonia-Rock Hill, and Chicago-Gary-Lake County areas—that have rendered moot the allegations in Sierra Club's Notice related to these areas. The proposed settlement agreement establishes deadlines for EPA to make determinations for the remaining four areas: New York-Northern New Jersey-Long Island (NY, NJ, CT) Springfield (Western MA), Boston-Lawrence-Worcester (Eastern MA), and St. Louis (IL, MO).

DATES: Written comments on the proposed settlement agreement must be received by *January 30, 2012.*

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OGC–2011–1021, online at *www.regulations.gov* (EPA's preferred method); by email 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: Kendra Sagoff, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone: (202) 564–5591; fax number (202) 564–5603; email address: *sagoff.kendra@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Settlement Agreement

The proposed settlement agreement would avoid a lawsuit seeking to compel the Administrator to take various actions related to whether seven areas: (1) Boston-Lawrence-Worcester (Eastern Massachusetts), (2) Chicago-Gary-Lake County (Illinois portion), (3) New York-Northern New Jersey-Long Island (New York, New Jersey, and Connecticut portions), (4) Springfield (Western Massachusetts), (5) St. Louis (Illinois and Missouri portions), (6) Charlotte-Gastonia-Rock Hill (North Carolina and South Carolina portions), and (7) Boston-Manchester-Portsmouth (New Hampshire portion), which are designated as nonattainment for ozone, attained the 1997 8-hour ozone NAAQS by the applicable attainment date. The proposed settlement agreement states that Sierra Club and EPA have agreed that EPA has taken actions with regard to the Boston-Manchester-Portsmouth, Charlotte-Gastonia-Rock Hill, and Chicago-Gary-Lake County areas, rendering the allegations regarding those areas moot.

The proposed settlement agreement provides various dates by which EPA must propose a determination and make a final determination as to whether each of the four remaining areas listed in the Notice has attained the 1997 8-hour ozone standard by the applicable attainment date. These areas are: New York-Northern New Jersey-Long Island (NY, NJ, CT), Springfield (Western MA), Boston-Lawrence-Worcester (Eastern MA), and St. Louis (IL, MO).

No later than 15 business days following signature on each notice related to a proposed or final determination specified in the proposed settlement agreement, EPA is required to send the notice to the Office of the Federal Register for review and publication in the **Federal Register**.

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 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–2011–1021) 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 *www.regulations.gov.* You may use *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 *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 email 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 *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, email 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 (email) system is not an ''anonymous access'' system. If you send an email comment directly to the Docket without going through *www.regulations.gov,* your email 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: December 22, 2011.

Patricia Embrey,

Acting Associate General Counsel.

[FR Doc. 2011–33455 Filed 12–28–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before February 27, 2012. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Submit your PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at (202) 395–5167 or via Internet at *Nicholas_A._Fraser@omb.eop.gov* and to Judith B. Herman, Federal Communications Commission, via the Internet at *Judith-b.herman@fcc.gov.* To submit your PRA comments by email send them to: *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, Office of Managing Director, (202) 418–0214.

SUPPLEMENTARY INFORMATION: *OMB Control Number:* 3060–0718.

Title: Part 101 Rule Sections Governing the Terrestrial Microwave Fixed Radio Service.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or Other For-profit Entities; Not-for-profit Institutions and State, Local, or Tribal Government.

Number of Respondents: 9,500 respondents; 27,292 responses.

Estimated Time per Response: .25 hours to 3 hours.

Frequency of Response: On occasion and every 10 year reporting requirements, recordkeeping requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151, 154(i), 301, 303(f), 303(g), 303(r), 307, 308, 309, 310 and 316 of the Communications Act of 1934, as amended.

Total Annual Burden: 35,242 hours.

Total Annual Cost: $760,000.

Privacy Impact Assessment: N/A.

Nature and Extent of Confidentiality: No questions of a sensitive nature are asked.

Needs and Uses: The Commission will submit this expiring information collection to the Office of Management and Budget (OMB) after this 60 day comment period to obtain the full three year clearance from them. There is no change in the Commission's previous burden estimates. There is no change in the reporting, recordkeeping and/or third party disclosure requirements.

Part 101 rule sections require respondents to report or disclose information to the Commission or to third parties, respectively, and to maintain records. These requirements are necessary for the Commission staff to carry out its duties to determine the technical, legal and other qualifications of applicants to operate and remain licensed to operate a station(s) in the common carrier and/or private fixed microwave services.

In addition, the information is used to determine whether the public interest, convenience, and necessity are being served as required by 47 U.S.C. 309 and to ensure that applicants and licensees comply with ownership and transfer restrictions imposed by 47 U.S.C. section 310. Without this information, the Commission would not be able to carry out its statutory responsibilities.

Federal Communications Commission.

Bulah P. Wheeler,

Deputy Manager, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011–33375 Filed 12–28–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[AU Docket No. 11–146; DA 11–2046]

Auction of FM Broadcast Construction Permits; Revised Construction Permit Number in Auction 93

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces a change to the construction permit number for one of the FM broadcast construction permits for Auction 93.

FOR FURTHER INFORMATION CONTACT: Linda Sanderson, Wireless Telecommunications Bureau, Auctions and Spectrum Access Division at (717) 338–2868.

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction 93 Construction Permit Number Change Public Notice* released on December 21, 2011. The complete texts of the *Auction 93 Construction Permit Number Change Public Notice,* including its attachment, and related Commission documents, are available for public inspection and copying from 8 a.m. to 4:30 p.m. ET Monday through Thursday or from 8 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12th Street SW., Room CY–A257, Washington, DC 20554. The *Auction 93 Construction Permit Number Change Public Notice* and related Commission documents also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone (202) 488–5300, fax (202) 488–5563, or you may contact BCPI at its Web site: *http://www.BCPIWEB.com.* When ordering documents from BCPI, please provide FCC document number DA 11–2046 for the *Auction 93 Construction Permit Number Change Public Notice.* The *Auction 93 Construction Permit Number Change Public Notice* and related documents also are available on the Internet at the Commission's Web site: *http://wireless.fcc.gov/auctions/93/,* or by using the search function for AU Docket No. 11–146 on the Commission's Electronic Comment Filing System (ECFS) Web page at *http://www.fcc.gov/cgb/ecfs/.*

1. The Wireless Telecommunications and Media Bureaus announce a change to the construction permit number for one of the FM broadcast construction permits being offered in Auction 93. The number assigned to the construction permit for a Class A FM radio station on channel 252 at Culver, IN is changed from MM-FM900-A, as listed in Attachment A to the *Auction 93 Procedures Public Notice,* 76 FR 78645, December 19, 2011, to MM-FM389-A. Attachment A to the *Auction 93 Revised Construction Permit Public Notice* reflects this change and also includes an indicator that a permit for this allotment was won in Auction 62, but the winning bidder defaulted.

2. For additional information about Auction 93, including filing deadlines and an overview of requirements to participate in the auction, you should consult the *Auction 93 Procedures Public Notice.* That Public Notice and additional information about Auction 93 may be found on the Commission's Auction Web site at *http://wireless.fcc.gov/auctions.*

Federal Communications Commission.

William W. Huber,

Associate Chief, Auctions and Spectrum Access Division, WTB.

[FR Doc. 2011–33509 Filed 12–28–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 011275–030.

Title: Australia and New Zealand-United States Discussion Agreement.

Parties: A.P. Moller-Maersk AS; ANL Singapore Pte Ltd.; CMA CGM, S.A.; Hamburg-Süd KG; and Hapag-Lloyd AG.

Filing Party: Wayne R. Rohde, *Esq.;* Cozen O'Connor LLP; 1627 I Street, NW; Suite 1100; Washington, DC 20006–4007.

Synopsis: The amendment revises the minimum level of service agreed upon by the parties in accordance with Australian law.

By Order of the Federal Maritime Commission.

Dated: December 23, 2011.

Karen V. Gregory,

Secretary.

[FR Doc. 2011–33485 Filed 12–28–11; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities Regarding Savings and Loan Holding Companies: Announcement of Board Approval Under Delegated Authority and Submission to OMB

SUMMARY: Pursuant to the Paperwork Reduction Act of 1995 and 5 CFR 1320.16, the Board of Governors of the Federal Reserve System (''Board'') is hereby giving notice of the final approval of proposed information collections from savings and loan holding companies (''SLHCs''). On July 21, 2011, the responsibility for supervision and regulation of SLHCs transferred from the Office of Thrift Supervision (''OTS'') to the Board pursuant to section 312 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act''). The Board issued a notice proposing information collections from SLHCs and seeking public comment on August 25, 2011.

FOR FURTHER INFORMATION CONTACT: Cynthia Ayouch, Federal Reserve Board Clearance Officer (202) 452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551. OMB Desk Officer—Shagufta Ahmed —Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

SUPPLEMENTARY INFORMATION: *Background.* Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Current Actions. The Dodd-Frank Act was enacted into law on July 21, 2010. Title III of the Dodd-Frank Act abolished the OTS and transferred its authorities (including rulemaking) related to SLHCs to the Board effective as of July 21, 2011. The Board is responsible for the consolidated supervision of SLHCs beginning July 21, 2011. Consolidated data currently collected from bank holding companies (''BHCs'') assist the Board in the identification and evaluation of significant risks that may exist in a diversified holding company. The data also assist the Board in determining whether an institution is in compliance with applicable laws and regulations. The Board believes that it is important that any company that owns and operates a depository institution be held to appropriate standards of capitalization, liquidity, and risk management. Consequently, it is the Board's intention that, to the greatest extent possible, taking into account any unique characteristics of SLHCs and the requirements of the Home Owners' Loan Act (''HOLA''), supervisory oversight of SLHCs should be carried out on a comprehensive consolidated basis, consistent with the Board's established approach regarding BHC supervision. The revisions approved by the Board will provide data to analyze the overall financial condition of most SLHCs to ensure safe and sound operations.

On February 8, 2011, the Board published in the **Federal Register** a notice of intent (''NOI'') to require SLHCs to submit the same reports as BHCs, beginning with the March 31, 2012, reporting period. The NOI stated that the Board would issue a formal proposed notice on information collection activities for SLHCs after the transfer date. On August 22, 2011, the Board issued a proposal to generally require SLHCs to submit certain reports currently used by BHCs and requested public comment.[1] The comment period for the proposal expired on November 1, 2011. The Board received 17 comment letters, which have been summarized and addressed below.

After consideration of the comments received on the proposal, the Board has determined to finalize the proposed collections of information from SLHCs with modifications. As proposed, the Board is exempting a limited number of SLHCs from regulatory reporting using the Board's existing regulatory reports and providing a two year phase-in approach for regulatory reporting for all

[1] 76 FR 53129 (August 25, 2011).

other SLHCs.[2] The reporting panels for the reports listed below will be revised to include SLHCs and specific citation and terminology changes to the related forms will be made as they are renewed.

For all SLHCs that are not initially excluded from reporting, the Board believes a phased-in approach should allow the SLHCs to develop reporting systems over a period of time and would reduce the risk of data quality concerns. The phase-in approach will take two years to implement and will begin with the March 31, 2012, reporting period, when savings associations are required to file the Financial Institutions Examination Council (''FFIEC'') Consolidated Reports of Condition and Income (''Call Reports'') (FFIEC 031 & 041; OMB No. 7100–0036).

During 2012, SLHCs that are not initially excluded from reporting will be required to submit the FR Y–9 series of reports and one of two year-end annual reports (FR Y–6 or FR Y–7 reports).[3] During 2013, these SLHCs will be required to submit all regulatory reports that are applicable to the SLHC, depending on the size, complexity, and nature of the holding company. All SLHCs submitting reports to the Board will also continue to submit the Form H–(b)11 until further notice.

The revisions will provide data to analyze the overall financial condition of SLHCs to ensure safe and sound operations. The Board also will revise other regulatory reports filed by BHCs to include SLHCs in the reporting panels going forward, as needed for supervisory purposes.[4] No other revisions are proposed for these information collections. Reporting requirements for BHCs would not be affected by this proposal.

The Board recognizes institutions' need for lead time to prepare for the new reporting requirements. Thus, consistent with longstanding practice, SLHCs may provide reasonable estimates during the first reporting period. The Federal Reserve Banks will provide training and guidance to SLHCs to assist with the completion and submission of the Federal Reserve's regulatory reports.

Summary of Public Comments

The Board received comment letters from five trade associations (one of these letters was co-authored by two trade groups), three commercial companies, two law firms, four insurance companies, and three financial services companies (one of these letters represented seven financial services companies). The majority of the public comments addressed the two proposed exemptions for certain SLHCs from initially reporting most Federal Reserve regulatory reports. Other comments requested delayed implementation, exemption from the FR Y–6 reporting requirements and BHC capital reporting, and submission of regulatory reports based on a fiscal year basis instead of a calendar year basis. Following is a detailed discussion of the comments received and the Board's responses to the comments.

Detailed Discussion of Public Comments and Responses

A. Excluded SLHCs

As mentioned above, the Board proposed to exclude certain SLHCs from initially reporting most Federal Reserve regulatory reports. There were a limited number of SLHCs where immediate transition to these regulatory reports was not deemed appropriate. As a result, the Board initially proposed to exempt SLHCs in either of the following categories from reporting:

1. *Commercial SLHCs:* SLHCs that are exempt pursuant to section 10(c)(9)(C) of HOLA (*i.e.,* ''grandfathered'' unitary SLHCs) and whose savings association subsidiaries' consolidated assets make up less than 5 percent of the total consolidated assets of the SLHC as of the quarter end prior to the reporting date quarter end; or

2. *Insurance SLHCs:* SLHCs where the top-tier holding company is an insurance company that only prepares statutory accounting principles (SAP) financial statements.

The proposal also stated that there could be a few SLHCs that fall outside of the exemption criteria and would be reviewed on a case-by-case basis to determine if requiring standardized regulatory reporting beginning in March 2012 was appropriate. In addition, the proposal stated that other SLHCs that currently meet the exemption criteria would be reviewed on a case-by-case basis to determine if they should be required to submit Federal Reserve regulatory reports.

Several commenters suggested the two exemptions be made permanent and implemented as proposed. The Board believes that it is important that any company that owns and operates a depository institution be held to appropriate standards of capitalization, liquidity, and risk management. Consequently, the Board has determined that, to the greatest extent possible, taking into account any unique characteristics of SLHCs and the requirements of the HOLA, supervisory oversight of SLHCs will be carried out on a comprehensive consolidated basis, consistent with the Board's established approach regarding BHC supervision. The revisions approved by the Board will provide data to analyze the overall financial condition of most SLHCs to ensure safe and sound operations.

A few commenters specifically requested that the Board communicate quickly whether a firm is eligible for an exemption and what must be reported. Some commenters encouraged the Board to perform a case-by-case analysis that will allow some SLHCs an opportunity to demonstrate the costs and challenges of implementing standardized regulatory reporting. The Board recognizes that there are significant costs associated with building financial reporting systems. Thus, the Board gave notice to SLHCs of its intent to transition SLHCs to its reporting systems in February 2011. As mentioned above, the Board believes it is prudent to apply its regulatory reporting scheme to the vast majority of SLHCs in order to assess the overall financial condition of the SLHC and the industry as a whole. The Board provided certain limited exemptions for SLHCs with characteristics that make transition difficult at this time. While the Board recognizes the challenges that SLHCs are undertaking to develop the appropriate reporting infrastructure, the Board has concluded that the transition periods and exemptions are reasonable.

The Board received a number of comments regarding the exemption for commercial SLHCs. Several commenters

[2] All SLHCs will continue to submit all currently required OTS reports, the Schedule HC—Thrift Holding Companies as part of the Thrift Financial Report (''TFR'') and the H–(b)11, through the December 31, 2011, reporting period, using the existing processing, editing and validating system, which is the Electronic Filing System (''EFS'') established by the OTS. Effective for 2012, all SLHCs will still be required to report the H–(b)11 report (OTS Form H–(b)11; OMB No. 7100–0334) with the Board. In addition, SLHCs that are initially exempt from reporting using the Federal Reserve's regulatory reports will still be required to report Thrift Financial Report Schedule HC (OTS 1313; OMB No. 1557–0255), which is proposed to be renamed the FR 2320 report and the Board's FR Y–6 or FR Y–7 regulatory reports. Details about how SLHCs will submit the FR 2320 to the Board effective for 2012 is described in a separate notice in the **Federal Register** dated November 10, 2011. *See* 76 FR 70146. Additionally, the Board will issue a transmittal letter in early 2012 with information regarding the submission of the H–(b)11 report.

[3] SLHCs that must file the FR Y–9C report will not be required to complete Schedule HC–R, Regulatory Capital, until consolidated regulatory capital requirements for SLHCs are established.

[4] In addition, the Board plans to issue a separate reporting proposal for the FR Y–10 report in 2012 that will address the Board's plans to collect organizational structure and activity information from SLHCs in order to populate its National Information Center (''NIC'') data base with a comprehensive list of subsidiaries and affiliates of each SLHC.

requested clarification regarding whether the Board intended this exemption to apply to all grandfathered unitary SLHCs with *de minimis* thrift activity or only those who principally engage in commercial activities. Commenters argued that it would be appropriate to exempt all grandfathered unitary SLHCs with *de minimis* thrift activity. They stated that these companies, whether commercial or financial in nature, are structured substantially different than BHCs, subjecting them to the Federal Reserve reporting forms would be burdensome, and that much of the information is available through other means, such as U.S. Securities and Exchange Commission (''SEC'') filings. In the proposal, the Board was seeking to exclude only those grandfathered unitary SLHCs that were both principally engaged in commercial activities and whose thrift activities are immaterial to the consolidated organization. In response to the comments received, the Board will clarify the exemption to include only those grandfathered unitary SLHCs that engage primarily in activities that are not otherwise permissible under HOLA [5] and whose thrift asset size is immaterial to the size of the consolidated SLHC.

One commenter suggested raising the threshold for measuring the size of the savings association in relation to the size of the consolidated assets of the SLHC from 5 percent (''5 percent test'') to 10 percent, or allowing the exemption to apply if the asset size of the savings association exceeds 5 percent but the savings association is well-capitalized and well-managed, as determined by the most recent examination of the savings association. Another commenter suggested that the 5 percent test be calculated by averaging the four quarters prior to the reporting date instead of determining the threshold using the asset size for the single quarter prior to the reporting date. Another suggestion was to make the determination annually using a four quarter average and that SLHCs in this category should be exempt if their subsidiary savings association's assets do not exceed 5 percent of the consolidated assets of the SLHC for four consecutive quarters. The Board continues to believe that the 5 percent test is an appropriate limit for determining if the savings association is immaterial in size in relation to the consolidated SLHC.

The Board, having taken these comments into consideration, will calculate the 5 percent test annually (as of the June 30th report date) and by reviewing the asset size of the subsidiary savings association for the prior four quarters (which includes the quarter-ended June 30th reporting period) to determine if it exceeded 5 percent of the consolidated assets of the commercial SLHC for four consecutive quarters. Therefore, if the subsidiary savings association's assets were less than 5 percent of the consolidated assets of the commercial SLHC for any single quarter during this period, the commercial SLHC will be exempt from submitting most Federal Reserve reports (except for the FR Y–6 or FR Y–7 and certain other reports) for the upcoming calendar year. Generally, once an SLHC exceeds this threshold test and must start reporting on the Federal Reserve's regulatory reports, it cannot revert to exempt status in the future and must continue to report regardless of the size of the savings association in relation to the size of the SLHC.

For the 2012 reporting year, the Board will review the total assets reported for the subsidiary savings association in the TFR (OMB No. 1550–0023) (or the FFIEC 031 or 041 Call reports if the subsidiary savings association has earlier adopted the submission of the Call report for 2011) and the assets reported for the SLHC on Schedule HC of the TFR for the four quarters including the June 30, 2011, reporting period to evaluate whether an institution would qualify for the exemption. Therefore, for the 2012 reporting year, the asset balances of the subsidiary savings association and the SLHC will be reviewed using the assets reported as of June 30, 2011, March 31, 2011, December 31, 2010 and September 30, 2010. For determining whether a SLHC is eligible for exemption in 2013 and beyond, if the exemption still exists, the Board will review asset balances of the savings association as reported on the FFIEC 031 or 041 report, and will review the total asset balances of the SLHC reported on Schedule HC or the FR 2320 report, for the four quarters including the quarter-ended June 30, 2012 reporting period.[6]

In addition, several commenters noted that it was not clear how this exemption would apply to multi-tiered SLHCs and proposed that the 5 percent test be calculated on an enterprise-wide basis. Consistent with other Board determinations regarding consolidated supervision, the Board will calculate the 5 percent test on an enterprise-wide basis.

Many commenters were particularly concerned about transitioning SLHCs that are principally engaged in the business of insurance (an activity permissible for both SLHCs under HOLA and BHCs under section 4(k) of the Bank Holding Company Act (''BHC Act'') (''Insurance SLHCs'') to the Federal Reserve reporting forms. Several commenters stated that it would be inappropriate and potentially misleading for SLHCs that are principally engaged in insurance activities to submit reports based on existing BHC capital rules and standards, and the capital rules for such entities should be tailored to accurately and appropriately reflect the fundamental business of these types of SLHCs. Commenters requested that the Board strongly consider excluding all Insurance SLHCs, irrespective of their status as grandfathered unitary SLHCs or their reporting status with the SEC, from transitioning to Federal Reserve regulatory reports. These commenters noted that Insurance SLHCs submit financial information and reports to the state insurance regulators. In addition, one commenter cited to section 604(g) and (h) of the Dodd-Frank Act,[7] which requires the Board to use reports and supervisory information provided to other federal and state regulators, to the fullest extent possible.

In response to the comments, the Board will adjust the Insurance SLHC exemption to provide more certainty to affected institutions. Insurance SLHCs that submit reports to the SEC under section 13 or 15(d) of the Securities Exchange Act of 1934 would be expected to transition to the Federal Reserve reporting requirements. Current SEC reporting requirements include the submission of Generally Accepted Accounting Principles (''GAAP'') financial statements that are consolidated at the top-tier holding company.

The Board has a longstanding practice of reviewing reports submitted to other regulators as part of its supervisory activities and, as a result, the Board intends to use this information during the supervisory process. However, as noted above, the Board will supervise all SLHCs on a comprehensive consolidated basis. Although Insurance SLHCs submit financial information and reports to the state insurance regulators, this information is reported on an individual legal entity basis utilizing SAP. The Board believes that consolidated financial data from large

[5] *See* 12 U.S.C. 1467a(c)(2).

[6] *See* 76 FR 70146 (November 10, 2011). This notice includes a proposal to create the FR 2320 as a replacement to Schedule HC of the Thrift Financial Report. This form would be submitted by exempt SLHCs only.

[7] 12 U.S.C. 1467a(b)(2).

SLHCs is an important part of this process.

Revised Exemptions

In light of the comments received and the discussion above, the Board has revised the language exempting certain SLHCs from initially transitioning to the Federal Reserve regulatory reports as follows:

1. *Commercial SLHCs:* The Board will not require grandfathered SLHCs to initially transition to the Federal Reserve regulatory reports if (1) as calculated annually as of June 30th, using the four previous quarters (which includes the quarter-ended June 30th reporting period), its savings association subsidiaries' consolidated assets make up less than 5 percent of the total consolidated assets of the grandfathered SLHC on an enterprise-wide basis for any of these four quarters; *and* (2) as calculated annually as of June 30th, using the assets reported as of June 30th, where more than 50 percent of the assets of the grandfathered unitary SLHC are derived from activities that are not otherwise permissible under HOLA [8] on an enterprise-wide basis. The exemption for commercial SLHCs will be reviewed periodically and may be rescinded if the Board determines that FR Y–9 financial information and other regulatory reports are needed to effectively and consistently assess compliance with capital and other regulatory requirements.

2. *Certain Insurance SLHCs:* The Board will not require SLHCs to initially transition to the Federal Reserve regulatory reports if: (1) as calculated annually as of June 30th, using the assets reported as of June 30th, where more than 50 percent of the assets of the SLHC are derived from the business of insurance on an enterprise-wide basis; *and* (2) the SLHC does not submit reports to the SEC pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934. Insurance SLHCs will be exempt only until consolidated regulatory capital rules are finalized for SLHCs, at which time they may be required to file consolidated financial statements to demonstrate their compliance with the capital rules, and other Federal Reserve Reports.

As proposed, the Board will require all exempt SLHCs to continue submitting the existing Schedule HC, currently in the TFR, and Form H–(b)11 (OMB No. 7100–0334) until further notice.[9] The Board will require all exempt SLHCs to file the FR Y–6 or FR Y–7 beginning with fiscal year ends beginning December 31, 2012.

B. Delayed Implementation

For all SLHCs that were not excluded from reporting, the Board proposed a phased-in approach to allow the SLHCs to develop reporting systems over a period of time and to reduce the risk of data quality concerns. The phased-in approach would take two years to implement and would begin no sooner than the March 31, 2012, reporting period, when savings associations are required to file the Call Report. Reporting requirements for BHCs would not be affected by this proposal.

During 2012, SLHCs that are not excluded above would be required to submit the FR Y–9 series of reports and one of two year-end annual reports (FR Y–6 or FR Y–7). During 2013, these SLHCs would be required to submit all BHC regulatory reports that are applicable to the SLHC, depending on the size, complexity, and nature of the holding company. All SLHCs submitting reports to the Board would also continue to submit the Form H–(b)11 until further notice.

Several commenters suggested delaying the implementation date for SLHCs to begin reporting the Federal Reserve regulatory reports. Some commenters stated that there was not sufficient time or resources to develop the systems necessary to prepare the required reports. The length of delay varied from one year to three years, or until the Board finalizes consolidated regulatory capital requirements and intermediate holding company rules for SLHCs. A number of commenters advocated that former OTS reports (i.e., Form H–(b)11 and Schedule HC of the TFR) should only be required to be submitted until the consolidated capital and intermediate holding company rules for SLHCs are finalized.

In the NOI that was published in February 2011,[10] the Board stated its intention to require SLHCs to submit the same reports as BHCs beginning with the March 31, 2012, reporting period, for SLHCs that meet the quarterly reporting threshold. The structures and activities of the vast majority of SLHCs are similar to BHCs, such that the reporting requirements of these SLHCs should not impose significant additional burden, particularly in view of the two-year phase-in period. The Board recognizes the complexity of the FR Y–9C, which should be submitted by SLHCs with consolidated assets of $500 million or more.[11] However, the majority of SLHCs have consolidated assets of less than $500 million. SLHCs in this category would submit the FR Y–9SP, which is an abbreviated report that is filed only semiannually. SLHC reporting for the FR Y–9SP will not begin until the June 30, 2012, reporting period, which will provide additional time for the majority of SLHCs to prepare their systems for reporting. Additionally, the Board will accept reasonably estimated data for the first reporting cycle and will work with the institutions to accomplish successful reporting.

The Board believes it is prudent to start the migration of reporting by SLHCs on the proposed timeframe, in order to provide the Board with data to assist in analyzing the overall financial condition of most SLHCs to ensure safe and sound operations. Therefore, the Board does not plan to extend the implementation date of the March 31, 2012, reporting period or change the two-year phase-in approach. In addition, the Federal Reserve Banks have been providing training and guidance to SLHCs to assist with the completion and submission of the Federal Reserve's regulatory reports.

Some commenters suggested that the Board introduce a modified phase-in approach for SLHCs that meet either exemption but subsequently receive a determination from the Board that they should comply with the full reporting requirements. These commenters suggested that such a phase-in should not begin any earlier than 2013. Some respondents stated that if the exemptions were only temporary, then the Board should adopt a suitable transition period, such as three years, to give institutions sufficient time to build financial reporting systems to comply with the Board's requirements without creating undue additional burdens.

The Board will develop a transition period for each institution within this category based on the facts and circumstances. Additionally, if the Board decides at a later date to require additional reporting for SLHCs that are currently exempt, the Board will publish a proposal in the **Federal Register** with a proposed transition date.

C. Exemption From FR Y–6 and BHC Capital Reporting

Several commenters mentioned concerns about submitting the FR Y–6 which requires institutions with consolidated assets of $500 million or more to have financial statements

[8] *See* 12 U.S.C. 1467a(c)(2).

[9] The proposed *Quarterly Savings and Loan Holding Company Report* (FR 2320) report replaces the OTS TFR Schedule HC. *See* 76 FR 70146. Both the FR 2320 and the H–(b)11 reports are retained in their entirety and will be required to be submitted by exempt SLHCs until further notice.

[10] *See* 76 FR 70146.

[11] One commenter expressed concern about providing average balances in terms of either an average of daily end-of-day balances or an average of the close of business balance on each Wednesday during the reporting quarter on Schedule HC–K of the FR Y–9C, would require extremely costly system changes. The Board plans to issue a proposal to revise the reporting instruction to accommodate average balance reporting on Schedule HC–K of the FR Y–9C.

audited and prepared in accordance with GAAP. Some commented that the FR Y–6 is appropriate for certain categories of SLHC, but not those that are exempt, given their diverse business activities. In addition, it was suggested that the threshold for reporting of ownership in voting securities of a nonbank company be raised in excess of 10 percent, instead of the current 5 percent requirement of the FR Y–6. Commenters also expressed concern about the burden associated with requiring SLHCs to submit the Report of Changes in Organizational Structure (FR Y–10) (OMB No. 7100–0297), which was not included in the proposal. The Board believes that useful information is reported in the FR Y–6, including the submission of an organization chart, the listing of securities holdings, and information on insiders. This information is used for supervisory planning and to monitor compliance with U.S. laws and regulations. Therefore, the Board will collect the FR Y–6 from all SLHCs.

The Board is aware that the current FR Y–6 reporting instructions are based on BHC statutory requirements. Accordingly, the Board will modify the FR Y–6 and FR Y–7 reporting instructions to include the specific statutory and regulatory requirements for SLHCs. The Board also plans to issue a separate reporting proposal for the FR Y–10 report in early 2012 that would address plans to collect organizational structure and activity information from SLHCs to populate the NIC database with a comprehensive list of subsidiaries and affiliates of each SLHC.

In addition, several commenters expressed concern about SLHCs and Insurance SLHCs submitting reports based on existing BHC capital rules and standards. As stated in the initial **Federal Register** notice, the proposal will not require SLHCs to report regulatory capital information until the Board established consolidated capital requirements for SLHCs.

Section 171 of the Dodd-Frank Act requires the Board to establish minimum leverage and risk-based capital requirements for all SLHCs on a consolidated basis regardless of the size of the SLHCs. Section 171 also requires that the minimum leverage and risk-based capital requirements shall not be less than the requirements in effect for insured depository institutions. As stated in a notice published in the **Federal Register** on April 22, 2011,[12] the Board will issue proposed capital rules for SLHCs at a later date. Until those regulatory capital requirements are finalized, SLHCs would not be required to complete regulatory capital schedules that are included in any report that a SLHC is required to submit to the Board. Consequently, if a SLHC is required to file the quarterly FR Y–9C report, it would not be required to complete Schedule HC–R, Regulatory Capital, at this time.

D. Fiscal Year Reporting

Several commenters suggested that the Board should allow for fiscal year reporting rather than requiring calendar year reporting. These commenters argued that requiring calendar year reporting would add significant complexity and require significant resources to maintain dual reporting systems.

The Board recognizes that some SLHCs use fiscal year reporting rather than calendar year reporting. However, the Board has a longstanding policy of requiring calendar year reporting on most of the standardized financial regulatory reports in order to provide an appropriate basis for comparability and consistency in peer analysis. In addition, the FFIEC 031 and 041 that will be submitted to a savings association's primary Federal banking regulator require calendar year reporting. The Board will require SLHCs that are generally exempted from initially transitioning to the Federal Reserve reporting forms to file the proposed Quarterly Savings and Loan Holding Company Report (FR 2320; OMB No. 7100–to be assigned), the H–(b)11 report, the FR Y–6, or the FR Y–7 all of which allow fiscal year reporting. Therefore, the Board will retain calendar year reporting where required on existing reports.

Final approval under OMB delegated authority without extension of the following reports. As discussed in more detail above, the Board has approved expanding these reporting panels to include SLHCs in the same manner as BHCs with certain exceptions and modifications.

1. *Report title:* The Annual Report of Bank Holding Companies and the Annual Report of Foreign Banking Organizations.

Agency form number: FR Y–6 and FR Y–7.

OMB control number: 7100–0297.

Frequency: Annual.

Reporters: FR Y–6: Top-tier domestic BHCs and SLHCs; FR Y–7: Foreign Banking Organizations (''FBOs'').

Estimated annual reporting hours: FR Y–6: 28,796; FR Y–7: 713.

Estimated average hours per response: FR Y–6: 5.25 hours; FR Y–7: 3.75.

Number of respondents: FR Y–6: 5,485; FR Y–7: 190.

General description of report: These information collections are mandatory under the Federal Reserve Act, the Bank Holding Company Act (BHC Act), the Home Owners' Loan Act (HOLA), and the International Banking Act (12 U.S.C. 248(a)(1), 602, 611a, 1467a(b)(2), 1844(c)(1)(A), 3106(a), and 3108(a)), and Regulations K, Y, and LL (12 CFR 211.13(c), 225.5(b), and 238.4(b)). Individual respondent data are not considered confidential. However, respondents may request confidential treatment for any information that they believe is subject to an exemption from disclosure under the Freedom of Information Act (FOIA), 5 U.S.C. 552(b).

Abstract: The FR Y–6 is an annual information collection submitted by top-tier BHCs and SLHCs, as well as non-qualifying FBOs. It collects financial data, an organization chart, verification of domestic branch data, and information about shareholders. The Board uses the data to monitor holding company operations and determine holding company compliance with the provisions of the BHC Act, HOLA, Regulation Y, and Regulation LL (12 CFR 225, 238). The FR Y–7 is an annual information collection submitted by qualifying FBOs to update their financial and organizational information with the Board. The Board uses information to assess an FBO's ability to be a continuing source of strength to its U.S. operations and to determine compliance with U.S. laws and regulations.

2. *Report title:* Financial Statements for Bank Holding Companies.

Agency form number: FR Y–9C, FR Y–9LP, FR Y–9SP, FR Y–9ES, and FR Y–9CS.

OMB control number: 7100–0128.

Frequency: Quarterly, semiannually, and annually.

Reporters: BHCs and SLHCs.

Estimated annual reporting hours: FR Y–9C: 210,399; FR Y–9LP: 31,689; FR Y–9SP: 47,790; FR Y–9ES: 49; FR Y–9CS: 472.

Estimated average hours per response: FR Y–9C: 45.00; FR Y–9LP: 5.25; FR Y–9SP: 5.40; FR Y–9ES: 0.50; FR Y–9CS: 0.50.

Number of respondents: FR Y–9C: 1,165; FR Y–9LP: 1,509; FR Y–9SP: 4,425; FR Y–9ES: 98; FR Y–9CS: 236.

General description of report: This information collection is mandatory (12 U.S.C. 1467a(b)(2), 1844(c)(1)(A)). Confidential treatment is not routinely given to the data in these reports. However, confidential treatment for the reporting information, in whole or in part, can be requested in accordance

[12] 76 FR 22662 (April 22, 2011).

with the instructions to the form, pursuant to sections (b)(4), (b)(6), and (b)(8) of FOIA (5 U.S.C. 522(b)(4), (b)(6), and (b)(8)).

Abstract: The FR Y–9C and the FR Y–9LP are standardized financial statements for the consolidated BHC or SLHC and its parent. The FR Y–9 family of reports historically has been, and continues to be, the primary source of financial information on BHCs and SLHCs between on-site inspections. Financial information from these reports is used to detect emerging financial problems, to review performance and conduct pre-inspection analysis, to monitor and evaluate capital adequacy, to evaluate BHC or SLHC mergers and acquisitions, and to analyze a BHC's or SLHC's overall financial condition to ensure safe and sound operations.

The FR Y–9C consists of standardized financial statements similar to the Federal Financial Institutions Examination Council (FFIEC) Consolidated Reports of Condition and Income (Call Reports) (FFIEC 031 & 041; OMB No. 7100–0036) filed by commercial banks. The FR Y–9C collects consolidated data from BHCs and SLHCs. The FR Y–9C is filed by top-tier BHCs or SLHCs with total consolidated assets of $500 million or more. (Under certain circumstances defined in the General Instructions, BHCs or SLHCs under $500 million may be required to file the FR Y–9C.)

The FR Y–9LP includes standardized financial statements filed quarterly on a parent company only basis from each BHC or SLHC that files the FR Y–9C. In addition, for tiered BHCs or SLHCs, a separate FR Y–9LP must be filed for each lower tier BHC or SLHC.

The FR Y–9SP is a parent company only financial statement filed by smaller BHCs or SLHCs. Respondents include BHCs or SLHCs with total consolidated assets of less than $500 million. This form is a simplified or abbreviated version of the more extensive parent company only financial statement for large BHCs or SLHCs (FR Y–9LP). This report is designed to obtain basic balance sheet and income information for the parent company, information on intangible assets, and information on intercompany transactions.

The FR Y–9ES collects financial information from Employee Stock Ownership Plans that are also BHCs or SLHCs on their benefit plan activities. It consists of four schedules: Statement of Changes in Net Assets Available for Benefits, Statement of Net Assets Available for Benefits, Memoranda, and Notes to the Financial Statements. The FR Y–9CS is a supplemental report that may be utilized to collect additional information deemed to be critical and needed in an expedited manner from BHCs and SLHCs. The information is used to assess and monitor emerging issues related to BHCs and SLHCs. It is intended to supplement the FR Y–9 reports, which are used to monitor BHCs and SLHC between on-site inspections. The data items of information included on the supplement may change as needed.

3. Financial Statements for Nonbank Subsidiaries of U.S. Bank Holding Companies.

Agency form number: FR Y–11 and FR Y–11S.

OMB control number: 7100–0244.

Frequency: Quarterly and annually.

Reporters: BHCs and SLHCs.

Estimated annual reporting hours: FR Y–11 (quarterly): 18,088; FR Y–11 (annual): 3,658; FR Y–11S: 1,033.

Estimated average hours per response: FR Y–11 (quarterly): 6.8; FR Y–11 (annual): 6.8; FR Y–11S: 1.0.

Number of respondents: FR Y–11 (quarterly): 665; FR Y–11 (annual): 538; FR Y–11S: 1,033.

General description of report: This information collection is mandatory (12 U.S.C. 1467a(b)(2); 1844(c)(1)(A)). Confidential treatment is not routinely given to the data in these reports. However, confidential treatment for the reporting information, in whole or in part, can be requested in accordance with the instructions to the form, pursuant to sections (b)(4), (b)(6) and (b)(8) of FOIA (5 U.S.C. 522(b)(4), (b)(6) and (b)(8)).

Abstract: The FR Y–11 reports collect financial information for individual non-functionally regulated U.S. nonbank subsidiaries of domestic BHCs or SLHCs. BHCs and SLHCs file the FR Y–11 on a quarterly or annual basis according to filing criteria. The FR Y–11 data are used with other BHC and SLHC data to assess the condition of BHCs and SLHCs that are heavily engaged in nonbanking activities and to monitor the volume, nature, and condition of their nonbanking operations.

The FR Y–11S is an abbreviated reporting form that collects four data items: net income, total assets, equity capital, and total off-balance-sheet data items. The FR Y–11S is filed annually, as of December 31, by top-tier BHCs and SLHCs for each individual nonbank subsidiary (that does not meet the criteria for filing the detailed report) with total assets of at least $50 million, but less than $250 million, or with total assets greater than 1 percent of the total consolidated assets of the top-tier organization.

4. *Report title:* Financial Statements of Foreign Subsidiaries of U.S. Banking Organizations.

Agency form number: FR 2314 and FR 2314S.

OMB control number: 7100–0073.

Frequency: Quarterly and annually.

Reporters: Foreign subsidiaries of U.S. state member banks, BHCs, SLHCs, and Edge or agreement corporations.

Estimated annual reporting hours: FR 2314 (quarterly): 19,483; FR 2314 (annual): 4,415; FR 2314S: 1,047.

Estimated average hours per response: FR 2314 (quarterly): 6.6; FR 2314 (annual): 6.6; FR 2314S: 1.0.

Number of respondents: FR 2314 (quarterly): 738; FR 2314 (annual): 669; FR 2314S: 1,047.

General description of report: This information collection is mandatory (12 U.S.C. 324, 602, 625, 1467a(b)(2), and 1844(c)). Confidential treatment is not routinely given to the data in these reports. However, confidential treatment for the reporting information, in whole or in part, can be requested in accordance with the instructions to the form, pursuant to sections (b)(4), (b)(6) and (b)(8) of FOIA (5 U.S.C. 522(b)(4), (b)(6) and (b)(8)).

Abstract: The FR 2314 reports collect financial information for non-functionally regulated direct or indirect foreign subsidiaries of U.S. state member banks (SMBs), Edge and agreement corporations, SLHCs, and BHCs. Parent organizations (SMBs, Edge and agreement corporations, SLHCs, or BHCs) file the FR 2314 on a quarterly or annual basis according to filing criteria. The FR 2314 data are used to identify current and potential problems at the foreign subsidiaries of U.S. parent companies, to monitor the activities of U.S. banking organizations in specific countries, and to develop a better understanding of activities within the industry, in general, and of individual institutions, in particular.

The FR 2314S is an abbreviated reporting form that collects four data items: net income, total assets, equity capital, and total off-balance-sheet data items. The FR 2314S is filed annually, as of December 31, for each individual subsidiary (that does not meet the criteria for filing the detailed report) with assets of at least $50 million but less than $250 million, or with total assets greater than 1 percent of the total consolidated assets of the top-tier organization.

5. *Report title:* Bank Holding Company Report of Insured Depository Institutions' Section 23A Transactions with Affiliates.

Agency form number: FR Y–8.

OMB control number: 7100–0126.

Frequency: Quarterly.

Reporters: Top-tier BHCs and SLHCs, including financial holding companies (''FHCs''), for all insured depository institutions that are owned by the BHC or SLHC and by FBOs that directly own a U.S. subsidiary bank.

Estimated annual reporting hours: 56,001 hours.

Estimated average hours per response: Institutions with covered transactions, 7.8 hours; Institutions without covered transactions, 1.0 hour.

Number of respondents: Institutions with covered transactions, 1,134; Institutions without covered transactions, 5,155.

General description of report: This information collection is mandatory (12 U.S.C. 1467a(b)(2), 1844(c)(1)(A) and is given confidential treatment (5 U.S.C. 552(b)(4)).

Abstract: This reporting form collects information on transactions between an insured depository institution and its affiliates that are subject to section 23A of the Federal Reserve Act. The primary purpose of the data is to enhance the Board's ability to monitor bank exposures to affiliates and to ensure banks' compliance with section 23A of the Federal Reserve Act. Section 23A of the Federal Reserve Act is one of the most important statutes on limiting exposures to individual institutions and protecting against the expansion of the federal safety net.

6. *Report title:* Consolidated Bank Holding Company Report of Equity Investments in Nonfinancial Companies, and the Annual Report of Merchant Banking Investments Held for an Extended Period.

Agency form number: FR Y–12 and FR Y–12A, respectively.

OMB control number: 7100–0300.

Frequency: FR Y–12, quarterly and semiannually; and FR Y–12A, annually.

Reporters: BHCs, SLHCs, and FHCs.

Estimated annual reporting hours: FR Y–12, 1,980 hours; and FR Y–12A, 126 hours.

Estimated average hours per response: FR Y–12, 16.5 hours; and FR Y–12A, 7.0 hours.

Number of respondents: FR Y–12, 35; and FR Y–12A, 18.

General description of report: This collection of information is mandatory pursuant to Section 5(c) of the BHC Act (12 U.S.C. 1844(c)(1)(A)) and Section 10(b) of HOLA (12 U.S.C. 1467a(b)(2)). The FR Y–12 data are not considered confidential. However, BHCs and SLHCs may request confidential treatment for any information that they believe is subject to an exemption from disclosure under FOIA, 5 U.S.C. 552(b). The FR Y–12A data are considered confidential on the basis that disclosure of specific commercial or financial data relating to investments held for extended periods of time could result in substantial harm to the competitive position of the financial holding company pursuant to the FOIA (5 U.S.C. 552(b)(4) and (b)(8)).

Abstract: The FR Y–12 collects information from certain domestic BHCs and SLHCs on their equity investments in nonfinancial companies. Respondents report the FR Y–12 either quarterly or semi-annually based on reporting threshold criteria. The FR Y–12A is filed annually by institutions that hold merchant banking investments that are approaching the end of the holding period permissible under Regulation Y.

7. *Report title:* The Capital and Asset Report of Foreign Banking Organizations, and the Financial Statements of U.S. Nonbank Subsidiaries Held by Foreign Banking Organizations.

Agency form number: FR Y–7Q, FR Y–7N and FR Y–7NS, respectively.

OMB control number: 7100–0125.

Frequency: Quarterly and annually.

Reporters: FBOs.

Estimated annual reporting hours: FR Y–7Q (quarterly): 315; FR Y–7Q (annual): 118; FR Y–7N (quarterly): 5,331; FR Y–7N (annual): 1,455; FR Y–7NS: 299.

Estimated average hours per response: FR Y–7Q (quarterly): 1.25; FR Y–7Q (annual): 1.0; FR Y–7N (quarterly): 6.8; FR Y–7N (annual): 6.8; FR Y–7NS: 1.0.

Number of respondents: FR Y–7Q (quarterly): 63; FR Y–7Q (annual): 118; FR Y–7N (annual): 196; FR Y–7N (annual): 214; FR Y–7NS: 299.

General description of report: The FR Y–7Q and FR Y–7N information collections are mandatory (12 U.S.C. 1467a(b)(2), 1844(c)(1)(A), 3106(c), and 3108). Confidential treatment is not routinely given to the data in these reports. However, confidential treatment for information, in whole or in part, on any of the reporting forms can be requested in accordance with the instructions to the form, pursuant to sections (b)(4) and (b)(6) of the Freedom of Information Act (5 U.S.C. 522(b)(4) and (b)(6)).

Abstract: The FR Y–7Q collects consolidated regulatory capital information from all FBOs either quarterly or annually. FBOs that have effectively elected to become FHCs file the FR Y–7Q quarterly. All other FBOs (those that have not elected to become FHCs) file the FR Y–7Q annually. The FR Y–7N collects financial information for non-functionally regulated U.S. nonbank subsidiaries held by FBOs other than through a U.S. BHC, U.S. SLHC, U.S. FHC, or U.S. bank. FBOs file the FR Y–7N on a quarterly or annual basis. The FR Y–7NS collects financial information for non-functionally regulated U.S. nonbank subsidiaries held by FBOs other than through a U.S. BHC, U.S. SLHC, U.S. FHC, or U.S. bank. The FR Y–7NS is filed annually, as of December 31, by top-tier FBOs for each individual nonbank subsidiary (that does not meet the filing criteria for filing the detailed report) with total assets of at least $50 million, but less than $250 million.

Board of Governors of the Federal Reserve System.

Dated: December 23, 2011.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2011–33432 Filed 12–28–11; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 12, 2012

A. Federal Reserve Bank of New York (Ivan Hurwitz, Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. *Anil Bansal, Wayne, New Jersey,* to acquire additional voting shares of IA Bancorp, Inc., and thereby indirectly acquire additional voting shares of Indus American Bank, both of Iselin, New Jersey.

B. Federal Reserve Bank of Richmond (Adam M. Drimer, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. *Gregory Allen Turnage,* individually and as part of a group acting in concert including *Leonard Turnage Marital Trust B and the Leonard Turnage Funded Irrevocable Trust (trustees, Teresa Turnage Finch*

and Gregory Allen Turnage), Teresa Turnage Finch, David Allen Turnage and Rebecca Nicole Turnage, all of Wilson, North Carolina, and Jamie Danielle Turnage of Wilmington, North Carolina, to acquire voting shares of CB Financial Corporation, and thereby indirectly acquire voting shares of Cornerstone Bank, both of Wilson, North Carolina.

Board of Governors of the Federal Reserve System, December 22, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–33363 Filed 12–28–11; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 13, 2012.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Helen P. Johnson-Leipold, Imogene P. Johnson, all of Racine, Wisconsin,* to acquire additional voting shares of Johnson Financial Group, Inc., and thereby indirectly acquire Johnson Bank, Racine, Wisconsin.

Board of Governors of the Federal Reserve System, December 23, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–33385 Filed 12–28–11; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in or to Acquire Companies Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 13, 2012.

A. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Carlile Bancshares, Inc., Fort Worth, Texas, to engage *de novo* in lending and servicing activities through its subsidiary, Carlile Capital, LLC, pursuant to Section 4(c)(8) of the Bank Holding Company Act and Section 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, December 23, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–33386 Filed 12–28–11; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0180; Docket No. 2010–0079; Sequence 22]

Submission for OMB Review; Biobased Procurements

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding a new OMB information clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995, the Regulatory Secretariat (MVCB) will be submitting to the Office of Management and Budget (OMB) a request to review and approve a new information collection requirement regarding biobased procurements.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before January 30, 2012.

ADDRESSES: Submit comments identified by Information Collection 9000–0180, Biobased Procurements, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting ''Information Collection 9000–0180, Biobased Procurements'' under the heading ''Enter Keyword or ID'' and selecting ''Search''. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 9000–0180, Biobased Procurements''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 9000–0180, Biobased Procurements'' on your attached document.
- *Fax:* (202) 501–4067.

• *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417. Attn: Hada Flowers/IC 9000–0180, Biobased Procurements.

Instructions: Please submit comments only and cite Information Collection 9000–0180, Biobased Procurements, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. William Clark, Procurement Analyst, Office of Governmentwide Acquisition Policy, at telephone (202) 219–1813 or via email to *William.clark@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

Federal Acquisition Regulation clause 52.223–2, Affirmative Procurement of Biobased Products Under Service and Construction Contracts, is being revised to require prime contractors to report annually the product types and dollar value of U.S. Department of Agriculture (USDA)-designated biobased products purchased during the preceding fiscal year of a contract. The information reported by prime contractors will enable Federal agencies to report annually to the Office of Federal Procurement Policy concerning actions taken to implement and measure progress in carrying out the preference for biobased products required under section 9002 of the Farm Security and Rural Investment Act of 2002, codified at 7 U.S.C. 8102.

B. Discussion of Comment

A notice was published on the **Federal Register** at 76 FR 41179, on July 13, 2011. Only one comment was received in response to the **Federal Register** notice. The respondent stated that the current Federal Acquisition Regulation already requires contractors to make maximum use of (USDA)-designated biobased products, and, therefore, contractors should already be keeping certain records. The respondent concluded that the new information collection requirement, for contractors to report annually to the Government, should not be burdensome. This comment did not result in a change to the estimated burden.

C. Annual Reporting Burden

Respondents: 48,376.
Responses Per Respondent: 5.
Hours Per Response: 5.
Total Burden Hours: 1,209,400.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street, NE., Washington, DC 20417, telephone (202) 501–4755. Please cite OMB Control No. 9000–0180, Biobased Procurements, in all correspondence.

Dated: December 19, 2011.

Laura Auletta,

Acting Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2011–33347 Filed 12–28–11; 8:45 am]

BILLING CODE 6820–EP–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0235; Docket No.2011–0001; Sequence 10]

General Services Administration Acquisition Regulation; Information Collection; Price Reductions Clause

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement regarding the GSAR Price Reductions Clause.

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected.

DATES: Submit comments on or before: February 27, 2012.

ADDRESSES: Submit comments identified by Information Collection 3090–0235, Price Reduction Clause, by any of the following methods:

• *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting ''Information Collection 3090–0235, Price Reduction Clause'', under the heading ''Enter Keyword or ID'' and selecting ''Search''. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 3090–0235, Price Reduction Clause''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 3090–0235, Price Reduction Clause'' on your attached document.

• *Fax:* (202) 501–4067.

• *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417. ATTN: Hada Flowers/IC 3090–0235, Price Reduction Clause.

Instructions: Please submit comments only and cite Information Collection 3090–0235, Price Reduction Clause, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Dana Munson, General Services Acquisition Policy Division, GSA, (202) 357–9652 or email *Dana.Munson@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

The clause at GSAR 552.238–75, Price Reductions, used in multiple award schedule contracts ensures that the Government maintains its relationship with the contractor's customer or category of customers, upon which the contract is predicated. The reason for the burden decrease as it exists now is based on current data updating the number of MAS Schedule contractors.

B. Annual Reporting Burden

Number of Respondents: 4,500.

Total Annual Responses: 4,500.

Average hours per response: 2 hours.

Total Burden Hours: 9,000.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1275 First Street NE., Washington, DC 20417, telephone (202) 501–4755. Please cite OMB Control No. 3090–0235, Price Reductions Clause, in all correspondence.

Dated: December 22, 2011.

Joseph A. Neurauter,

Director, Office of Acquisition Policy, Senior Procurement Executive.

[FR Doc. 2011–33430 Filed 12–28–11; 8:45 am]

BILLING CODE 6820–61–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0010; Docket 2011–0079; Sequence 24]

Federal Acquisition Regulation; Information Collection; Progress Payments (SF–1443)

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995, the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously information collection requirement concerning progress payments.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before February 27, 2012.

ADDRESSES: Submit comments identified by Information Collection 9000–0010, Progress Payments, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.*

Submit comments via the Federal eRulemaking portal by inputting ''Information Collection 9000–0010, Progress Payments'' under the heading ''Enter Keyword or ID'' and selecting ''Search''. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 9000–0010, Progress Payments''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 9000–0010, Progress Payments'' on your attached document.

- *Fax:* (202) 501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417. Attn: Hada Flowers/IC 9000–0010, Progress Payments.

Instructions: Please submit comments only and cite Information Collection 9000–0010, Progress Payments, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Edward Chambers, Procurement Analyst, Federal Acquisition Policy Division, at (202) 501–3221 or *Edward.chambers@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

Certain Federal contracts provide for progress payments to be made to the contractor during performance of the contract. Pursuant to FAR clause 52.232–16 ''Progress Payments,'' contractors are required to request progress payments on Standard Form (SF) 1443, ''Contractor's Request for Progress Payment,'' or an agency approved electronic equivalent. Additionally, contractors may be required to submit reports, certificates, financial statements, and other pertinent information, reasonably requested by the Contracting Officer. The contractual requirement for submission of SF 1443, reports, certificates, financial statements and other pertinent information is necessary for protection of the Government against financial loss through the making of progress payments.

B. Annual Reporting Burden

Respondents: 27,000.

Responses per Respondent: 32.

Annual Responses: 864,000.

Hours per Response: .55.

Total Burden Hours: 475,200.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417, telephone (202) 501–4755. Please cite OMB Control No. 9000–0010, Progress Payments, in all correspondence.

Dated: December 19, 2011.

Laura Auletta,

Acting Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2011–33348 Filed 12–28–11; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier OS–0990–New; 30-Day Notice]

Agency Information Collection Request 30-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden. To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, email your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office on (202) 690–5683. Send written comments and recommendations for the proposed information collections within 30 days of this notice directly to the OS OMB Desk Officer; faxed to OMB at (202) 395–5806.

Proposed Project: Teen Pregnancy Prevention Replication Evaluation: Implementation Data Collection—OMB No. OS–0990–NEW—The Office of Adolescent Health.

Abstract: The Office of Adolescent Health (OAH), Office of the Assistant Secretary for Health (OASH), U.S. Department of Health and Human Services (HHS), is overseeing and coordinating adolescent pregnancy prevention evaluation efforts as part of

the Teen Pregnancy Prevention Initiative. OAH is working collaboratively with the Office of the Assistant Secretary for Planning and Evaluation (ASPE), the Centers for Disease Control and Prevention (CDC), and the Administration for Children and Families (ACF) on adolescent pregnancy prevention evaluation activities.

OAH in partnership with ASPE will be overseeing the Teen Pregnancy Prevention Replication Evaluation (TPP Replication Evaluation). The TPP Replication Evaluation will be an experimental evaluation which will determine the extent to which a subset of evidence-based program models funded as part of the OAH evidence-based Teen Pregnancy Prevention Initiative demonstrate effects on adolescent sexual risk behavior and teenage pregnancy when they are replicated in similar and in different settings and for different populations. The findings from this evaluation will be of interest to the general public, to policy-makers, and to organizations interested in teen pregnancy prevention.

The implementation study will enable us to understand the programs, document their implementation and context, assess fidelity of implementation and the factors that influence it, and describe the counterfactual, or the ''business as usual'' services received by youth in the control group. This information will enable us to describe each implemented program and the treatment-control contrast evaluated in each site. It will also help us interpret impact analysis findings and may help explain any unexpected findings, differences in impacts across programs, and differences in impacts across locations or population subgroups.

ESTIMATED ANNUALIZED BURDEN TABLE

Instrument	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Total annual burden hours
Staff and community member interviews (Master Topic Guide)	150	1	1.5	225
Guide for Focus Group Discussion with Frontline Staff	120	1	1.5	180
Guide for Focus Group Discussion with Participating Youths	400	1	1.5	600
Guide for Discussion with School/Agency Staff about Counterfactual	100	1	1	100
Total				1,105

Keith A. Tucker,

Office of the Secretary, Paperwork Reduction Act Clearance Officer.

[FR Doc. 2011–33390 Filed 12–28–11; 8:45 am]

BILLING CODE 4150–30–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier OS–0990–New; 30-day Notice]

Agency Information Collection Request. 30-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, email your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office on (202) 690–5683. Send written comments and recommendations for the proposed information collections within 30 days of this notice directly to the OS OMB Desk Officer; faxed to OMB at (202) 395–5806.

Proposed Project: Pregnancy Prevention Approaches Evaluation Baseline Data Collection—OMB No. OS–0990–NEW—The Office of Adolescent Health (OAH).

Abstract: The Office of Adolescent Health (OAH), Office of the Assistant Secretary for Health (OASH), U.S. Department of Health and Human Services (HHS), is overseeing and coordinating adolescent pregnancy prevention evaluation efforts as part of the Teen Pregnancy Prevention Initiative. OAH is working collaboratively with the Office of the Assistant Secretary for Planning and Evaluation (ASPE), the Centers for Disease Control and Prevention (CDC), and the Administration for Children and Families (ACF) on adolescent pregnancy prevention evaluation activities.

The Evaluation of Adolescent Pregnancy Prevention Approaches (PPA) is one of these efforts. PPA is a random assignment evaluation which will expand available evidence on effective ways to reduce teen pregnancy. The evaluation will document and test a range of pregnancy prevention approaches in up to eight program sites. The findings from the evaluation will be of interest to the general public, to policy-makers, and to organizations interested in teen pregnancy prevention.

OAH proposed baseline data collection activity as part of the PPA evaluation. A core baseline data collection instrument was approved on July 26, 2010. The project has worked in recent months to secure grantees as evaluation sites, and as part of this effort the project has undertaken making revisions to the baseline instrument with each site. These revisions were undertaken because each site has unique features (*e.g.* target population; curriculum; objectives) and the baseline instruments were tailored to take these features into account. Emergency clearance of the site-specific baseline package was approved August 17, 2011 (ICR Reference No: 201107–0970–003). OAH is now requesting full clearance to collect data using site-specific instruments with a 3-year expiration date.

ESTIMATED ANNUALIZED BURDEN TABLE

Site/Program (and name of baseline instrument)	Annualized number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours (annual)
Chicago Public Schools/Health Teacher	1518	1	36/60	911
Children's Hospital of Los Angeles/Project AIM	467	1	42/60	327
Oklahoma Institute of Child Advocacy/Power Through Choices	360	1	36/60	216
Engender Health/Gender Matters	375	1	36/60	225
Ohio Health/T.O.P.P.	200	1	42/60	140
Live the Life Ministries/WAIT Training	533	1	42/60	373
Princeton Center for Leadership Traning (PCLT)/TeenPEP	533	1	36/60	320
Total				2512

Keith A. Tucker,

Office of the Secretary, Paperwork Reduction Act Clearance Officer.

[FR Doc. 2011–33391 Filed 12–28–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: ''MEPS Cancer Self Administrated Questionnaire.'' In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3521, AHRQ invites the public to comment on this proposed information collection.

This proposed information collection was previously published in the **Federal Register** on November 2nd, 2011 and allowed 60 days for public comment. No comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by January 30, 2012.

ADDRESSES: Written comments should be submitted to: AHRQ's OMB Desk Officer by fax at (202) 395–6974 (attention: AHRQ's desk officer) or by email at *OIRA_submission@omb.eop.gov* (attention: AHRQ's desk officer).

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by email at *doris.lefkowitz@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

MEPS Cancer SAQ

The Medical Expenditure Panel Survey (MEPS) is a nationally representative survey of the civilian noninstitutionalized population of all ages in the United States that collects comprehensive data on health care and health care expenditures from all payors (including private payors, Medicaid, the VA, and out-of-pocket) over a two-year period. The MEPS has been conducted annually since 1996. The OMB Control Number for the MEPS is 0935–0118, with an expiration date of January 31st, 2013. All of the supporting documents for the MEPS can be downloaded from *http://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=200910-0935-001.*

The purpose of this request is to integrate the new self-administered questionnaire (SAQ) entitled, ''Experiences with Cancer,'' into the MEPS. Once the SAQ is integrated it will be completed by MEPS participants identified as ever having cancer. The Cancer SAQ will be included in the MEPS in 2012; it will be subsequently removed from the MEPS in 2013.

The work is being conducted by AHRQ through its contractor, Westat, pursuant to AHRQ's statutory authority to conduct and support research on healthcare and on systems for the delivery of such care, including the use of surveys to collect data on the cost, use and quality of such care. 42 U.S.C. 299b–2; 42 U.S.C. 299a(a)(1), (2), (3), and (8).

Method of Collection

MEPS respondents identified as having cancer will be given the paper questionnaire to complete themselves. If the cancer SAQ respondent is available at the time of the MEPS interview, we ask that he/she complete the SAQ and give it to the interviewer before she leaves the household after completing the MEPS interview. If the cancer SAQ is not collected before the interviewer leaves the household (including those cases where the SAQ respondent is not available at the time of the MEPS interview), he/she will either arrange a time to come back to pick it up (if it is mutually convenient for the respondent and interviewer) or we ask that the SAQ be returned in a postage-paid envelope left at the household.

There are several benefits to administering this SAQ nationally as a supplement to the MEPS. First, the accompanying oversample of persons with cancer will improve the cost estimates for patients with this disease and will allow AHRQ to conduct analysis on the long term costs of cancer for survivors. Since the survey is about the lasting effects of cancer and cancer treatments on the lives of those who have been diagnosed with cancer, the data will also allow research directed at long-term consequences of cancer and overall medical expenses. Finally, this activity will allow AHRQ to examine the feasibility of using MEPS as a vehicle for in depth analysis of other specific conditions. The questionnaire is being funded by the National Cancer Institute (NCI) and was developed through a collaboration among the Centers for Disease Control and Prevention, NCI, the National Institutes of Health, AHRQ, the American Cancer Society, and the Lance Armstrong Foundation.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden hours for respondents' time to participate in this research. The Cancer SAQ will be completed by 3,500 persons and is estimated to require 30 minutes to complete. The total annualized burden is estimated to be 1,750 hours.

Exhibit 2 shows the estimated annualized cost burden associated with respondents' time to participate in this research. The total cost burden is estimated to be $37,363 annually.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Activity	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
MEPS Cancer SAQ	3,500	1	30/60	1750
Total	3,500	n/a	n/a	1750

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Activity	Number of respondents	Total burden hours	Average hourly wage rate*	Total cost burden hours
MEPS Cancer SAQ	3,500	1,750	$21.35	$37,363
Total	3,500	1,750	n/a	37,363

* Based on the mean average hourly rate for all occupations (00–0000), National Compensation Survey: Occupational Wages in the United States May 2010, "U.S. Department of labor, Bureau of Labor Statistics".

Estimated Annual Costs to the Federal Government

Exhibit 3 shows the estimated total cost for the Cancer SAQ. Since the SAQ will only be used once in 2012 the total and annual costs are identical. The total cost is approximately $1,050,000.

EXHIBIT 3—ESTIMATED TOTAL AND ANNUALIZED COST

Cost component	Total cost	Annualized cost
Sampling Activities	$20,000	$20,000
Interviewer Recruitment and Training	0	0
Data Collection Activities	300,000	300,000
Data Processing	600,000	600,000
Production of Public Use Data Files	80,000	80,000
Project Management	50,000	50,000
Total	1,050,000	1,050,000

Request for Comments

In accordance with the Paperwork Reduction Act, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ healthcare research and healthcare information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: December 21, 2011.

Carolyn M. Clancy,

Director.

[FR Doc. 2011–33293 Filed 12–28–11; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Request for Measures and Domains To Use in Development of a Standardized Instrument for Use in Public Reporting of Family Experience of Pediatric Inpatient Care

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice of request for measures and domains.

SUMMARY: Section 401(a) of the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA), Public Law 111–3, amended the Social Security Act (the Act) to enact section 1139A (42 U.S.C. 1320b–9a). Section 1139A(b) charged the Department of

Health and Human Services with improving pediatric health care quality measures. The Agency for Healthcare Research and Quality (AHRQ) is soliciting the submission of instruments or domains (for example, key concepts) measuring aspects of families' experience with the quality of inpatient medical and surgical hospital care from all researchers, vendors, hospitals, stakeholders, and other interested parties. The survey development team of Children's Hospital Boston Center of Excellence for Pediatric Quality Measurement (CEPQM), is one of the CHIPRA Pediatric Quality Measures Program (PQMP) Centers of Excellence, which were created pursuant to an interagency agreement between the Centers for Medicare & Medicaid Services (CMS) and AHRQ, and are funded through cooperative agreement awards with AHRQ. AHRQ is interested in instruments and items through which families of pediatric patients assess the care their child receives during the child's inpatient stay. The goal is to develop a standardized instrument for use in the public reporting of family experience of pediatric inpatient care. The team developing this survey intends to submit it to the CAHPS Consortium to request use of the CAHPS trademark. The survey will be developed in accordance with CAHPS Survey Design Principles and will develop implementation instructions based on those for CAHPS instruments (*https://www.cahps.AHRQ.gov/About-CAHPS/Principles.aspx*.) All CAHPS surveys are available to users free of charge and are published on the AHRQ Web site.

DATES: Please submit materials January 30, 2012. AHRQ will not respond to individual submissions, but will consider all suggestions.

ADDRESSES: Electronic submissions are encouraged, preferably as an email with an electronic file in a standard word processing format as an email attachment. Submissions may also be in the form of a letter to: Maushami DeSoto, MHA, Ph.D., Staff Service Fellow, Office of Extramural Research, Education and Priority, Populations Agency for Healthcare Research and Quality, 540 Gaither Rd, Rockville, MD 20850, Phone: (301) 427–1546, Fax: (301) 427–1238, Email: *Maushami.DesotoAHRQ.hhs.gov.*

All submissions must include a written statement from the submitter that it will grant AHRQ the necessary rights to use, modify, and adapt the submitted instruments, items, and their documentation for the development of this survey and its dissemination for AHRQ purposes. In accordance with CHIPRA's charge to improve pediatric quality care measures, and consistent with AHRQ's mandate to disseminate research results, 42 U.S.C. 299c–3, AHRQ purposes include public disclosure and dissemination (e.g., on the AHRQ Web site) of AHRQ products and the results of AHRQ-sponsored research and activities. The written statement must be signed by an individual authorized to act for any holder of copyright and/or data rights on each submitted measure or instrument. The authority of the signatory to provide such authorization should be described in the letter. Submitters must attach a proposed license granting all of the above-referenced rights, including the following terms:

- A worldwide, royalty-free, nonexclusive, irrevocable license to AHRQ and those acting on its behalf to reproduce, prepare derivative works of, and otherwise use the submitted materials for the development of AHRQ products, including a standardized instrument for use in the public reporting of family experience of pediatric inpatient care; and
- The right of AHRQ and those acting on its behalf to publicly disseminate, in any media (including AHRQ's Web site), any derivative works that AHRQ or those acting on its behalf develops based on the submitted materials.

Submission Guidelines

When submitting instruments, please include, to the extent that it is available:

- Name of the instrument;
- Copies of the full instrument, in all languages available;
- Domains or key concepts included in the instrument;
- Instrument reliability (internal consistency, test-retest, etc) and validity (content, construct, criterion-related);
- Results of cognitive testing;
- Results of field-testing;
- Current use of the instrument (who is using it, what it is being used for, how instrument findings are reported, and by whom the findings are used); and
- Relevant peer-reviewed journal articles or full citations.

When submitting domains, please include, to the extent available:

- Detailed descriptions of question domain and specific purpose;
- Sample questions, in all languages available; and
- Relevant peer-reviewed journal articles or full citations. For all submissions, please also include:
- A brief cover letter summarizing the information requested above for submitted instruments and domains, respectively;
- Complete information about the person submitting the material, including:

(a) Name;
(b) Title;
(c) Organization;
(d) Mailing address;
(e) Telephone number;
(f) Email address; and
(g) The written statement granting AHRQ the necessary rights to use, modify, and adapt the submitted instruments, items, and their supporting documentation for the development of the survey and its dissemination for AHRQ purposes, as described above.

FOR FURTHER INFORMATION CONTACT: Maushami DeSoto, MHA, Ph.D.

SUPPPLEMENTARY INFORMATION: Section 401(a) of the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA), Public Law 111–3, amended the Social Security Act (the Act) to enact section 1139A (42 U.S.C. 1320b–9a). Since the law was passed, the Agency for Healthcare Research and Quality (AHRQ) and the Centers for Medicare & Medicaid Services (CMS) have been working together to implement selected provisions of the legislation related to children's health care quality. Section 1139A(b) of the Act charged the Department of Health and Human Services with improving pediatric health care quality measures. To implement the law, AHRQ and CMS have established the CHIPRA Pediatric Quality Measures Program (PQMP), which is designed to enhance select pediatric quality measures and develop new measures as needed.

The Children's Hospital Boston Center of Excellence for Pediatric Quality Measurement (CEPQM) is one of seven CHIPRA PQMP Centers of Excellence, which were created pursuant to an interagency agreement between CMS and AHRQ and funded through cooperative agreement awards with AHRQ. CEPQM has been assigned to develop a family experience of pediatric inpatient care measure to be considered as a standardized instrument for publicly reporting pediatric inpatient hospital family experiences voluntarily by State Medicaid and CHIP programs and to be used by providers, consumers, other public and private purchasers, and others. The team developing this survey intends to submit it to the CAHPS Consortium to request use of the CAHPS trademark.

Existing instruments or domains submitted should capture the family's experience of hospital or related care (for example, preparation for discharge or care coordination). The survey development team is looking for items

for which families of pediatric inpatients are generally the best or only judge; for example, the family can best say if the provider spent sufficient time with them or explained things in ways they could understand. Existing instruments that have been tested should have a high degree of reliability and validity; and evidence of wide use will be helpful.

Dated: December 20, 2011.

Carolyn M. Clancy,

AHRQ Director.

[FR Doc. 2011–33290 Filed 12–28–11; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

World Trade Center Health Program Scientific/Technical Advisory Committee (WTCHP STAC or Advisory Committee), National Institute for Occupational Safety and Health (NIOSH)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463) the Centers for Disease Control and Prevention (CDC), announces the following meetings of the aforementioned committee:

COMMITTEE PUBLIC MEETING TIMES AND DATES: (All times are Eastern Standard Time).

TELECONFERENCE MEETING: 1 p.m.–5 p.m., January 24, 2012.

This meeting is available via the USA toll-free, dial-in number: 1–(888) 801–1939. To be automatically connected to the meeting, you will need to enter the following participant code: 62062756.

PUBLIC COMMENT TIMES AND DATE: 4 p.m.–4:45 p.m., January 24, 2012.

Please note that the public comment period ends at the time indicated or following the last call for comments, whichever is earlier. Members of the public who want to comment must sign up by providing their name by mail, facsimile, email, or telephone, as given below. Each commenter will be provided up to five minutes for comment. A limited number of time slots are available and will be assigned on a first come-first served basis. Written comments will also be accepted from those unable to attend the public session.

Status: Open to the public, limited only by the number of telephone lines. The conference line will accommodate up to 100 callers; therefore it is suggested that those interested in calling in to listen to the committee meeting share a line when possible.

Background: The Advisory Committee was established by Public Law 111–347 (The James Zadroga 9/11 Health and Compensation Act of 2010, Title XXXIII of the Public Health Service Act), enacted on January 2, 2011 and codified at 42 U.S.C. 300mm–300mm–61.

Purpose: The purpose of the Advisory Committee is to review scientific and medical evidence and to make recommendations to the World Trade Center (WTC) Program Administrator regarding additional WTC Health Program eligibility criteria and potential additions to the list of covered WTC-related health conditions. Title XXXIII of the Public Health Service Act established within the Department of Health and Human Services (HHS), the World Trade Center (WTC) Health Program, to be administered by the WTC Program Administrator. The WTC Health Program provides: (1) Medical monitoring and treatment benefits to eligible emergency responders and recovery and cleanup workers (including those who are Federal employees) who responded to the September 11, 2011, terrorist attacks, and (2) initial health evaluation, monitoring, and treatment benefits to residents and other building occupants and area workers in New York City who were directly impacted and adversely affected by such attacks (''survivors''). Certain specific activities of the WTC Program Administrator are reserved to the Secretary, HHS, to delegate at her discretion; other WTC Program Administrator duties not explicitly reserved to the Secretary, HHS, are assigned to the Director, NIOSH. The administration of the Advisory Committee established under Section 300mm–1(a) is left to the Director of NIOSH in his role as WTC Program Administrator. CDC and NIOSH provide funding, staffing, and administrative support services for the Advisory Committee. The charter was issued on May 12, 2011, and will expire on May 12, 2013.

MATTERS TO BE DISCUSSED: The agenda for the Advisory Committee meeting includes: WTC Health Program Research Priorities and the petition to add cancer to the list of WTC Health Program covered conditions. The agenda is subject to change as priorities dictate. In the event an individual cannot attend, written comments may be submitted. The comments should be limited to two pages and submitted to the contact person below by January 18, 2012. Efforts will be made to provide the two-page written comments received by the deadline below to the committee members before the meeting. Comments in excess of two pages will be made publicly available at the NIOSH docket (*http://www.cdc.gov/niosh/docket/archive/docket248.html*).

PUBLIC COMMENT SIGN-UP AND SUBMISSIONS TO THE DOCKET: To sign up to provide public comments or to submit comments to the docket, send information to the NIOSH Docket Office by one of the following means:

Mail: NIOSH Docket Office, Robert A. Taft Laboratories, MS–C–34, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

Facsimile: (513) 533–8285.

Email: nioshdocket@cdc.gov.

Telephone: (513) 533–8611.

Submissions to the docket should reference docket #248.

Policy on Redaction of Committee Meeting Transcripts (Public Comment): Transcripts will be prepared and posted to NIOSH Docket 248 within 60 days after the meeting. If a person making a comment gives his or her name, no attempt will be made to redact that name. NIOSH will take reasonable steps to ensure that individuals making public comments are aware of the fact that their comments (including their name, if provided) will appear in a transcript of the meeting posted on a public Web site. Such reasonable steps include: (a) A statement read at the start of the meeting stating that transcripts will be posted and names of speakers will not be redacted; and (b) A printed copy of the statement mentioned in (a) above will be displayed on the table where individuals sign up to make public comments. If individuals in making a statement reveal personal information (e.g., medical information) about themselves, that information will not usually be redacted. The CDC Freedom of Information Act coordinator will, however, review such revelations in accordance with the Freedom of Information Act and if deemed appropriate, will redact such information. Disclosures of information concerning third party medical information will be redacted.

CONTACT PERSON FOR MORE INFORMATION: Paul J. Middendorf, Ph.D., Designated Federal Official, NIOSH, CDC, 4676 Columbia Parkway, MailStop R–45, Cincinnati, Ohio 45226, Telephone: 1 (888) 982–4748; email: *wtc-stac@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the

Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry.

Dated: December 22, 2011.

Ronald Ergle,

Acting Director, Management Analysis and Services Office Centers for Disease Control and Prevention.

[FR Doc. 2011–33396 Filed 12–28–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0345]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Experimental Study on Consumer Responses to Nutrition Facts Labels With Various Footnote Formats and Declaration of Amount of Added Sugars

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by January 30, 2012.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, Fax: (202) 395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–New and title ''Experimental Study on Consumer Responses to Nutrition Facts Labels With Various Footnote Formats and Declaration of Amount of Added Sugars.'' Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, II, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, (301) 796–3793, *Denver.Presley@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Experimental Study on Consumer Responses to Nutrition Facts Labels With Various Footnote Formats and Declaration of Amount of Added Sugars—(OMB Control Number 0910–New)

I. Background

Under the Nutrition Labeling and Education Act of 1990 (Pub. L. 101–535), the Nutrition Facts label is required on most packaged foods, and this information must be provided in a specific format in accordance with the provisions of § 101.9 (21 CFR 101.9). When FDA was determining which Nutrition Facts label format to require, the Agency undertook consumer research to evaluate alternatives (Refs. 1 to 3). More recently, FDA conducted qualitative consumer research on the format of the Nutrition Facts label on behalf of the Agency's Obesity Working Group (Ref. 4), which was formed in 2003 and tasked with outlining a plan to help confront the problem of obesity in the United States (Ref. 5). In addition to conducting consumer research, in the **Federal Register** of November 2, 2007 (72 FR 62149), FDA issued an advance notice of proposed rulemaking (ANPRM) entitled ''Food Labeling: Revision of Reference Values and Mandatory Nutrients'' (the 2007 ANPRM), which requested comments on a variety of topics related to a future proposed rule to update the presentation of nutrients and content of nutrient values on food labels. In the 2007 ANPRM, the Agency included a request for comments on how consumers use the Percent Daily Value in the Nutrition Facts label when evaluating the nutritional content of food items and making purchases.

Research has suggested that consumers use the Nutrition Facts label in various ways, including, but not limited to, using the Nutrition Facts label to determine if products are high or low in a specific nutrient and to compare products (Ref. 6). One component of the Nutrition Facts label that serves as an aid in these uses is the Percent Daily Value. Early consumer research indicated that the Percent Daily Value format improved consumers' abilities to make correct dietary judgments about a food in the context of a total daily diet (Ref. 3), which led FDA to require both quantitative and percentage declarations of nutrient Daily Values in the Nutrition Facts label in the 1993 Nutrition Labeling final rule (58 FR 2079, January 6, 1993).

Research in subsequent years, however, suggested that consumers' understanding and use of Percent Daily Value may be somewhat inconsistent (Refs. 7 and 8). Additionally, FDA has received several public comments suggesting that further research on Percent Daily Values may be warranted, along with research on other modifications to the Nutrition Facts label. Suggested research on potential modifications includes research on: (1) The removal of the statements, ''Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs''; (2) the removal of the table in the footnote that lists the Daily Values for total fat, saturated fat, cholesterol, sodium, total carbohydrate, and dietary fiber based on 2,000 and 2,500 calorie diets as described in § 101.9(d)(9); and (3) changes to the presentation of and amount of information provided in the Nutrition Facts label. Therefore, FDA, as part of its effort to promote public health, proposes to use this study to explore consumer responses to various food label formats for the footnote area of the Nutrition Facts label, including those that exhibit information such as various definitions for Percent Daily Value, a succinct statement about daily caloric intake, and general guidelines for high and low nutrient levels.

This study will also explore how declaring the added sugars content of foods might affect consumers' attention to and understanding of the sugars and calorie contents and other information on the Nutrition Facts label. FDA is contemplating requiring the amount of added sugars to be declared under sugars with a double indention format because added sugars are a component of sugars. This new requirement would be the first time that the mandatory declaration of a nutrient is shown in this format on the Nutrition Facts label. Because added sugars have been linked to obesity, a significant public health problem in the country (Ref. 9), it is important that this new requirement is supported by evidence so that consumers can correctly use the information. The Agency is not aware of any existing consumer research that has examined this topic and is therefore interested in using this study to enhance understanding of how consumers would comprehend and use this new information.

In the **Federal Register** of May 23, 2011 (76 FR 29758), FDA published a 60-day notice requesting public comment on the proposed collection of information. In that notice, the Agency announced its intention to examine

consumer reactions to the declaration of vitamins and minerals on the Nutrition Facts label. The intention was prompted by the 2003 Institute of Medicine report that recommended declaration of weight amounts of all nutrients, including vitamins and minerals, on the label (Ref. 10). As the report noted, public health advice on nutrient intake is often given in absolute amounts, but in the case of a nutrient such as calcium, consumers may not be able to determine the amount of calcium in a food when it is listed only as Percent Daily Values on the Nutrition Facts label. Block and Peracchio (Ref. 11) demonstrated this difficulty and the potential merits of providing consumers with easy-to-use information in helping them increase their calcium intakes. The Agency considers the recommendation of the Institute of Medicine as well as the findings by Block and Peracchio adequate support for requiring the weight amounts of vitamins and minerals be declared on the Nutrition Facts label. On the other hand, consumer evidence on the effects of declaring added sugars is lacking. Therefore, the Agency has determined that the utility of the study would be enhanced by replacing the examination of declaring amounts of vitamins and minerals with the examination of declaring amount of added sugars. This change would have minimal effects on the planned length and respondent burden of the study and would not change the study's primary focus, which remains on examining footnote options.

The proposed collection of information is a controlled, randomized, experimental study. The study will use a Web-based survey, which will take about 15 minutes to complete, to collect information from 10,000 English-speaking adult members of an online consumer panel maintained by a contractor. The study will aim to recruit a sample that reflects the U.S. Census on gender, education, age, and ethnicity/race.

The study will randomly assign each of its participants to view a series of label images from a set of food labels that will be created for the study and systematically varied in the presence or absence of: (1) A definition for Percent Daily Value, (2) a general guideline for ''high'' and ''low'' nutrient levels, and (3) a declaration for added sugars. A sample definition for Percent Daily Value may include, for example, ''The Percent Daily Value is the amount of a nutrient listed above that one serving of this product contributes to the daily diet.'' A sample guideline for high and low nutrient levels may include, for example, ''Five percent or less is low, and 20 percent or more is high.'' Finally, the study will also examine effects of including reference to FDA within the Nutrition Facts footnote and a succinct statement about daily caloric intake. All label images will be mockups resembling food labels that may be found in the marketplace. Images will show product identity (e.g., yogurt or frozen meal) but not any real or fictitious brand name.

The survey will ask its participants to view label images and answer questions about their understanding, perceptions, and reactions related to the viewed label. The study will focus on the following types of consumer reactions: (1) Judgments about a food product in terms of its nutritional attributes and overall healthfulness, (2) ability to use the Nutrition Facts label in tasks such as identifying a product's nutrient contents and evaluating the Percent Daily Values for specific nutrients, and (3) label perceptions (e.g., helpfulness and credibility). To help understand consumer reactions, the study will also collect information on participants' background, including but not limited to, use of the Nutrition Facts label and health status.

The study is part of the Agency's continuing effort to enable consumers to make informed dietary choices and construct healthful diets. Results of the study will be used primarily to enhance the Agency's understanding of how various potential modifications to the Nutrition Facts label may affect how consumers perceive a product or a label, which may in turn affect their dietary choices. Results of the study will not be used to develop population estimates.

In the **Federal Register** of May 23, 2011, FDA published a 60-day notice requesting public comment on the proposed collection of information. The Agency received two comments. One of the comments was outside of the scope of the proposed collection of information described in the 60-day notice and is not addressed here.

(Comment 1) The comment suggested that, in place of the proposed research, an educational effort be undertaken to inform consumers about the meaning of Percent Daily Value as it is currently presented on the Nutrition Facts label. The comment also questioned whether a study sample obtained from the proposed online consumer panel would sufficiently reflect the demographic diversity of the U.S. adult population.

(Response) FDA agrees that consumer education is important to help consumers understand Percent Daily Value and has been conducting and sponsoring this type of education through its Web site (Refs. 12 to 16) and programs such as the ''Spot the Block'' campaign (Ref. 16 and 17). FDA does not agree, however, that consumer education about how to use the food label can substitute for consumer research, which is the primary approach for generating empirical and scientifically valid evidence about consumer understanding in response to any considered modifications to the Nutrition Facts label. Consumer research allows the Agency to evaluate objectively which considered modifications to the Nutrition Facts label are most likely to help consumers; additionally, such research may help enhance the design and utility of consumer education efforts. Although the study will use an online consumer panel, the Agency expects that, based on prior experience with these types of panels, this approach will achieve a sample of participants that is reflective of the Census distributions in key demographic characteristics (gender, age, education, and race/ethnicity). As in our previous online research, we will develop a Census-balanced sample (Ref. 18) by setting a quota prior to the study so that the overall sample of panelists who participate in the study will be balanced against the U.S. Census in gender, age, education, and race/ethnicity, i.e., inbound-balanced. The planned balancing categories are: (1) Gender: female and male; (2) age: 18–34, 35–54, and 55+; (3) education: high-school graduate or less and 1 year or more college education; and (4) race/ethnicity: non-Hispanic white and other.

To help design and refine the questionnaire, FDA plans to conduct cognitive interviews by screening 72 panelists to obtain 9 participants in the interviews. Each screening is expected to take 5 minutes (0.083 hour), and each cognitive interview is expected to take 1 hour. The total for cognitive interview activities is 15 hours (6 hours + 9 hours). Subsequently, we plan to conduct pretests of the questionnaire before it is administered in the study. We expect that 1,000 invitations, each taking 2 minutes (0.033 hours), will need to be sent to adult members of an online consumer panel to have 150 of them complete a 15-minute (0.25 hours) pretest. The total for the pretest activities is 71 hours (33 hours + 38 hours). For the survey, we estimate that 40,000 invitations, each taking 2 minutes (0.033 hours), will need to be sent to adult members of an online consumer panel to have 10,000 of them complete a 15-minute (0.25 hours) questionnaire. The total for the survey activities is 3,820 hours (1,320 hours +

2,500 hours). Thus, the total estimated burden is 3,906 hours. This estimate is 1,352 hours lower than the 5,258 hours published in the 60-day notice and reflects 20 fewer hours for the pretest invitation, 12 fewer hours for the pretest, and 1,320 fewer hours for the survey invitation. Recent evidence available to the Agency suggests the study will not need to send as many pretest or survey invitations as originally estimated to achieve its target sample sizes in the pretest and survey. The number of pretests was changed from 200 to 150 to correct an error that was made in the 60-day notice.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Cognitive Interview Screener	72	1	72	0.083 (5 min.)	6
Cognitive Interview	9	1	9	1	9
Pretest Invitation	1,000	1	1,000	0.033 (2 min.)	33
Pretest	150	1	150	0.25 (15 min.)	38
Survey Invitation	40,000	1	40,000	0.033 (2 min.)	1,320
Survey	10,000	1	10,000	0.25 (15 min.)	2,500
Total					3,906

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

II. References

The following references have been placed on display in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday. (FDA has verified the Web site addresses, but we are not responsible for any subsequent changes to the Web sites after this document is published in the **Federal Register**.)

1. Levy, A.S., S.B. Fein, and R.E. Schucker, ''Nutrition Labeling Formats: Performance and Preference,'' *Food Technology,* vol. 45, pp. 116–121, 1991.
2. Levy, A.S., S.B. Fein, and R.E. Schucker, ''More Effective Nutrition Label Formats Are Not Necessarily Preferred,'' *Journal of the American Dietetic Association,* vol. 92, pp. 1230–1234, 1992.
3. Levy, A.S., S.B. Fein, and R.E. Schucker, ''Performance Characteristics of Seven Nutrition Label Formats,'' *Journal of Public Policy and Marketing,* vol. 15, pp. 1–15, 1996.
4. Lando, A.M. and J. Labiner-Wolfe, ''Helping Consumers Make More Healthful Food Choices: Consumer Views on Modifying Food Labels and Providing Point-of-Purchase Nutrition Information at Quick-Service Restaurants,'' *Journal of Nutrition Education and Behavior,* vol. 39, pp. 157–163, 2007.
5. Food and Drug Administration, ''Calories Count: Report of the Working Group on Obesity,'' (*http://www.fda.gov/Food/LabelingNutrition/ReportsResearch/ucm081696.htm*), 2004.
6. Food and Drug Administration, ''2008 Health and Diet Survey—Topline Frequencies (Weighted),'' (*http://www.fda.gov/Food/ScienceResearch/ResearchAreas/ConsumerResearch/ucm193895.htm*), 2010.
7. Li, F., P.W. Miniard, and M.J. Barone, ''The Facilitating Influence of Consumer Knowledge on the Effectiveness of Daily Value Reference Information,'' *Journal of the Academy of Marketing Science,* vol. 28, pp. 425–436, 2000.
8. Levy, L., R.E. Patterson, A.R. Kristal, et al., ''How Well Do Consumers Understand Percentage Daily Value on Food Labels?'' *American Journal of Health Promotion,* vol. 14, pp. 157–160, 2000.
9. U.S. Department of Agriculture and U.S. Department of Health and Human Services, ''Dietary Guidelines for Americans, 2010,'' 7th Edition, Washington, DC: U.S. Government Printing Office, December 2010.
10. Institute of Medicine, ''Dietary Reference Intakes: Guiding Principles for Nutrition Labeling and Fortification,'' (*http://www.nap.edu/catalog.php?record_id=10872*), 2003.
11. Block, L.G. and L.A. Peracchio, ''The Calcium Quandary: How Consumers Use Nutrition Labels,'' *Journal of Public Policy and Marketing,* vol. 25, pp. 188–196, 2006.
12. Food and Drug Administration, ''A Key to Choosing Healthful Foods: Using the Nutrition Facts on the Food Label,'' (*http://www.fda.gov/Food/ResourcesForYou/Consumers/ucm079449.htm*), 2011.
13. Food and Drug Administration, ''The Food Label and You—Video,'' (*http://www.fda.gov/Food/ResourcesForYou/Consumers/NFLPM/ucm275409.htm*), 2011.
14. Food and Drug Administration, ''How to Understand and Use the Nutrition Facts Label,'' (*http://www.fda.gov/Food/ResourcesForYou/Consumers/NFLPM/ucm274593.htm*), 2011.
15. U.S. Food and Drug Administration, ''Using the Nutrition Facts Label. A How-to Guide for Older Adults,'' (*http://www.fda.gov/Food/ResourcesForYou/Consumers/ucm267499.htm*), 2010.
16. Food and Drug Administration, ''Spot the Block Using the Nutrition Facts Label to Make Healthy Food Choices—A Program for Tweens,'' (*http://www.fda.gov/Food/ResourcesForYou/Consumers/NFLPM/ucm281746.htm*), 2011.
17. Food and Drug Administration, ''Spot the Block: Cartoon Network and the FDA Encourage Kids to SPOT THE BLOCK,'' (*http://www.fda.gov/ForConsumers/ConsumerUpdates/ucm048815.htm*), 2011.
18. American Association for Public Opinion Research (AAPOR). ''AAPOR Report on Online Panels,'' (*http://www.aapor.org/AM/Template.cfm?Section=AAPOR_Committee_and_Task_Force_Reports&Template=/CM/ContentDisplay.cfm&ContentID=2223*), March 2010.

Dated: December 22, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–33303 Filed 12–28–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

[Docket ID OIG 910–N]

Privacy Act; System of Records

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of amendment to system of existing records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Office of Inspector General gives notice of a proposed amendment to its Privacy Act system of records entitled ''Consolidated Data Repository'' (09–90–1000). This system of records is being amended to include records regarding Federal and State benefit programs and service providers in Federal health care programs.

DATES: *Effective Date:* This system of records will become effective without further notice on February 27, 2012, unless comments received on or before that date result in a contrary determination.

Comment Date: Comments on this amendment to the system of records will be considered if we receive them at the addresses provided below no later than 5 p.m. on January 30, 2012.

ADDRESSES: You may submit your written comments, identified by OIG–910–N, by any of the following methods:

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

• *Mail or Delivery:* Office of Inspector General, Department of Health and Human Services, Attention: OIG–910–N, Room 5541, Cohen Building, 330 Independence Avenue SW., Washington, DC 20201.

Instructions: We do not accept comments by facsimile (FAX) transmission. All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comment submissions from members of the public is to make these available for public viewing on *http://www.regulations.gov* after receipt. All comments, including attachments and other supporting materials, received are subject to public disclosure.

FOR FURTHER INFORMATION CONTACT: Patrice Drew, OIG Regulatory Officer, External Affairs, (202) 619–1368.

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act of 1974 (5 U.S.C 552a), an agency is to publish a notice in the **Federal Register** when there is a revision, change, or addition to its system of records. OIG is proposing to amend its system of records entitled ''Consolidated Data Repository'' (SORN 09–90–1000). OIG is adding record sources to the system. This system fulfills our responsibilities under the Inspector General Act of 1978 (5 U.S.C. App.) ''to conduct and supervise audits and investigations relating to the programs and operations'' of the Department of Health and Human Services (HHS). This amendment will assist OIG in performing timely and independent audits, evaluations and inspections, and investigations of the Medicare and Medicaid programs.

SYSTEM NAME:

Consolidated Data Repository–HHS–OIG (SORN 09–90–1000).

RECORD SOURCE CATEGORIES:

Description of the Change: Remove the current entry and in its place add the following: ''Sources of information in this records system include: Federal, State, and local government records regarding Medicare, Medicaid, and other benefit programs; Department documents and records; materials regarding service providers in Federal health care programs furnished by nongovernmental sources; and public source materials.''

Dated: December 22, 2011.

Daniel R. Levinson,

Inspector General.

[FR Doc. 2011–33346 Filed 12–28–11; 8:45 am]

BILLING CODE 4152–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; 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 a meeting of the Board of Scientific Counselors, National Advisory Neurological Disorders and Stroke.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Neurological Disorders and Stroke, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Institute of Neurological Disorders and Stroke.

Date: January 22–24, 2012.

Time: 7 p.m. to 11:30 a.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Alan P. Koretsky, Ph.D., Scientific Director, Division of Intramural Research, National Institute of Neurological Disorders and Stroke, NIH, 35 Convent Drive, Room 6A908, Bethesda, MD 20892, (301) 435–2232, *koretskya@ninds.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS).

Dated: December 22, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–33494 Filed 12–28–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel Skeletal Healing, Regeneration and Repair.

Date: January 18, 2012.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Priscilla B. Chen, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787, *chenp@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel PAR Panel: NHLBI Systems Biology.

Date: January 19–20, 2012.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ai-Ping Zou, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7814, Bethesda, MD 20892, (301) 435–1777, *zouai@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 22, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–33492 Filed 12–28–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Training and Career Development Subcommittee.

Date: March 6–7, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.

Contact Person: Eliane Lazar-Wesley, Ph.D., Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 4245, MSC 9550, 6001 Executive Blvd., Bethesda, MD 20892–9550, (301) 451–4530, *el6r@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos.: 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: December 22, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–33491 Filed 12–28–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Council on Drug Abuse.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Drug Abuse.

Date: February 14–15, 2012.

Closed: February 14, 2012, 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Rooms C & D, Rockville, MD 20852.

Open: February 15, 2012, 8:30 a.m. to 1 p.m.

Agenda: This portion of the meeting will be open to the public for announcements and reports of administrative, legislative and program developments in the drug abuse field.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Rooms C & D, Rockville, MD 20852.

Contact Person: Teresa Levitin, Ph.D., Director, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 4243, MSC 9550, 6001 Executive Boulevard, Bethesda, MD 20892–89550, (301) 443–2755, *tlevitin.nida.nih.gov.*

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *www.drugabuse.gov/NACDA/NACDAHome.html,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos.: 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: December 22, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–33489 Filed 12–28–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; 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 Cancer Institute Special Emphasis Panel, P01 Special Emphasis Panel Three.

Date: January 24–25, 2012.

Time: 8 a.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Majed M. Hamawy, PhD., Scientific Review Officer, Research Programs Review Branch, Division of Extramual Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 8135, Bethesda, MD 20892, (301) 594–5659, *mh101v@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel SPORE in Lymphoma, Brain, Head/Neck and Lung Cancers, and Sarcoma.

Date: February 8–9, 2012.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Wlodek Lopaczynski, MD, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Blvd. Room 8131, Bethesda, MD 20892, (301) 594–1402, *lopacw@mail.nih.gov.*

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/sep/sep.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: December 22, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–33484 Filed 12–28–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel Collaborative: Eating Disorders

Date: January 6, 2012

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call)

Contact Person: Mark Lindner, PhD., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7770, Bethesda, MD 20892, (301) 435–0913, *mark.lindner@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 22, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–33483 Filed 12–28–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel RFA Panel: Devices for the Neonatal Intensive Care Unit.

Date: January 19, 2012.

Time: 11 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Bethesda, MD 20892.

Contact Person: John Firrell, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5118, MSC 7854, Bethesda, MD 20892, (301) 435–2598, *firrellj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Biological Chemistry and Macromolecular Biophysics.

Date: January 19–20, 2012.

Time: 11 a.m. to 10 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Donald L. Schneider, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5160, MSC 7842, Bethesda, MD 20892, (301) 435–1727, *schneidd@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, RFA Panel: Fogarty International Research Training and Planning Awards (NCD–LIFESPAN).

Date: January 23–24, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Monaco, 700 F Street NW., Washington, DC 20001.

Contact Person: Wenchi Liang, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3150, MSC 7770, Bethesda, MD 20892, (301) 435–0681, *liangw3@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Cancer Biology.

Date: January 23, 2012.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Angela Y. Ng, MBA, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6200, MSC 7804, Bethesda, MD 20892, (301) 435–1715, *nga@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflicts: Lung Injury and Fibrosis.

Date: January 24–25, 2012.

Time: 9 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: George M. Barnas, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4220, MSC 7818, Bethesda, MD 20892, (301) 435–0696, *barnasg@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 22, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–33481 Filed 12–28–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 USC, as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel Confirming Compliance with Experimental Pharmacotherapy Treatment of Drug Abuse (2227)

Date: January 17, 2012.

Time: 9 a.m. to 5:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Scott A. Chen, Ph.D., Scientific Review Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 4234, MSC 9550, 6001 Executive Blvd., Bethesda, MD 20892–9550, (301) 443–9511, *chensc@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos.: 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: December 22, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–33479 Filed 12–28–11; 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: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Resource-Related Research Projects.

Date: January 26, 2012.

Time: 10 a.m. to 2 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: Richard W. Morris, Ph.D., Scientific Review Officer, Scientific Review Program, DEA/NIAID/NIH/DHHS, Room 2217, 6700–B Rockledge Drive, MSC–7616, Bethesda, MD 20892–7616, (301) 496–2550, *rmorris@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: December 22, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–33497 Filed 12–28–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Next Generation PrEP II (R01).

Date: January 18, 2012.

Time: 12 p.m. to 5 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: Uday K. Shankar, M.SC., Ph.D., Scientific Review Officer, Scientific Review Program, DEA/NIAID/NIH/DHHS, Room 3246, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, (301) 594–3193, *uday.shankar@nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Therapeutics for Neurotropic Biodefense Toxins and Pathogens.

Date: February 3, 2012.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Yong Gao, Ph.D., Scientific Review Officer, Scientific Review Program, DHHS/NIH/NIAID, 6700B Rockledge Drive, Room 3127, Bethesda, MD 20892, (301) 443–8115, *gaol2@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: December 22, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–33496 Filed 12–28–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2011–0118]

Agency Information Collection Activities: Submission for Review; Information Collection Request for the Department of Homeland Security (DHS), Science and Technology, Project 25 Compliance Assessment Program (P25 CAP)

AGENCY: Science and Technology Directorate, DHS.

ACTION: 60-day notice and request for comment.

SUMMARY: The Department of Homeland Security (DHS) invites the general public to comment on the renewal of existing data collection forms for the DHS Science and Technology Directorate's Project 25 (P25) Compliance Assessment Program (CAP): Supplier's Declaration of Compliance (SDoC) (DHS Form 10044 (6/08)) and Summary Test Report (DHS Form 10056 (9/08)). The attacks of September 11, 2001, and the destruction of Hurricane

Katrina made apparent the need for emergency response radio systems that can interoperate, regardless of which organization manufactured the equipment. In response, and per congressional direction, DHS and the National Institute of Standards and Technology (NIST) developed the P25 CAP to improve the emergency response community's confidence in purchasing land mobile radio (LMR) equipment built to P25 LMR standards. The P25 CAP establishes a process for ensuring that equipment complies with P25 standards and is capable of interoperating across manufacturers. The Department of Homeland Security needs to be able to collect essential information from manufacturers on their products that have met P25 standards as demonstrated through the P25 CAP. Equipment suppliers will provide information to publicly attest to their products' compliance with a specific set of P25 standards. Accompanied by a Summary Test Report that substantiates this declaration, the SDoC constitutes a company's formal, public attestation of compliance with the standards for the equipment. In providing this information, companies will consent to making this information public. In turn, the emergency response community will use this information to identify P25-compliant communications systems. The P25 CAP Program Manager will perform a simple administrative review to ensure the documentation is complete and accurate in accordance with the current P25 CAP processes. This notice and request for comments is required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

DATES: Comments are encouraged and will be accepted until February 27, 2012.

ADDRESSES: Interested persons are invited to submit comments, identified by docket number DHS–2011–0118, by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Please follow the instructions for submitting comments.
- *Email: Millie.Ives@hq.dhs.gov.* Please include docket number DHS–2011–0118 in the subject line of the message.
- *Fax:* (202) 254–6171. (Not a toll-free number).
- *Mail:* Science and Technology Directorate, ATTN: Chief Information Office—Millie Ives, 245 Murray Drive, Mail Stop 0202, Washington, DC 20528.

FOR FURTHER INFORMATION CONTACT: DHS S&T PRA Coordinator Millie Ives (202) 254–6828 (Not a toll free number).

SUPPLEMENTARY INFORMATION: The SDoC and Summary Test Report forms will be posted on the Responder Knowledge Base (RKB) Web site at *http://www.rkb.us.* The forms will be available in Adobe PDF format. The supplier will complete the forms electronically. The completed forms may then be submitted via Internet to the RKB Web site.

The Department is committed to improving its information collection and urges all interested parties to suggest how these materials can further reduce burden while seeking necessary information under the Act.

DHS is particularly interested in comments that:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Suggest ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Suggest 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 submissions of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Renewal of information collection.

(2) *Title of the Form/Collection:* Science and Technology, Project 25 (P25) Compliance Assessment Program (CAP).

(3) *Agency Form Number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Department of Homeland Security, Science & Technology Directorate—(1) Supplier's Declaration of Compliance (SDoC) (DHS Form 10044 (6/08)) (2) Summary Test Report (DHS Form 10056 (9/08)).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Businesses; the data will be gathered from manufacturers of radio systems who wish to declare that their products are compliant with P25 standards for radio systems.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:*

a. *Estimate of the total number of respondents:* 12.

b. *Estimate of number of responses per respondent:* 6.

c. *An estimate of the time for an average respondent to respond:* 4 burden hours (2 burden hour for each form).

d. *An estimate of the total public burden (in hours) associated with the collection:* 288 burden hours.

Dated: December 13, 2011.

Rick Stevens,

Chief Information Officer for Science and Technology.

[FR Doc. 2011–33426 Filed 12–28–11; 8:45 am]

BILLING CODE 9110–9F–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2011–0069]

Assessment Questionnaire—IP Sector Specific Agency Risk Self Assessment Tool (IP–SSARSAT)

AGENCY: National Protection and Programs Directorate, DHS.

ACTION: 60-day notice and request for comments; New Information Collection Request: 1670–NEW.

SUMMARY: The Department of Homeland Security (DHS), National Protection and Programs Directorate (NPPD), Office of Infrastructure Protection (IP), Sector Specific Agency Executive Management Office (SSA EMO) will submit the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35).

DATES: Comments are encouraged and will be accepted until February 27, 2012. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESS: Written comments and questions about this Information Collection Request should be forwarded to DHS/NPPD/IP/SSA EMO, 245 Murray Lane SW., Mail Stop 0640, Arlington, VA 20598–0630. Emailed requests should go to Jay Robinson, *jay.robinson@hq.dhs.gov*. Comments must be identified by ''DHS–2011–0069'' and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.*
- *Email:* Include the docket number in the subject line of the message.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket

number for this action. Comments received will be posted without alteration at *http://www.regulations.gov*, including any personal information provided.

SUPPLEMENTARY INFORMATION: In order to identify and assess the vulnerabilities and risks pertaining to the critical infrastructures and key resources by the SSA EMO, owner-operators and/or security managers often volunteer to conduct an automated self risk assessment. The requested questionnaire information is necessary in order to facilitate electronic execution of the SSA EMO's risk assessment to focus protection resources and activities on those assets, systems, networks, and functions with the highest risk profiles. Currently, there is no known data collection that includes multiple critical nodes with specific sector related criteria. After the user logs into the system the user will be prompted with the assessment questionnaire and will answer various questions to input the data. Once the user begins the assessment, the only information required to be submitted to (and shared with) DHS before completing the assessment is venue identification information (e.g., point-of-contact information, address, latitude/longitude, venue type, or capacity). A user can elect to share their entire completed assessment with DHS, which will protect the information as Protected Critical Infrastructure Information (PCII). The information from the assessment will be used to assess the risk of the evaluated entity (e.g., calculate a vulnerability score by threat, evaluate protective/mitigation measures relative to vulnerability, calculate a risk score, or report threats presenting highest risks). The information will also be combined with data from other respondents to provide an overall sector perspective (e.g., report additional relevant protective/mitigation measures for consideration). OMB is particularly interested in comments which:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Analysis

Agency: Department of Homeland Security, National Protection and Programs Directorate, Office of Infrastructure Protection, Sector Specific Agency Executive Management Office.

Title: Assessment Questionnaire—IP Sector Specific Agency Risk Self Assessment Tool (IP–SSARSAT).

OMB Number: 1670–NEW.

Frequency: On occasion.

Affected Public: Private Sector.

Number of Respondents: 4,000 respondents.

Estimated Time per Respondent: 8 hours.

Total Burden Hours: 32,000 annual burden hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $14,440.00.

Dated: December 22, 2011.

David Epperson,

Chief Information Officer, National Protection and Programs Directorate, Department of Homeland Security.

[FR Doc. 2011–33422 Filed 12–28–11; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2011–0117]

National Infrastructure Advisory Council

AGENCY: National Protection and Programs Directorate, DHS.

ACTION: Committee Management; Notice of an open Federal Advisory Committee Meeting.

SUMMARY: The National Infrastructure Advisory Council (NIAC) will meet on Tuesday, January 10, 2012, at the National Press Club, Ballroom, 529 14th Street, NW., Washington, DC 20045. The meeting will be open to the public.

DATES: The NIAC will meet Tuesday, January 10, 2012, from 1:30 p.m. to 4:30 p.m. The meeting may close early if the committee has completed its business. For additional information, please consult the NIAC Web site, *www.dhs.gov/niac,* or contact the NIAC Secretariat by phone at (703) 235–2888 or by email at *NIAC@dhs.gov.*

ADDRESSES: The meeting will be held at the National Press Club, Ballroom, 529 14th Street, NW., Washington, DC 20045.

While this meeting is open to the public, participation in the NIAC deliberations is limited to committee members and appropriate Federal Government officials. Discussions may include committee members, appropriate Federal Government officials, and other invited persons attending the meeting to provide information that may be of interest to the Council.

Immediately following the committee member deliberation and discussion period, there will be a limited time period for public comment. Comments should be limited to the issues related the committee's work. Agenda and relevant documents for this meeting can be found on the NIAC Web site: *www.dhs.gov/niac.* Relevant public comments may be submitted in writing or presented in person for the Council to consider. In-person presentations will be limited to three minutes per speaker, with no more than 30 minutes for all speakers. Parties interested in making in-person comments must register no fewer than 15 minutes prior to the beginning of the meeting at the meeting location. Oral comments will be permitted based upon the order of registration; all registrants may not be able to speak if time does not permit. Written comments may be sent to Nancy Wong, National Protection and Programs Directorate, Department of Homeland Security, 245 Murray Lane, SW., Mail Stop 0607, Arlington, VA 20598–0607. Written comments must be received by Nancy Wong no later than January 3, 2012, identified by **Federal Register** Docket Number DHS–2011–0117. Comments may also be submitted by any *one* of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting written comments.
- *Email: NIAC@dhs.gov.* Include the docket number in the subject line of the message.
- *Fax:* (703) 603–5098.
- *Mail:* Nancy Wong, National Protection and Programs Directorate, Department of Homeland Security, 245 Murray Lane SW., Mail Stop 0607, Arlington, VA 20598–0607.

Instructions: All written submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. Written comments received will be posted without alteration at *www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received by the NIAC, go to *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Nancy Wong, National Infrastructure Advisory Council Designated Federal Officer, Department of Homeland Security, telephone (703) 235–2888.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463). The NIAC shall provide the President through the Secretary of Homeland Security with advice on the security of the critical infrastructure sectors and their information systems.

The NIAC will meet to address issues relevant to the protection of critical infrastructure as directed by the President. At this meeting, the committee will receive work from a NIAC working group on Public/Private Intelligence Information Sharing, review and deliberate on the work, and provide further direction to the working group. Please check the Web site for products from the NIAC working group prior to the meeting at *www.dhs.gov/niac.*

The Federal Advisory Committee Act requires that notices of meetings of advisory committees be announced in the **Federal Register** 15 days prior to the meeting date. This notice of the meeting of the NIAC is being published in the **Federal Register** on December 28, 2011, 12 days prior to the meeting, due to recent changes in budgeting procedures for conferences. Although the meeting notice will be published in the **Federal Register** late, the meeting information has been available online at *www.dhs.gov/niac* since early December 2011, and we are coordinating with industry stakeholders through the NIAC members.

Meeting Agenda

I. Opening of Meeting
II. Roll Call of Members
III. Opening Remarks and Introductions
IV. Approval of July 12, 2011 Minutes
V. Deliberation/Recommendations: Public/Private Sector Intelligence Information Sharing Study
  i. Presentation and Recommendations of the Working Group
  ii. Public Comment Period
  iii. Deliberations and Consensus Recommendations
VI. Discussion on Potential Study Topics
VII. Closing Remarks
VIII. Adjournment

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the NIAC Secretariat at (703) 235–2888 as soon as possible.

Dated: December 22, 2011.

Renee Murphy,

Alternate Designated Federal Officer for the NIAC.

[FR Doc. 2011–33419 Filed 12–28–11; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2011–1106]

Mobile Offshore Drilling Unit Guidance Policy

AGENCY: Coast Guard, DHS.

ACTION: Notice of availability, request for comments and public meeting.

SUMMARY: The Coast Guard announces the availability of a draft policy letter entitled, ''Dynamically Positioned Mobile Offshore Drilling Unit (MODU) Critical Systems, Personnel and Training.'' We request your comments on this draft guidance.

DATES: Comments and related material must either be submitted to our online docket via *http://www.regulations.gov* on or before January 30, 2012 or reach the Docket Management Facility by that date.

ADDRESSES: You may submit comments identified by docket number USCG–2011–1106 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* (202) 493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email Commander Joshua D. Reynolds, Chief, Office of Design and Engineering Standards, Human Element and Ship Design Division (CG–5211), United States Coast Guard; telephone (202) 372–1355, email *Joshua.D.Reynolds@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation, Request for Comments, and Public Meeting

We encourage you to submit comments and related material on the draft MODU policy letter. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided. Comments will be accepted until January 30, 2012. There will be a public meeting to discuss comments to the draft policy letter on February 9, 2012 at USCG Headquarters, 2100 2nd Street SW., Washington, DC 20593, Room 2500 at 1300.

Submitting comments: If you submit a comment, please include the docket number for this notice (USCG–2011–1106) and provide a reason for each suggestion or recommendation. You may submit your comments and material online, or by fax, mail or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the ''submit a comment'' box, which will then become highlighted in blue. In the ''Document Type'' drop down menu select ''Notices'' and insert ''USCG–2011–1106'' in the ''Keyword'' box. Click ''Search'' then click on the balloon shape in the ''Actions'' column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them 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.

Viewing the comments and supplemental material: To view the comments and any supplemental material, 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–2011–1106'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. If you do not have access to the

internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act: Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act, system of records notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Background and Purpose

Dynamic Positioning Systems (DPSs), Emergency Disconnect Systems (EDSs), Blowout Preventers (BOPs) and related training and emergency procedures are critical to the safety of a MODU actively engaged in drilling. Operators, technicians, and inspectors should view these integrated systems holistically, but the myriad requirements imposed by multiple oversight entities makes this exceedingly difficult. For example, these systems are subject to international guidelines, Coast Guard and Bureau of Safety and Environmental Enforcement (BSEE) regulations, industry standards and Flag State requirements. The draft policy letter (available in the docket for this notice) would give guidance on how to witness inspection and tests of these critical systems by industry and BSEE in a holistic way using the various requirements, standards and guidelines. It would encourage Coast Guard Officer-in-charge of Marine Inspections (''OCMI''), at the invitation of BSEE, operator or MODU contractor, to witness drills and equipment tests of these systems during a joint visit with BSEE when a MODU is not drilling, typically when the MODU arrives at a new well location. The policy letter would encourage OCMIs to establish early communication with the operator, MODU contractor, and BSEE in order to prevent any delay in oil exploration. This policy letter represents a preliminary effort to better understand how industry conducts these tests, enhance communication and coordination with BSEE, inform future rulemaking, and investigate how oversight of these critical systems and training could be incorporated into future inspection policy.

The guidance contained in the draft policy letter is not a substitute for applicable legal requirements, nor is it itself a rule. If finalized, it would provide operational guidance for Coast Guard personnel. It is not the Coast Guard's intent to impose legally binding requirements on any party outside the Coast Guard through this policy letter. The policy letter would represent the Coast Guard's current thinking on this topic and could assist industry, mariners, the general public, and the Coast Guard, as well as other Federal and state regulators, in applying statutory and regulatory requirements.

Authority

This notice is issued under the authority of 5 U.S.C. 552(a) and 33 CFR 1.05–1.

Dated: December 23, 2011.

J.G. Lantz,

Director, Commercial Regulations and Standards for Marine Safety, Security, and Stewardship, United States Coast Guard.

[FR Doc. 2011–33501 Filed 12–28–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5480–N–124]

Notice of Submission of Proposed Information Collection to OMB; Limited English Proficiency Initiative (LEPI) Program

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This collection is essential to HUD selecting qualified organizations to participate in the LEPI program. Further, this solicitation will enable the monitoring of the selected grantees' use of LEPI funds that is consistent with promoting the use of translated materials and other programs that support the assistance of persons with limited English proficiency in utilizing the services provided by the Department.

DATES: *Comments Due Date:* January 30, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2529–0051) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: (202) 395–5806. Email: *OIRA_Submission@omb.eop.gov* fax: (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (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; (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 collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice Also Lists the Following Information

Title of Proposal: Limited English Proficiency Initiative (LEPI) Program.

OMB Approval Number: 2529–0051.

Form Numbers: HUD2880, SF–424–CBW, HUD–424–CB, HUD2993, HUD96011, SF424–SUPP, HUD 27061, SF–424.

Description of the Need for the Information and Its Proposed Use: This collection is essential to HUD selecting qualified organizations to participate in the LEPI program. Further, this solicitation will enable the monitoring of the selected grantees' use of LEPI funds that is consistent with promoting the use of translated materials and other programs that support the assistance of persons with limited English proficiency in utilizing the services provided by the Department.

Frequency of Submission: Quarterly, Annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	30	1		71.066		2,132

Total Estimated Burden Hours: 2,132.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: December 23, 2011.

Colette Pollard,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2011–33408 Filed 12–28–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5480–N–125]

Notice of Proposed Information Collection: Comment Request; Homelessness Prevention Study Site Visits

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the proposed collection of information to: (1) enhance the quality, utility, and clarity of the information to be collected; and (2) minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology that will reduce burden, (*e.g.* permitting electronic submission of responses).

DATES: *Comments Due Date:* January 30, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name/or OMB approval number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; email: *OIRA_Submission @omb.eop.gov;* fax: (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4178, Washington, DC 20410–5000; email Colette Pollard at *Colette.Pollard@hud.gov;* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection 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; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Homelessness Prevention Study Site Visits.

OMB Control Number, if applicable: 2528–0270.

Description of the need for the information and proposed use: This is a request to extend approval for information collection already approved under emergency review (OMB Control #2528–0270). The Department of Housing and Urban Development is seeking review of the Paperwork Reduction Act requirements associated with HUD's Homelessness Prevention Study Site Visits. This information collection request includes the site visit interview guide that will serve as the protocol for the remaining 8 site visits to be conducted with selected HPRP grantees.

Agency form numbers, if applicable: None.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of respondents who will participate in the 8 remaining site visits is approximately 60 individuals; the frequency of the response is once; and the total reporting burden will be approximately 45 hours.

Status of the proposed information collection: This is a request to extend approval granted under emergency review.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: December 23, 2011.

Colette Pollard,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2011–33410 Filed 12–28–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–EA–2011–N271; 97600–9792–0000–5D]

Sport Fishing and Boating Partnership Council

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce a public meeting of the Sport Fishing and Boating Partnership Council (Council).

DATES: The meeting will be held on Wednesday, January 25, 2012, from 9 a.m. to 5 p.m. and Thursday, January 26, 2012, from 9 a.m. to 1:30 p.m. (Eastern time). Members of the public who wish to attend the meeting must notify Douglas Hobbs by January 18, 2011. For deadlines and directions on registering to attend, submitting written material, and giving an oral presentation, please see ''Public Input'' under **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meeting will be held at the Renaissance Fort Lauderdale Cruise Port Hotel, 1617 SE 17th Street, Fort

Lauderdale, FL 33312; (954) 626–1700 (phone).

FOR FURTHER INFORMATION CONTACT: Douglas Hobbs, Council Coordinator, 4401 North Fairfax Drive, Mailstop 3103–AEA, Arlington, VA 22203; telephone (703) 358–2336; fax (703) 358–2548; or *Doug_Hobbs@fws.gov.*

SUPPLEMENTARY INFORMATION: In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. App., we announce that the Sport Fishing and Boating Partnership Council will hold a meeting (see **DATES**).

Background

The Council was formed in January 1993 to advise the Secretary of the Interior, through the Director of the U.S. Fish and Wildlife Service, on nationally significant recreational fishing, boating, and aquatic resource conservation issues. The Council represents the interests of the public and private sectors of the sport fishing, boating, and conservation communities and is organized to enhance partnerships among industry, constituency groups, and government. The 18-member Council, appointed by the Secretary of the Interior, includes the Director of the Service and the president of the Association of Fish and Wildlife Agencies, who both serve in ex officio capacities. Other Council members are Directors from State agencies responsible for managing recreational fish and wildlife resources and individuals who represent the interests of saltwater and freshwater recreational fishing, recreational boating, the recreational fishing and boating industries, recreational fisheries resource conservation, Native American tribes, aquatic resource outreach and education, and tourism. Background information on the Council is available at *http://www.fws.gov/sfbpc.*

Upcoming Meeting

The Council will convene to consider:

1. Update on FWS progress in implementing the Council's assessment of the Service's Fisheries Program;
2. Council role in leading the revision of the FWS Fisheries Program Strategic Plan;
3. Update from the Recreational Boating & Fishing Foundation on progress in implementing Council recommendations to improve the activities and operations of the Foundation;
4. Issues related to implementation of the America's Great Outdoors Initiative;
5. Updates on activities of the Service's Wildlife and Sport Fish Restoration Program and Fisheries Program; and
6. Other Council business.

The final agenda will be posted on the Internet at *http://www.fws.gov/sfbpc.*

Public Input

If you wish to	You must contact Douglas Hobbs (see **FOR FURTHER INFORMATION CONTACT**) no later than
Attend the meeting	January 18, 2012.
Submit written information or questions before the meeting for the council to consider during the meeting	January 18, 2012.
Give an oral presentation during the meeting	January 18, 2012.

Attendance

In order to attend this meeting, you must register by close of business on the date above. Please submit your name, time of arrival, email address, and phone number to Douglas Hobbs (see **FOR FURTHER INFORMATION CONTACT**).

Submitting Written Information or Questions

Interested members of the public may submit relevant information or questions for the Council to consider during the public meeting. Written statements must be received by the date under **DATES**, so that the information may be made available to the Council for their consideration prior to this meeting. Written statements must be supplied to the Council Coordinator in both of the following formats: One hard copy with original signature, and one electronic copy via email.

Giving an Oral Presentation

Individuals or groups requesting to make an oral presentation at the meeting will be limited to 2 minutes per speaker, with no more than a total of 30 minutes for all speakers. Interested parties should contact Douglas Hobbs, Council Coordinator, in writing (preferably via email; see **FOR FURTHER INFORMATION CONTACT**), to be placed on the public speaker list for this meeting. Nonregistered public speakers will not be considered during the meeting. Registered speakers who wish to expand upon their oral statements, or those who had wished to speak but could not be accommodated on the agenda, are invited to submit written statements to the Council after the meeting.

Meeting Minutes

Summary minutes of the conference will be maintained by the Council Coordinator at 4401 N. Fairfax Drive, MS–3103–AEA, Arlington, VA 22203, and will be available for public inspection during regular business hours within 30 days following the meeting. Personal copies may be purchased for the cost of duplication.

Dated: December 21, 2011.

Gregory E. Siekaniec,

Deputy Director.

[FR Doc. 2011–33389 Filed 12–28–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[Account number: GX.12.LH00.0A000.UR]

Agency Information Collections Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: United States Geological Survey (USGS), Interior.

ACTION: Notice of a proposed new information collection and request for comments.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB a new information collection request (ICR) for approval of the paperwork requirements for the Study on Uranium and other trace metals in Private Bedrock Wells of south-eastern New Hampshire.

DATES: You must submit comments on or before January 30, 2012.

ADDRESSES: Please submit written comments on this information collection directly to the Office of Management and Budget (OMB) Office of Information and Regulatory Affairs,

Attention: Desk Officer for the Department of the Interior via email to *OIRA_DOCKET@omb.eop.gov* or fax at (202) 395–5806; and identify your submission as 1028–NEW NHWELL. Please also submit a copy of your written comments to Shari Baloch, USGS Information Collection Clearance Officer, U.S. Geological Survey, 12201 Sunrise Valley Drive Reston, VA 20192 MS 807 (mail); (703) 648–7199 (fax); or *smbaloch@usgs.gov* (email). Please reference Information Collection 1028–NEW NHWELL in the subject line.

FOR FURTHER INFORMATION CONTACT: Sarah M. Flanagan, U.S. Geological Survey, 331 Commerce Way, Pembroke, New Hampshire 03275 (mail); at (603) 226–7811 (telephone); or *sflanaga@usgs.gov* (email). You may also find information on this collection at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The U.S. Geological Survey (USGS) is conducting the study with the assistance of the U.S. Environmental Protection Agency (USEPA) to (1) obtain information on water-quality issues that affect private well owners, (2) estimate the number of private wells containing raw-water concentrations of uranium and other trace metals (arsenic, iron, lead, and manganese) that are greater than the current drinking-water standards, and (3) assess the degree to which bedrock types can be associated with concentrations of uranium and other trace metals. This information will help guide future water-supply development and well-water testing. It will guide local health officials to areas of concern within their communities. Responses are voluntary. No questions of a ''sensitive'' nature are asked.

II. Data

Title: Study on Uranium and other trace metals in Bedrock Wells in South-East New Hampshire.

OMB Control Number: 1028–NEW NHWELL.

Affected Public: Individual and household residents.

Respondent's Obligation: Voluntary.

Frequency of Collection: One time collection.

Estimated Number and Description of Respondents: 350 private well owners in south-eastern New Hampshire.

Estimated Number of Annual Responses: 350.

Estimated Time per Response: We estimate that the burden for this collection to be approximately 10 minutes to take the survey and 10 minutes to locate and collect the water needed for the sample. The total estimate is approximately 20 minutes per response.

Estimated Annual Burden Hours: 117 hours.

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: There are no ''non-hour cost'' burdens associated with this collection of information.

III. Request for Comments

On August 9, 2011 we published a **Federal Register** notice (76 FR 48882) announcing that we would submit this ICR to OMB for approval and soliciting comments. The comment period closed on October 11, 2011. We did not receive any comments in response to that notice. We again invite comments concerning this ICR on: (a) Whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, usefulness, and clarity of the information to be collected; and (d) ways to minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology. Please note that the comments submitted in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at anytime. 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: December 20, 2011.

Keith W. Robinson,

Director, USGS New Hampshire-Vermont Water Science Center.

[FR Doc. 2011–33392 Filed 12–28–11; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCON06000–L16100000–DP0000]

Notice of Resource Advisory Council Meetings for the Dominguez-Escalante Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) Dominguez-Escalante Advisory Council (Council) will meet as indicated below.

DATE: The Council will meet January 25, 2012, in addition to the previously announced meetings for January 4, 2012; February 1, 2012; and March 7, 2012, which will still be held. All meetings will begin at 3 p.m. and will adjourn at 6 p.m.

ADDRESSES: Meetings on January 4, January 25, and March 7 will be held at the Mesa County Courthouse Annex, Training Room A, 544 Rood, Grand Junction, Colorado.

The meeting on February 1 will be held at the Delta Performing Arts Center, 822 Grand Ave., Delta, Colorado.

FOR FURTHER INFORMATION CONTACT: Katie Stevens, Advisory Council Designated Federal Official, 2815 H Road, Grand Junction, CO 81506. Phone: (970) 244–3049. Email: *kasteven@blm.gov*.

SUPPLEMENTARY INFORMATION: The 10-member Council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with the resource management planning process for the Dominguez-Escalante National Conservation Area and Dominguez Canyon Wilderness.

Topics of discussion during the meeting may include informational presentations from various resource specialists working on the resource management plan, as well as Council reports relating to the following topics: Recreation, fire management, land-use planning process, invasive species management, travel management, wilderness, land exchange criteria, cultural resource management and other resource management topics of interest to the Council raised during the planning process.

These meetings are anticipated to occur monthly, and may occur as frequently as every two weeks during intensive phases of the planning process. Dates, times and agendas for additional meetings may be determined at future Council Meetings, and will be published in the **Federal Register**, announced through local media and on the BLM's Web site for the Dominguez-Escalante planning effort, *www.blm.gov/co/st/en/nca/denca/denca_rmp.html*.

These meetings are open to the public. The public may present written

comments to the Council. Each formal Council meeting will have time allocated at the beginning and end of each meeting 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 at the discretion of the chair.

John Mehlhoff,

Acting State Director.

[FR Doc. 2011–33397 Filed 12–28–11; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCOS05000–L10100000. PH0000]

Notice of Public Meeting, Southwest Colorado 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 (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Southwest Colorado Resource Advisory Council (RAC) will meet in January, April and October 2012.

DATES: The Southwest Colorado RAC meetings will be held on January 27, 2012, in Ridgeway, Colorado; April 27, 2012, in Hotchkiss, Colorado; and October 26, 2012, in Dolores, Colorado.

ADDRESSES: The Southwest Colorado RAC meetings will be held January 27, 2012, at the Ouray County Fairgrounds 4–H Events Center at 22739 Highway 550, Ridgway, CO, 81432; April 27, 2012, at the Hotchkiss Memorial Hall, 174 N. First Street, Hotchkiss, CO, 81419; and October 26, 2012, at the Anasazi Heritage Center at 27501 Highway 184, Dolores, CO, 81323.The meetings will begin at 9 a.m. and adjourn at approximately 4 p.m. A public comment period regarding matters on the agenda will be held at 11:30 a.m.

FOR FURTHER INFORMATION CONTACT: Lori Armstrong, BLM Southwest District Manager, 2505 S. Townsend Avenue, Montrose, CO, 81401; telephone (970) 240–5300; or Shannon Borders, Public Affairs Specialist, 2505 S. Townsend Avenue, Montrose, CO, 81401; telephone (970)–240–5300.

SUPPLEMENTARY INFORMATION: The Southwest Colorado RAC advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of public land issues in Colorado.

Topics of discussion for all Southwest Colorado RAC meetings may include field manager and working group reports, recreation, fire management, land use planning, invasive species management, energy and minerals management, travel management, wilderness, land exchange proposals, cultural resource management, and other issues as appropriate.

These meetings are open to the public. The public may present written comments to the RACs. Each formal RAC meeting will also have time, as identified above, 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.

Dated: December 21, 2011.

John Mehlhoff,

Acting State Director.

[FR Doc. 2011–33393 Filed 12–28–11; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAN00000.L18200000.XZ0000]

Notice of Public Meeting: Joint Session of Northeast California Resource Advisory Council and Northwest California Resource Advisory Council, and Individual Meetings

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 (FLPMA), and the Federal Advisory Committee Act of 1972 (FACA), the U. S. Department of the Interior, Bureau of Land Management (BLM) Northeast California Resource Advisory Council and Northwest California Resource Advisory Council will meet jointly and individually, as indicated below.

DATES: The committees will meet jointly and individual sessions. On Wednesday, Feb. 8, 2012, the Northeast California RAC will meet from 1 to 5 p.m. Public comments will be accepted at 4 p.m. On Thursday, Feb. 9, 2012, the Northeast California RAC and Northwest California RAC will convene at 8 a.m. for a field tour of public lands managed by the BLM. The councils will convene a joint business meeting at 1 p.m. and accept public comments at 4 p.m. On Friday, Feb. 10, 2012, the Northwest California RAC will convene at 8 a.m. Public comments will be accepted at 11 a.m. All meetings will be held in the Conference Center of the Oxford Suites Hotel, 1967 Hilltop Dr., Redding, California.

FOR FURTHER INFORMATION CONTACT: Nancy Haug, BLM Northern California District manager, (530) 224–2160; or Joseph J. Fontana, BLM public affairs officer, (530) 252–5332.

SUPPLEMENTARY INFORMATION: These councils advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in northern California and far northwest Nevada. Agenda items for the Northeast California RAC meeting include wild horse and burro management and wind energy development proposals. Agenda items for the joint session include habitat restoration partnerships, major BLM initiatives and future RAC work. Agenda items for the Northwest California RAC include the Walker Ridge wind energy project, wilderness management, forest management and the BLM's fee program and policies. The council will accept public comments at each meeting as indicated above. Depending on the number of persons wishing to speak, and the time available, the time for individual comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation and other reasonable accommodations, should contact the BLM as provided above.

Dated: December 9, 2011.

Joseph J. Fontana,

Public Affairs Officer.

[FR Doc. 2011–33394 Filed 12–28–11; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

NATIONAL PARK SERVICE

[NPS–PWR–PWRO–0927–8529; 9082–S612–409]

Final Environmental Impact Statement for General Management Plan, Ross Lake National Recreation Area, North Cascades National Park Service Complex, Skagit and Whatcom Counties, WA

AGENCY: National Park Service, Interior.

ACTION: Notice of availability.

SUMMARY: Under the National Environmental Policy Act of 1969 and the Council on Environmental Quality

Regulations, the National Park Service (NPS) has prepared a final environmental impact statement (Final EIS) for the proposed General Management Plan for Ross Lake National Recreation Area (Ross Lake NRA) in Washington State. This Final EIS describes and analyzes four alternatives for resource protection and preservation, education and interpretation, visitor use and facilities, land protection and boundaries, and long-term operations and management of the Ross Lake NRA.

SUPPLEMENTARY INFORMATION: The original public information process began in September 2006 when the NPS produced and distributed an initial newsletter announcing the start of the planning process and soliciting feedback on issues to be addressed in park planning. The Notice of Intent formally announcing preparation of a draft environmental impact statement and general management plan (GMP) was published in the **Federal Register** on October 30, 2006. The NPS released details about the public scoping period and invited public comment through direct mailings and correspondence, press releases, public workshops and informal meetings, the NPS Planning, Environment, and Public Comment (PEPC) Web site and the Ross Lake NRA Web site. A comprehensive scoping outreach effort was planned to elicit early public comment regarding issues and concerns, the nature and extent of potential environmental impacts, and possible alternatives that should be addressed in the preparation of the GMP. NPS staff produced and mailed a newsletter to approximately 350 individuals and entities on the mailing list.

Agencies, organizations, governmental representatives, and tribal governments were sent letters of invitation to attend the public workshops or individual meetings. Press releases were distributed to local and regional news media. The project was launched on the NPS PEPC Web site: *http://parkplanning.nps.gov/rola,* providing access to information about the Ross Lake NRA GMP and a method for taking public comments. News articles featuring the public workshops were written in the local *Courier Times* and *East Skagit Community News* and announced on private and public radio stations. The public was invited to submit comments by regular mail, email, fax, online, and at public workshops and individual meetings.

The NPS held seven public workshops in western Washington and British Columbia in October 2006 to provide the public with an opportunity to learn about the general management planning project and to offer comments. During the scoping period, the NPS received correspondence from over 80 individuals and organizations that provided a total of over 750 specific comments. All comments received were reviewed and considered by the NPS interdisciplinary planning team for the preparation of this GMP. The NPS conducted an additional round of public involvement at the draft alternatives phase of the planning process to ensure that the public fully comprehended the range of draft alternatives and was able to comment effectively on the draft alternatives. The primary purpose of this planning step was to understand the public's concerns and preferences with regard to the range of draft alternatives and to assist the planning team in refining the draft alternatives and selecting a preferred alternative. NPS produced and mailed the Draft Alternatives Newsletter to approximately 450 contacts on Ross Lake NRA's mailing list and announced this planning step on the NPS Web sites. The newsletter fully outlined the concepts and actions in the draft alternatives and proposed management zones.

Public review of draft alternatives ran from February 2008 through April 2008. The NPS held four public workshops in Concrete, Sedro-Woolley, Bellingham, and Seattle in February and March 2008. Seventy people participated in the public workshops and provided oral comments. A total of 539 individual comments were received on the draft alternatives and covered a broad range of topics, issues, and recommendations for Ross Lake NRA. All comments received were again reviewed and considered by the NPS interdisciplinary planning team for the preparation of this GMP.

The NPS invited public comments on the Skagit Wild and Scenic River Eligibility and Suitability Studies in fall 2008. The primary purpose of this public comment period was to understand the public's concerns about the preliminary eligibility findings and potentially designating the river segments as wild and scenic rivers. This was an extra planning step designed to provide the public with opportunities to focus on the Skagit wild and scenic studies. A newsletter was sent to approximately 450 contacts and announced this planning step on NPS Web sites and through press releases. Thirty people attended the two public meetings held on October 14, 2008 in Seattle, WA and October 15, 2008 in Sedro-Woolley, WA. Written comments were received from 52 organizations and individuals. The information gathered was used in formulating and refining the Skagit Wild and Scenic River Eligibility and Suitability Studies.

Public review of Draft EIS/GMP began on July 1, 2010 and ended September 30, 2010. A Notice of Availability was published in the **Federal Register** on July 16, 2010. The Draft EIS/GMP and information about how to provide public comments were made available on the NPS Web sites on July 1, 2010. During early July 2010, the NPS distributed approximately 160 copies of the complete document to the state's congressional offices, local tribes, governmental agencies, and other interested organizations and individuals. The NPS also produced and mailed the Executive Summary Newsletter #3 to over 900 contacts on the mailing list. The newsletter fully outlined the four alternatives and encouraged the public to participate in the planning process. The public had opportunities to provide comments through attending a public open house, submitting comments on the NPS PEPC Web site, writing a letter or email, or providing comments on the postage paid comment form enclosed in the newsletter. Dates, times, and locations for the public open houses were clearly listed in the newsletter and on the NPS Web sites. Contact information for the public to either request more planning materials and/or comment on the draft plan was also printed in the newsletter and available on the web.

Press releases were prepared and mailed to local media in advance of the public open houses by the North Cascades NPS Complex staff, and a series of posters were distributed to approximately 35 locations throughout Ross Lake National Recreation Area and the region announcing the public open houses and requesting public comment.

The NPS held six public open houses in Sedro-Woolley, Marblemount, Newhalem, Seattle, Bellingham, and Winthrop in July 2010. Seventy-seven people participated in these public open houses and provided oral comments. The National Park Service received over 1,600 comments on the draft plan by mail, email, fax, hand delivery, oral transcript, and the Internet via the NPS PEPC Web site. A number of groups and individuals submitted duplicate comments by different means, and several people commented up to four times. Of the comments received, 7 were from agencies and elected officials, 5 from businesses, and 22 from organizations. The remaining comments were from individuals. The Environmental Protection Agency (EPA)

assigned a ''Lack of Objections'' rating to the Draft EIS.

Comments were analyzed and grouped into broad categories. Major areas of emphasis included: alternatives, connection to the ''National Park,'' boundary modifications, visitor experience, facilities, resource management, wilderness, Skagit Wild and Scenic River Eligibility and Suitability Studies, partnerships, operations, and planning. Substantive comments have been addressed in the FEIS. Changes incorporated in the GMP as result of public comments are shown in the FEIS with gray highlight or text that is in strikeout. The alternatives have been revised or clarified for the following topics: management zones, grizzly bear core area, motor boats, sport climbing, seaplanes, the bridge over the Skagit River in Newhalem, campgrounds, trails, concessions, the land acquisition associated with Diablo Townsite. Moreover, a name change from Ross Lake National Recreation Area to North Cascades National Recreation Area has been added. This list does not include those changes made to clarify points, provide additional rationale for decisions, or correct minor errors or omissions.

Proposed Plan and Alternatives

Alternative A is the No Action Alternative and assumes that existing programming, facilities, staffing, and funding would generally continue at their current levels. The No Action Alternative is required by the National Environmental Policy Act and also serves as a baseline for comparison in evaluating the changes and impacts of the other three alternatives. The emphasis of the No Action Alternative would be to protect the values of Ross Lake NRA without substantially increasing staff, programs, funding supporting, or facilities. Resource preservation and protection would continue to be high priority for the management of Ross Lake NRA. Staff would continue to work with neighboring agencies for collaborative ecosystem management.

Management of visitor use and facilities would generally continue through existing levels and types of service and regulation. Additional visitor facilities, such as new buildings, structures, roads, parking areas, camping areas, and trails, would not be constructed. The park would react to catastrophic events and destruction of visitor facilities on a case-by-case basis, which could result in a net loss of visitor facilities.

Alternative B (agency preferred) focuses on managing Ross Lake NRA as a gateway to millions of acres of wilderness, providing enhanced visitor opportunities along the North Cascades Highway, and making better use of facilities along that corridor, while ensuring the long term stewardship of natural resources, cultural resources, and wilderness. The North Cascades Highway corridor would be managed to provide a variety of day-use and overnight recreational opportunities for visitors with a range of abilities and interests. Management of wilderness and backcountry areas would focus on ecosystem preservation and compatible recreational activities. Interpretation and education would emphasize hands-on experiential learning and stewardship programs delivered by both the NPS and its partners.

Recreation in Ross Lake NRA would be enhanced along the North Cascades Highway corridor through the addition of limited new facilities, including dayhiking trails, reconfigured parking areas, a new Wilderness Information Center, and the modest expansion of overnight facilities and concessions. Recreation in the wilderness and backcountry areas of Ross Lake NRA, including Ross Lake, would focus on providing visitors with opportunities for solitude and connections with the natural world. Self-propelled and non-mechanized recreation would be encouraged throughout Ross Lake NRA. Regulations for motorized water recreation would work to maintain the ambient character and experience on the lakes and the Skagit River, while also moving towards cleaner technologies. An online permit system would allow visitors the opportunity for advance trip planning. In the event of a catastrophic event and the destruction of visitor facilities, the NPS would strive to offer similar visitor facilities in the vicinity while ensuring no net loss of visitor opportunities. If Seattle City Light determines that the Hollywood area of Diablo Townsite is no longer necessary for hydropower operations in the future, the NPS would work to acquire that land. Alternative B is also considered the ''environmentally preferred'' course of action.

Alternative C emphasizes the role of Ross Lake NRA in preserving the greater North Cascades ecosystem, which includes two additional National Park System units, two national forests, as well as provincial parks and protected areas across the Canadian border. Park management and education efforts would focus on broader ecosystem preservation and enhancement through coordinated regional and international environmental stewardship. The focus of visitor experiences would be linked to solitude, tranquility, natural soundscapes, and scenery through traditional outdoor activities. The NPS would actively manage to reduce habitat fragmentation throughout Ross Lake NRA by consolidating development, eliminating certain trails, and limiting construction of new facilities in undeveloped areas. Educational and interpretive opportunities would be primarily structured, and the NPS would increasingly rely on partners to deliver educational and interpretive programs both on-site and off-site.

Alternative C would provide visitors with recreational opportunities along the North Cascades Highway. However, there would be no net increase in miles of trail in Ross Lake NRA. In the backcountry and wilderness, Alternative C would focus on resource preservation and enhancement while limiting and/or restricting some recreational uses. Seaplanes would not be allowed to land on the lakes, and the NPS would recommend restricting commercial scenic air tours within Ross Lake NRA in order to protect and enhance soundscapes and wilderness character, experience, and values. In the event of a catastrophic weather event and the destruction of visitor facilities, natural geomorphological processes would be allowed to occur unimpeded wherever possible and affected facilities, including Colonial and Goodell Campgrounds, would be closed and restored to natural conditions.

Alternative D focuses on improving connections between visitors and the outdoors through a variety of enhanced recreation and learning opportunities. The emphasis of park management would be to diversify Ross Lake NRA's visitor base and build stewardship through more hands-on/experiential recreation and education opportunities. Interpretive and educational programs would be offered by both the NPS and partners with expanded offerings in the backcountry and limited areas of the wilderness zones. Park management would continue to protect resources and minimize impacts from visitor use.

Overnight accommodations, several new trails, and additional visitor amenities would expand visitor opportunities in Ross Lake NRA primarily along the North Cascades Highway corridor. The public functions of the Wilderness Information Center would be moved to an easily accessible location on Highway 20. A wide variety of recreational activities would be allowed throughout Ross Lake NRA, and there would be fewer restrictions on recreational activities than the other action alternatives. An online reservation and permit system would

allow visitors the opportunity for advance trip planning. In the event of a catastrophic event and the destruction of visitor facilities, the NPS would close affected facilities and build new facilities on other locations to ensure no net loss of visitor opportunities.

Actions Common-to-All Action Alternatives

Several actions are common-to-all action alternatives (Alternatives B, C, and D). The NPS would recommend a name change for Ross Lake NRA to North Cascades National Recreation Area. Congressional legislation would be required to authorize this name change. Recreation activities, including hunting and hiking with dogs on trails, would continue. The Thunder Creek Potential Wilderness Area would be designated as wilderness through administrative action, as authorized in the Washington Park Wilderness Act of 1988 (Pub. L. 100–668, Title IV), and included in the Stephen Mather Wilderness. The NPS would recommend Congressional legislation for wild and scenic river designation of the Skagit River from Gorge Powerhouse downstream to the boundary of Ross Lake NRA, Goodell Creek, and Newhalem Creek. Climate change impacts and Ross Lake NRA's carbon footprint would be addressed through various strategies and actions including the reduction of emissions, use of green energy, adaptive management, and support for scientific research and educational programs.

The Final GMP/EIS is now available. Interested persons and organizations may obtain the Final EIS/GMP online at *http://parkplanning.nps.gov/rola* or by contacting Superintendent, North Cascades NPS Complex, 810 State Route 20, Sedro-Woolley, Washington 98284. A limited number of additional printed copies of this report are available from the mailing address above.

If you comment, before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Following the release of the Final GMP/EIS, a Record of Decision will be prepared not sooner than 30 days after the EPA has published its notice of filing of the document in the **Federal Register**. Notice of approval of the GMP would be similarly published. As a delegated EIS, the official responsible for the final decision is the Regional Director, Pacific West Region; subsequently the official responsible for implementation would be the Superintendent, North Cascades NPS Complex.

Dated: November 4, 2011.

Cynthia L. Ip,

Acting Regional Director, Pacific West Region.

[FR Doc. 2011–33398 Filed 12–28–11; 8:45 am]

BILLING CODE 4312–GX–P

DEPARTMENT OF THE INTERIOR

National Park Service

[1730–SZM]

Cape Cod National Seashore Advisory Commission; Cape Cod National Seashore, South Wellfleet, MA

AGENCY: National Park Service, Interior.

ACTION: Two Hundred Eighty-Second Notice of Meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App 1, Section 10) of a meeting of the Cape Cod National Seashore Advisory Commission.

DATES: The meeting of the Cape Cod National Seashore Advisory Commission will be held on January 9, 2012, at 1 p.m.

ADDRESSES: The Commission members will meet in the meeting room at Headquarters, 99 Marconi Station, Wellfleet, Massachusetts.

SUPPLEMENTARY INFORMATION: The Commission was reestablished pursuant to Public Law 87–126 as amended by Public Law 105–280. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, with respect to matters relating to the development of Cape Cod National Seashore, and with respect to carrying out the provisions of sections 4 and 5 of the Act establishing the Seashore.

The regular business meeting is being held to discuss the following:

1. Adoption of Agenda
2. Approval of Minutes of Previous Meeting (November 14, 2011)
3. Reports of Officers
4. Reports of Subcommittees
5. Superintendent's Report
   - Update on Dune Shacks
   - Improved Properties/Town Bylaws
   - Herring River Wetland Restoration
   - Wind Turbines/Cell Towers
   - Shorebird Management Planning
   - Highlands Center Update
   - Alternate Transportation funding
   - Ocean stewardship topics—shoreline change
   - 50th Anniversary
   - North Beach Cottages, Chatham
6. Old Business
7. New Business
8. Date and agenda for next meeting
9. Public comment and
10. Adjournment

The meeting is open to the public. It is expected that 15 persons will be able to attend the meeting in addition to Commission members.

Interested persons may make oral/written presentations to the Commission during the business meeting or file written statements. Such requests should be made to the park superintendent prior to the meeting. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

FOR FURTHER INFORMATION CONTACT: Further information concerning the meeting may be obtained from the Superintendent, Cape Cod National Seashore, 99 Marconi Site Road, Wellfleet, MA 02667.

Dated: December 19, 2011.

George E. Price, Jr.,

Superintendent.

[FR Doc. 2011–33399 Filed 12–28–11; 8:45 am]

BILLING CODE 4310–WV–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–525]

Remanufactured Goods: An Overview of the U.S. and Global Industries, Markets, and Trade; Submission of Questionnaire for OMB Review

AGENCY: United States International Trade Commission.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the U.S. International Trade Commission (Commission) has submitted a request for approval of a questionnaire to the Office of Management and Budget for review.

Purpose of Information Collection: The form is for use by the Commission in connection with Investigation No.

332–525, *Remanufactured Goods: An Overview of the U.S. and Global Industries, Markets, and Trade,* instituted under the authority of section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)). This investigation was requested by the United States Trade Representative (USTR). The Commission expects to deliver the results of its investigation to the USTR by October 28, 2012.

SUMMARY of Proposal:

(1) *Number of forms submitted:* 1.

(2) *Title of form:* Manufactured Goods Questionnaire.

(3) *Type of request:* New.

(4) *Frequency of use:* Industry questionnaire, single data gathering, scheduled for 2012.

(5) *Description of respondents:* U.S. firms in 14 manufacturing sectors.

(6) *Estimated number of respondents:* 7,000.

(7) *Estimated total number of hours to complete the form per respondent:* 20 hours.

(8) Information obtained from the form that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

Additional Information or Comment: Copies of the forms and supporting documents may be obtained from project leader Alan Treat (*alan.treat@usitc.gov* or (202) 205–3426) or deputy project leader Jeremy Wise (*jeremy.wise@usitc.gov* or (202) 205–3190). Comments about the proposal should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Room 10102 (Docket Library), Washington, DC 20503, *Attention:* Docket Librarian. All comments should be specific, indicating which part of the questionnaire is objectionable, describing the concern in detail, and including specific suggested revision or language changes. Copies of any comments should be provided to Andrew Martin, Chief Information Officer, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, who is the Commission's designated Senior Official under the Paperwork Reduction Act.

Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Secretary at (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TTD terminal (telephone no. (202) 205–1810). Also, general information about the Commission can be obtained from its Internet site (*http://www.usitc.gov*).

By order of the Commission.
Issued: December 22, 2011.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–33395 Filed 12–28–11; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1105–0091]

Agency Information Collection Activities; Proposed Collection; Comments Requested; Assumption of Concurrent Federal Criminal Jurisdiction in Certain Areas of Indian Country

ACTION: 60-Day notice of information collection under review.

The Department of Justice, Office of Tribal Justice, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until February 27, 2012. 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 additional information, please contact Mr. Tracy Toulou, Director, Office of Tribal Justice, Department of Justice, 950 Pennsylvania Avenue NW, Room 2310, Washington, DC 20530. 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:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Request to the Attorney General for Assumption of Concurrent Federal Criminal Jurisdiction.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* No form. Component: Office of Tribal Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Tribal governments. Other: None.

Abstract: The Department of Justice is publishing a proposed rule to establish the procedures for an Indian tribe whose Indian country is subject to State criminal jurisdiction under Public Law 280 (18 U.S.C. 1162(a)) to request that the United States accept concurrent criminal jurisdiction within the tribe's Indian country, and for the Attorney General to decide whether to consent to such a request. The purpose of the collection is to provide information from the requesting tribe sufficient for the Attorney General to make a decision whether to consent to the request.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Fewer than 350 respondents; 80 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 28,000 annual total burden hours associated with this collection.

Fewer than 350 Indian tribes are eligible for the assumption of concurrent criminal jurisdiction by the United States. The Department of Justice does not know how many eligible tribes will, in fact, make such a request. The information collection will require Indian tribes seeking assumption of concurrent criminal jurisdiction by the United States to provide certain information relating to public safety within the Indian country of the tribe.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, U.S. Department of Justice, Two Constitution

Square, 145 N Street NE., Suite 2E–508, Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2011–33371 Filed 12–28–11; 8:45 am]

BILLING CODE 4410–07–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on December 21, 2011, the United States lodged a proposed First Amended Consent Decree with Defendants Intel Corporation and Raytheon Company, in *United States* v. *Intel Corporation and Raytheon Company,* Civil Action No. 91–CV–20275 JW (N.D. Cal.), with respect to the Middlefield-Ellis-Whisman Superfund Site in Mountain View, California (the ''MEW Site'').

On December 21, 2011, the United States and Defendants filed a joint stipulation to amend the Consent Decree that was entered by the Court on April 10, 1992. After the U.S. Environmental Protection Agency (''EPA'') had certified the completion of initial work under the Consent Decree, EPA received information indicating that the remedy set forth in EPA's Record of Decision issued on June 9, 1989, as clarified by a September 1990 Explanation of Significant Differences (''ROD''), was not protective of human health and the environment because the remedy in the ROD did not address exposure to contaminants at the MEW Site through the vapor intrusion pathway. On August 16, 2010, EPA issued an Amendment to the ROD to address the vapor intrusion pathway. The proposed First Amended Consent Decree amends the Consent Decree to include work required to implement the vapor intrusion remedy as set forth in EPA's Statement of Work for Remedial Design and Remedial Action to Address the Vapor Intrusion Pathway, which is attached as Appendix F to the First Amended Consent Decree.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the First Amended Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either emailed 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* v. *Intel Corporation and Raytheon Company,* D.J. Ref. 90–11–2–244.

The First Amended Consent Decree may be examined at U.S. EPA Region IX at 75 Hawthorne Street, San Francisco, California 94105. During the public comment period, the First Amended 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 First Amended Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or emailing 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 $29.25 (without appendices) or $101.75 (with appendices) (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by email or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Henry Friedman,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2011–33500 Filed 12–28–11; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on Dec. 22, 2011, a proposed Consent Decree in *United States of America et al.* v. *AK Steel Corporation, et al.,* Civil Action No. 97–1863 was lodged with the United States District Court for the Western District of Pennsylvania.

The Consent Decree resolves the United States' claims against Allegheny Ludlum Corporation at the Breslube Penn Superfund Site, located in Coraopolis, Moon Township, Pennsylvania. Those claims were brought under Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9607. The Consent Decree requires a payment of $535,000 in settlement of the United States' claims.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, and either emailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States of America et al.* v. *AK Steel Corporation, et al.,* Civil Action No. 97–1863 (W.D. PA), D.J. Ref. 90–11–3–1762.

The Decree may be examined at U.S. EPA Region 3, 1650 Arch Street, Philadelphia, PA 19103. During the public comment period, the 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 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 emailing 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 $23.25 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by email or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2011–33380 Filed 12–28–11; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0029]

Agency Information Collection Activities: Proposed Collection; Comments Requested: Records and Supporting Data: Daily Summaries, Records of Production, Storage, and Disposition, and Supporting Data by Licensed Explosives Manufacturers

ACTION: 60-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. Comments are encouraged and will be accepted for

''sixty days'' until February 27, 2012. 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 William J. Miller, *William.miller@atf.gov,* Chief, Explosives Industry Programs Branch, 99 New York Ave. NE., Washington, DC 20226.

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:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Records and Supporting Data: Daily Summaries, Records of Production, Storage and Disposition and Supporting Data by Explosives Manufacturers.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. 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. These records show daily activities in the manufacture, use, storage, and disposition of explosive materials by manufacturers. The records are used to show where and to whom explosive materials are sent, thereby ensuring that any diversion will be readily apparent and, if lost or stolen, ATF will be immediately notified on discovery of the loss or theft. ATF requires that records be kept 5 years from the date a transaction occurs or until discontinuance of business or operations by the licensee.

(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 2,008 respondents will take 15 minutes to maintain each record.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 130,520 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. 2011–33374 Filed 12–28–11; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Deutsche Börse AG and NYSE Euronext; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *Deutsche Börse AG and NYSE Euronext,* Civil Action No. 1:11–cv–02280. On December 22, 2011, the United States filed a Complaint alleging that the proposed merger of Deutsche Börse AG and NYSE Euronext would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed the same time as the Complaint, requires Deutsche Börse AG's subsidiary to divest its interest in Direct Edge Holdings LLC within two years and to take the necessary steps to remove its affiliates from governance of Direct Edge.

Copies of the Complaint, proposed Final Judgment and Competitive Impact Statement are available for inspection at the Department of Justice, Antitrust Division, Antitrust Documents Group, 450 Fifth Street NW., Suite 1010, Washington, DC 20530 (telephone: (202) 514–2481), on the Department of Justice's Web site at *http://www.usdoj.gov/atr*, and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to James J. Tierney, Chief, Networks & Technology Enforcement Section, Antitrust Division, United States Department of Justice, 450 Fifth Street, NW., Suite 7100, Washington, DC 20530 (202) 307–6640).

Patricia A. Brink,

Director of Civil Enforcement.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,
Antitrust Division
U.S. Department of Justice
450 Fifth Street NW., Suite 7100
Washington, DC 20530

Plaintiff,

v.

DEUTSCHE BÖRSE AG,
Mergenthalerallee 61
65760 Eschborn
Germany

and

NYSE EURONEXT,
11 Wall Street
New York, NY 10005

Defendants.

Case: 1:11–cv–02280
Assigned To: Beryl A. Howard
Date: 12/22/2011
Description: Antitrust

COMPLAINT

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil action pursuant to the antitrust laws of the United States to enjoin the proposed merger of Deutsche Börse AG (''DB'') and NYSE Euronext (''NYSE'') and to obtain such other equitable relief as the Court deems appropriate. The United States alleges as follows:

NATURE OF ACTION

1. DB is among the largest operators of financial exchanges in the world. While most of its businesses are in Europe, DB, through various subsidiaries, is also the largest unitholder of Direct Edge Holdings LLC (''Direct Edge''), the fourth-largest operator of stock exchanges in the United States. Direct Edge competes head-to-head with NYSE and is an exchange innovator, leading in

technology, pricing, and in the development of exchange models.

2. NYSE operates some of the oldest, largest, and most prestigious stock exchanges in the United States. It stands at the center of American financial markets, with its exchanges handling roughly a third of the equities traded daily in the United States, and considerably more for certain equities and certain times of day. NYSE exchanges list the vast majority of the listed exchange-traded products, including the majority of exchange-traded funds, and they supply key market data to customers making investment decisions.

3. On February 15, 2011, NYSE and DB agreed to merge in a transaction worth roughly $9 billion. NYSE and DB propose to combine under a new Dutch holding company (''NewCo''), which would be the largest exchange group in the world, with dual headquarters in Frankfurt and New York. NewCo would own 100% of NYSE and 31.54% of Direct Edge.

4. The proposed transaction would violate Section 7 of the Clayton Act, 15 U.S.C. § 18, because it would substantially lessen competition and potential competition in at least three lines of commerce in the United States: (a) displayed equities trading services; (b) listing services for exchange-traded products (''ETPs''), including exchange-traded funds (''ETFs''); and (c) real-time proprietary equity data products.

JURISDICTION, VENUE AND COMMERCE

5. The United States brings this action under Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, to prevent and restrain defendants from violating Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

6. The Court has subject matter jurisdiction over this action and the defendants pursuant to Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, and 28 U.S.C. §§ 1331, 1337(a), and 1345. NYSE and DB provide and sell displayed equity trading services and real-time proprietary equities trading data. NYSE also provides and sells listing services for exchange traded products. Sales of these services in the United States represent a regular, continuous, and substantial flow of interstate commerce, and have a substantial effect upon interstate commerce.

7. This Court has personal jurisdiction over each defendant and venue is proper in this District under Section 12 of the Clayton Act, 15 U.S.C. § 22, and 28 U.S.C. §§ 1391(b)(1) and (c). Defendants transact business within the District of Columbia. DB and NYSE acknowledge personal jurisdiction in this District and consent to venue.

DEFENDANTS AND THE TRANSACTION

8. DB is a German *Aktiengesellschaft* that operates financial exchanges and related businesses in the United States and Europe. It generates revenue from, among other things, listing fees, stock trading transaction fees, market data licensing fees, and technology licensing arrangements. Through its subsidiaries, DB is the largest holder of equity in Direct Edge, a leading stock exchange operator in the United States. DB owns 50% of the equity and controls Frankfurt-based Eurex Group, a leading European derivatives exchange operator. DB has announced an agreement to buy the remaining equity in Eurex after DB completes its merger with NYSE. Eurex owns International Securities Exchange Holdings, Inc. (''ISE''), a leading options exchange in New York that also owns a 31.54% equity interest in Direct Edge. In 2010, DB's subsidiaries earned substantial revenues from sales in the United States.

9. NYSE is a publicly traded Delaware corporation with its principal place of business located in New York, New York. The company operates financial exchanges in the United States and Europe. In the United States, NYSE operates three stock exchanges: (i) the New York Stock Exchange LLC; (ii) NYSE Arca, Inc., an all-electronic exchange; and (iii) NYSE Amex LLC, an exchange that lists the stock of primarily small- and medium-sized companies. NYSE generates revenue from, among other things, listing fees, stock trading transaction fees, market data licensing fees, and technology licensing arrangements. In 2010, NYSE earned over $3 billion in total revenues from within the United States.

10. Direct Edge is a Delaware limited liability company with its principal place of business in Jersey City, New Jersey. Direct Edge, through its subsidiary Direct Edge Holdings, Inc., owns and operates two leading U.S. stock exchanges, EDGA Exchange, Inc. and EDGX Exchange, Inc. Direct Edge is majority-owned by a group including ISE, Goldman Sachs Group Inc., Citadel Investment Group LLC, and Knight Capital Group Inc. ISE owns 31.54% of Direct Edge and holds certain key voting and special veto rights, such as the right to veto entry by Direct Edge into options trading. ISE also has the right to appoint three members to the Direct Edge board of managers and one member to each of the corporate boards of EDGA Exchange, Inc. and EDGX Exchange, Inc. Goldman Sachs, Citadel, and Knight each own 19.9% of Direct Edge. The remaining 8.76% is owned by a group of five brokers, including affiliates of JP Morgan Chase & Co. (through LabMorgan Corp.), Bank of America (through Merrill Lynch L.P. Holdings, Inc.), Nomura Securities International, Inc., Deutsche Bank USA (through DB US Financial Markets Holding Corporation), and Sun Partners LLC. Direct Edge's exchanges compete head-to-head with the NYSE exchanges. In 2010, Direct Edge earned substantial revenues in the United States.

11. DB and NYSE have proposed to merge into a NewCo that will house all their current corporate holdings. NewCo will be a Dutch holding company, with dual headquarters in New York City and outside Frankfurt, Germany. Combined annual net revenues of NewCo are expected to be over $5 billion, with revenue sources including market data and technology; equities trading and listings; derivatives trading and listings; and settlement and custody. NewCo will own many of the world's leading brands in finance. Its post-merger leadership will be split between former executives from both NYSE and DB. The current DB Chief Executive Officer will stay on as Chairman, and the current NYSE CEO will remain CEO of the combined entity.

RELEVANT MARKETS

Displayed Equities Trading Services

12. Displayed equities trading services comprise a relevant antitrust product market and a ''line of commerce'' within the meaning of Section 7 of the Clayton Act. These services include providing mechanisms and ancillary services to facilitate the public purchase and sale of exchange-traded stocks (those defined as ''NMS stock'' under Rule 600(b)(47) of Regulation NMS, 17 C.F.R. § 200 *et seq.*). These services are offered mainly by national stock exchanges registered under Section 6 of the Securities Exchange Act of 1934, 15 U.S.C. § 78f, and also by electronic communications networks (''ECNs'') regulated by Regulation ATS, 17 C.F.R. § 242.300 *et seq.*

13. Several key attributes separate displayed from undisplayed or ''dark'' equities trading services, including the continuous pre-trade publication of the best-priced quotations for buying and selling exchange-traded stocks in a national consolidated data stream, the display of certain customer limit orders (offers to buy and sell stock at particular prices), and the provision of deep and reliable liquidity for a broad array of exchange-traded stocks. Displayed trading venues, in particular those operated by NYSE, The NASDAQ OMX Group, Inc., Direct Edge, and BATS Global Markets, Inc. form the backbone of the American national market system and over the past several years have accounted for roughly 65% to 75% of the overall average daily trading volume in the United States. Broker-dealers, institutional investors, and other customers rely on displayed trading venues to provide meaningful price discovery for exchange-traded stocks and to act as exchanges of last resort, especially for thinly traded stocks, in times of market volatility or stress.

14. Undisplayed trading services account for roughly 25% to 35% of total average daily trading volume and serve a very different purpose for investors: to allow for anonymous matching of orders without publicly revealing the intention to trade before execution. Institutional investors and other traders use these services to minimize the likelihood that their trades will cause the stock price to move against their interest. Most of the undisplayed trading centers offer less liquidity on most stocks (indeed, an alternative trading system providing undisplayed trading must account for less than 5% trading volume in a stock or the venue automatically becomes displayed by regulations promulgated by the U.S. Securities and Exchange Commission (''SEC'')) and base their prices on those prevailing in the displayed equities trading centers.

15. The relevant geographic market is the United States. Trading equities on a foreign exchange is not an adequate substitute for trading on an exchange in the United States. Trading on an exchange outside the United States exposes traders to risks like foreign exchange risk, country risk, reputational risk,

different or potentially lax regulatory environments for trading, lack of analyst coverage, different accounting standards, time differences, and language differences, among other things. Additionally, the majority of American companies choose to list on domestic exchanges. Therefore, to trade most publicly-listed American stocks, investors must use stock exchanges located in the United States.

16. The market for displayed equities trading services in the United States satisfies the hypothetical monopolist test. A profit-maximizing monopolist in the offering of displayed equities trading services in the United States likely would impose at least a small but significant and non-transitory increase in the price of such services. Not enough customers would switch to alternative means of trading equities in undisplayed trading centers or foreign exchanges to render this price increase unprofitable.

Listing Services for Exchange-Traded Products

17. The provision of ETP listing services constitutes a relevant antitrust product market and a ''line of commerce'' within the meaning of Section 7 of the Clayton Act. An ETP is typically an exchange-listed equity security instrument other than a standard corporate cash equity, the performance of which is designed to track another specific instrument, asset or group of assets, such as a market index or a selected basket of corporate stocks. ETPs are typically sponsored by firms that monitor and manage the composition and performance of the ETP. The most popular type of ETP today is an exchange-traded fund, an equity fund with a form of exchange-listed securities (often trust units) that can be traded like a stock but that is also benchmarked against another stock, index or other asset. Buying an ETP offers a simple way for investors to diversify their portfolios without having to buy each individual corporate stock or other financial instrument directly. For instance, the SPDR S&P 500 exchange-traded fund tracks the S&P 500 U.S. stock index, which comprises widely held American stocks. ETFs and other ETPs are very popular and serve as the cornerstone of many individual investors' portfolios.

18. The relevant geographic market is the United States. Listing an ETP on a foreign exchange is not an adequate substitute for listing on an exchange in the United States. U.S. sponsors of ETPs overwhelmingly choose to list domestically, because it allows them to build brand awareness and reputation and stay close to U.S. capital markets and investors in the United States considering the purchase and sale of ETFs and other ETPs, as well as the analysts that cover ETPs and ETFs and, in many cases, the underlying or related assets, indexes, or products.

19. The market for ETP listing services in the United States satisfies the hypothetical monopolist test. A profit-maximizing monopolist that was the only present and future firm in the offering of ETP listing services in the United States likely would impose at least a small but significant and non-transitory increase in the price of ETP listings. Not enough customers would switch to alternatives to render this price increase unprofitable.

Real-time Proprietary Equity Data

20. Real-time proprietary equity data is a relevant antitrust product market and a ''line of commerce'' within the meaning of Section 7 of the Clayton Act. Access to affordable, reliable and timely data about the stock market is essential for informed stock trading. NYSE and Direct Edge are among only four major competitors that aggregate and disseminate certain market data to brokers, dealers, investors, and news organizations. They sell (or with little lead time could easily sell) competing proprietary market data products derived from trading activities occurring both on and off their exchanges.

21. The product market for real-time proprietary equity data consists of what is commonly referred to in the industry as ''non-core'' data. Market participants generally refer to two broad categories of critical market data: ''core'' and ''non-core.'' Core data refers to the transaction data the SEC requires stock exchanges to report to securities information processors for consolidation and public distribution, including the current best bid and offer for each stock on every exchange and information on each stock trade, including the last sale. Non-core data includes trading volume and ''depth of book'' data that certain exchanges collect and sell, *i.e.*, the underlying quotation data on any given exchange. Non-core data helps traders determine where liquidity for a given stock exists during the day and the depth of that liquidity. Each exchange (or other trading platform) owns non-core data and can distribute it voluntarily for a profit in competition with data from other exchanges. Non-core data products can be made to replicate core data and exchanges can package and sell both core and non-core data together.

22. The market for real-time proprietary equity data satisfies the hypothetical monopolist test. A profit-maximizing monopolist in the offering of real-time proprietary equity data likely would impose at least a small but significant and non-transitory increase in the price of its equity data products. Not enough customers would switch to other products or services to render this price increase unprofitable.

23. The relevant geographic market is the United States. Real-time proprietary equity data in this context relate only to domestic trading of U.S.-listed stock. Customers needing real-time proprietary equity data relating to U.S.-listed stocks cannot turn to foreign alternatives.

ANTICOMPETITIVE EFFECTS

NYSE and Direct Edge Are Head-to-Head Competitors

24. NYSE and Direct Edge compete head-to-head in displayed equities trading services and in the provision of real-time proprietary equity data products. Direct Edge over the years has been a force in modernizing stock trading with cutting edge technology, faster trading times, lower prices, and new market models. Direct Edge began in 1998 as an electronic communication network named Attain. By 2007, it was a major trading venue owned and supported by broker-dealers Knight Capital, Citadel and Goldman Sachs. These broker-dealers used Direct Edge as a counterweight to the exchange duopoly of NYSE and NASDAQ. In December 2008, Direct Edge and ISE agreed that ISE would buy part of Direct Edge and Direct Edge would take control of the struggling ISE Stock Exchange. In March 2010, Direct Edge received approval from the SEC to convert its two ECNs into national securities exchanges under Section 6 of the Securities Exchange Act of 1934 (''Exchange Act'').

25. Direct Edge was first to offer two trading platforms using the same technology, but with different pricing schemes. EDGA historically has been operated as a lower cost exchange, being typically free or nearly free for many traders to make offers to buy or sell stock at certain posted prices (*i.e.*, ''post liquidity'') as well as for customers to trade against these offers and buy and sell stock (*i.e.*, ''take liquidity''), making EDGA attractive to traders sensitive to execution charges. Approximately one-third of Direct Edge volume trades over EDGA. EDGX historically has offered a more traditional pricing structure whereby the exchange normally pays customers to post liquidity and charges a fee for them to take liquidity. Although the two platforms have different pricing structures and cater to different segments, they share technology, support, code, and data centers.

26. NYSE has responded to Direct Edge's aggressive tactics in part by improving its own technology and changing its pricing. For example, NYSE in 2009 replaced its trading system in an effort to regain business lost mainly to the sophisticated electronic platforms at Direct Edge and BATS. The new system was faster, reducing transaction processing time to less than 10 milliseconds, which at the time made NYSE roughly as fast as its rivals. NYSE largely was able to stabilize its share of trading volume by implementing a new market model and introducing a new pricing scheme, which gave rebate incentives to certain designated market makers (*i.e.,* those market participants that agreed to buy and sell particular stocks at certain prices for certain amounts of time).

27. Direct Edge's investors, mainly broker-dealers, use its exchanges to put downward pressure on trading fees at NYSE and other exchanges. When possible, Direct Edge's broker-dealer investors often send trades to a Direct Edge exchange in order to keep their overall transaction costs down. In this way, Direct Edge helped spur a 2009 pricing war that substantially reduced the cost of trading stocks in the United States.

28. NYSE and Direct Edge also are head-to-head competitors in the provision of real-time proprietary equity data. Both are well-situated to offer new real-time equity data products and equity data products that replicate portions of core data offerings, but with even faster feeds.

Direct Edge Is a Potential Competitor to NYSE in Listing Services for Exchange-Traded Products

29. Direct Edge is a potential competitor to NYSE in listing services for ETPs. An ETP, including an ETF, must be listed on a registered stock exchange in order to be widely-traded in the United States. Exchanges typically compete for listings based on market structure, market maker incentives, marketing, and other associated services.

30. NYSE dominates the business of providing listing services for ETPs. NYSE's major competitors are NASDAQ, with a small share, and recent entrant BATS. Direct Edge, as a leading operator of registered stock exchanges, is uniquely situated for entry and already imposes competitive discipline on NYSE: its potential entry has already affected NYSE decisions to innovate and its pricing decisions in its ETP listings business.

This Merger Would Substantially Lessen Competition

31. NYSE and Direct Edge are currently vigorous competitors and closely monitor each other's competitive positions in at least two highly-concentrated markets. They are also close potential competitors in a third highly-concentrated market, listing services for ETPs, in which NYSE is a dominant player. Upon consummation of the proposed transaction, NewCo would own NYSE and would be able to control NYSE's management decisions.

32. Upon consummation of the proposed transaction, NewCo also would become, through ISE, the largest equity owner and most influential member of Direct Edge. NewCo would be able to appoint three of the eleven Direct Edge managers, and one representative to each of the EDGA and EDGX exchange's respective corporate boards. NewCo would have important ancillary rights at Direct Edge: veto rights over certain major corporate actions, representation on key committees, and shareholder rights under corporate law, such as the right to file shareholder derivative lawsuits. NewCo also would have access to Direct Edge's non-public, competitively sensitive information, and to the company's officers and employees. NewCo's ownership interests and associated rights would give it influence over Direct Edge's management decisions.

33. NewCo's presence on the Direct Edge boards would also likely chill board-level discussions of competition with NYSE. Direct Edge was formed, in part, as a customer-owned foil to NYSE and NASDAQ. When NYSE or NASDAQ fails to innovate or price competitively, broker-dealers can encourage Direct Edge to innovate or can shift their business to Direct Edge. If a NYSE-affiliate were sitting on Direct Edge boards, the broker-dealer board members would likely not want to discuss or reveal Direct Edge's potential innovations or other competitive initiatives targeting NYSE.

34. NewCo would have the incentive and ability to use its ownership, influence, and access to information as to both NYSE and Direct Edge to reduce competition between the companies in markets where they are significant competitors or potential competitors, resulting in an increase in prices or a reduction in innovation and quality for a significant number of trading, listings, and data customers.

ENTRY

35. Supply responses from competitors or entry of new potential competitors in the relevant markets—displayed equities trading services, ETP listing services, and real-time proprietary equity data—would not prevent the likely anticompetitive effects of the proposed merger. The merged firm would possess significant advantages that any new or existing competitor would have to overcome to successfully compete with the merged firm.

36. Barriers to entry into each of these markets are formidable. In the market for displayed equities trading services, any entrant would have to overcome hurdles of reputation, scale and network effects to successfully challenge the incumbents. In ETP listing services, any entrant would have to overcome numerous barriers to successfully challenge NYSE, including regulation, reputation, scale, and liquidity. Direct Edge is in a strong position to enter because it is already a registered stock exchange with reputation, scale and liquidity. Finally, competition in real-time proprietary equity data is largely limited to registered securities exchanges, and is closely linked to and derived from an exchange's presence in trading and market data collection. Only four exchange operators today have large enough public trading volume and existing facilities for collecting, aggregating, and disseminating data to meaningfully compete. They enjoy a significant advantage over any possible entrant.

VIOLATIONS ALLEGED

37. The United States incorporates the allegations of paragraphs 1 through 36.

38. The proposed transaction between DB and NYSE would substantially lessen competition in interstate trade and commerce in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

39. Unless restrained, the transaction will have the following anticompetitive effects, among others:

a. Actual and potential competition between NYSE and Direct Edge in displayed equities trading services and real-time proprietary equity data products in the United States will be substantially lessened;

b. Potential competition between NYSE and Direct Edge in ETP listing services in the United States will be substantially lessened;

c. Prices for displayed equities trading services, ETP listing services, and real-time proprietary equity data products likely will increase; and

d. Innovation in displayed equities trading services, ETP listing services, and real-time proprietary equity data products likely will decrease.

RELIEF REQUESTED

40. The United States requests that:

a. the proposed merger of NYSE and DB be adjudged to violate Section 7 of the Clayton Act, 15 U.S.C. § 18;

b. DB and NYSE be enjoined from carrying out the proposed merger or carrying out any other agreement, understanding, or plan by which DB and NYSE would acquire, be acquired by, or merge with each other;

c. The United States be awarded the costs of this action; and

d. The United States receives such other and further relief as the case requires and the Court deems just and proper.

Dated: December 22, 2011

Respectfully submitted,

FOR PLAINTIFF UNITED STATES:

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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

DEUTSCHE BÖRSE AG,

and

NYSE EURONEXT,

Defendants.

Case: 1:11–cv–02280
Assigned To: Beryl A. Howard
Date: 12/22/2011
Description: Antitrust

COMPETITIVE IMPACT STATEMENT

Plaintiff United States of America (''United States''), pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA'' or ''Tunney Act''), 15 U.S.C. § 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. NATURE AND PURPOSE OF THIS PROCEEDING

On February 15, 2011, NYSE Euronext (''NYSE'') and Deutsche Börse AG (''DB''), two of the world's leading owners and operators of financial exchanges, agreed to merge in a transaction valued at approximately $9 billion. NYSE and DB are seeking to combine their businesses and create the largest exchange group in the world under a new Dutch holding company (''NewCo''). NewCo would have dual headquarters in Frankfurt and New York.

Both NYSE and DB have substantial operations in the United States, including between them interests in five major American stock exchanges. NYSE is one of the two largest and most prestigious stock exchange operators in the United States. It owns the New York Stock Exchange LLC, NYSE Arca, Inc., and NYSE Amex LLC. DB, through a series of subsidiaries, is the largest unitholder of Direct Edge Holdings LLC (''Direct Edge''), which operates the EDGA and EDGX electronic exchanges and is the fourth largest stock exchange operator in the United States by volume of shares traded. Direct Edge is considered an innovator in the exchange space and a competitive constraint on NYSE. This transaction therefore poses a significant risk that NewCo could use its influence to dampen the competitive zeal of Direct Edge. The United States brought this lawsuit on December 22, 2011, seeking to enjoin the proposed transaction. After a thorough investigation, the United States believes that the likely effect of the merger would be to lessen substantially competition and potential competition in displayed equities trading services, listing services for exchange-traded products, including exchange-traded funds, and real-time proprietary equity data products in the United States in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

Simultaneous with the filing of the complaint, the United States filed a proposed Final Judgment designed to remedy the Section 7 violation. Under the proposed Final Judgment, which is explained more fully below, Defendants are subject to affirmative obligations to divest DB of its holdings in Direct Edge and to immediately eliminate DB's ability, through its subsidiaries, to influence the business and governance of Direct Edge.

The United States and Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA, unless the United States withdraws its consent. Entry of the proposed Final Judgment would terminate this action, except that this Court would retain jurisdiction to construe, modify, or enforce the proposed Final Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violation

A. The Defendants and the Proposed Transaction

DB is a German *Aktiengesellschaft* that runs financial exchanges and ancillary businesses in the United States and Europe. DB generates revenue from several sources, including fees for securities listings and trading, fees for market data, and charges for licensing of exchange-related technology. DB, through its subsidiaries, is the largest holder of equity in Direct Edge, a leading stock exchange operator in the United States. DB owns 50% of the equity and controls Frankfurt-based Eurex Group, a leading European derivatives exchange operator. DB has announced an agreement to buy the remaining equity in Eurex after DB completes its merger with NYSE. Eurex owns International Securities Exchange Holdings, Inc. (''ISE''), a leading options exchange in New York that also owns a 31.54% equity interest in Direct Edge. In 2010, DB's ISE and Eurex subsidiaries earned substantial revenues from sales in the United States.

NYSE is a publicly traded Delaware corporation with its principal place of business in New York, New York. NYSE operates financial exchanges in the United States and across Europe. In the United States, NYSE operates the New York Stock Exchange, which is the storied hybrid exchange with both trading floor and electronic components; NYSE Arca, which is an all-electronic exchange; and NYSE Amex, the former American Stock Exchange, which targets mainly small- and medium-sized companies. NYSE also generates revenue from a wide range of exchange-related businesses, including securities listings, trading, data licensing, and technology licensing. In 2010, NYSE earned more than $3 billion in total revenues from within the United States.

Direct Edge is a Delaware limited liability company with its principal place of business in Jersey City, New Jersey. Direct Edge, through its subsidiary Direct Edge Holdings, Inc., owns and operates two leading U.S. stock exchanges, EDGA Exchange, Inc. and EDGX Exchange, Inc. Direct Edge is majority-owned by ISE, Goldman Sachs Group Inc., Citadel Investment Group LLC, and Knight Capital Group Inc. ISE owns 31.54% of Direct Edge and holds certain key voting and special veto rights, such as the right to veto entry by Direct Edge into options trading. ISE also has the right to appoint three members to the Direct Edge board of managers and one member to each of the corporate boards of EDGA Exchange, Inc. and EDGX Exchange, Inc. Goldman Sachs, Citadel, and Knight each own 19.9% of Direct Edge. The remaining 8.76% is owned by a group of five brokers, including affiliates of JP Morgan Chase & Co. (through LabMorgan Corp.), Bank of America (through Merrill Lynch L.P. Holdings, Inc.), Nomura Securities International, Inc., Deutsche Bank USA (through DB US Financial Markets Holding Corporation), and Sun Partners LLC. Direct Edge's exchanges compete head to head with the NYSE exchanges. In 2010, Direct Edge earned substantial revenues from within the United States.

B. Relevant Markets

Antitrust law, including Section 7 of the Clayton Act, protects consumers from anticompetitive conduct, such as a firm's acquisition of the ability to raise prices or reduce innovation. Market definition assists antitrust analysis by focusing attention on those markets where competitive effects are likely to be felt. Well-defined markets include both sellers and buyers, whose conduct most strongly influences the nature and magnitude of competitive effects. Defining relevant markets in merger cases frequently begins by identifying a collection of products or set of services over which a hypothetical profit maximizing monopolist likely would impose at least small but significant and non-transitory increase in price. Defining markets in this way ensures that antitrust analysis takes account of a broad enough set of products to evaluate whether a transaction is likely to lead to a substantial lessening of competition.

Here, the investigation revealed three relevant markets. The first is displayed equities trading services, which includes stock trading services offered by trading venues that publicly disclose certain key information about quotes and transactions. Registered stock exchanges and electronic communication networks offer such displayed trading services. Displayed trading services are accompanied by the continuous pre-trade publication of the best-priced quotations for buying and selling exchange-traded stocks in a national consolidated data stream, the display of certain customer limit orders (offers to buy and sell stock at particular prices), and the provision of deep and reliable liquidity for a broad array of exchange-traded stocks. Displayed equities trading services form the backbone of the American national market system and facilitate equity price discovery in the United States. Displayed services are by their nature very different from undisplayed equity trading services, like dark pools, which offer no pre-trade transparency and cater mainly to institutional traders looking to buy or sell large volumes of stock while minimizing stock price movement.

A second relevant market consists of the listing services for exchange-traded products (''ETPs''). An ETP is typically an exchanged-listed equity security instrument other than a standard corporate cash equity, the performance of which is designed to track another specific instrument, asset or group of assets, such as a market index or a specific basket of corporate stocks. ETPs typically are sponsored by firms that determine the composition of the ETP and then manage it for investors. The most popular type of ETP today is an exchange-traded fund (''ETF''), which is a security traded like a stock that is designed to replicate the returns of a stock, index or similar asset. Exchanges compete to

list, or offer for trading, ETPs in exchange for listing fees and fees for ancillary services. Exchanges compete for listings mainly on the basis of their market structure, market maker incentives, marketing, and other associated services. ETP listings are a separate relevant market because there are no reasonable substitutes for listing an ETP if a sponsoring firm wants a widely-traded product with access to the liquidity offered by exchanges. In addition to which, only registered exchanges can offer these listing services.

A third relevant market encompasses real-time proprietary equity data products comprised of non-core data. There are two general types of equity data: ''core'' and ''non-core.'' Core data refers to the transaction data the U.S. Securities and Exchange Commission requires stock exchanges to aggregate and distribute publicly, including the current best bid and offer for each stock on every exchange and information on each stock trade, including the last sale. Non-core data includes trading volume and ''depth of book'' data that certain exchanges collect and sell, i.e., the underlying quotation data on any given exchange. Non-core data helps traders determine where liquidity for a given stock exists during the day and the depth of that liquidity. Access to market data is critical to many market participants and followers, who are willing to pay a premium for the best price, quote, volume, and other data available about exchange-listed equities being traded on the exchanges. Each exchange (or other trading venue) owns its non-core data and can distribute it for a profit. Proprietary data products can be made to replicate core data and exchanges can package and provide both core and non-core data together. NYSE and Direct Edge, as registered exchange operators, are among only four major competitors supplying real-time proprietary equity data products derived from trading activities.

Antitrust analysis must also consider the geographic dimensions of competition. Here, the relevant geographic markets exist within the United States and are not affected by competition outside the United States. The competitive dynamics for each of the three markets is distinctly different outside the United States.

C. Competitive Effects

NewCo would have the incentive and ability to significantly influence the competitive conduct of Direct Edge through ISE's voting interest, governance rights, or other shareholder rights under corporate law, like the right to file shareholder derivative suits. NewCo would likely use its influence to induce Direct Edge to compete less aggressively, to coordinate Direct Edge's conduct with the NYSE exchanges, or to disrupt day-to-day business activities at Direct Edge.

NewCo's presence on the Direct Edge boards would chill discussion of head-to-head competition with the NYSE stock exchanges. Direct Edge was formed, in part, by a group of broker-dealers intending to constrain the two large stock exchange operators in the United States, NYSE and NASDAQ. The broker-dealer owners of Direct Edge, and others, can and do turn their trades to Direct Edge when NYSE or NASDAQ fails to compete aggressively.

Finally, NewCo also would gain access to non-public, competitively sensitive information about Direct Edge. This access would likely enhance NewCo's ability to coordinate the behavior of the NYSE and Direct Edge exchanges, or make the accommodating responses of NYSE faster and more targeted. And if Direct Edge gained access to competitively sensitive NYSE information, it would further elevate the risk of coordinated effects.

Finally, even if it were unable to influence Direct Edge, NewCo would likely have, as a result of the partial ownership interest in Direct Edge, a reduced incentive to direct the NYSE exchanges to compete as aggressively against the Direct Edge exchanges. Since NewCo would share Direct Edge's losses inflicted by the NYSE exchanges, this may lead NewCo to behave in ways that would reduce those losses.

Supply responses from competitors or entry of potential competitors in any of the relevant markets would not prevent the likely anticompetitive effects of the proposed merger. The merged firm would possess significant advantages that any new or existing competitor would have to overcome to successfully compete with the merged firm. Entrants face significant entry barriers including hurdles of reputation, scale and network effects to successfully challenge the incumbents in the markets for displayed equities trading services, listing services for ETPs, and real-time proprietary equity data products.

III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The proposed Final Judgment is designed to preserve competition in displayed equities trading services, listing services for exchange-traded products, and real-time proprietary equity data products by restricting NewCo's ability to influence Direct Edge and by eliminating NewCo's equity stake in Direct Edge. The proposed Final Judgment has two principal requirements: (1) the complete divestiture of Defendants' equity stake in Direct Edge, and (2) the immediate suspension of Defendants' ability to participate in the governance or business of Direct Edge. The proposed Final Judgment also has several sections designed to ensure its effectiveness and adequate compliance. Each of these sections is discussed below.

Before closing the DB–NYSE transaction, the proposed Final Judgment requires the Defendants provide a written plan explaining the steps they will take to render DB's interest in Direct Edge passive until such time as the divestiture occurs. Defendants must also certify that the plan complies with all applicable laws and that all voting, director, or other rights DB held have been eliminated, except as otherwise been provided for in the order. Within two calendar days of closing the transaction, any DB officer, director, manager, employee, affiliate, or agent must resign from the boards of all Direct Edge entities.

Further, from the date of the filing of the Final Judgment, the Defendants are prohibited from suggesting or nominating any candidate for election to the board of any Direct Edge entities or having any officer, director, manager, employee, or agent serve as an officer, director, manager, employee with or for any Direct Edge entities. The Defendants are also prohibited from any participation in a nonpublic meeting of any Direct Edge entities or in otherwise receiving any nonpublic information from any Direct Edge employee or board member, except to the extent necessary to fulfill the provisions of the proposed Final Judgment or to fulfill financial reporting obligations. The Defendants are further prohibited from voting except to the extent necessary to fulfill the provisions of the proposed Final Judgment, in which case they must vote their shares in proportion to how the other owners vote.

The Defendants are also prohibited from using their ownership interest in Direct Edge to exert any influence over it or to prevent it from making any necessary changes to its corporate governance documents to comply with the Final Judgment. The proposed Final Judgment provides that the Defendants must continue to provide regulatory and backup facility services to Direct Edge pursuant to existing contracts, and requires that the Defendants implement a firewall to prevent any inappropriate use of information gained by the Defendants about Direct Edge's business as a result of those contracts. The firewall requires that only the employees of the Defendants specifically necessary to provide the agreed upon services may receive any information from Direct Edge under those agreements, and those employees are prohibited from using any such information for any purpose other than providing the agreed upon services. This provision will allow Direct Edge to continue to receive its contracted services while reducing the opportunities for the Defendants to misuse any information provided by Direct Edge under the agreement. The anticipated effect of all these provisions is to maintain Direct Edge as an independent and viable competitor.

The proposed Final Judgment provides a two-year period, which the United States in its sole discretion may extend up to three additional years, for Defendants to divest all equity ownership in Direct Edge. The assets may be divested by open market sale, public offering, private sale, private placement, or repurchase by Direct Edge. If the assets are divested by private sale or private placement the United States must, in its sole discretion, approve the buyers of the assets. This provision ensures that the divestiture itself does not create any competitive issues. To maintain the complete independence of Direct Edge after the divestiture, the proposed Final Judgment prohibits the Defendants from financing any part of any purchase made pursuant to the Final Judgment.

In the event that Defendants are unable to take the steps required by the proposed Final Judgment to render their Direct Edge interest passive or create a plan demonstrating their compliance with the proposed Final Judgment, or do not accomplish the divestiture as prescribed in the proposed Final Judgment, Section VII of the Final

Judgment provides that the Court will appoint a trustee selected by the United States to effect the divestiture upon the request of the United States. If a trustee is appointed, the proposed Final Judgment provides that Defendants will pay all costs and expenses of the trustee. After his or her appointment becomes effective, the trustee will file monthly reports with the Court and the United States setting forth his or her efforts to accomplish the divestiture. At the end of six months, if the divestiture has not been accomplished, the trustee and the United States will make recommendations to the Court, which shall enter such orders as appropriate in order to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

The proposed Final Judgment lasts for ten years, and prohibits the Defendants from acquiring any additional equity interest in Direct Edge during that time. It also provides procedures for the United States to access the Defendants' records and personnel in order to secure compliance with the terms of the Final Judgment.

The proposed Final Judgment will eliminate the anticompetitive effects of the acquisition by maintaining Direct Edge as an independent and vibrant competitive constraint in displayed equities trading services, listing services for exchange-traded products, and real-time proprietary equity data products in the United States.

IV. REMEDIES APPLICABLE TO POTENTIAL PRIVATE LITIGANTS

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against Defendants.

V. PROCEDURES APPLICABLE FOR APPROVAL OR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

The United States and Defendants have stipulated the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within 60 days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to:

James J. Tierney, Chief, Networks & Technology Enforcement Section, Antitrust Division, United States Department of Justice, 450 Fifth Street, NW., Suite 7100, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

The United States considered, as an alternative to the proposed Final Judgment, seeking preliminary and permanent injunctions against Defendants' transaction and proceeding to a full trial on the merits. The United States is satisfied, however, that the relief in the proposed Final Judgment will preserve competition in the markets for displayed equities trading services, listing services for exchange-traded products, and real-time proprietary equity data products. Thus, the proposed Final Judgment would protect competition as effectively as would any remedy available through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits.

VII. STANDARD OF REVIEW UNDER THE APPA FOR PROPOSED FINAL JUDGMENT

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a 60-day comment period, after which the Court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. § 16(e)(1). In making that determination, the Court, in accordance with the statute as amended in 2004, is required to consider:

(A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e)(1)(A) & (B). In considering these statutory factors, the Court's inquiry is necessarily a limited one as the United States is entitled to ''broad discretion to settle with the Defendant within the reaches of the public interest.'' *United States v. Microsoft Corp.,* 56 F.3d 1448, 1461 (DC Cir. 1995); *see generally United States v. SBC Commc'ns, Inc.,* 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act); *United States v. InBev N.V./S.A.,* 2009–2 Trade Cas. (CCH) ¶ 76,736, 2009 U.S. Dist. LEXIS 84787, No. 08–1965 (JR), at *3 (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires ''into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable'').[1]

Under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the United States's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States v. BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States v. Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft,* 56 F.3d at 1460–62; *United States v. Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001); InBev, 2009 U.S. Dist. LEXIS 84787, at *3. Courts have held that:

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is '*within the reaches of the public interest.*' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[2] In determining whether

[1] The 2004 amendments substituted ''shall'' for ''may'' in directing relevant factors for a court to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. § 16(e) (2004), *with* 15 U.S.C. § 16(e)(1) (2006); *see also SBC Commc'ns,* 489 F. Supp. 2d at 11 (concluding that the 2004 amendments ''effected minimal changes'' to Tunney Act review).

[2] Cf. BNS, 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); *United States v. Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''). *See generally Microsoft,* 56 F.3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest.' '').

a proposed settlement is in the public interest, a district court ''must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17; *see also Microsoft,* 56 F.3d at 1461 (noting the need for courts to be ''deferential to the government's predictions as to the effect of the proposed remedies''); *United States v. Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States's prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

In addition, ''a proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' '' *United States v. Am. Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States v. Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland v. United States,* 460 U.S. 1001 (1983); *see also United States v. Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States ''need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17.

Moreover, the Court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its complaint, and does not authorize the court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459; *see also InBev,* 2009 U.S. Dist. LEXIS 84787, at *20 (''[T]he 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged.''). Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Microsoft,* 56 F.3d. at 1459–60. Courts ''cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power.'' SBC Commc'ns, 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. § 16(e)(2). This language effectuates what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public interest determination is left to the discretion of the Court, with the recognition that the court's ''scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.'' *SBC Commc'ns,* 489 F. Supp. 2d at 11.[3]

VIII. DETERMINATIVE DOCUMENTS

There are no determinative materials or documents within the meaning of the APPA that the United States considered in formulating the proposed Final Judgment.

Dated: December 22, 2011
Respectfully submitted,
FOR PLAINTIFF
UNITED STATES OF AMERICA
/s/Alexander P. Okuliar

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UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,
Plaintiff,
v.
DEUTSCHE BÖRSE AG,
and
NYSE EURONEXT,
Defendants.

Case:
Assigned To:
Date:
Description: Antitrust

[Proposed] Final Judgment

WHEREAS, Plaintiff United States of America (''United States'') filed its Complaint on December 22, 2011, the United States and Defendants Deutsche Börse AG and NYSE Euronext, by their respective attorneys, have consented to entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

AND WHEREAS, Defendants agree to be bound by the provisions of the Final Judgment pending its approval by the Court;

AND WHEREAS, the United States requires that Defendants agree to undertake certain actions and refrain from certain conduct for the purpose of remedying the loss of competition alleged in the Complaint;

AND WHEREAS, Defendants have represented to the United States that the actions and conduct restrictions can and will be undertaken and that Defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the provisions contained below;

NOW THEREFORE, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of Defendants, it is ORDERED, ADJUDGED AND DECREED:

I. JURISDICTION

This Court has jurisdiction over the subject matter of, and each of the parties to, this action. The Complaint states a claim upon which relief may be granted against defendants under Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

II. DEFINITIONS

As used in this Final Judgment:

A. ''Deutsche Börse'' means defendant Deutsche Börse AG, an Aktiengesellschaft organized under the laws of the Federal Republic of Germany with its principal place of business in Eschborn, Germany, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees. This definition expressly includes International Securities Exchange Holdings as a subsidiary of Deutsche Börse.

B. ''NYSE'' means defendant NYSE Euronext, a Delaware corporation with its principal place of business in New York, New York, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

C. The ''Deutsche Börse/NYSE Merger'' means the transaction to be undertaken pursuant to the Business Combination Agreement, dated as of February 15, 2011, by and among Deutsche Börse, NYSE, Alpha Beta Netherlands Holding N.V., and Pomme Merger Corporation, under which Deutsche Börse and NYSE will combine their businesses under a new holding company, Alpha Beta Netherlands Holding N.V.

D. ''Direct Edge'' means Direct Edge Holdings LLC, a Delaware limited liability company with its principal place of business in Jersey City, New Jersey, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees. Direct Edge includes, but is not limited to, its subsidiaries Direct Edge, Inc., EDGA Exchange, Inc. and EDGX Exchange, Inc.

[3] See United States v. Enova Corp., 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the ''Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone''); *United States v. Mid-Am. Dairymen, Inc.,* 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977) (''Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.''); S. Rep. No. 93–298, 93d Cong., 1st Sess., at 6 (1973) (''Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.'').

E. ''Direct Edge Equity'' means any equity interest, whether voting or nonvoting, of Direct Edge that defendants own or control, directly or indirectly, including, but not limited to, the units of interest in the ownership and profits and losses of Direct Edge and such rights to receive distributions from Direct Edge (defined as ''Units'' in the Operating Agreement) owned by Deutsche Börse through International Securities Exchange Holdings as of the date of the filing of this Final Judgment.

F. ''Divestiture Assets'' means the Direct Edge Equity required to be divested under this Final Judgment.

G. ''International Securities Exchange Holdings'' means International Securities Exchange Holdings, Inc., a Delaware corporation with its principal place of business in New York, New York, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

H. ''Mutual Services Agreement'' means the Mutual Services Agreement by and between ISE and Direct Edge, dated as of November 4, 2010, including any modifications, amendments, restatements, or other versions of the Mutual Services Agreement existing at the time of this Final Judgment or in the future.

I. ''Operating Agreement'' means the Fifth Amended and Restated Limited Liability Company Operating Agreement of Direct Edge Holdings LLC, dated as of June 12, 2010, including any modifications, amendments, restatements, or other versions of the Operating Agreement existing at the time of this Final Judgment or in the future.

J. ''Own'' means to have or retain any right, title, or interest in any asset, including any ability to control or direct actions with respect to such asset, either directly or indirectly, individually or through any other party.

K. ''Regulatory Services Agreements'' means the Regulatory Services Agreement by and between ISE and EDGX Exchange, Inc., dated as of January 21, 2010, and the Regulatory Services Agreement by and between ISE and EDGA Exchange, Inc., dated as of January 21, 2010, including any modifications, amendments, restatements, or other versions of the Regulatory Services Agreements existing at the time of this Final Judgment or in the future.

III. APPLICABILITY

This Final Judgment applies to Deutsche Börse and NYSE and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

IV. CERTIFICATION OF PASSIVE INTEREST

A. Defendants are hereby ordered and directed to take all necessary steps to render the Direct Edge Equity passive and to divest the Direct Edge Equity, consistent with the time limits, rights and restrictions specified elsewhere herein and in conformance with all applicable statutes, rules, regulations, and policies of relevant federal authorities.

B. Defendants are hereby ordered and directed, before closing of the Deutsche Börse/NYSE Merger, to provide a written plan outlining the steps defendants will take to comply with the terms of this Final Judgment, and written certification and supporting documentation to the United States demonstrating that such plan complies with this Final Judgment and that all voting, director, or other rights Deutsche Börse enjoyed under the Operating Agreement, the Certificate of Incorporation and By-Laws of EDGA Exchange, Inc., the Certificate of Incorporation and By-Laws of EDGX Exchange, Inc., or any other organizational documents of Direct Edge, have been eliminated (except any such rights specifically reserved or provided for herein).

V. DIVESTITURE OF DIRECT EDGE EQUITY

A. Defendants are ordered and directed, in a manner consistent with this Final Judgment, on or before two (2) years from the date of closing of the Deutsche Börse/NYSE Merger, to divest the Direct Edge Equity sufficient to cause defendants to own no outstanding equity in Direct Edge. The United States, in its sole discretion, may extend the two (2) year time limit in this Section V.A for up to three (3) additional extensions of one (1) year each upon written application of the Defendants.

B. Defendants are enjoined and restrained from the date of entry by the Court of the Stipulation and Order until the completion of the divestiture required by Section V.A from acquiring, directly or indirectly, any additional Direct Edge equity (including Units, options or any other forms of equity rights or warrants) or ownership interest or rights, except pursuant to a transaction that does not increase defendants' proportion of the outstanding equity of Direct Edge, such as a stock split, stock dividend, rights offering, recapitalization, reclassification, merger, consolidation, or corporate reorganization. Any additional Direct Edge equity acquired by defendants as specifically permitted in this Section V.B shall be part of the Direct Edge Equity and be subject (1) to the divestiture obligations of Section V.A of this Final Judgment; and (2) to the rights and restrictions set forth herein.

C. The divestiture required by Section V.A may be made by open market sale, public offering, private sale, private placement, repurchase by Direct Edge, or a combination thereof, subject to the restrictions outlined herein. Such divestiture shall not be made by private sale or private placement to any person unless the United States, in its sole discretion, shall otherwise agree in writing pursuant to the procedures set out in Section VIII.

D. Defendants shall notify the United States no less than sixty (60) calendar days prior to the expiration of the time period for divestiture required by Section V.A of this Final Judgment as to the arrangements made to complete the required divestiture in a timely fashion.

E. Upon completion of the divestiture required by Section V.A, defendants may not acquire, directly or indirectly, any additional equity (in any form) or ownership interest or rights in Direct Edge.

F. Defendants may not acquire debt obligations of Direct Edge, enter into any loan agreements with Direct Edge, or provide any financing to Direct Edge.

G. Defendants shall not take any action that will impede in any way the divestiture of the Divestiture Assets.

VI. DIRECT EDGE GOVERNANCE

A. Within two (2) business days after the closing of the Deutsche Börse/NYSE Merger, any Deutsche Börse officer, director, manager, employee, affiliate, or agent shall resign from the Board of Managers or Board of Directors of Direct Edge, Direct Edge, Inc., EDGA Exchange, Inc., and EDGX Exchange, Inc., and from any executive committees, advisory committees, or other comparable positions.

B. Except to the extent permitted elsewhere herein, from the date of the filing of this Final Judgment and until its expiration, defendants are enjoined and restrained, directly or indirectly, from:

1. Suggesting, designating or nominating, individually or as part of a group, any candidate for election to the Board of Managers or Board of Directors of Direct Edge, Direct Edge, Inc., EDGA Exchange, Inc. or EDGX Exchange, Inc., or having any officer, director, manager, employee, or agent serve as an officer, director, manager, employee, or in a comparable position with or for Direct Edge, Direct Edge, Inc., EDGA Exchange, Inc. or EDGX Exchange, Inc.;

2. participating in, being present at, or receiving any notes, minutes, or agendas of, information from, or any documents distributed in connection with, any nonpublic meeting of the Board of Managers or Board of Directors of Direct Edge, Direct Edge, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., or any committee thereof, any other governing body of Direct Edge, or any nonpublic meeting of members, shareholders, Unitholders, or any other type of equity owners of Direct Edge in which the business, operations, or ownership of Direct Edge are discussed, except to the extent it is necessary to disclose such information to the defendants in order to implement the provisions of this Final Judgment (the term ''meeting'' here includes any action taken by consent in lieu of a meeting);

3. voting, causing to be voted or permitting to be voted any Direct Edge shares, Units, or other equity that defendants own in any Direct Edge entity, except to the extent that Direct Edge determines that Deutsche Börse must vote its Units in Direct Edge, in which case Deutsche Börse shall vote in an amount and manner proportional to the vote of all other votes cast by other Direct Edge owners;

4. using or attempting to use any ownership interest in Direct Edge to exert any influence over Direct Edge in the conduct of Direct Edge's business;

5. using or attempting to use any rights or duties under any agreement or relationship between Deutsche Börse and Direct Edge, including but not limited to the Regulatory Services Agreements and Mutual Services Agreement, to influence Direct Edge in the conduct of Direct Edge's business;

6. communicating to or receiving from any officer, director, manager, member, owner, employee, or agent of Direct Edge any nonpublic information regarding any aspect

of defendants' or Direct Edge's business, including any plans or proposals with respect thereto; provided, however, that defendants shall be allowed to receive from Direct Edge quarterly financial information, including profit and loss information, of Direct Edge, to the extent necessary for defendants to comply with their financial reporting obligations; and

7. preventing, or attempting to prevent, Direct Edge from making any changes in any corporate governance documents necessary to implement the prohibitions contained in Sections IV.A, IV.B, or in this Section VI. B.

C. Except as set out elsewhere herein, nothing in this Final Judgment is intended to prevent Deutsche Börse from continuing to provide services for Direct Edge under the Regulatory Services Agreements and Mutual Services Agreement or from agreeing with Direct Edge to amend or terminate such agreements.

a. During the period of any Regulatory Services Agreement and Mutual Services Agreement between defendants and Direct Edge, defendants shall construct and maintain in place a firewall that prevents any information obtained pursuant to those agreements from flowing to any employee of the defendants except those necessary to provide the services under the Regulatory Services Agreements and Mutual Services Agreement. Defendants shall not use information obtained pursuant to the Regulatory Services Agreements and Mutual Services Agreement for any purpose other than in connection with providing the agreed upon services under the Regulatory Services Agreements and Mutual Services Agreement. To implement this provision, defendants are required to identify those employees necessary to provide the services under the Regulatory Services Agreements and Mutual Services Agreement. All identified employees shall be prohibited from passing on information obtained pursuant to the Regulatory Services Agreements and Mutual Services Agreement to non-identified employees, and all non-identified employees shall be prohibited from receiving any information obtained pursuant to the Regulatory Services Agreements and Mutual Services Agreement. For the avoidance of doubt, identified employees of the defendants may become employees of a self-regulatory organization (as that term is defined in Section 3(a)(26) of the Securities Exchange Act of 1934) other than a self-regulatory organization owned or operated by the defendants and such employees may continue to receive information obtained pursuant to the Regulatory Services Agreements and Mutual Services Agreement as necessary to provide the services under the Regulatory Services Agreements and Mutual Services Agreement.

b. Defendants shall, within ten (10) business days of the entry of the Stipulation and Order, submit to the Department of Justice a document setting forth in detail its procedure to effect compliance with provision VI.C.a. The Department of Justice shall have the sole discretion to approve defendant's compliance plan and shall notify defendants within three (3) business days whether it approves of or rejects the compliance plan. In the event that defendant's compliance plan is rejected, the reasons for the rejection shall be provided to defendants and defendants shall be given the opportunity to submit, within two (2) business days of receiving the notice of rejection, a revised compliance plan. If the parties cannot agree on a compliance plan within an additional three (3) business days, a plan will be devised by the Department of Justice and implemented by defendants.

VII. APPOINTMENT OF TRUSTEE

A. In the event that the United States, in its sole discretion, determines (a) that, upon receipt of the notice called for in Section V.D, defendants have not made arrangements that will result in completion of any divestiture within the time limits specified in Section V.A, (b) that defendants have not completed the divestiture required in Section V.A within the specified time limits, or (c) the defendants have not complied with the requirements of Section IV herein, the Court shall, upon application of the United States, appoint a trustee selected by the United States to effect such divestiture. Plaintiff may request a trustee before any of the time periods for divestiture specified in Section V.A expire. After the appointment of a trustee becomes effective, only that trustee shall have the right to sell the Divestiture Assets. The trustee shall have the power and authority to accomplish the divestiture to an acquirer(s) acceptable to the United States at such price and on such terms as are then obtainable upon the best reasonable effort by the trustee, and shall have such other powers as the Court shall deem appropriate. The trustee may hire at the cost and expense of defendants any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment to assist in the divestiture.

B. Defendants shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objections by defendants must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under Sections VII.E and F.

C. The trustee shall serve at the cost and expense of defendants, on such terms and conditions as the United States approves, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to defendants and the trust shall then be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the trustee with incentives based on the price and terms of the divestiture and the speed with which they are accomplished, but timeliness is paramount.

D. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to all information held by defendants relating to the Divestiture Assets. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

E. After its appointment, the trustee shall file monthly reports with the United States and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment. To the extent that such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets by means of private sale or placement, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to divest the Divestiture Assets.

F. If the trustee has not accomplished such divestiture within six (6) months after his or her appointment, the trustee shall promptly file with the Court a report setting forth: (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee at the same time shall furnish such reports to the United States, which shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it deems appropriate to carry out the purpose of this Final Judgment, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

VIII. Notice of Proposed Divestiture

A. Within two (2) business days following execution of a definitive divestiture agreement for private sale or private placement, defendants or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States of any proposed divestiture required by this Final Judgment. If the trustee is responsible, it shall similarly notify defendants. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from defendants, the proposed Acquirer(s), any other third party, or the trustee, if applicable, additional information concerning the proposed divestiture, the proposed

Acquirer(s), and any other potential Acquirer. Defendants and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from defendants, the proposed Acquirer(s), any third party, and the trustee, whichever is later, the United States shall provide written notice to defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to defendants' limited right to object to the sale under Section VII.B of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer(s) or upon objection by the United States, a divestiture proposed under Section V or Section VII shall not be consummated. Upon objection by defendants under Section VII.B, a divestiture proposed under Section VII shall not be consummated unless approved by the Court.

IX. Financing

Defendants shall not finance all or any part of any purchase made pursuant to this Final Judgment.

X. Compliance Inspection

A. For the purpose of determining or securing compliance with this Final Judgment, or determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, duly authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants, be permitted:

1. access during defendants' office hours to inspect and copy, or at the option of the United States, to require defendants to provide hard copies or electronic copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of defendants, relating to any matters contained in this Final Judgment; and

2. to interview, either informally or on the record, defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by defendants.

B. Upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, defendants shall submit written reports or responses to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If, at the time information or documents are furnished by defendants to the United States, defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure,'' then the United States shall give defendants ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI. No Reacquisition

Defendants may not reacquire any part of the Divestiture Assets or any other equity interest in Direct Edge during the term of this Final Judgment.

XII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify or terminate any of its provisions, to enforce compliance, and to punish any violations of its provisions.

XIII. Expiration of Final Judgment

Unless extended by this Court, this Final Judgment shall expire ten (10) years from the date of its entry.

XIV. Public Interest Determination

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States's responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

DATED: _____

Court approval subject to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16.

_____

United States District Judge

[FR Doc. 2011–33413 Filed 12–28–11; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in schedule I or II, and prior to issuing a regulation under 21 U.S.C. 952(a)(2) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with 21 CFR 1301.34(a), this is notice that on October 5, 2011, Mylan Pharmaceuticals, Inc., 781 Chestnut Ridge Road, Morgantown, West Virginia 26505, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the following basic classes of controlled substances:

Drug	Schedule
Methylphenidate (1724)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Fentanyl (9801)	II

The company plans to import the listed controlled substances in finished dosage form (FDF) from foreign sources for analytical testing and clinical trials in which the foreign FDF will be compared to the company's own domestically-manufactured FDF. This analysis is required to allow the company to export domestically-manufactured FDF to foreign markets.

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic classes of controlled substances may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43, and in such form as prescribed by 21 CFR 1316.47.

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than January 30, 2012.

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975,

40 FR 43745–46, all applicants for registration to import a basic class of any controlled substance in schedule I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: December 22, 2011.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2011–33402 Filed 12–28–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a), Title 21 of the Code of Federal Regulations (CFR), this is notice that on October 10, 2011, Norac Inc., 405 S. Motor Avenue, Azusa, California 91702–3232, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
Gamma Hydroxybutyric Acid (2010).	I
Tetrahydrocannabinols (7370)	I
Methamphetamine (1105)	II
Pentobarbital (2270)	II
Nabilone (7379)	II

With regard to Gamma Hydroxybutyric Acid (2010), Tetrahydrocannabinols (7370), and Methamphetamine (1105) only, the company manufactures these controlled substances in bulk solely for distribution within the United States to customers engaged in dosage-form manufacturing.

With regard to Nabilone (7379), the company presently manufactures a small amount of this controlled substance in bulk solely to conduct manufacturing internal process development. It is the company's intention that, when the manufacturing process is refined to the point that its Nabilone bulk product is available for commercial use, the company will export the controlled substance in bulk solely to customers engaged in dosage-form manufacturing outside the United States. The company is aware of the requirement to obtain a DEA registration as an exporter to conduct this activity.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than February 27, 2012.

Dated: December 20, 2011.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2011–33421 Filed 12–28–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated May 25, 2011, and published in the **Federal Register** on June 3, 2011, 76 FR 32225, AMPAC Fine Chemicals LLC., Highway 50 and Hazel Avenue Building 05011, Rancho Cordova, California 95670, made application to the Drug Enforcement Administration (DEA) as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
Thebaine (9333)	II
Poppy Straw Concentrate (9670)	II

The company is a contract manufacturer. In reference to Poppy Straw Concentrate the company will manufacture Thebaine intermediates for sale to its customers for further manufacture. No other activity for this drug code is authorized for registration.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of AMPAC Fine Chemicals LLC., to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated AMPAC Fine Chemicals LLC., to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823(a), and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: December 20, 2011.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2011–33400 Filed 12–28–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated September 9, 2011, and published in the **Federal Register** on September 15, 2011, 76 FR 57080, Chemic Laboratories, Inc., 480 Neponset Street, Building 7, Canton, Massachusetts 02021, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of Cocaine (9041), a basic class of controlled substance listed in schedule II.

The company plans to manufacture small quantities of the above listed controlled substance for distribution to its customers for the purpose of research.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Chemic Laboratories, to manufacture the listed basic class of controlled substance is consistent with the public interest at this time. DEA has investigated Chemic Laboratories to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823(a), and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic class of controlled substance listed.

Dated: December 20, 2011.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2011–33404 Filed 12–28–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Parole Commission

Sunshine Act Meeting; Record of Vote of Meeting Closure (Pub. L. 94–409) (5 U.S.C. 552b)

I, Isaac Fulwood, of the United States Parole Commission, was present at a meeting of said Commission, which started at approximately 11 a.m., on Thursday, December 8, 2011, at the U.S. Parole Commission, 90 K Street NE., Third Floor, Washington, DC 20530. The purpose of the meeting was to discuss four original jurisdiction cases pursuant to 28 CFR 2.27. Four Commissioners were present, constituting a quorum when the vote to close the meeting was submitted.

Public announcement further describing the subject matter of the meeting and certifications of the General Counsel that this meeting may be closed by votes of the Commissioners present were submitted to the Commissioners prior to the conduct of any other business. Upon motion duly made, seconded, and carried, the following Commissioners voted that the meeting be closed: Isaac Fulwood, Cranston J. Mitchell, Patricia Cushwa and J. Patricia Wilson Smoot.

In witness whereof, I make this official record of the vote taken to close this meeting and authorize this record to be made available to the public.

Dated: December 13, 2011.

Isaac Fulwood,

Chairman, U.S. Parole Commission.

[FR Doc. 2011–33524 Filed 12–27–11; 4:15 pm]

BILLING CODE 4410–01–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Green Jobs and Health Care Impact Evaluation of ARRA-Funded Grants

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employment and Training Administration (ETA) sponsored information collection request (ICR) titled, ''Green Jobs and Health Care Impact Evaluation of ARRA-funded Grants,'' to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 et seq.).

DATES: Submit comments on or before January 30, 2012.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain*, on the day following publication of this notice or by contacting Michel Smyth by telephone at (202) 693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov*.

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor, Employment and Training Administration (ETA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: (202) 395–6929/Fax: (202) 395–6881 (these are not toll-free numbers), email: *OIRA_submission@omb.eop.gov*.

FOR FURTHER INFORMATION: Contact Michel Smyth by telephone at (202) 693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov*.

SUPPLEMENTARY INFORMATION: ETA is undertaking the Green Jobs and Health Care Impact Evaluation of the Pathways Out of Poverty (POP—Green Jobs) and Health Care and High Growth Training grant initiatives. The goal of this evaluation is to determine the extent to which enrollees achieve increases in employment, earnings, and career advancement as a result of their participation in the training provided by Pathways and Health Care grantees and to identify promising best practices and strategies for replication.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1205–0481. The current OMB approval is scheduled to expire on January 31, 2012; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on September 28, 2011 (76 FR 60084).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should reference OMB Control Number 1205–0481. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment and Training Administration (ETA).

Title of Collection: Green Jobs and Health Care Impact Evaluation of ARRA-funded Grants.

OMB Control Number: 1205–0481.

Affected Public: Individuals or households; State, Local, and Tribal Governments.

Total Estimated Number of Respondents: 6,024.

Total Estimated Number of Responses: 12,000.

Total Estimated Annual Burden Hours: 2,600.

Total Estimated Annual Other Costs Burden: $0.

Dated: December 21, 2011.

Linda Watts Thomas,

Acting Departmental Clearance Officer.

[FR Doc. 2011–33342 Filed 12–28–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; The Family and Medical Leave Act of 1993

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Wage Hour Division (WHD) sponsored information collection request (ICR) titled, ''29 CFR Part 825, The Family and Medical Leave Act of 1993,'' to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*).

DATES: Submit comments on or before January 30, 2012.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain*, on the day following publication of this notice or by contacting Michel Smyth by telephone at (202) 693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov*.

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor, Wage Hour Division, Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: (202) 395–6929/Fax: (202) 395–6881 (these are not toll-free numbers), email: *OIRA_submission@omb.eop.gov*.

FOR FURTHER INFORMATION: Contact Michel Smyth by telephone at (202) 693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov*.

SUPPLEMENTARY INFORMATION: The DOL created the subject information collections (i.e., notifications) to implement statutory notice and certification provisions and to assist employees and employers in meeting their FMLA third-party notification obligations as required by The Family and Medical Leave Act of 1993 (FMLA) and by the amendments to FMLA contained in National Defense Authorization Act for FY 2010 (NDAA), Public Law 111–84, and Airline Flight Crew Technical Corrections Act, Public Law 111–119. The subject recordkeeping requirements are necessary in order for the DOL to carry out its statutory obligation under FMLA section 106 to investigate and ensure employer compliance.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1235–0003. The current OMB approval is scheduled to expire on December 31, 2011; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on September 28, 2011 (76 FR 60086).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should reference OMB Control Number 1235–0003. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Wage Hour Division (WHD).

Title of Collection: 29 CFR Part 825, The Family and Medical Leave Act of 1993.

OMB Control Number: 1235–0003.

Affected Public: Business or other for-profit; Not-for-profits institutions; Farms; State, Local, and Tribal Government.

Total Estimated Number of Respondents: 14,127,414.

Total Estimated Number of Responses: 88,926,419.

Total Estimated Annual Burden Hours: 19,009,201.

Total Estimated Annual Other Costs Burden: $163,332,185.

Dated: December 21, 2011.

Linda Watts Thomas,

Acting Departmental Clearance Officer.

[FR Doc. 2011–33343 Filed 12–28–11; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; ''Green Jobs and Health Care Implementation Study''

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employment and Training (ETA) sponsored information collection request (ICR) proposal entitled ''Green Jobs and Healthcare Grants Implementation Study,'' to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*).

DATES: Submit comments on or before January 30, 2012.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain*, on the day following publication of this notice or by contacting Michel Smyth by telephone at (202) 693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov*.

Submit comments about this request to the Office of Information and

Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor, Employment and Training (ETA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: (202) 395–6929/Fax: (202) 395–6881 (these are not toll-free numbers), email: *OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION: Contact Michel Smyth by telephone at (202) 693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This information collection request seeks to collect data from recipients of four ETA grants that provide funding to train unemployed, underemployed, dislocated, and incumbent workers for employment and to create career pathways in healthcare and other growing industries. The ETA seeks clearance to conduct on-site in-depth interviews with grantees and their program partner staff; conduct focus groups with grant participants; and administer a web/telephone survey of all grant project directors and selected program partner staff as part of the Green Jobs and Healthcare Implementation Study. This project seeks to understand the processes surrounding the design and implementation of the four grant programs.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6. For additional information, see the related notice published in the **Federal Register** on August 29, 2011 (vol. 76, p 53698). Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should reference ICR Reference Number 201110–1205–002. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment and Training Administration.

Title of Collection: Green Jobs and Health Care Implementation Study.

OMB ICR Reference Number: 201110–1205–002.

Affected Public: Private Sector—Businesses or Other For-Profits and Not-For-Profit Institutions; State, Local, and Tribal Governments; and Individuals and Households.

Total Estimated Number of Respondents: 1,272.

Total Estimated Number of Responses: 2,252.

Total Estimated Annual Burden Hours: 1,186.

Total Estimated Annual Other Costs Burden: $0.

Dated: December 21, 2011.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2011–33373 Filed 12–28–11; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Contribution Operations

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employment and Training Administration (ETA) sponsored information collection request (ICR) titled, ''Contribution Operations,'' to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 et seq.).

DATES: Submit comments on or before January 30, 2012.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain*, on the day following publication of this notice or by contacting Michel Smyth by telephone at (202) 693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov*.

Submit comments about this request to the Office of Information and Regulatory Affairs, *Attn:* OMB Desk Officer for the Department of Labor, Employment and Training Administration (ETA), Office of Management and Budget, Room 10235, Washington, DC 20503, *Telephone:* (202) 395–6929/Fax: (202) 395–6881 (these are not toll-free numbers), email: *OIRA_submission@omb.eop.gov*.

FOR FURTHER INFORMATION: Contact Michel Smyth by telephone at (202) 693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov*.

SUPPLEMENTARY INFORMATION: In support of the Unemployment Insurance statutory and regulatory requirements, ETA 581 provides quarterly data on State agencies' volume and performance in wage processing, promptness of liable employer registration, timeliness of filing contribution and wage reports, extent of tax delinquency, and results of the field audit program.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1205–0178. The current OMB approval is scheduled to expire on December 31, 2011; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review.

For additional information, see the related notice published in the **Federal Register** on September 21, 2011 (76 FR 58540).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should reference OMB Control Number 1205–0178. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment and Training Administration (ETA).

Title of Collection: Contribution Operations.

OMB Control Number: 1205–0178.

Affected Public: State Government.

Total Estimated Number of Respondents: 53.

Total Estimated Number of Responses: 212.

Total Estimated Annual Burden Hours: 1,802.

Total Estimated Annual Other Costs Burden: $0.

Dated: September 21, 2011.

Linda Watts Thomas,

Acting Clearance Officer.

[FR Doc. 2011–33370 Filed 12–28–11; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Cognitive and Psychological Research

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Bureau of Labor Statistics (BLS) sponsored information collection request (ICR) titled, ''Cognitive and Psychological Research,'' to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*).

DATES: Submit comments on or before January 30, 2012.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain*, on the day following publication of this notice or by contacting Michel Smyth by telephone at (202) 693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov*.

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor, Bureau of Labor Statistics (BLS), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: (202) 395–6929/Fax: (202) 395–6881 (these are not toll-free numbers), email: *OIRA_submission@omb.eop.gov*.

FOR FURTHER INFORMATION: Contact Michel Smyth by telephone at (202) 693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov*.

SUPPLEMENTARY INFORMATION: The Bureau of Labor Statistics' Behavioral Science Research Laboratory (BSRL) conducts psychological research focusing on the design and execution of the data collection process in order to improve the quality of data collected by the Bureau. BSRL conducts research aimed at improving data collection quality by assessing questionnaire/form management and administration, as well as issues which relate to interviewer training and interaction with respondents in the interview process. BSRL staff work closely with economists and/or program specialists responsible for defining the concepts to be measured by the Bureau of Labor Statistics' collection programs. The proposed laboratory research will be conducted from Fiscal Year (FY) 2012 through FY 2014 to enhance data quality in the Bureau of Labor Statistics' surveys. Improvements will be made by examining psychological and cognitive aspects of BLS's data collection procedures, including questionnaire design, interviewing procedures, collection modalities, and administrative technology.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1220–0141. The current OMB approval is scheduled to expire on February 29, 2012; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on September 12, 2011 (76 FR 56226).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should reference OMB Control Number 1220–0141. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Bureau of Labor Statistics (BLS).

Title of Collection: Cognitive and Psychological Research.

OMB Control Number: 1220–0141.

Affected Public: Individuals and Households, Private Sector.

Total Estimated Number of Responses: 3,600.

Total Estimated Annual Burden Hours: 3,600.

Total Estimated Annual Other Costs Burden: $0.

Dated: December 22, 2011.

Linda Watts Thomas,

Acting Departmental Clearance Officer.

[FR Doc. 2011–33365 Filed 12–28–11; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Local Area Unemployment Statistics Program

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Bureau of Labor Statistics (BLS) sponsored information collection request (ICR) titled, ''Local Area Unemployment Statistics Program,'' to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*).

DATES: Submit comments on or before January 30, 2012.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by contacting Michel Smyth by telephone at (202) 693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor, Bureau of Labor Statistics (BLS), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: (202) 395–6929/Fax: (202) 395–6881 (these are not toll-free numbers), email: *OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at (202) 693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The Manual provides the theoretical basis and essential technical instructions and guidance, which States require to prepare State and area labor force estimates, while the reports ensure and/or measure the timeliness, quality, consistency, and adherence to LAUS program directives and research.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1220–0017. The current OMB approval is scheduled to expire on February 29, 2012; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on September 27, 2011 (76 FR 59741).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should reference OMB Control Number 1220–0017. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Bureau of Labor Statistics (BLS).

Title of Collection: Local Area Unemployment Statistics Program.

OMB Control Number: 1220–0017.

Affected Public: State Government.

Total Estimated Number of Respondents: 52.

Total Estimated Number of Responses: 95,790.

Total Estimated Annual Burden Hours: 143,375.

Total Estimated Annual Other Costs Burden: $0.

Linda Watts Thomas,

Acting Departmental Clearance Officer.

[FR Doc. 2011–33468 Filed 12–28–11; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Office of the Secretary

Bureau of International Labor Affairs; Office of Trade and Labor Affairs; Bahrain—United States Free Trade Agreement; Notice of Extension of the Period of Review for Submission #2011–01

AGENCY: Bureau of International Labor Affairs, U.S. Department of Labor.

ACTION: Notice.

SUMMARY: The Office of Trade and Labor Affairs (OTLA) in the Bureau of International Labor Affairs of the U.S. Department of Labor has determined that an extension of time is required for its review of a public submission concerning Bahrain filed under Chapter Fifteen (the Labor Chapter) of the Bahrain—United States Free Trade Agreement (FTA).

The submission was received on April 21, 2011 from the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) and alleges actions by the Government of Bahrain that, if substantiated, would be inconsistent with Bahrain's commitments under the FTA Labor Chapter.

OTLA accepted the submission for review on June 10, 2011, in accordance with its published procedures and standards for acceptance. Acceptance of the submission for review does not imply a finding that the allegations are

true. Rather, it triggers a 180-day fact-finding and review period (unless circumstances as determined by OTLA require an extension of time) that results in the issuance of a public report of any findings and recommendations.

As part of its ongoing review, OTLA sent a delegation to Bahrain from October 22–26, 2011 to gather information on issues raised by the public submission. The Department of Labor delegation met with representatives from the Government of Bahrain, Bahraini trade unions, employers' organizations, employers, workers, and other groups with information relevant to the submission.

Due to the receipt of recent information relevant to the submission and the thorough on-going review process, OTLA has determined that the circumstances require an extension of time. The extension of time is necessary to permit adequate consideration of several recent developments:

- The Government of Bahrain has recently made commitments to the U.S. government and to the Bahraini public to promptly and favorably resolve the matters at issue in the AFL-CIO submission. It is important for OTLA to assess the progress made in coming weeks towards prompt and favorable resolution;
- OTLA has recently received a substantial amount of information and a large volume of documents, requiring careful study and analysis. Several hundred pages of documents in Arabic require translation;
- OTLA's visit to Bahrain for first hand collection of documentary and interview information, the source of much of the most substantive and relevant information, was twice delayed, to accommodate the schedule of elections in Bahrain and at the request of the Government of Bahrain; and
- There have been other recent developments in response to the issues raised by the AFL-CIO submission, and on matters closely related to them. It is important that there be sufficient opportunity to assess the Government of Bahrain's response to them. These include the issuance of the Report of the Bahrain Independent Commission of Inquiry and the proposal of the Government of Bahrain to the Governing Body of the International Labor Organization (ILO) to constitute a tripartite committee to address the issue of workplace dismissals and reinstatements, to avail itself of the independent legal advice of the ILO, and to report to the ILO Director General and to the ILO Governing Body.

OTLA will continue to give this matter the highest priority and to devote the resources necessary to completing the review as expeditiously as possible.

DATES: *Effective Date:* December 7, 2011.

FOR FURTHER INFORMATION CONTACT: Gregory Schoepfle, Director, OTLA, U.S. Department of Labor, 200 Constitution Avenue NW., Room S–5303, Washington, DC 20210. Telephone: (202) 693–4900 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Article 15.4.2 of the Labor Chapter of the Bahrain—United States Free Trade Agreement establishes that each Party's contact point shall provide for the submission, receipt, and consideration of communications from persons of a Party on matters related to provisions of the Labor Chapter and shall review such communications in accordance with domestic procedures. On December 14, 2006, the Department of Labor's OTLA was designated as the office to serve as the contact point for administering the labor provisions in free trade agreements, including the Bahrain—United States Free Trade Agreement. 71 FR 76691 (2006). The same **Federal Register** notice informed the public of the Procedural Guidelines that OTLA would follow for the receipt and review of public submissions. These Procedural Guidelines are available at *http://www.dol.gov/ilab/programs/otla/proceduralguidelines.htm.* According to the definitions contained in the Procedural Guidelines (Section B) a ''submission,'' as used in the guidelines, means ''a communication from the public containing specific allegations, accompanied by relevant supporting information, that another Party has failed to meet its commitments or obligations arising under a labor chapter * * *.''

The Procedural Guidelines specify that OTLA shall consider six factors, to the extent that they are relevant, in determining whether to accept a submission for review:

1. Whether the submission raises issues relevant to any matter arising under a labor chapter;
2. Whether a review would further the objectives of a labor chapter;
3. Whether the submission clearly identifies the person filing the submission, is signed and dated, and is sufficiently specific to determine the nature of the request and permit an appropriate review;
4. Whether the statements contained in the submission, if substantiated, would constitute a failure of the other Party to comply with its obligations or commitments under a labor chapter;
5. Whether the statements contained in the submission or available information demonstrate that appropriate relief has been sought under the domestic laws of the other Party, or that the matter or a related matter is pending before an international body; and,
6. Whether the submission is substantially similar to a recent submission and significant, new information has been furnished that would substantially differentiate the submission from the one previously filed.

The submission raises pertinent issues that would further the objectives of the Labor Chapter and that would, if substantiated, constitute a failure of the Government of Bahrain to comply with its FTA commitments. The submission provides new information and was filed in a correct and complete manner with an allegation that is specific enough to be investigated. The affected trade unionists have attempted to engage in dialogue with the Government of Bahrain regarding the allegations contained in the submission. The OTLA has taken these factors into account and accepted the submission for review.

OTLA's decision to accept the submission for review is not intended to indicate any determination as to the validity or accuracy of the allegations contained in the submission. The objectives of the review of the submission will be to gather information so that OTLA can better understand and publicly report on the U.S. Government's views regarding whether the Government of Bahrain's actions were consistent with the obligations set forth in the Labor Chapter of the Bahrain—United States Free Trade Agreement. The review will be completed and a public report issued within 180 days, unless circumstances, as determined by OTLA, require an extension of time, as set out in the Procedural Guidelines. The public report will include a summary of the review process, as well as findings and recommendations.

Signed at Washington, DC, on December 22, 2011.

Carol Pier,

Associate Deputy Undersecretary, International Affairs.

[FR Doc. 2011–33478 Filed 12–28–11; 8:45 am]

BILLING CODE 4510–28–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–80,304B]

Continuous Computing, Inc. (CCPU), A Subsidiary of RadiSys Corporation, Including On-Site Leased Workers From Qualstaff Resources, Including Teleworkers Located in Florida, Pennsylvania, Georgia, and Texas, Reporting to This Location, San Diego, CA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on September 2, 2011, applicable to workers of Continuous Computing, Inc. (CCPU), a subsidiary of RadiSys Corporation, including on-site leased workers from Qualstaff Resources, San Diego, California. The workers are engaged in activities related to the production of PCP boards, telecommunication systems, and medical systems. The notice was published in the **Federal Register** on September 19, 2011 (76 FR 58046).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information shows that worker separations have occurred involving employees of the subject firm who telework from off-site locations in Florida, Pennsylvania, Georgia, and Texas. These employees provided various activities supporting production of PCP boards, telecommunication systems, and medical systems.

Based on these findings, the Department is amending this certification to include employees of the firm who telework and report to the San Diego, California facility of Continuous Computing, Inc. (CCPU), a subsidiary of RadiSys Corporation.

The intent of the Department's certification is to include all workers of the subject firm adversely affected by actual/likely increase in imports following a shift abroad.

The amended notice applicable to TA–W–80,304, TA–W–80,304A, and TA–W–80,304B are hereby issued as follows:

All workers of RadiSys Corporation, including on-site leased workers from Employment Trends, Hillsboro, Oregon (TA–W–80,304) who became totally or partially separated from employment on or after August 15, 2011, through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974, as amended,

And

All workers from Northwest Software, Inc., Oxford Global Resources and Resources Global Professionals, working on-site at RadiSys Corporation, Hillsboro, Oregon (TA–W–80,304A) who became totally or partially separated from employment on or after July 20, 2010, through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974, as amended,

And

All workers of Continuous Computing, Inc. (CCPU), a subsidiary of RadiSys Corporation, including on-site workers from QualStaff Resources, including teleworkers located in Florida, Pennsylvania, Georgia, and Texas reporting to San Diego, California (TA–W–80,304B), who became totally or partially separated from employment on or after July 20, 2010, through September 2, 2013, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974, as amended.

Signed at Washington, DC, this 19th day of December 2011.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–33326 Filed 12–28–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–73,824]

Honeywell International, Inc., Automation and Control Solutions Division, Including On-Site Leased Workers From Manpower, Spherion, Securitas and ABM Janitorial Services North Central, Inc., Rock Island, IL; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 30, 2010, applicable to workers of Honeywell International, Inc., Automation and Control Solutions Division, Rock Island, Illinois. The notice was published in the **Federal Register** on August 13, 2010 (75 FR 49531). The notice was amended on December 7, 2010 to include several on-site leased worker firms. The amended notice was published in the **Federal Register** on December 13, 2010 (75 FR 77664–77665).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of rubber boots.

The company reports that workers leased from ABM Janitorial Services North Central, Inc. was employed on-site at the Rock Island, Illinois location of Honeywell International, Inc., Automation and Control Solutions Division. The Department has determined that these workers were sufficiently under the control of Honeywell International, Inc., Automation and Control Solutions Division to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from ABM Janitorial Services north Central, Inc. working on-site at the Rock Island, Illinois location of Honeywell International, Inc., Automation and Control Solutions Division.

The amended notice applicable to TA–W–73,824 is hereby issued as follows:

All workers of Honeywell International, Inc., Automation and Control Solutions Division, including on-site leased workers from Manpower, Spherion, Securitas, and ABM Janitorial Services North Central, Inc., Rock Island, Illinois, who became totally or partially separated from employment on or after March 29, 2009, through July 30, 2012, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC, this 19th day of December 2011.

Michael W. Jaffe,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2011–33329 Filed 12–28–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–73,077]

Grupo Antolin, a Subsidiary of Grupo Antolin North America Including Workers Whose Unemployment Insurance (UI) Wages Are Reported Through Keyland Usa, Inc. Including On-Site Leased Workers From Job Network Belvidere, IL; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility To Apply for Worker Adjustment Assistance on June 16, 2010, applicable to workers of Grupo Antolin, a subsidiary of Grupo Antolin North America, including on-site leased workers from Job Network, Belvidere, Illinois. The workers produce door trim modules for the automotive industry. The notice was published in the **Federal Register** on July 1, 2010 (75 FR 38141).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm.

New information shows that Keyland USA, Inc. has a service agreement signed with Grupo Antolin to provide the administration services of the IT area, including day to day IT operations as well as support in the launch of new projects and any other related activity. Some workers separated from employment at the Belvidere, Illinois location of Grupo Antolin, a subsidiary of Grupo Antolin North America had their wages reported under a separate unemployment insurance (UI) tax account under the name Keyland USA, Inc.

Accordingly, the Department is amending this certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected as a secondary component supplier to a trade certified primary firm, (Chrysler Assembly Plant, Belvidere, Illinois).

The amended notice applicable to TA–W–73,077 is hereby issued as follows:

All workers of Grupo Antolin, a subsidiary of Grupo Antolin North America, including workers whose unemployment insurance (UI) wages are reported through Keyland USA, Inc., including on-site leased workers from Job Network, Belvidere, Illinois, who became totally or partially separated from employment on or after December 9, 2008 through June 16, 2012, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC, this 19th day of December 2011.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–33328 Filed 12–28–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers by (TA–W) number issued during the period of *December 12, 2011 through December 16, 2011.*

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Under Section 222(a)(2)(A), the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the sales or production, or both, of such firm have decreased absolutely; and

(3) One of the following must be satisfied:

(A) Imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased;

(B) imports of articles like or directly competitive with articles into which one or more component parts produced by such firm are directly incorporated, have increased;

(C) imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased;

(D) imports of articles like or directly competitive with articles which are produced directly using services supplied by such firm, have increased; and

(4) the increase in imports contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; or

II. Section 222(a)(2)(B) all of the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) One of the following must be satisfied:

(A) There has been a shift by the workers' firm to a foreign country in the production of articles or supply of services like or directly competitive with those produced/supplied by the workers' firm;

(B) there has been an acquisition from a foreign country by the workers' firm of articles/services that are like or directly competitive with those produced/supplied by the workers' firm; and

(3) the shift/acquisition contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in public agencies and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) A significant number or proportion of the workers in the public agency have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the public agency has acquired from a foreign country services like or directly competitive with services which are supplied by such agency; and

(3) the acquisition of services contributed importantly to such workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(c) of the Act must be met.

(1) A significant number or proportion of the workers in the workers' firm have become totally or partially separated, or

are threatened to become totally or partially separated;

(2) the workers' firm is a Supplier or Downstream Producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, and such supply or production is related to the article or service that was the basis for such certification; and

(3) either—

(A) the workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) a loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in firms identified by the International Trade Commission and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(f) of the Act must be met.

(1) The workers' firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) an affirmative determination of serious injury or threat thereof under section 202(b)(1);

(B) an affirmative determination of market disruption or threat thereof under section 421(b)(1); or

(C) an affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

(2) the petition is filed during the 1-year period beginning on the date on which—

(A) a summary of the report submitted to the President by the International Trade Commission under section 202(f)(1) with respect to the affirmative determination described in paragraph (1)(A) is published in the **Federal Register** under section 202(f)(3); or

(B) notice of an affirmative determination described in subparagraph (1) is published in the **Federal Register**; and

(3) the workers have become totally or partially separated from the workers' firm within—

(A) the 1-year period described in paragraph (2); or

(B) notwithstanding section 223(b)(1), the 1-year period preceding the 1-year period described in paragraph (2).

Affirmative Determinations For Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
80,418	Invista S.A.R.L., Mundy Maintenance Services and Operations.	Waynesboro, VA	February 20, 2011.
80,418A	Security Forces, Inc. (SFI), Working on-Site at Invista S.A.R.L	Waynesboro, VA	September 6, 2010.
80,451	Dillan Chenille, Inc.	Martinsville, VA	September 19, 2010.
80,463	Clow Water Systems Company, Carol Harris Staffing	Coshocton, OH	September 23, 2010.
80,479	Excelsior Services Group, Pinnacle Technical Resources, Working On-Site at Cognizant.	Fort Worth, TX	September 28, 2010.
80,497	Southwoods, LLC, American Forest Products Division, Roper Personnel.	Manning, SC	October 6, 2010.
80,520	Positronic Industries, Inc., Penmac	Mount Vernon, MO	October 13, 2010.
80,520A	Positronic Industries, Inc., Penmac	Springfield, MO	October 13, 2010.
80,528	Timbron International, Inc.	Stockton, CA	October 17, 2010.
81,011	Cyberdyne, Inc.	New Eagle, PA	February 13, 2010.
81,031	Ultrablend, LLC, Ambassador Personnel Services	Charlotte, NC	February 13, 2010.
81,097	Kimberly-Clark Worldwide, Inc., Kimberly-Clark Corp., Injury Free Inc., Ventilation Power Cleaning, etc.	Everett, WA	February 13, 2010.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production or services) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
80,429	Kennametal, Inc., Kennametal Finance Organization	Latrobe, PA	June 18, 2011.
80,429A	Kelly Services, Working of Site at Kennametal, Inc., Kennametal Finance Organization.	Latrobe, PA	September 9, 2010.
80,453	Seroyal USA, Inc, Atrium Biotech Investments, Inc., HVL LLC	Redmond, WA	September 20, 2010.
80,492	RockTenn, Consumer Packaging Division, Custom Staffing National.	Milwaukee, WI	October 4, 2010.
80,498	InterMetro Industries Corporation, Emerson Electric, Custom Staffing.	Fostoria, OH	October 5, 2010.
80,501	TT Electronics, International Resistive Company, Inc.	Boone, NC	October 10, 2010.
80,504	BASF Corporation, Coatings Division	Belvidere, NJ	December 23, 2011.
80,504A	Leased Workers from Nextsource, Working On-Site at BASF Corporation, Coatings Division.	Belvidere, NJ	October 11, 2010.
80,527	MAHLE Engine Components USA, Inc., MAHLE Industries, Inc., Hamilton Connections and Monroe Staffing.	Trumbull, CT	October 17, 2010.
81,001	Freeman Metal Products, Inc.	Ahoskie, NC	February 13, 2010.
81,005	Terex USA, LLC, Powertemp Services, Express Pesonnel and Manpower.	Wilmington, NC	February 13, 2010.

TA–W No.	Subject firm	Location	Impact date
81,058	Warren Corporation, Textile Apparel Divisions	Stafford Springs, CT	December 4, 2011.
81,064	VTech Communications, Inc., Express and Kelly IT	Beaverton, OR	February 13, 2010.
81,070	CVG CS LLC, Seating Division, including on-site leased workers from Staffmark.	Tellico Plains, TN	February 13, 2010.
81,076	Amphenol Aerospace Corporation, Superior Technical Resource, Staffworks, Adecco and Manpower.	Sidney, NY	February 13, 2010.
81,080	The Travelers Indemnity Company, Personal Insurance Division, Tele-Workers to this Location.	Glens Falls, NY	February 13, 2010.
81,085	Western United Life Assurance Company, Global Life Holdings, LLC, Insurance Administration, etc.	Spokane, WA	February 13, 2010.
81,091	Sperian Protection Instrumentation LLC, Honeywell International, Spherion Staffing Services, Manpower, etc.	Middletown, CT	February 13, 2010.
81,095	Sanyo Manufacturing Corporation, Sanyo Electric Division, Panasonic Corporation.	Forrest City, AR	December 31, 2011.
81,095A	Leased Workers From G4S (Wackenhut) and Ozark Motor Lines, Working On-Site at Sanyo Manufacturing Corporation.	Forrest City, AR	February 13, 2010.
81,099	Brake Parts, Inc., Brake and Chassis Division, Affinia Group, Nicolet Staffing.	Waupaca, WI	February 13, 2010.
81,103	Kerry, Inc., Kerry Holding Co., Express Personnel, Aerotek and Command Staffing.	Kent, WA	February 13, 2010.
81,108	Mayville Products Corporation, QPS Employment Group	Mayville, WI	February 13, 2010.
81,111	Ametek National Controls Corporation, Instrumentation and Specialty, Ametek, Staff Force and Manpower.	West Chicago, IL	October 9, 2011.
81,111A	First Choice Staffing, Ametek National Controls, Instrumentation and Specialty Controls Division.	West Chicago, IL	February 13, 2010.
81,123	Dana Holding Corporation, Light Vehicle Division, Manpower and Experis.	Marion, IN	June 10, 2010.
81,123A	Leased Workers From Experis, Working On-Site at Dana Holding Corporation.	Marion, IN	February 13, 2010.

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
80,517	A.G. Simpson (USA), Inc., Shreveport Plant, Career Adventures.	Shreveport, LA	October 13, 2010.
80,521	Billhorn Converters, LLC, Northweat Division, Express Employment.	Kalama, WA	October 12, 2010.
80,531	PPG Industries, Inc., Automotive Coatings, Belcan and Aerotek, Working On-Site at General Motors.	Shreveport, LA	October 18, 2010.
81,008	Lintelle Engineering, Inc., Kelly Services	Scotts Valley, CA	February 13, 2010.
81,121	Third Degree Graphics	Ventura, CA	February 13, 2010.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

The investigation revealed that the criteria under paragraphs(a)(2)(A) (increased imports) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

TA–W No.	Subject firm	Location	Impact date
80,347	Pension Systems Corporation	Sherman Oaks, CA.	
80,352	Penske Logistics, LLC,, General Electric/Penske, El Paso Distribution, Warehouse Division.	El Paso, TX.	
80,447	Dell USA LP, Dell, Inc., Support for Internal Services/Financial, Applications, etc..	Round Rock, TX.	
80,476	Wells Fargo Bank, N.A., Auto Finance Collections Group	Bethlehem, PA.	
80,511	Specialty Bar Products Company, Doncasters, Inc.	Blairsville, PA.	
80,533	Champion Photochemistry	Rochester, NY.	

Determinations Terminating Investigations of Petitions for Worker Adjustment Assistance

After notice of the petitions was published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued in cases where these petitions were not filed in accordance with the requirements of 29 CFR 90.11. Every petition filed by workers must be signed by at least three individuals of the petitioning worker group. Petitioners separated more than one year prior to the date of the petition cannot be covered under a certification of a petition under Section 223(b), and therefore, may not be part of a petitioning worker group. For one or more of these reasons, these petitions were deemed invalid.

TA–W No.	Subject firm	Location	Impact date
81,148	Wells Fargo	San Francisco, CA.	

I hereby certify that the aforementioned determinations were issued during the period of *December 12, 2011 through December 16, 2011.* These determinations are available on the Department's Web site at *tradeact__taa/taa__search__form.cfm* under searchable listing of determinations or by calling the Office of Trade Adjustment Assistance toll-free at (888) 365–6822.

Dated: December 20, 2011.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–33327 Filed 12–28–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

2002 Reopened—Previously Denied Determinations; Notice of Negative Determinations on Reconsideration Under the Trade Adjustment Assistance Extension Act of 2011 Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) (Act) the Department of Labor (Department) herein presents summaries of negative determinations on reconsideration regarding eligibility to apply for Trade Adjustment Assistance for workers by case (TA–W–) number regarding negative determinations issued during the period of February 13, 2011 through October 21, 2011. Notices of negative determinations were published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271). As required by the Trade Adjustment Assistance Extension Act of 2011 (TAAEA), all petitions that were denied during this time period were automatically reopened. The reconsideration investigation revealed that the following workers groups have not met the certification criteria under the provisions of TAAEA.

After careful review of the additional facts obtained, the following negative determinations on reconsideration have been issued: TA–W–80,163; Dentsply International, Inc., Bohemia, NY. TA–W–80,249; Staples, Inc., Broomfield, CO.

I hereby certify that the aforementioned negative determinations on reconsideration were issued on December 19, 2011. These determinations are available on the Department's Web site at *tradeact/taa/taa_search_form.cfm* under the searchable listing of determinations or by calling the Office of Trade Adjustment Assistance toll-free at (888) 365–6822.

Dated: December 21, 2011.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–33305 Filed 12–28–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

2002 Reopened—Previously Denied Determinations; Notice of Negative Determinations on Reconsideration Under the Trade Adjustment Assistance Extension Act of 2011 Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 USC 2273) (Act) the Department of Labor (Department) herein presents summaries of negative determinations on reconsideration regarding eligibility to apply for Trade Adjustment Assistance for workers by case (TA–W–) number regarding negative determinations issued during the period of February 13, 2011 through October 21, 2011. Notices of negative determinations were published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271). As required by the Trade Adjustment Assistance Extension Act of 2011 (TAAEA), all petitions that were denied during this time period were automatically reopened. The reconsideration investigation revealed that the following workers groups have not met the certification criteria under the provisions of TAAEA.

After careful review of the additional facts obtained, the following negative determinations on reconsideration have been issued.

TA–W–80,013; Robb & Stucky Limited LLP, Fort Myers, FL.

TA–W–80,026; Computer Task Group, Mechanicsburg, PA.

TA–W–80,047; Cenveo, Inc., Springfield, MA.

TA–W–80,053; Shiloh Steel Fabricators, Bethel Heights, AR.

TA–W–80,172; Burner Systems International, Chattanooga, TN.

TA–W–80,199; Stimson Lumber Co., Gaston, OR.

TA–W–80,310; Applabs, Inc., Deerfield Beach, FL.

TA–W–80,390; Hancock and Moore, Inc., Hickory, NC.

TA–W–80,395; Simpson Lumber Co., LLC, Shelton, WA.

I hereby certify that the aforementioned negative determinations on reconsideration were issued on December 14, 2011 through December 16, 2011. These determinations are available on the Department's Web site at *tradeact/taa/taa_search_form.cfm* under the searchable listing of determinations or by calling the Office of Trade Adjustment Assistance toll-free at (888) 365–6822.

Dated December 19, 2011.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–33324 Filed 12–28–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

2002 Reopened—Previously Denied Determinations; Notice of Revised Denied Determinations on Reconsideration Under the Trade Adjustment Assistance Extension Act of 2011 Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) (Act) the Department of Labor (Department) herein presents summaries of revised determinations on reconsideration regarding eligibility to apply for Trade Adjustment Assistance for workers by case (TA–W-) number regarding negative determinations issued during the period of February 13, 2011 through October 21, 2011. Notices of negative determinations were published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271). As required by the Trade Adjustment Assistance Extension Act of 2011 (TAAEA), all petitions that were denied during this time period were automatically reconsidered. The reconsideration investigation revealed that the following workers groups have met the certification criteria under the provisions of TAAEA.

After careful review of the additional facts obtained, the following revised determinations on reconsideration have been issued. TA–W–80,372; Walgreens Company, Deerfield, IL: August 2, 2010.

I hereby certify that the aforementioned revised determinations on reconsideration were issued on December 19, 2011. These determinations are available on the Department's Web site at *tradeact/taa/taa_search_form.cfm* under the searchable listing of determinations or by calling the Office of Trade Adjustment Assistance toll-free at (888) 365–6822.

Dated December 21, 2011.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–33304 Filed 12–28–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

2002 Reopened—Previously Denied Determinations; Notice of Revised Denied Determinations on Reconsideration Under the Trade Adjustment Assistance Extension Act of 2011 Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) (Act) the Department of Labor (Department) herein presents summaries of revised determinations on reconsideration regarding eligibility to apply for Trade Adjustment Assistance for workers by case (TA–W) number regarding negative determinations issued during the period of *February 13, 2011 through October 21, 2011.* Notices of negative determinations were published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271). As required by the Trade Adjustment Assistance Extension Act of 2011 (TAAEA), all petitions that were denied during this time period were automatically reconsidered. The reconsideration investigation revealed that the following workers groups have met the certification criteria under the provisions of TAAEA.

After careful review of the additional facts obtained, the following revised determinations on reconsideration have been issued.

TA–W–80,079; The Loomis Co., Wyomissing, PA: March 29, 2010.
TA–W–80,180; JPMorgan Chase and Co., Houston, TX: May 12, 2010.
TA–W–80,286; Affinity Express, Columbus, OH: July 12, 2010.
TA–W–80,354; Avery Dennison, Greensboro, NC: July 29, 2010.
TA–W–80,420; MGM Transport, Lenoir, NC: September 7, 2010
TA–W–80,420A; MGM Transport, Martinsville, VA: September 7, 2010
TA–W–80,420B; MGM Transport, High Point, NC: September 7, 2010
TA–W–80,420C; Caldwell Freight Lines, High Point: September 7, 2010
TA–W–80,420D; Caldwell Freight Lines, Martinsville, VA: September 7, 2010
TA–W–80,420E; Caldwell Freight Lines, Pontotoc, MS: September 7, 2010
TA–W–80,420F; Caldwell Freight Lines, Lenoir, NC: September 7, 2010
TA–W–80,420G; Caldwell Freight Lines, Newton, NC: September 7, 2010

I hereby certify that the aforementioned revised determinations on reconsideration were issued on *December 15, 2011 through December 16, 2011.* These determinations are available on the Department's Web site at *tradeact/taa/taa_search_form.cfm* under the searchable listing of determinations or by calling the Office of Trade Adjustment Assistance toll-free at (888) 365–6822.

Dated: December 19, 2011.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–33325 Filed 12–28–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–80,207]

Tecumseh Products Corporation, Ann Arbor, MI; Notice of Termination of Investigation

On September 15, 2011, the Department issued a Notice of Affirmative Determination Regarding Application for Reconsideration applicable to workers and former workers of Tecumseh Products Corporation, Ann Arbor, Michigan. The Department's Notice was published in the **Federal Register** on September 23, 2011 (76 FR 59176). Workers at the subject firm are engaged in activities related to the production of refrigerator compressors.

The work who requested administrative reconsideration pursuant to 29 CFR 90.18 has withdrawn the request. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 15th day of December, 2011.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–33330 Filed 12–28–11; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL SCIENCE FOUNDATION

National Spectrum Sharing Research Experimentation, Validation, Verification, Demonstration and Trials: Technical Workshop II on Coordinating Federal Government/Private Sector Spectrum Innovation Testing Needs

AGENCY: The National Coordination Office (NCO) for Networking and Information Technology Research and Development (NITRD).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Wendy Wigen at (703) 292–4873 or *wigen@nitrd.gov*. Space is limited and on a first-come, first-served basis. The meeting will be webcast. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

DATES: January 17–18, 2012.

SUMMARY: Representatives from Federal research agencies, private industry, and academia will collaboratively define the concept and requirements of national level spectrum research, development, demonstration, and field trial facilities.

SUPPLEMENTARY INFORMATION:

Overview: This notice is issued by the National Coordination Office (NCO) for the Networking and Information Technology Research and Development (NITRD) Program. NITRD agencies are holding a series of technical workshops, this being the second, to bring together experts from private industry and academia to help create and implement a plan for the Department of Commerce regarding spectrum-sharing technologies. The workshop will take place on January 17, from 12 Noon to 5 p.m. Pacific Time, and January 18 from 8 a.m. to 5 p.m. Pacific Time in Berkeley, California at the Berkeley Wireless Research Center (BWRC), 2108 Allston Way, Suite 200, Berkeley, CA 94704–1302. This event will be webcast. For the event agenda and information about the webcast, go to *http://www.nitrd.gov/Subcommittee/wirelessspectrumrd.aspx.*

Background: The dramatic rise of radio frequency-based applications has sparked a new sense of urgency among federal users, commercial service providers, equipment developers, and spectrum management professionals to determine the optimal way to manage and use the radio spectrum. During Workshop I held at Boulder, Colorado on June 26, 2011, the industry expressed a critical need to increase the number and availability of national testing facilities to prove that spectrum sharing technologies are a viable approach to sharing spectrum among different users. Spectrum sharing technology experimentation in ideal environments was cited as a key element to catalyze future wireless innovation in a complex spectrum environment that stakeholders can trust and that will provide a technological basis for national policy and rule making. The Wireless Spectrum Research and Development Senior Steering Group (WSRD–SSG) was created by the White House Office of Science and Technology Policy in late 2010. The committee was asked to identify current spectrum-related research projects funded by the Federal Government, and to work with the non-federal community, including the academic, commercial, and public safety sectors, to implement a plan that ''facilitates research, development, experimentation, and testing by researchers to explore innovative spectrum-sharing technologies,'' in accordance with the Presidential Memorandum on Unleashing the Wireless Broadband Revolution. WSRD–SSG operates under the auspices of the Networking and Information Technology Research and Development (NITRD) Program of the National Coordination Office (NCO), and has recently put together a preliminary inventory of federal R&D in the spectrum arena. This second workshop—Workshop II—will present an opportunity for relevant interested parties, including technical experts from private industry and public safety, together with academic researchers, and Government agencies to collaboratively define the concept and requirements of national level spectrum research, development, demonstration, and field trial facilities. Participants will discuss the national facilities that are operational today and their availability. Participants, especially those from the industry and academia, will also be asked to identify infrastructure, toolsets, facilities and features that are important for spectrum innovation. The workshop will discuss potential payoffs, resource utilization and collaborative engagement frameworks that the national wireless industry can adopt that are consistent with the Federal Government's role in sponsoring ''high-risk high-reward'' research innovation and experimentation. The workshop will also address possible frameworks for supporting near-term and long-term research experimentation that may result in yet-to-be-conceived improvements and models for spectrum utilization. The workshop will discuss technology impacts on multiple sectors that can benefit from the use of national experimentation facilities including, government, public safety, commercial cellular, energy, transport, health, education and agricultural sectors.

Submitted by the National Science Foundation for the National Coordination Office (NCO) for Networking and Information Technology Research and Development (NITRD) on December 23, 2011.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2011–33383 Filed 12–28–11; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 52–039; NRC–2008–0603]

PPL Bell Bend, LLC; Combined License Application for Bell Bend Nuclear Power Plant; Exemption

1.0 Background

PPL Bell Bend, LLC submitted to the U.S. Nuclear Regulatory Commission (NRC or the Commission) a Combined License (COL) Application for a single unit of AREVA NP's U.S. EPR in accordance with the requirements of Title 10 of the *Code of Federal Regulations* (10 CFR), subpart C of part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants.'' This reactor is to be identified as Bell Bend Nuclear Power Plant (BBNPP), in Salem County, Pennsylvania. The BBNPP COL application incorporates by reference AREVA NP's application for a Standard Design Certification for the U.S. EPR. Additionally, the BBNPP COL application is based upon the U.S. EPR reference COL (RCOL) application for UniStar's Calvert Cliffs Nuclear Power Plant, Unit 3 (CCNPP3). The NRC docketed the BBNPP COL application on October 10, 2008. The NRC is currently performing a detailed review of the CCNPP3 RCOL application, as well as AREVA NP's application for design certification of the U.S. EPR.

2.0 Request/Action

The regulations specified in 10 CFR 50.71(e)(3)(iii), require that an applicant for a combined license under 10 CFR part 52 shall, during the period from docketing of a COL application until the Commission makes a finding under 10 CFR 52.103(g) pertaining to facility operation, submit an annual update to the application's Final Safety Analysis Report (FSAR), which is a part of the application.

On February 12, 2010, PPL Bell Bend, LLC submitted Revision 2 to the COL application, including updates to the FSAR. Pursuant to 10 CFR 50.71(e)(3)(iii), the next annual update is due by December 2011. PPL Bell Bend, LLC has requested a one-time exemption from the 10 CFR 50.71(e)(3)(iii) requirements to submit

the scheduled 2011 update, and proposed, for approval, a new submittal deadline of March 30, 2012, for the next FSAR update.

In summary, the requested exemption is a one-time schedule change from the requirements of 10 CFR 50.71(e)(3)(iii). The exemption would allow PPL Bell Bend, LLC to submit the next FSAR update at a later date. The current FSAR update schedule could not be changed, absent the exemption. PPL Bell Bend LLC requested the exemption by letter dated October 26, 2011 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML11307A414).

3.0 Discussion

Pursuant to 10 CFR 50.12, the NRC may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50, including Section 50.71(e)(3)(iii) when: (1) The exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) special circumstances are present. As relevant to the requested exemption, special circumstances exist if: (1) ''Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule'' (10 CFR 50.12(a)(2)(ii)); or (2) ''The exemption would provide only temporary relief from the applicable regulation and the licensee or applicant has made good faith efforts to comply with the regulation'' (10 CFR 50.12(a)(2)(v)).

PPL Bell Bend LLC commits to submit the next FSAR update by March 30, 2012, and would need to identify all changes to the U.S. EPR FSAR in order to prepare a COL application FSAR revision that accurately and completely reflects the changes to the U.S. EPR FSAR.

The requested one-time schedule exemption to defer submittal of the next update to the NMP3NPP COL application FSAR would provide only temporary relief from the regulations of 10 CFR 50.71(e)(3)(iii).

Authorized by Law

The exemption is a one-time schedule exemption from the requirements of 10 CFR 50.71(e)(3)(iii). The exemption would allow PPL Bell Bend LLC to submit the next BBNPP COL application FSAR update on or before March 30, 2012. As stated above, 10 CFR 50.12 allows the NRC to grant exemptions. The NRC staff has determined that granting PPL Bell Bend LLC the requested one-time exemption from the requirements of 10 CFR 50.71(e)(3)(iii) will provide only temporary relief from this regulation and will not result in a violation of the Atomic Energy Act of 1954, as amended, or the NRC's regulations. Therefore, the exemption is authorized by law.

No Undue Risk to Public Health and Safety

The underlying purpose of 10 CFR 50.71(e)(3)(iii) is to provide for a timely and comprehensive update of the FSAR associated with a COL application in order to support an effective and efficient review by the NRC staff and issuance of the NRC staff's safety evaluation report. The requested exemption is solely administrative in nature, in that it pertains to the schedule for submittal to the NRC of revisions to an application under 10 CFR part 52, for which a license has not been granted. Based on the nature of the requested exemption as described above, no new accident precursors are created by the exemption; thus, neither the probability, nor the consequences of postulated accidents are increased. Therefore, there is no undue risk to public health and safety.

Consistent With Common Defense and Security

The requested exemption would allow PPL Bell Bend LLC to submit the next FSAR update on or before March 20, 2012. This schedule change has no relation to security issues. Therefore, the common defense and security is not impacted by this exemption.

Special Circumstances

Special circumstances, in accordance with 10 CFR 50.12(a)(2), are present whenever: (1) ''Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule'' (10 CFR 50.12(a)(2)(ii)); or (2) ''The exemption would provide only temporary relief from the applicable regulation and the licensee or applicant has made good faith efforts to comply with the regulation'' (10 CFR 50.12(a)(2)(v)).

The underlying purpose of 10 CFR 50.71(e)(3)(iii) is to provide for a timely and comprehensive update of the FSAR associated with a COL application in order to support an effective and efficient review by the NRC staff and issuance of the NRC staff's safety evaluation report. As discussed above, the requested one-time exemption is solely administrative in nature, in that it pertains to a one-time schedule change for submittal of revisions to an application under 10 CFR part 52, for which a license has not been granted. The requested one-time exemption will permit PPL Bell Bend LLC time to carefully review the most recent revisions of the U.S. EPR FSAR, and fully incorporate these revisions into a comprehensive update of the FSAR associated with the BBNPP COL application. This one-time exemption will support the NRC staff's effective and efficient review of the COL application when resumed, as well as issuance of the safety evaluation report. For this reason, application of 10 CFR 50.71(e)(3)(iii) in the particular circumstances is not necessary to achieve the underlying purpose of that rule. Therefore, special circumstances exist under 10 CFR 50.12(a)(2)(ii). In addition, special circumstances are also present under 10 CFR 50.12(a)(2)(v) because granting a one-time exemption from 10 CFR 50.71(e)(3)(iii) would provide only temporary relief, and PPL Bell Bend LLC has made good faith efforts to comply with the regulation by submitting Revision 2 to the COL application on February 12, 2010. Revision 2 incorporated information provided in prior supplements and standardized language with the RCOL application. For the above reasons, the special circumstances required by 10 CFR 50.12(a)(2) for the granting of an exemption from 10 CFR 50.71(e)(3)(iii) exist.

Eligibility for Categorical Exclusion From Environmental Review

With respect to the exemption's impact on the quality of the human environment, the NRC has determined that this specific exemption request is eligible for categorical exclusion as identified in 10 CFR 51.22(c)(25). Under 10 CFR 51.22(c)(25), granting of an exemption from the requirements of any regulation of 10 CFR Chapter 1 is an action that is a categorical exclusion, provided that:

(i) There is no significant hazards consideration;

(ii) There is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite;

(iii) There is no significant increase in individual or cumulative public or occupational radiation exposure;

(iv) There is no significant construction impact;

(v) There is no significant increase in the potential for or consequences from radiological accidents; and

(vi) The requirements from which an exemption is sought involve:

(B) Reporting requirements; or (G) Scheduling requirements.

The NRC staff's determination that each of the applicable criteria for this categorical exclusion is met is justified as follows:

(i) There is no significant hazards consideration;

Staff analysis: The criteria for determining whether there is no significant hazards consideration are found in 10 CFR 50.92. The proposed action involves only a schedule change regarding the submission of an update to the application for which the licensing review is currently underway. Therefore, there are no significant hazard considerations because granting the proposed exemption would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) Involve a significant reduction in a margin of safety.

(ii) There is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite;

Staff analysis: The proposed action involves only a schedule change which is administrative in nature, and does not involve any changes to be made in the types or significant increase in the amounts of effluents that may be released offsite.

(iii) There is no significant increase in individual or cumulative public or occupational radiation exposure;

Staff analysis: Since the proposed action involves only a schedule change which is administrative in nature, it does not contribute to any significant increase in occupational or public radiation exposure.

(iv) There is no significant construction impact;

Staff analysis: The proposed action involves only a schedule change which is administrative in nature; the application review is underway and no license will be issued prior to receipt of the afore-mentioned application's March 30, 2012 submittal of the revised FSAR, hence the proposed action does not involve any construction impact.

(v) There is no significant increase in the potential for or consequences from radiological accidents;

Staff analysis: The proposed action involves only a schedule change which is administrative in nature, and does not impact the probability or consequences of accidents.

(vi) The requirements from which an exemption is sought involve:

(B) Reporting requirements; or (G) Scheduling requirements.

Staff analysis: The exemption request involves requirements in both of these categories because it involves submitting an updated FSAR by PPL Bell Bend, LLC and also relates to the schedule for submitting FSAR updates to the NRC.

4.0 Conclusion

Accordingly, the NRC has determined that, pursuant to 10 CFR 50.12, the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the NRC hereby grants PPL Bell Bend LLC a one-time exemption from the requirements of 10 CFR 50.71(e)(3)(iii) pertaining to the BBNPP COL application to allow submittal of the next FSAR update, no later than March 30, 2012.

Pursuant to 10 CFR 51.22, the NRC has determined that the exemption request meets the applicable categorical exclusion criteria set forth in 10 CFR 51.22(c)(25), and the granting of this exemption will not have a significant effect on the quality of the human environment.

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 21st day of December, 2011.

For the Nuclear Regulatory Commission.

John Segala,

Chief, Licensing Branch1, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2011–33466 Filed 12–28–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 52–016; NRC–2008–0250]

UniStar Nuclear Energy; Combined License Application for Calvert Cliffs Nuclear Power Plant, Unit 3; Exemption

1.0 Background:

UniStar Nuclear Energy (UNE) submitted to the U.S. Nuclear Regulatory Commission (NRC or the Commission) a Combined License (COL) Application for a single unit of AREVA NP's U.S. EPR in accordance with the requirements of Title 10 of the *Code of Federal Regulations* (10 CFR), Subpart C of part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants.'' This reactor is to be identified as Calvert Cliffs Nuclear Power Plant Unit 3 (CCNPP3) and located at a site in Calvert County, Maryland. The CCNPP3 COL application incorporates by reference AREVA NP's application for a Standard Design Certification for the U.S. EPR. The NRC docketed the CCNPP3 COL application on June 3, 2008. The NRC is currently performing concurrent reviews of the CCNPP3 COL application, as well as the AREVA NP's application for design certification of the U.S. EPR.

2.0 Request/Action

The regulations specified in 10 CFR 50.71(e)(3)(iii), require that an applicant for a combined license under 10 CFR part 52 shall, during the period from docketing of a COL application until the Commission makes a finding under 10 CFR 52.103(g) pertaining to facility operation, submit an annual update to the application's Final Safety Analysis Report (FSAR), which is a part of the application.

On December 20, 2010, UNE submitted Revision 7 to the COL application, including updates to the FSAR. Pursuant to 10 CFR 50.71(e)(3)(iii), the next annual update is due by December 2011. UNE has requested a one-time exemption from the 10 CFR 50.71(e)(3)(iii) requirements to submit the scheduled 2011 update, and proposed, for approval, a new submittal deadline of March 30, 2012, for the next FSAR update.

In summary, the requested exemption is a one-time schedule change from the requirements of 10 CFR 50.71(e)(3)(iii). The exemption would allow UNE to submit the next FSAR update at a later date. The current FSAR update schedule could not be changed, absent the exemption. UNE requested the exemption by letter dated November 8, 2011 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML11318A013).

3.0 Discussion

Pursuant to 10 CFR 50.12, the NRC may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50, including Section 50.71(e)(3)(iii) when: (1) The exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) special circumstances are present. As relevant to the requested exemption, special circumstances exist if: (1) ''Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule'' (10 CFR 50.12(a)(2)(ii)); or (2) ''The exemption would provide only temporary relief

from the applicable regulation and the licensee or applicant has made good faith efforts to comply with the regulation'' (10 CFR 50.12(a)(2)(v)).

UNE commits to submit the next FSAR update by March 30, 2012, and would need to identify all changes to the U.S. EPR FSAR in order to prepare a COL application FSAR revision that accurately and completely reflects the changes to the U.S. EPR FSAR.

The requested one-time schedule exemption to defer submittal of the next update to the CCNPP3 COL application FSAR would provide only temporary relief from the regulations of 10 CFR 50.71(e)(3)(iii). .

Authorized by Law

The exemption is a one-time schedule exemption from the requirements of 10 CFR 50.71(e)(3)(iii). The exemption would allow UNE to submit the next CCNPP3 COL application FSAR update on or before March 30, 2012. As stated above, 10 CFR 50.12 allows the NRC to grant exemptions. The NRC staff has determined that granting UNE the requested one-time exemption from the requirements of 10 CFR 50.71(e)(3)(iii) will provide only temporary relief from this regulation and will not result in a violation of the Atomic Energy Act of 1954, as amended, or the NRC's regulations. Therefore, the exemption is authorized by law.

No Undue Risk to Public Health and Safety

The underlying purpose of 10 CFR 50.71(e)(3)(iii) is to provide for a timely and comprehensive update of the FSAR associated with a COL application in order to support an effective and efficient review by the NRC staff and issuance of the NRC staff's safety evaluation report. The requested exemption is solely administrative in nature, in that it pertains to the schedule for submittal to the NRC of revisions to an application under 10 CFR part 52, for which a license has not been granted. Based on the nature of the requested exemption as described above, no new accident precursors are created by the exemption; thus, neither the probability, nor the consequences of postulated accidents are increased. Therefore, there is no undue risk to public health and safety.

Consistent With Common Defense and Security

The requested exemption would allow UNE to submit the next FSAR update on or before March 30, 2012. The requested schedule change has no relation to security issues. Therefore, the common defense and security is not impacted by this exemption.

Special Circumstances

Special circumstances, in accordance with 10 CFR 50.12(a)(2), are present whenever: (1) ''Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule'' (10 CFR 50.12(a)(2)(ii)); or (2) ''The exemption would provide only temporary relief from the applicable regulation and the licensee or applicant has made good faith efforts to comply with the regulation'' (10 CFR 50.12(a)(2)(v)).

The underlying purpose of 10 CFR 50.71(e)(3)(iii) is to provide for a timely and comprehensive update of the FSAR associated with a COL application in order to support an effective and efficient review by the NRC staff and issuance of the NRC staff's safety evaluation report. As discussed above, the requested one-time exemption is solely administrative in nature, in that it pertains to a one-time schedule change for submittal of revisions to an application under 10 CFR Part 52, for which a license has not been granted. The requested one-time exemption will permit UNE time to carefully review the most recent revisions of the U.S. EPR FSAR, and fully incorporate these revisions into a comprehensive update of the FSAR associated with the CCNPP3 COL application. This one-time exemption will support the NRC staff's effective and efficient review of the COL application as well as issuance of the safety evaluation report. For this reason, application of 10 CFR 50.71(e)(3)(iii) in the particular circumstances is not necessary to achieve the underlying purpose of that rule. Therefore, special circumstances exist under 10 CFR 50.12(a)(2)(ii). In addition, special circumstances are also present under 10 CFR 50.12(a)(2)(v) because granting a one-time exemption from 10 CFR 50.71(e)(3)(iii) would provide only temporary relief, and UNE has made good faith efforts to comply with the regulation by submitting Revision 7 to the COL application on December 20, 2010. Revision 7 of the COL application incorporated information provided in prior supplements and standardized language with the U.S. EPR Design Certification application. For the above reasons, the special circumstances required by 10 CFR 50.12(a)(2) for the granting of an exemption from 10 CFR 50.71(e)(3)(iii) exist.

Eligibility for Categorical Exclusion From Environmental Review

With respect to the exemption's impact on the quality of the human environment, the NRC has determined that this specific exemption request is eligible for categorical exclusion as identified in 10 CFR 51.22(c)(25). Under 10 CFR 51.22(c)(25), granting of an exemption from the requirements of any regulation of 10 CFR Chapter 1 is an action that is a categorical exclusion, provided that:

(i) There is no significant hazards consideration;

(ii) There is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite;

(iii) There is no significant increase in individual or cumulative public or occupational radiation exposure;

(iv) There is no significant construction impact;

(v) There is no significant increase in the potential for or consequences from radiological accidents; and

(vi) The requirements from which an exemption is sought involve:

(B) Reporting requirements; or (G) Scheduling requirements.

The NRC staff's determination that each of the applicable criteria for this categorical exclusion is met is justified as follows:

(i) There is no significant hazards consideration;

Staff analysis: The criteria for determining whether there is no significant hazards consideration are found in 10 CFR 50.92. The proposed action involves only a schedule change regarding the submission of an update to the application for which the licensing review is currently underway. Therefore, there are no significant hazard considerations because granting the proposed exemption would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) Involve a significant reduction in a margin of safety.

(ii) There is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite;

Staff analysis: The proposed action involves only a schedule change which is administrative in nature, and does not involve any changes to be made in the types or significant increase in the amounts of effluents that may be released offsite.

(iii) There is no significant increase in individual or cumulative public or occupational radiation exposure;

Staff analysis: Since the proposed action involves only a schedule change which is administrative in nature, it does not contribute to any significant increase in occupational or public radiation exposure.

(iv) There is no significant construction impact;

Staff analysis: The proposed action involves only a schedule change which is administrative in nature; the application review is underway and no license will be issued prior to receipt of the afore-mentioned March 30, 2012 submittal of the revised FSAR, hence the proposed action does not involve any construction impact.

(v) There is no significant increase in the potential for or consequences from radiological accidents; and

Staff analysis: The proposed action involves only a schedule change which is administrative in nature, and does not impact the probability or consequences of accidents, and

(vi) The requirements from which an exemption is sought involve:

(B) Reporting requirements; or (G)Scheduling requirements;

Staff analysis: The proposed exemption involves requirements in both of these categories because it involves submitting an updated FSAR by UNE and also relates to the schedule for submitting FSAR updates to the NRC

4.0 Conclusion

Accordingly, the NRC has determined that, pursuant to 10 CFR 50.12, the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the NRC hereby grants UNE a one-time exemption from the requirements of 10 CFR 50.71(e)(3)(iii) pertaining to the CCNPP3 COL application to allow submittal of the next FSAR update, no later than March 30, 2012.

Pursuant to 10 CFR 51.22, the NRC has determined that the exemption request meets the applicable categorical exclusion criteria set forth in 10 CFR 51.22(c)(25), and the granting of this exemption will not have a significant effect on the quality of the human environment.

This exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 21st day of December, 2011.

John Segala,

Chief, Licensing Branch 1, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2011–33464 Filed 12–28–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–416; NRC–2011–0262]

Entergy Operations, Inc.; Notice of Intent To Prepare an Environmental Impact Statement and Conduct the Scoping Process for Grand Gulf Nuclear Station, Unit 1

AGENCY: Nuclear Regulatory Commission.

ACTION: Intent to prepare environmental impact statement and conduct scoping process; public meeting.

SUMMARY: Entergy Operations, Inc. (Entergy) has submitted an application for renewal of Facility Operating License NPF–29 for an additional 20 years of operation at Grand Gulf Nuclear Station, Unit 1 (GGNS). GGNS is located in Claiborne County, Mississippi.

The current operating license for GGNS expires on November 1, 2024. The application for renewal, dated October 28, 2011, was submitted pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) part 54, which included an environmental report (ER). A separate notice of receipt and availability of the application was published in the **Federal Register** on November 17, 2011 (76 FRN 71379). A notice of acceptance for docketing of the application and opportunity for hearing regarding renewal of the facility operating license is also being published in the **Federal Register**. The purpose of this notice is to inform the public that the U.S. Nuclear Regulatory Commission (NRC or the Commission) will be preparing an environmental impact statement (EIS) related to the review of the license renewal application and to provide the public an opportunity to participate in the environmental scoping process, as defined in 10 CFR 51.29.

As outlined in 36 CFR 800.8, ''Coordination with the National Environmental Policy Act,'' the NRC plans to coordinate compliance with Section 106 of the National Historic Preservation Act (NHPA) in meeting the requirements of the National Environmental Policy Act of 1969 (NEPA). Pursuant to 36 CFR 800.8(c), the NRC intends to use its process and documentation for the preparation of the EIS on the proposed action to comply with Section 106 of the NHPA in lieu of the procedures set forth at 36 CFR 800.3 through 800.6.

In accordance with 10 CFR 51.53(c) and 10 CFR 54.23, Entergy submitted the ER as part of the application.

DATES: Submit comments by February 27, 2012.

ADDRESSES: Please include Docket ID NRC–2011–0262 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 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–2011–0262. Address questions about NRC dockets to Carol Gallagher, telephone: (301) 492–3668; email: *Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Fax comments to:* RADB at (301) 492–3446.

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 document 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 email to *pdr.resource@nrc.gov.* The ER is available electronically under ADAMS Accession Number ML113080132 and may also be viewed on the Internet at *http://www.nrc.gov/reactors/operating/licensing/renewal/applications.html.* In addition, the ER is available to the public near the site at the Harriette Person Memorial Library, 606 Main St., Port Gibson, Mississippi 39150.

• *Federal Rulemaking Web Site:* Public comments and supporting materials related to this notice can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2011–0262.

This notice advises the public that the NRC intends to gather the information necessary to prepare a plant-specific supplement to the NRC's ''Generic Environmental Impact Statement (GEIS) for License Renewal of Nuclear Plants'' (NUREG–1437), related to the review of the application for renewal of the GGNS operating license for an additional 20 years.

Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative energy sources. The NRC is required by 10 CFR 51.95 to prepare a supplement to the GEIS in connection with the renewal of an operating license. This notice is being published in accordance with NEPA and the NRC's regulations found at 10 CFR Part 51.

The NRC will first conduct a scoping process for the supplement to the GEIS and, as soon as practicable thereafter, will prepare a draft supplement to the GEIS for public comment. Participation in the scoping process by members of the public and local, State, Tribal, and Federal government agencies is encouraged. The scoping process for the supplement to the GEIS will be used to accomplish the following:

a. Define the proposed action, which is to be the subject of the supplement to the GEIS;

b. Determine the scope of the supplement to the GEIS and identify the significant issues to be analyzed in depth;

c. Identify and eliminate from detailed study those issues that are peripheral or that are not significant;

d. Identify any environmental assessments and other ElSs that are being or will be prepared that are related to, but are not part of, the scope of the supplement to the GEIS being considered;

e. Identify other environmental review and consultation requirements related to the proposed action;

f. Indicate the relationship between the timing of the preparation of the environmental analyses and the Commission's tentative planning and decision-making schedule;

g. Identify any cooperating agencies and, as appropriate, allocate assignments for preparation and schedules for completing the supplement to the GEIS to the NRC and any cooperating agencies; and

h. Describe how the supplement to the GEIS will be prepared and include any contractor assistance to be used.

The NRC invites the following entities to participate in scoping:

a. The applicant, Entergy;

b. Any Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved or that is authorized to develop and enforce relevant environmental standards;

c. Affected State and local government agencies, including those authorized to develop and enforce relevant environmental standards;

d. Any affected Indian tribe;

e. Any person who requests or has requested an opportunity to participate in the scoping process; and

f. Any person who has petitioned or intends to petition for leave to intervene.

In accordance with 10 CFR 51.26, the scoping process for an EIS may include a public scoping meeting to help identify significant issues related to a proposed activity and to determine the scope of issues to be addressed in an EIS. The NRC has decided to hold public meetings for the GGNS license renewal supplement to the GEIS. The scoping meetings will be held on January 31, 2012, and there will be two sessions to accommodate interested parties. The first session will convene at 2 p.m. and will continue until 3:30 p.m. The second session will convene at 7 p.m. with a repeat of the overview portions of the meeting and will continue until 8:30 p.m., as necessary. Both sessions will be held at the Port Gibson City Hall, 1005 College Street, Port Gibson, Mississippi 39150.

Both meetings will be transcribed and will include: (1) an overview by the NRC staff of the NEPA environmental review process, the proposed scope of the supplement to the GEIS, and the proposed review schedule; and (2) the opportunity for interested government agencies, organizations, and individuals to submit comments or suggestions on the environmental issues or the proposed scope of the supplement to the GEIS. Additionally, the NRC staff will host informal discussions one hour prior to the start of each session at the same location. No formal comments on the proposed scope of the supplement to the GEIS will be accepted during the informal discussions. To be considered, comments must be provided either at the transcribed public meetings or in writing, as discussed in the **ADDRESSES** section of this notice.

Persons may register to attend or present oral comments at the meetings on the scope of the NEPA review by contacting the NRC Project Manager, David Drucker, by telephone at (800) 368–5642, ext. 6223, or by email at *David.Drucker@nrc.gov* no later than January 24, 2012. Members of the public may also register to speak at the meeting within 15 minutes of the start of each session. Individual oral comments may be limited by the time available, depending on the number of persons who register. Members of the public who have not registered may also have an opportunity to speak if time permits. Public comments will be considered in the scoping process for the supplement to the GEIS. David Drucker will need to be contacted no later than January 10, 2012, if special equipment or accommodations are needed to attend or present information at the public meeting so that the NRC staff can determine whether the request can be accommodated.

Participation in the scoping process for the supplement to the GEIS does not entitle participants to become parties to the proceeding to which the supplement to the GEIS relates. Matters related to participation in any hearing are outside the scope of matters to be discussed at this public meeting. The notice of acceptance for docketing of the application and opportunity for hearing that was published in the **Federal Register** describes the hearing process.

Dated at Rockville, Maryland, this 22nd day of December, 2011.

For the Nuclear Regulatory Commission.

David J. Wrona,

Chief, Projects Branch 2, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. 2011–33461 Filed 12–28–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0295]

Methodology for Low Power/Shutdown Fire PRA

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft NUREG/CR; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment a draft NUREG/CR, NUREG/CR–7114, Revision 0, ''Methodology for Low Power/Shutdown Fire PRA—Draft Report for Comment.''

DATES: Submit comments by March 01, 2012. Comments received after this date will be considered if it is practical to do so, but the NRC staff is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Please include Docket ID NRC–2011–0295 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 by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2011–0295. Address questions about NRC dockets to Carol Gallagher (301) 492–3668; email *Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Mail comments to: Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to RADB at (301) 492–3446.
- *Fax comments to:* RADB at (301) 492–3446.

FOR FURTHER INFORMATION CONTACT: Felix E. Gonzalez, Division of Risk Analysis, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: (301) 251–7596, email: *Felix.Gonzalez@nrc.gov* or Hugh W. Woods, Division of Risk Analysis, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: (301) 251–7577, email: *Hugh.Woods@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 document 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 email to *pdr.resource@nrc.gov.* The draft NUREG is available electronically under ADAMS Accession No. ML11353A377. The draft NUREG will also be accessible through the NRC's public site under draft NUREGs for comment.
- *Federal Rulemaking Web Site:* Public comments and supporting materials related to this notice can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2011–0295.

Discussion

The draft NUREG presents a probabilistic risk assessment (PRA) method for quantitatively analyzing fire risk in commercial nuclear power plants during low power operation and shutdown (LPSD) conditions, including the determination of core damage frequency (CDF) and large early release frequency (LERF). Future updates are expected to be made to this document as experience is gained with LPSD quantitative risk analyses of both internal events and fires.

The NRC developed this LPSD fire quantitative risk method so analysts would be able to use a quantitative approach for estimating fire risk during LPSD conditions. While current LPSD safety analyses for fires performed under National Fire Protection Association Standard 805 (NFPA 805) focus on qualitative, defense-in-depth methods, it is envisioned that applications in the future may evolve to a more quantitative method.

Dated at Rockville, Maryland, this 21 day of December, 2011.

For the Nuclear Regulatory Commission.

Mark H. Salley,

Chief, Fire Research Branch, Division of Risk Analysis, Office of Nuclear Regulatory Research.

[FR Doc. 2011–33471 Filed 12–28–11; 8:45 am]

BILLING CODE 7590–01–P

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

Senior Executive Service Performance Review Board Membership

AGENCY: Occupational Safety and Health Review Commission.

ACTION: Annual notice.

SUMMARY: Notice is given under 5 U.S.C. 4314(c)(4) of the appointment of members to the Performance Review Board (PRB) of the Occupational Safety and Health Review Commission.

DATE: Membership is effective on December 29, 2011.

FOR FURTHER INFORMATION CONTACT: Debra A. Hall, Acting Executive Director, U.S. Occupational Safety and Health Review Commission, 1120 20th Street, NW., Washington, DC 20036, (202) 606–5397.

SUPPLEMENTARY INFORMATION: The Review Commission, as required by 5 U.S.C. 4314(c)(1) through (5), has established a Senior Executive Service PRB. The PRB reviews and evaluates the initial appraisal of a senior executive's performance by the supervisor, and makes recommendations to the

Chairman of the Review Commission regarding performance ratings, performance awards, and pay-for-performance adjustments. Members of the PRB serve for a period of 24 months. In the case of an appraisal of a career appointee, more than half of the members shall consist of career appointees, pursuant to 5 U.S.C. 4314(c)(5). The names and titles of the PRB members are as follows:

- Nicholas M. Inzeo, Director, Office of Field Programs, U.S. Equal Employment Opportunity Commission;
- Gloria J. Joseph, Director of Administration, National Labor Relations Board;
- Jeffrey Risinger, Human Resources Director, Federal Housing Finance Agency; and
- Joel R. Schapira, Deputy General Counsel, Defense Nuclear Facilities Safety Board.

Dated: December 22, 2011.

Thomasina V. Rogers,

Chairman.

[FR Doc. 2011–33356 Filed 12–28–11; 8:45 am]

BILLING CODE 7600–01–M

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: Certificate of Medical Examination

AGENCY: U.S. Office of Personnel Management.

ACTION: Notice and request for comments.

SUMMARY: The U.S. Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on an extension without change of a currently approved collection, information collection request (ICR) 3206–0250, Certificate of Medical Examination.

DATES: Comments are encouraged and will be accepted until February 27, 2012. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESS: Interested persons are invited to submit written comments on the proposed information collection to Employee Services, U.S. Office of Personnel Management, 1900 E Street NW., Washington, DC 20415, Attention: Susan Spannbauer or via electronic mail to *susan.spannbauer@opm.gov* or *employ@opm.gov.*

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting Hiring Policy, U.S. Office of Personnel Management, 1900 E Street NW., Washington, DC 20415, Attention: Susan Spannbauer or via electronic mail to *susan.spannbauer@opm.gov* or *employ@opm.gov.*

SUPPLEMENTARY INFORMATION: The Optional Form (OF) 178, Certificate of Medical Examination, is used to collect medical information about individuals who are incumbents of positions which require physical fitness/agility testing and/or medical examinations, or who have been selected for such a position contingent upon meeting physical fitness/agility testing and medical examinations as a condition of employment. This information is needed to ensure fair and consistent treatment of employees and job applicants, to adjudicate the medically-based passover of a preference eligible, and to adjudicate claims of discrimination under the Americans with Disabilities Act (ADA).

As required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection to:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Analysis

Agency: Employee Services, U.S. Office of Personnel Management.

Title: Certificate of Medical Examination.

OMB Number: 3206–0250.

Affected Public: Federal Government.

Number of Respondents: 45,000.

Estimated Time per Respondent: 3 hours.

Total Burden Hours: 135,000 hours.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2011–33505 Filed 12–28–11; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: Verification of Who Is Getting Payments, RI 38–107 and RI 38–147

AGENCY: U.S. Office of Personnel Management.

ACTION: 30-Day Notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other federal agencies the opportunity to comment on an extension, without change, of a currently approved information collection request (ICR) 3206–0197, Verification of Who is Getting Payments. As required by the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. The information collection was previously published in the **Federal Register** on July 22, 2011 at Volume 76 FR 44051 allowing for a 60-day public comment period. No comments were received for this information collection. The purpose of this notice is to allow an additional 30 days for public comments. The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

DATES: Comments are encouraged and will be accepted until January 30, 2012.

This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: RI 38–107, Verification of Who is Getting Payments, is designed for use by the Retirement Inspection Branch when OPM, for any reason, must verify that the entitled person is indeed receiving the monies payable. RI 38–147, Verification of Who is Getting Payments, collects the same information and is used by other groups within Retirement Operations. Failure to collect this information would cause OPM to pay monies absent the assurance of a correct payee.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Verification of Who is Getting Payments.

OMB Number: 3206–0197.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: 25,400.

Estimated Time per Respondent: 10 minutes.

Total Burden Hours: 4,234.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2011–33511 Filed 12–28–11; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: Marital Status Certification Survey, RI 25–7

AGENCY: U.S. Office of Personnel Management.

ACTION: 30-Day Notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other federal agencies the opportunity to comment on a revised information collection request (ICR) 3206–0033, Marital Status Certification Survey, RI 25–7. As required by the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. The information collection was previously published in the **Federal Register** on July 7, 2011 at Volume 76 FR 39927 allowing for a 60-day public comment period. No comments were received for this information collection. The purpose of this notice is to allow an additional 30 days for public comments. The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

DATES: Comments are encouraged and will be accepted until January 30, 2012. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: RI 25–7, Marital Status Certification Survey, is used to determine whether widows, widowers, and former spouses receiving survivor annuities from OPM have remarried before reaching age 55 and, thus, are no longer eligible for benefits.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Marital Status Certification Survey.

OMB Number: 3206–0033.

Frequency: Annually.

Affected Public: Individuals or households.

Number of Respondents: 24,000.

Estimated Time per Respondent: 15 minutes.

Total Burden Hours: 6,000.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2011–33510 Filed 12–28–11; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: Request for Change to Unreduced Annuity, RI 20–120

AGENCY: U.S. Office of Personnel Management.

ACTION: 30-Day Notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other federal agencies the opportunity to comment on a revised information collection request (ICR) 3206–0245, Request for Change to Unreduced Annuity, RI 20–120. As required by the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. The information collection was previously published in the **Federal Register** on June 7, 2011 at Volume 76 FR 32997 allowing for a 60-day public comment period. No comments were received for this information collection. The purpose of this notice is to allow an additional 30 days for public comments. The Office

of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

DATES: Comments are encouraged and will be accepted until January 30, 2012. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR with applicable supporting documentation, may be obtained by contacting the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: RI 20–120 is designed to collect information the Office of Personnel Management needs to comply with the wishes of the retired Federal employee whose marriage has ended. This form provides an organized way for the retiree to give us everything at one time.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Request for Change to Unreduced Annuity.

OMB Number: 3206–0245.

Frequency: On occasion.

Affected Public: Individuals or households.

Number of Respondents: 5,000.

Estimated Time per Respondent: 30 minutes.

Total Burden Hours: 2,500 hours.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2011–33508 Filed 12–28–11; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: Alternative Annuity Election, RI 20–80

AGENCY: U.S. Office of Personnel Management.

ACTION: 30-Day Notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM), offers the general public and other federal agencies the opportunity to comment on a revised information collection request (ICR) 3206–0168, Alternative Annuity Election, RI 20–80. As required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35), as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. The information collection was previously published in the **Federal Register** on June 10, 2011, at Volume 76 FR 34108 allowing for a 60-day public comment period. No comments were received for this information collection. The purpose of this notice is to allow an additional 30 days for public comments. The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

DATES: Comments are encouraged and will be accepted until January 30, 2012. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: RI 20–80 is used for individuals who are eligible to elect whether to receive a reduced annuity and a lump-sum payment equal to their retirement contributions (alternative form of annuity) or an unreduced annuity and no lump sum.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Alternative Annuity Election.

OMB Number: 3206–0168.

Frequency: On occasion.

Affected Public: Individuals or households.

Number of Respondents: 200.

Estimated Time per Respondent: 20 minutes.

Total Burden Hours: 67 hours.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2011–33506 Filed 12–28–11; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: SF 2800, Application for Death Benefits Under the Civil Service Retirement System; and SF 2800A, Documentation and Elections in Support of Application for Death Benefits When Deceased Was an Employee at the Time of Death

AGENCY: U.S. Office of Personnel Management.

ACTION: 30-Day Notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other federal agencies the opportunity to comment on a revised information collection request (ICR) 3206–0156, Application for Death Benefits Under the Civil Service Retirement System and Documentation and Elections in Support of Application for Death Benefits When Deceased Was an Employee at the Time of Death. As required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. The information collection was previously published in the **Federal Register** on July 7, 2011 at Volume 76 FR 39926 allowing for a 60-day public comment period. No comments were received for this information collection. The purpose of this notice is to allow an additional 30 days for public comments. The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

DATES: Comments are encouraged and will be accepted until January 30, 2012. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESS: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: SF 2800, Application for Death Benefits under the Civil Service Retirement System, is needed to collect information so that OPM can pay death benefits to the survivors of Federal employees and annuitants. SF 2800A, Documentation and Elections in Support of Application for Death Benefits When Deceased Was an Employee at the Time of Death, is needed for deaths in service so that survivors can make the needed elections regarding military service.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Application for Death Benefits Under the Civil Service Retirement System and Documentation and Elections in Support of Application for Death Benefits When Deceased Was an Employee at the Time of Death.

OMB Number: 3206–0156.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: SF 2800 = 68,000 and SF 2800A = 6,800.

Estimated Time per Respondent: 45 minutes.

Total Burden Hours: 56,100.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2011–33507 Filed 12–28–11; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: Health Benefits Registration Form, OPM 2809

AGENCY: U.S. Office of Personnel Management.

ACTION: 30-Day Notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other federal agencies the opportunity to comment on an existing information collection request (ICR) 3206–0141, Health Benefits Election Form, OPM 2809. As required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35), as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. This information collection was previously published in the **Federal Register** on June 7, 2011 at volume 76 FR 32996 allowing for a 60 day public comment period. We received comments from one organization. A response was sent to the organization. The purpose of this notice is to allow an additional 30 days for public comments. The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

DATES: Comments are encouraged and will be accepted until January 30, 2012. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel

Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR with applicable supporting documentation may be obtained by contacting the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: OPM Form 2809, Health Benefits Election Form, is used by annuitants and former spouses to elect, cancel, suspend, or change health benefits enrollment during periods other than open season.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Health Benefits Election Form.

OMB Number: 3206–0141.

Frequency: On occasion.

Affected Public: Individuals or households.

Number of Respondents: 30,000.

Estimated Time per Respondent: 45 minutes.

Total Burden Hours: 16,667 hours.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2011–33504 Filed 12–28–11; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: DD 1918 Establishment Information Form, DD 1919 Wage Data Collection Form, DD 1919C Wage Data Collection Continuation Form

AGENCY: U.S. Office of Personnel Management.

ACTION: 30-Day Notice and request for comments.

SUMMARY: The U.S. Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on an existing information collection request (ICR) 3206–0036, Establishment Information Form (DD 1918), Wage Data Collection Form (DD 1919), and Wage Data Collection Continuation Form (DD 1919C). As required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. The information collection was previously published in the **Federal Register** on August 16, 2011, at Volume 76 FR 50771 allowing for a 60-day public comment period. No comments were received for this information collection. The purpose of this notice is to allow an additional 30 days for public comments. The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

DATES: Comments are encouraged and will be accepted until January 30, 2012. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable documentation, may be obtained by contacting the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: The Establishment Information Form, the Wage Data Collection Form, and the Wage Data Collection Continuation Form are wage survey forms developed by OPM for use by the Department of Defense to establish prevailing wage rates for Federal Wage System employees.

Analysis

Agency: Employee Services, U.S. Office of Personnel Management.

Title: Establishment Information Form (DD 1918), Wage Data Collection Form (DD 1919), and Wage Data Collection Continuation Form (DD 1919C).

OMB Number: 3206–0036.

Frequency: Annually.

Affected Public: Private Sector Establishments.

Number of Respondents: 21,760.

Estimated Time per Respondent: 1.5 hours.

Total Burden Hours: 32,640 hours.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2011–33503 Filed 12–28–11; 8:45 am]

BILLING CODE 6325–39–P

POSTAL REGULATORY COMMISSION

[Docket No. A2012–91; Order No. 1064]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Fostoria, Iowa post office has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioners, and others to take appropriate action.

DATES: January 4, 2012, 4:30 p.m., Eastern Time: Deadline for Petitioner's Form 61; January 24, 2012, 4:30 p.m., Eastern Time: Deadline for answering brief in support of the Postal Service. *See* the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

ADDRESSES: Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at (202) 789–6820 (case-related

information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to 39 U.S.C. 404(d), the Commission received five petitions for review of the Postal Service's determination to close the Fostoria post office in Fostoria, IA. The first petition for review received November 30, 2011, was filed by Linda Birchard. The second petition for review received December 8, 2011, was filed by Marlin Voss, Mayor of Fostoria. The third petition for review received December 9, 2011, was filed by Jody Shatto. The fourth petition for review received December 9, 2011, was filed by Gale E. Jacobson. The fifth petition for review received was December 9, 2011, filed by Kathleen Shatto. The earliest postmark date is November 21, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2012–91 to consider Petitioners' appeal. If Petitioners would like to further explain their position with supplemental information or facts, Petitioners may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than January 4, 2012.

Notwithstanding the Postal Service's determination to close this post office, on December 15, 2011, the Postal Service advised the Commission that it ''will delay the closing or consolidation of any Post Office until May 15, 2012'' [1]. The Postal Service further indicated that it ''will proceed with the discontinuance process for any Post Office in which a Final Determination was already posted as of December 12, 2011, including all pending appeals.'' *Id.* It stated that the only ''Post Offices'' subject to closing prior to May 16, 2011 are those that were not in operation on, and for which a Final Determination was posted as of, December 12, 2011. It affirmed that it ''will not close or consolidate any other Post Office prior to May 16, 2012.'' *Id.* Lastly, the Postal Service requested the Commission ''to continue adjudicating appeals as provided in the 120-day decisional schedule for each proceeding.'' *Id.*

The Postal Service's Notice outlines the parameters of its newly announced discontinuance policy. Pursuant to the Postal Service's request, the Commission will fulfill its appellate responsibilities under 39 U.S.C. 404(d)(5).

Categories of issues apparently raised. Petitioners contend that (1) the Postal Service failed to consider the effect of the closing on the community (*see* 39 U.S.C. 404(d)(2)(A)(i)); and (2) the Postal Service failed to consider whether it will continue to provide a maximum degree of effective and regular postal services to the community (*see* 39 U.S.C. 404(d)(2)(A)(iii)).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above, or that the Postal Service's determination disposes of one or more of those issues. The deadline for the Postal Service to file the applicable administrative record is within 15 days after the date in which the petition for review was filed with the Commission. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service is also within 15 days after the date in which the petition for review was filed with the Commission.

Availability; Web site posting. The Commission has posted the appeal and supporting material on its Web site at *http://www.prc.gov.* Additional filings in this case and participant's submissions also will be posted on the Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's webmaster via telephone at (202) 789–6873 or via electronic mail at *prc-webmaster@prc.gov.*

The appeal and all related documents are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday, except on Federal government holidays. Docket section personnel may be contacted via electronic mail at *prc-dockets@prc.gov* or via telephone at (202) 789–6846.

Filing of documents. All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and 10(a) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained. *See* 39 CFR 3001.9(a) and 3001.10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site, *http://www.prc.gov,* or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at (202) 789–6846.

Commission reserves the right to redact personal information which may infringe on an individual's privacy rights from documents filed in this proceeding.

Intervention. Persons, other than the Petitioners and respondents, wishing to be heard in this matter are directed to file a notice of intervention. *See* 39 CFR 3001.111(b). Notices of intervention in this case are to be filed on or before January 17, 2012. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained for hardcopy filing. *See* 39 CFR 3001.9(a) and 3001.10(a).

Further procedures. By statute, the Commission is required to issue its decision within 120 days from the date it receives the appeal. *See* 39 U.S.C. 404(d)(5). A procedural schedule has been developed to accommodate this statutory deadline. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate issue. As required by Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. *See* 39 CFR 3001.21.

It is ordered:

1. The procedural schedule listed below is hereby adopted.

2. Pursuant to 39 U.S.C. 505, Brent W. Peckham is designated officer of the Commission (Public Representative) to represent the interests of the general public.

3. The Secretary shall arrange for publication of this notice and order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

PROCEDURAL SCHEDULE

November 30, 2011	Filing of Appeal.
December 15, 2011	Deadline for the Postal Service to file the applicable administrative record in this appeal.

[1] United States Postal Service Notice of Status of the Moratorium on Post Office Discontinuance Actions, December 15, 2011, (Notice).

PROCEDURAL SCHEDULE—Continued

December 15, 2011	Deadline for the Postal Service to file any responsive pleading.
January 17, 2012	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
January 4, 2012	Deadline for Petitioners' Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
January 24, 2012	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
February 8, 2012	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
February 15, 2012	Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116).
March 20, 2012	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2011–33339 Filed 12–28–11; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Regulation AC; OMB Control No. 3235–0575; SEC File No. 270–517.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in the following rule: Regulation Analyst Certification (AC) (17 CFR 242.500–505), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Regulation AC requires that research reports published, circulated, or provided by a broker or dealer or covered person contain a statement attesting that the views expressed in each research report accurately reflect the analyst's personal views and whether or not the research analyst received or will receive any compensation in connection with the views or recommendations expressed in the research report. Regulation AC also requires broker-dealers to, on a quarterly basis, make, keep, and maintain records of research analyst statements regarding whether the views expressed in public appearances accurately reflected the analyst's personal views, and whether any part of the analyst's compensation is related to the specific recommendations or views expressed in the public appearance. Regulation AC also requires that research prepared by foreign persons be presented to U.S. persons pursuant to Securities Exchange Act Rule 15a–6 and that broker-dealers notify associated persons if they would be covered by the regulation. Regulation AC excludes the news media from its coverage.

The Commission estimates that Regulation AC imposes an aggregate annual time burden of approximately 26,230 hours on 5,186 respondents, or approximately 5 hours per respondent. The Commission estimates that the total annual internal cost of the 26,230 hours is approximately $10,615,404.00, or approximately $2,047.00 per respondent, annually.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

Please direct your written comments to: Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, Virginia 22312 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: December 23, 2011.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–33513 Filed 12–28–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66029; File No. SR–CME–2011–20]

Self-Regulatory Organizations; Chicago Mercantile Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish a Fee Schedule Applicable to Its OTC Interest Rate Swap Clearing Offering

December 22, 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 December 20, 2011, Chicago Mercantile Exchange Inc. (''CME'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II and III below, which items have been prepared primarily by CME. CME filed the proposed rule change pursuant to Section 19(b)(3)(A)[3] of the Act and Rule 19b–4(f)(2)[4] thereunder.

I. Self-Regulatory Organization's Statement of Terms of Substance of the Proposed Rule Change

CME is proposing to establish a new fee schedule that would apply to its OTC Interest Rate Swap clearing offering. The text of the proposed rule change is available at CME's Web site at *http://www.cmegroup.com*, at the principal office of CME, and at the Commission's Public Reference Room.

[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).

II. Self-Regulatory Organization's Statement of Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CME included statements concerning the purpose 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. CME 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 Purpose of, and Statutory Basis for, the Proposed Rule Change

CME currently offers clearing for certain OTC Interest Rate Swap products. The filing proposes to establish a new fee schedule that will apply to CME's OTC Interest Rate Swap (''IRS'') clearing fees. The proposed rules changes are related to fees and therefore will become effective immediately.[5] However, the proposed changes will become operative as of January 6, 2012. There are two separate fee schedules that will be added. The first sets forth the new fee schedule that will apply to IRS Clearing Members clearing OTC IRS transactions at CME. The second sets forth the new fee schedule that will apply to customers of IRS Clearing Members clearing OTC IRS transactions at CME. The text of the new fee schedules is attached, with additions underlined and deletions in strikethrough.

CME has also certified the proposed rule changes that are the subject of this filing to its primary regulator, the Commodity Futures Trading Commission (''CFTC'').

The proposed CME rule amendments establish or change a member due, fee or other charge imposed by CME under Section 19(b)(3)(A)(ii) of the Securities Exchange Act of 1934 and Rule 19b–4(f)(2) thereunder. CME believes that the proposed rule change is consistent with the requirements of the Securities Exchange Act of 1934 and the rules and regulations thereunder and, in particular, to 17A(b)(3)(iv),[6] in that it provides for the equitable allocation of reasonable dues, fees and other charges among participants. CME notes that it operates in a highly competitive market in which market participants can readily direct business to competing venues.

B. Self-Regulatory Organization's Statement on Burden on Competition

CME does not believe that the proposed rule change will have any impact, or impose any burden, on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

CME has not solicited, and does not intend to solicit, comments regarding this proposed rule change. CME has not received any unsolicited written comments from interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change was filed pursuant to Section 19(b)(3)(A) of the Act and paragraph (f)(2) of Rule 19b–4 and became effective on filing. 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 may be submitted by using the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*), or send an email to *rule-comments@sec.gov*. Please include File No. SR–CME–2011–20 on the subject line.
- Paper comments should be sent 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–CME–2011–20. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of CME. 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–CME–2011–20 and should be submitted on or before January 19, 2012.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[7]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–33361 Filed 12–28–11; 8:45 am]

BILLING CODE 8011–01–P

[5] The staff notes that pursuant to 15 U.S.C. 78s(b)(3)(A)(ii) rule changes related to fees are effective upon filing.

[6] The staff notes the correct citation is 17A(b)(3)(D). 15 U.S.C. 78q–1(b)(3)(D).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66030; File No. SR–CME–2011–18]

Self-Regulatory Organizations; Chicago Mercantile Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish a Fee Schedule Applicable to Its OTC Credit Default Swap North American Index Clearing Offering

December 22, 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 December 20, 2011, Chicago Mercantile Exchange Inc. (''CME'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II and III below, which items have been prepared primarily by CME. CME filed the proposed rule change pursuant to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Section 19(b)(3)(A)[3] of the Act and Rule 19b–4(f)(2)[4] thereunder.

I. Self-Regulatory Organization's Statement of Terms of Substance of the Proposed Rule Change

CME is proposing to establish a fee schedule applicable to its OTC Credit Default Swap North American Index clearing offering. The text of the proposed rule change is available at CME's Web site at *http://www.cmegroup.com,* at the principal office of CME, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CME included statements concerning the purpose 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. CME 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 Purpose of, and Statutory Basis for, the Proposed Rule Change

CME currently has in place a temporary fee waiver program that applies to its OTC credit default swap index clearing business (the ''Waiver Program'').[5] The Waiver Program is a general fee waiver that applies equally to all market participants, including CDS Clearing Members and their customers. The Program is set to expire on December 31, 2011.

The filing proposes to establish two new fee schedules that will apply to CME's OTC Credit Default Swap North American Index clearing fees. North American Index CDS Fee Schedule A is the default fee schedule for all market participants clearing North American CDX Index CDS products at CME Group. Market participants may alternatively elect to participate in North American Index CDS Fee Schedule B (the ''Flat Rate Fee Program''). The Flat Rate Fee Program features a single blended flat rate for each transaction cleared and employs a look back period to determine an implied average clearing fee and establish a single blended flat rate in the subsequent period. The look-back period for the Flat Rate Fee Program is semi-annual, based on a calendar year, ending fifteen days prior to the beginning of the next six month period.

The proposed rules changes are related to fees and therefore will become effective immediately.[6] However, the Program will become operative as of January 1, 2012. The text of the proposed rule amendments is available on CME's Web site, as noted above.

CME has also certified the proposed rule changes that are the subject of this filing to its primary regulator, the Commodity Futures Trading Commission (''CFTC'').

B. Self-Regulatory Organization's Statement on Burden on Competition

CME does not believe that the proposed rule change will have any impact, or impose any burden, on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

CME has not solicited, and does not intend to solicit, comments regarding this proposed rule change. CME has not received any unsolicited written comments from interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change was filed pursuant to Section 19(b)(3)(A) of the Act and paragraph (f)(2) of Rule 19b–4 and became effective on filing. 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 may be submitted by using the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*), or send an email to *rule-comments@sec.gov.* Please include File No. SR–CME–2011–18 on the subject line.
- Paper comments should be sent 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–CME–2011–18. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of CME. 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–CME–2011–18 and should be submitted on or before January 19, 2012.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[7]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–33362 Filed 12–28–11; 8:45 am]

BILLING CODE 8011–01–P

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

[5] The Commission notes that the Waiver Program became effective on October 17, 2011. *See* Exchange Act Release No. 65634 (October 26, 2011), 76 FR 67517 (November 1, 2011) (SR–CME–2011–11).

[6] The staff notes that pursuant to 15 U.S.C. 78s(b)(3)(A)(ii) rule changes related to fees are effective upon filing.

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66037; File No. SR–Phlx–2011–177]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Fees Applicable to the Trading of NMS Stocks Through NASDAQ OMX PSX

December 22, 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 December 16, 2011, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify the fees applicable to trading of NMS stocks through NASDAQ OMX PSX (''PSX''). The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/,* at the principal office of the Exchange, on the Commission's Web site at *http://www.sec.gov/,* and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to modify order execution fees applicable to use of PSX. The Commission recently approved PSX's new Minimum Life Order type,[3] and this filing is designed to establish rebates applicable to its use. A Minimum Life Order is a Displayed Order that may not be cancelled for a period of 100 milliseconds following its entry. Because a party entering a Minimum Life Order incurs a degree of risk due to its inability to cancel the order for a period of time, the Exchange believes that it is appropriate to encourage use of the order through an enhanced liquidity provider rebate for such orders when they provide liquidity. The Exchange believes that it is appropriate to encourage use of the order type because it is intended to promote greater stability in the quotes available at PSX, thereby encouraging more market participants to direct orders to PSX in an effort to interact with its quotes. The Exchange thereby seeks to increase both its market share and its market quality.

Currently, the Exchange offers a rebate of $0.0026 per share executed for Displayed Orders with an original order size of 2,000 or more shares, but only $0.0024 for Displayed Orders with an original order size of less than 2,000. The rebate for Non-Displayed Orders is $0.0010 per share executed. PSX proposes also to offer the higher rebate of $0.0026 per share executed to Minimum Life Orders that provide liquidity.[4] PSX believes that the Minimum Life Order, with its goal of promoting more stable quotes, is complementary to PSX's goal of encouraging quotes with greater displayed size.

When a Minimum Life Order executes against an existing quote, rather than posting and providing liquidity, the market participant will pay the same fee ($0.0027 per share executed, or 0.20% of the total transaction cost for securities priced at less than $1 per share) that applies to all other liquidity-accessing orders.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[5] in general, and with Section 6(b)(4) of the Act,[6] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls. Specifically, the Exchange believes that the proposed rebate for Minimum Life Orders is reasonable because it is set at a level comparable to the existing rebate for orders with an original displayed size of 2,000 or more shares. The Exchange further believes that the proposal reflects an equitable allocation of fees, as all similarly situated member organizations will be subject to the same fee structure, and access to the Exchange's market is offered on fair and non-discriminatory terms. The Exchange further believes that it is equitable to pay a high rebate with respect to Minimum Life Orders, because (i) a market participant incurs a risk when it enters the order, which may not be cancelled for a period of time, and (ii) the Exchange expects that the higher rebate will promote its goal of encouraging display of more stable quotes that attract more order flow to the Exchange.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. The Exchange believes that its fees continue to be reasonable and equitably allocated to members on the basis of whether they opt to direct orders to the Exchange and thereby make use of its order execution services.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Because the market for order execution and routing is extremely competitive, members may readily favor the Exchange's competitors in making order routing decisions to the extent that they deem PSX's fees to be excessive. Moreover, the Exchange believes that the proposal will enhance competition through its use of pricing incentives to draw greater order flow to PSX.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 65926 (December 9, 2011), 76 FR 78057 (December 15, 2011) (SR–Phlx–2011–141).

[4] As is the case with other liquidity-providing orders, no rebate is paid with respect to securities priced at less than $1 per share.

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(4).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[7] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. 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 email to *rule-comments@sec.gov.* Please include File No. SR–Phlx–2011–177 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–Phlx–2011–177. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–Phlx–2011–177 and should be submitted on or before January 19, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–33379 Filed 12–28–11; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66032; File No. SR–NYSEAmex–2011–99]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Supplementary Material .26 (Pegging for d-Quotes and e-Quotes) to NYSE Amex Equities Rule 70

December 22, 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 December 14, 2011, NYSE Amex LLC (the ''Exchange'' or ''NYSE Amex'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Supplementary Material .26 (Pegging for d-Quotes and e-Quotes) to NYSE Amex Equities Rule 70. The text of the proposed rule change is available at the Exchange, at *www.nyse.com,* the Commission's Public Reference Room, and at *www.sec.gov.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Supplementary Material .26 (Pegging for d-Quotes and e-Quotes) to NYSE Amex Equities Rule 70.

Paragraph (i) of Supplementary Material .26 states that an e-Quote may be set to provide that it will be available for execution at the national best bid (''NBB'') (for an e-Quote that represents a buy order) or at the national best offer (''NBO'') (for an e-Quote that represents a sell order) as the national best bid or offer (''NBBO'') changes, so long as the NBBO is at or within the e-Quote's limit price. Paragraph (x) of Supplementary Material .26 further provides that, as long as the NBB or NBO is within the pegging price range selected by the Floor broker, the pegging e-Quote or d-Quote will join the NBB or NBO as it is autoquoted. As such, pegging interest may peg to a price that may not be displayed at the Exchange. For example, if the NBB is $10.05 and the Exchange best bid is $10.04, a pegging e-Quote to buy will display at the Exchange at $10.05, thus creating a new Exchange best bid.

Because pegging interest automatically pegs to the NBBO, under current rules and functionality, a

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

pegging e-Quote could peg to an NBB or NBO that is locking or crossing an existing Exchange best bid or offer. For example, if the Exchange best bid is $10.04 and the NBO locks it at $10.04, a pegging e-Quote to sell would peg to the $10.04 NBO price and then immediately execute against the Exchange's best bid of $10.04. In such scenario, a pegging e-Quote, which is intended to be reactive, becomes taker interest. Similarly, if automatic executions on the buy (sell) side are suspended at the Exchange, for example, if a liquidity replenishment point is reached pursuant to NYSE Rule 1000, the NYSE would not be displaying a protected bid (offer) and therefore other markets could display a protected offer (bid) that crosses the Exchange best bid (offer). In such scenario, if the NBO moved to below the Exchange best bid of $10.04, a pegging e-Quote to sell would peg to that NBO, which would cross the Exchange best bid.

The Exchange proposes to add new paragraph (x)(A) to Supplementary Material .26 to provide that a pegging e-Quote or d-Quote to buy (sell) would not peg to an NBB (NBO) that is locking or crossing the Exchange best offer (bid), but would instead join the next available best-priced non-pegging interest that does not lock or cross the Exchange best offer (bid).[5] Customers have requested this change because in the infrequent circumstances when the NBBO is locking or crossing the Exchange best bid or offer,[6] customers do not want their pegging interest, for which the ultimate goal is to be passive liquidity for purposes of execution, to become taker interest. Because the next available best-priced non-pegging interest may be on an away market, the Exchange further proposes to amend paragraph (vii) to Supplementary .26 to specify that the non-pegging interest against which pegging interest pegs may either be available on the Exchange or may be a protected bid or offer on an away market. The Exchange believes that this is already implied in Supplementary .26, particularly because pegging interest can peg to the NBB or NBO, which may or may not be a displayed price at the Exchange,[7] and is proposing this change only to add greater specificity to Supplementary Material .26.

The Exchange also proposes to add new paragraph (x)(B) to Supplementary Material .26 to provide that the converse of paragraph (x) is also true. Specifically, if the NBB (NBO) is not within the pegging price range selected by the Floor broker, then a pegging e-Quote or d-Quote to buy (sell) will join the next available best-priced non-pegging interest that is within the price range selected by the Floor broker.

Finally, the Exchange proposes to amend paragraph (xiii) to Supplementary Material .26 to delete the text that permits Floor brokers to specify a maximum size validation for e-Quotes and d-Quotes. Floor brokers have not availed themselves of this functionality and the Exchange has therefore decided to eliminate it from Supplementary Material .26. In addition, because pegging interest is considered when assessing the minimum volume size of same-side interest against which to peg, the Exchange proposes to delete the last sentence of paragraph (xiii) to Supplementary Material .26.

Because of the related technology changes that this proposed rule change would require, the Exchange proposes to announce the initial implementation date and related roll-out schedule, if applicable, via Trader Update.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[8] in general, and furthers the objectives of Section 6(b)(5),[9] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest. Specifically, the Exchange believes that the proposed changes to Supplementary Material .26 to NYSE Amex Equities Rule 70 would promote just and equitable principles of trade and remove impediments to, and perfect the mechanism of, a free and open market because they would reduce the potential for the Exchange best bid or offer to be locked or crossed. The proposed changes would also promote transparency by adding greater specificity with respect to the interest to which pegging e-Quotes and d-Quotes may peg and would remove text corresponding to a functionality that Floor brokers have not availed themselves of and therefore is no longer necessary to promote just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11]

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.

[5] When an exception to the prohibition against trade-throughs is in effect, pursuant to Rule 611(b)(4) of Regulation NMS, technically, there are no available protected bids or offers against which an e-Quote or d-Quote can peg. In such situations, the pegging interest would peg to the next available best-priced non-pegging interest on the Exchange that is within the price range selected by the Floor broker.

[6] The Exchange would re-price pegging interest only if the NBBO is locking or crossing the Exchange best bid or offer and not if the NBBO is ''locking'' or ''crossing'' undisplayed liquidity at the Exchange. For example, where the Exchange best bid and offer is $10.02 and $10.04 and there is ''dark'' reserve buy interest at $10.03, if the NBO becomes $10.03, pegging sell interest will peg to the $10.03 NBO and will execute against the Exchange ''dark'' reserve interest priced at $10.03.

[7] *See* Securities Exchange Act Release No. 61081 (December 1, 2009), 74 FR 64105 (December 7, 2009) (SR–NYSEAmex-2009–76).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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 email to *rule-comments@sec.gov.* Please include File Number SR–NYSEAmex–2011–99 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–NYSEAmex–2011–99. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAmex–2011–99 and should be submitted on or before January 19, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–33446 Filed 12–28–11; 8:45 am]

BILLING CODE 8011–01–P

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66036; File Nos. SR–NYSE–2011–56; SR–NYSEAmex–2011–86]

Self-Regulatory Organizations; New York Stock Exchange LLC; NYSE Amex LLC; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Changes To Codify Certain Traditional Trading Floor Functions That May Be Performed by Designated Market Makers

December 22, 2011.

On October 31, 2011, the New York Stock Exchange LLC (''NYSE'') and NYSE Amex LLC (''NYSE Amex'') each filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] proposed rule changes to amend certain of their respective rules relating to Designated Market Makers (''DMMs''). The proposed rule changes were published for comment in the **Federal Register** on November 17, 2011.[3] The Commission received no comment letters on the proposals.

Section 19(b)(2) of the Act[4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is January 1, 2012. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule changes so that it has sufficient time to consider these proposed rule changes, which modify the rules applicable to DMMs and floor brokers, including, among other things, making certain market information such as disaggregated order information available to DMMs and floor brokers.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[5] designates February 15, 2012, as the date by which the Commission should either approve or disapprove or institute proceedings to determine whether to disapprove the proposed rule changes.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–33378 Filed 12–28–11; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release Nos. 65735 (November 10, 2011), 76 FR 71405 (SR–NYSEAmex–2011–86); and 65736 (November 10, 2011), 76 FR 71399 (SR–NYSE–2011–56).

[4] 15 U.S.C. 78s(b)(2).

[5] 15 U.S.C. 78s(b)(2).

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66034; File No. SR–BATS–2011–51]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing of Proposed Rule Change To Implement a Competitive Liquidity Provider Program

December 22, 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 December 16, 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 filed with the Commission a proposal to adopt new Interpretation and Policy .02 to Rule 11.8 to implement a Competitive Liquidity Provider (''CLP'') program (the ''CLP Program'') to incent competitive and aggressive quoting by market makers registered with the Exchange (''Market Makers'') in Exchange-listed securities.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

On August 30, 2011, the Exchange received approval of rules applicable to the qualification, listing and delisting of companies on the Exchange.[3] In connection with the commencement of its program for listing companies on the Exchange, the Exchange proposes to adopt rules to operate a program to incentivize certain market makers registered with the Exchange as Competitive Liquidity Providers (''CLPs'') to enhance liquidity on the Exchange in securities listed on the Exchange (the ''Competitive Liquidity Provider Program'' or ''CLP Program''). The Exchange intends to file a proposal to adopt the financial incentives for the Competitive Liquidity Provider Program through a separate filing.

By establishing this new class of market participant, the Exchange is seeking to provide incentives for quoting and to add competition to the existing group of liquidity providers. By requiring CLPs to quote at the National Best Bid (''NBB'') or the National Best Offer (''NBO'') a percentage of the regular trading day in their assigned securities in order to qualify for financial incentives, the Exchange is rewarding aggressive liquidity providers in the market. The Exchange believes that this rebate program will encourage the additional utilization of, and interaction with, the Exchange and provide customers with a premier venue for price discovery, liquidity, competitive quotes and price improvement.

The Exchange proposes to adopt the Competitive Liquidity Provider Program as set forth in a new Interpretation and Policy to Rule 11.8, which contains the obligations applicable to Exchange Market Makers. A Competitive Liquidity Provider will be a Member that electronically enters proprietary orders into the systems and facilities of the Exchange and is obligated to maintain a bid or an offer at the NBB or NBO in each assigned security in round lots consistent with the requirements of new Interpretation and Policy .02 to Rule 11.8. As proposed, CLPs will be subject to both a daily quoting requirement in order to be eligible to receive financial incentives and a monthly quoting requirement in order to remain qualified as a CLP. A CLP that does not meet the CLP daily quoting requirement will not be eligible to receive the financial incentives of the CLP Program. A CLP that does not meet the CLP monthly quoting requirements will be subject to certain other non-regulatory penalties, including the potential to lose its CLP status.

Qualifications of a CLP

To qualify as a CLP, a Member will be required to be a registered Market Maker in good standing with the Exchange consistent with Rules 11.5 through 11.8. Further, the Exchange will a require each Member seeking to qualify as a CLP to have and maintain: (1) Adequate technology to support electronic trading through the systems and facilities of the Exchange; (2) one or more unique identifiers that identify to the Exchange CLP trading activity in assigned CLP securities;[4] (3) adequate trading infrastructure to support CLP trading activity, which includes support staff to maintain operational efficiencies in the CLP program and adequate administrative staff to manage the Member's participation in the CLP program; (4) quoting and volume performance that demonstrates an ability to meet the CLP quoting requirement in each assigned security on a daily and monthly basis; (5) a disciplinary history that is consistent with just and equitable business practices; and (6) the business unit of the Member acting as a CLP must have in place adequate information barriers between the CLP unit and the Member's customer, research and investment banking business.

Securities Eligible for the CLP

Any Exchange-listed security that is listed on the Exchange pursuant to Rule 14.8 (relating to Tier I securities), Rule 14.9 (relating to Tier II securities) or Rule 14.11 (relating to exchange traded funds and other exchange traded products (collectively, ''ETPs'') shall be eligible for the CLP Program unless and until such security has had a consolidated average daily volume (''CADV'') of equal to or greater than 2 million shares for two (2) consecutive calendar months during the first two (2) years the security is subject to the CLP Program; or (2) has been subject to the CLP Program for two (2) years. Thus, the CLP Program is designed to encourage support of Exchange-listed securities during their period of initial listing on the Exchange, when the security needs to develop an active trading market in order to succeed. To avoid ETP sponsors from being dissuaded from initially listing ETPs on the Exchange, the Exchange proposes to permit ETPs that are initially listed on the Exchange to remain in the CLP Program for six months regardless of the ETP's CADV. CADV will be measured by statistics provided through the consolidated tape plans.

Application Process

To become a CLP, a Member must submit a CLP application form with all supporting documentation to the Exchange. As is currently the case for membership applications to join the Exchange and applications to register as market makers on the Exchange, Exchange personnel in the Exchange's membership department will process such applications. Exchange personnel will determine whether an applicant is qualified to become a CLP based on the qualifications described above. After an applicant submits a CLP application to the Exchange, with supporting documentation, the Exchange shall notify the applicant Member of its decision. If an applicant is approved by the Exchange to receive CLP status, such applicant must establish connectivity with relevant Exchange systems before such applicant will be permitted to trade as a CLP on the Exchange. In the event an applicant is disapproved by the Exchange, such applicant may seek review under Chapter X of the Exchange's Rules governing adverse

[3] *See* Securities Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011).

[4] As proposed, a Member may not use such unique identifiers for trading activity at the Exchange in assigned CLP securities that is not CLP trading activity, but may use the same unique identifiers for trading activity in securities not assigned to a CLP. If a Member does not identify to the Exchange the unique identifier to be used for CLP trading activity, the Member will not receive credit for such CLP trading.

action and/or reapply for CLP status at least three (3) calendar months following the month in which the applicant received the disapproval notice from the Exchange. Chapter X of the Exchange's Rules provides any persons who are or are about to be aggrieved by an adverse action taken by the Exchange with a process to apply for an opportunity to be heard and to have the complained of action reviewed.

Voluntary Withdrawal of CLP Status

A CLP may withdraw from the status of a CLP by giving notice to the Exchange. Such withdrawal shall become effective when those securities assigned to the withdrawing CLP are reassigned to another CLP. After the Exchange receives the notice of withdrawal from the withdrawing CLP, the Exchange will reassign such securities as soon as practicable but no later than thirty (30) days after the date said notice is received by the Exchange. In the event the reassignment of securities takes longer than the 30-day period, the withdrawing CLP will have no obligations under this Interpretation and Policy .02 and will not be held responsible for any matters concerning its previously assigned CLP securities upon termination of this 30-day period.

CLP Quoting Requirements

The Exchange will measure the performance of a CLP in assigned securities by calculating Size Event Tests (''SETs'') during Regular Trading Hours on every day on which the Exchange is open for business. The Exchange will measure each CLP's quoted size at the NBB and NBO at least once per second to determine SETs. The CLP with the greatest aggregate size at the NBB and NBO at each SET will be considered to have a ''winning SET.''

As noted above, the Exchange proposes to adopt both daily and monthly quoting requirements.

First, a CLP must have at least 10% of the winning SETs on any trading day in order to meet its daily quoting requirement and to be eligible for any daily quotation rebate provided by the Exchange (each such CLP, an ''Eligible CLP''). Eligible CLPs will be ranked according to the number of winning SETs each trading day, and only the Eligible CLP ranked number one, and in some cases the Eligible CLP ranked number two, will receive the daily rebate. In addition to providing a daily rebate to CLPs that have the highest demonstrated size at the NBB and NBO during the trading day, as measured by the Exchange through the calculation of SETs, the Exchange also plans to propose incentives by providing special pricing for executions that occur in any auction operated by the Exchange pursuant to Rule 11.23. As noted above, the Exchange intends to separately propose the specific details regarding the financial incentives applicable to the CLP Program. The financial incentives adopted by the Exchange will specify the amount and allocation of rebates provided to CLPs as well as the parameters for receiving special pricing in Exchange auctions.

Second, a CLP must be quoting at the NBB or the NBO 10% of the time the Exchange calculates SETs to meet its monthly quoting requirement.

For purposes of calculating whether a CLP is in compliance with its CLP quoting requirements, the CLP must post displayed liquidity in round lots in its assigned securities at the NBB or the NBO. A CLP may post non-displayed liquidity; however, such liquidity will not be counted as credit towards the CLP quoting requirements. The CLP shall not be subject to any minimum or maximum quoting size requirement in assigned securities apart from the requirement that an order be for at least one round lot. The CLP quoting requirements will be measured by utilizing the unique identifiers that the Member has identified for CLP trading activity.

CLPs may only enter orders electronically directly into Exchange systems and facilities designated for this purpose. All CLP orders must only be for the proprietary account of the CLP Member.

Assignment of Securities

The Exchange, in its discretion, will assign to the CLP one or more securities consisting of Exchange-listed securities for CLP trading purposes. The Exchange shall determine the number of Exchange-listed securities within the group of securities assigned to each CLP. The Exchange, in its discretion, will assign one (1) or more CLPs to each security subject to the CLP Program, depending upon the trading activity of the security. The Exchange will restrict the CLPs assigned to any newly issued security that is listed on the Exchange pursuant to Rule 14.11, which relates to ETPs, to those Members that have actively participated in the development or funding of such product. This restriction will remain in effect for six (6) months following the initial offering of the ETP on the Exchange after which time there will be no limitation on the Members that can be assigned as CLPs for such a product.

Non-Regulatory Penalties

If a CLP fails to meet the CLP quoting requirements, the Exchange may impose certain non-regulatory penalties. First, if, during Regular Trading Hours on any day on which the Exchange is open for business, fails to meet its daily quoting requirement by failing to have at least 10% of the winning SETs for that trading day, the CLP will not be eligible to receive a financial rebate for that day's quoting activity in that particular assigned security. Second, if a CLP fails to meet its monthly quoting requirement for three (3) consecutive months in any assigned security, the CLP will be at risk of losing its CLP status. Thus, the Exchange may, in its discretion, take the following non-regulatory actions: (i) Revoke the assignment of the affected security(ies) and/or one or more additional unaffected securities; or (ii) disqualify a Member's status as a CLP.

The Exchange shall determine if and when a Member is disqualified from its status as a CLP. One (1) calendar month prior to any such determination, the Exchange will notify the CLP of such impending disqualification in writing. When disqualification determinations are made, the Exchange will provide a disqualification notice to the Member informing such Member that it has been disqualified as a CLP. In the event a Member is disqualified from its status as a CLP, such Member may re-apply for CLP status. Such application process shall occur at least three (3) calendar months following the month in which such Member received its disapproval or disqualification notice. Further, in the event a Member is determined to be ineligible for a financial rebate for failure to meet its daily quoting obligation or is disqualified from its status as a CLP, such Member may seek review under Chapter X of the Exchange's Rules governing adverse action. As noted above, Chapter X of the Exchange's Rules provides any persons who are or are about to be aggrieved by an adverse action taken by the Exchange with a process to apply for an opportunity to be heard and to have the complained-of action reviewed.

2. Statutory Basis

The Exchange believes that its proposal 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.[5] In particular, the proposed change is consistent with Section 6(b)(5) of the

[5] 15 U.S.C. 78f(b).

Act,[6] because it would promote just and equitable principles of trade, and, in general, protect investors and the public interest. At the outset, the Exchange believes that the proposal is not unfairly discriminatory due to the fact that registration as an Exchange Market Maker, and, in turn, as a CLP, is equally available to all Members that satisfy the requirements of Rule 11.8. The Exchange believes that the CLP Program will encourage the development of new financial products, provide a better trading environment for investors in Exchange-listed securities, and generally encourage greater competition between listing venues.

As proposed, the CLP Program is designed to enhance the Exchange's competitiveness as a listing venue and to strengthen its market quality for Exchange-listed securities. The Exchange is launching its listings business at a time in which there are two dominant primary listing venues, the New York Stock Exchange and Nasdaq. The Exchange believes that the proposed change would increase competition by incenting Exchange Market Makers to register as CLPs, which will enhance the quality of quoting in Exchange-listed securities and help to reduce imbalances in Exchange auctions, and will further assist the Exchange to develop an alternative to Nasdaq and the New York Stock Exchange for a company seeking to list its securities. Accordingly, the Exchange believes that the proposal will compliment the Exchange's program for listing securities on the Exchange, which will, in turn, provide companies with another option for raising capital in the public markets, thereby promoting the principles discussed in Section 6(b)(5) of the Act.[7]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BATS–2011–51 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–BATS–2011–51. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing 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 publicly available. All submissions should refer to File Number SR–BATS–2011–51 and should be submitted on or before January 19, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority. [8]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–33377 Filed 12–28–11; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78f(b)(5).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66049; File No. SR–FINRA–2011–035]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Amendment No. 2 to Proposed Rule Change, as Modified by Amendment No. 1, To Adopt FINRA Rules 2210 (Communications With the Public), 2212 (Use of Investment Companies Rankings in Retail Communications), 2213 (Requirements for the Use of Bond Mutual Fund Volatility Ratings), 2214 (Requirements for the Use of Investment Analysis Tools), 2215 (Communications With the Public Regarding Security Futures), and 2216 (Communications With the Public About Collateralized Mortgage Obligations (CMOs)) in the Consolidated FINRA Rulebook

December 23, 2011.

I. Introduction

On July 14, 2011, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt NASD Rules 2210 and 2211 and NASD Interpretive Materials 2210–1 and 2210–3 through 2210–8 as FINRA Rules 2210 and 2212 through 2216, and to delete paragraphs (a)(1), (i), (j) and (l) of Incorporated NYSE Rule 472, Incorporated NYSE Rule Supplementary Material 472.10(1), (3), (4) and (5) and 472.90, and Incorporated NYSE Rule Interpretations 472/01 and 472/03 through 472/11. The proposed rule change was published for comment

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

in the **Federal Register** on August 3, 2011.[3] The Commission received nine comment letters in response to the proposed rule change.[4] On October 31, 2011, FINRA filed Amendment No. 1 to the proposed rule change and a letter responding to comments.[5] The proposed Amendment No. 1 was published for comment along with an order instituting proceedings pursuant to Section 19(b)(2)(B) of the Act, to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1, in the **Federal Register** on November 7, 2011.[6] The comment period closed on December 7, 2011 and FINRA's rebuttal period closed on December 22, 2011. The Commission received seven comment letters in response to the Notice and Proceedings Order.[7] On December 22, 2011, FINRA filed Amendment No. 2 to the proposed rule change and a letter responding to comments.[8] The text of Amendment No. 2 and FINRA's Rebuttal Letter are available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room. FINRA's Rebuttal Letter is also available on the Commission's Web site at *http://www.sec.gov.*

[3] *See* Securities Exchange Act Release No. 64984 (July 28, 2011), 76 FR 46870 (August 3, 2011).

[4] Comment letters are available at *www.sec.gov.*

[5] *See* letter from Joseph P. Savage, FINRA, to Elizabeth Murphy, Secretary, SEC, dated October 31, 2011 (''Response Letter''). The text of proposed Amendment No. 1 and FINRA's Response Letter are available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room. FINRA's Response Letter is also available on the Commission's Web site at *http://www.sec.gov.*

[6] *See* Securities Exchange Act Release No. 65663 (November 1, 2011), 76 FR 68800 (November 7, 2011) (Notice of Filing of Amendment No. 1 and Order Instituting Proceedings SR–FINRA–2011–035) (''Notice and Proceedings Order''). The comment period closed on December 7, 2011 and FINRA's rebuttal period closed on December 22, 2011.

[7] *See* letter from Melissa Callison, Vice President, Compliance, Charles Schwab & Co., Inc., dated December 7, 2011 (''Schwab''); letter from Alexander C. Gavis, Vice President & Associate General Counsel, Fidelity Investments, dated December 7, 2011 (''Fidelity''); letter from David T. Bellaire, General Counsel and Director of Government Affairs, Financial Services Institute, dated December 7, 2011 (''FSI''); letter from Dorothy M. Donohue, Senior Associate Counsel, Investment Company Institute, dated December 7, 2011 (''ICI''); letter from John Polanin and Claire Santaniello, Co-Chairs, Compliance and Regulatory Policy Committee of the Securities Industry and Financial Markets Association (''SIFMA''); letter from Sandra J. Burke, Principal, Vanguard, dated December 7, 2011 (''Vanguard''); and letter from Jeremiah McGair, Attorney, Wolverine Execution Services, LLC, dated December 7, 2011 (''Wolverine''). Comment letters are available at *www.sec.gov.*

[8] *See* letter from Joseph P. Savage, FINRA, to Elizabeth M. Murphy, Secretary, SEC, dated December 22, 2011 (''Rebuttal Letter'').

II. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Amendment

First, FINRA is proposing to amend proposed FINRA Rule 2210 to exclude from the definition of ''institutional communication'' a member's internal communications used to train or educate registered persons about the products or services of the member. In this regard, FINRA proposes to delete proposed Supplementary Material 2210.01 in its entirety. FINRA also proposes to revise proposed FINRA Rule 2210(a)(3) as set forth below. Proposed new language is in italics.

(3) ''Institutional communication'' means any written (including electronic) communication that is distributed or made available only to institutional investors*, but does not include a member's internal communications.*

Second, FINRA is proposing to amend proposed FINRA Rule 2210 to allow a member that is subject to the new member pre-use filing requirements to file a broker-prepared free writing prospectus within 10 business days of first use, rather than at least 10 business days prior to first use. In this regard, FINRA proposes to replace proposed FINRA Rule 2210(c)(1)(A) with the following:

(A) For a period of one year beginning on the date reflected in the Central Registration Depository (CRD®) system as the date that FINRA membership became effective, the member must file with the Department at least 10 business days prior to first use any retail communication that is published or used in any electronic or other public media, including any generally accessible Web site, newspaper, magazine or other periodical, radio, television, telephone or audio recording, video display, signs or billboards, motion pictures, or telephone directories (other than routine listings). To the extent any retail communication that is subject to this filing requirement is a free writing prospectus that has been filed with the SEC pursuant to Securities Act Rule 433(d)(1)(ii), the member may file such retail communication within 10 business days of first use rather than at least 10 business days prior to first use.

Third, in response to comments received by the Commission, FINRA is proposing to amend proposed FINRA Rule 2210 to exclude from the filing requirements retail communications that are posted on an online interactive electronic forum. FINRA also is proposing to amend FINRA Rule 2210 to exclude from the filing requirements press releases issued by closed-end investment companies that are listed on the New York Stock Exchange (''NYSE'') pursuant to section 202.06 of the NYSE Listed Company Manual (or any successor provision). In this regard, FINRA proposes to insert the following new sub-paragraphs (M) and (N) at the end of paragraph (c)(7) of proposed FINRA Rule 2210:

(M) Retail communications that are posted on an online interactive electronic forum.

(N) Press releases issued by closed-end investment companies that are listed on the New York Stock Exchange (NYSE) pursuant to section 202.06 of the NYSE Listed Company Manual (or any successor provision).

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the filing as amended by Amendments 1 and 2 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 email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2011–035 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2011–035. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE.,

Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2011–035 and should be submitted on or before January 18, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–33488 Filed 12–28–11; 8:45 am]

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[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66038; File No. SR–CBOE–2011–117]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change Relating to Its Automated Improvement Mechanism

December 22, 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 December 14, 2011, the Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') 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. 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend its rules relating to its Automated Improvement Mechanism (''AIM''). The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to amend Rule 6.74A to permit an Initiating TPH to elect to have last priority in AIM's order allocation. AIM allows a TPH to submit an Agency Order along with a contra-side second order (a principal order or a solicited order for the same size as the Agency Order) into an Auction where other participants could compete with the Initiating TPH's second order to execute against the Agency Order, which guarantees that the Agency Order will receive an execution.[3] Initiating TPHs must submit the Agency Order at the better of the NBBO or the Agency Order's limit price (if the order is a limit order).[4] Once an Auction commences, the Initiating TPH cannot cancel it.[5] Upon receipt of an Agency Order (and the Initiating TPH's second order), the Exchange will commence the Auction by issuing an RFR detailing the side and size of the Agency Order. The RFR period will last for one (1) second.[6] At the conclusion of an Auction, an Agency Order will be allocated at the best price(s) in accordance with the applicable matching algorithm rules for that class, subject to the allocation provisions of Rule 6.74A(b)(3).

Under this proposal, when submitting an Agency Order to initiate an Auction against a single-price submission, the Initiating TPH will have the opportunity to elect to have last priority in AIM's order allocation. If the Initiating TPH makes this election, the Initiating TPH would be allocated only the amount of contracts remaining, if any, after the Agency Order is allocated to all other Auction participants willing to trade with the Agency Order at the single-price submission price.[7] If it makes this election, the Initiating TPH may not be allocated any contracts, or may be allocated fewer contracts than it would otherwise receive pursuant to Rule 6.74A(b)(3)(F) (generally 40%).

As an example, suppose an Initiating TPH submits to an Auction an Agency Order for 1,000 contracts and makes the election described above:

- If at the conclusion of the Auction, other Auction participants are willing to trade with 800 of these contracts at the single-price submission price or better price(s) resulting from the Auction, then the Initiating TPH will be allocated the remaining 200 contracts (or 20%) for execution against its contra-side order at its specified single price.
- If at the conclusion of the Auction, other Auction participants are willing to trade with 600 of these contracts at the single-price submission price or better price(s) resulting from the Auction, then the Initiating TPH will be allocated the remaining 400 contracts (or 40%) for execution against its contra-side order at its specified single price.
- If at the conclusion of the Auction, other Auction participants are willing to trade with 400 of these contracts at the single-price submission price or better price(s) resulting from the Auction, then the Initiating TPH will be allocated 600 contracts for execution against its contra-side order at its specified single price.
- If at the conclusion of the Auction, other Auction participants are willing to trade with the entire Agency Order at the single-price submission price or better price(s) resulting from the Auction, then the Initiating TPH will be allocated no contracts.

Under this proposal, Agency Orders submitted to AIM will continue to be guaranteed execution at a price at least as good as the NBBO while providing the opportunity for execution at a price better than the NBBO.

The Exchange believes this proposal will incent more TPHs to initiate Auctions, because the additional flexibility encourages increased participation by TPHs willing to trade with Agency Orders at the NBBO but

[3] *See* CBOE Rule 6.74A.

[4] *See* CBOE Rule 6.74A(a)(2).

[5] *See* CBOE Rule 6.74A(b)(1)(A).

[6] *See* CBOE Rule 6.74A(b)(1). Several types of events will cause an Auction to conclude. *See* CBOE Rule 6.74A(b)(2).

[7] The Exchange notes that Chapter V, Section 18(f)(v), The Price Improvement Period (''PIP''), of the Rules of the Boston Exchange Group, LLC includes a similar provision that permits an options participant initiating a PIP auction to designate a lower amount for which it will retain certain priority and trade allocation privileges upon the conclusion of the PIP auction than the 40% of the PIP order to which the initiating options participant is otherwise entitled pursuant to PIP's allocation order.

not at a price better than the NBBO and by TPHs willing to facilitate and stop a customer order at a particular price even when there is not a desire to trade against any or all of the customer order. Additionally, this proposal provides the possibility that other TPHs may receive increased order allocations through AIM, which the Exchange believes could increase participation in Auctions. The Exchange believes that this proposal may ultimately provide additional opportunities for price improvement over the NBBO for its customers.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act[8]. Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[9] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

In particular, the Exchange believes this proposed rule change is a reasonable modification designed to provide additional flexibility for TPHs to obtain executions on behalf of their customers while continuing to provide meaningful, competitive Auctions. The Exchange also believes that the proposed rule change will increase the number of and participation in Auctions, which will ultimately enhance competition in the AIM Auctions and provide customers with additional opportunities for price improvement.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will: (A) By order approve or disapprove such proposed rule change, or (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2011–117 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2011–117. This file number should be included on the subject line if email 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 on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2011–117, and should be submitted on or before January 19, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–33450 Filed 12–28–11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66035; File No. SR–CBOE–2011–122]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change Related to FLEX Options

December 22, 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 December 12, 2011, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend certain rules pertaining to the electronic trading of Flexible Exchange Options (''FLEX Options'') on the Exchange's FLEX Hybrid Trading System platform.[3]

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] FLEX Options provide investors with the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices. FLEX Options can be FLEX Index Options or FLEX Equity Options. In addition, other products are permitted to be traded pursuant to the FLEX trading procedures. For example, credit options are eligible for trading as FLEX Options pursuant to the

Continued

The Exchange is also proposing an amendment to eliminate certain European-Capped style settlement and currency provisions within the FLEX rules that pertain to both electronic and open outcry trading. The text of the rule proposal is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, Proposed Rule Change

1. Purpose

The Exchange is in the process of enhancing the FLEX Hybrid Trading System platform (referred to herein as the ''FLEX System'' or the ''System'') in order to further integrate it with the Exchange's existing technology platform utilized for non-FLEX trading. In conjunction with the enhancement, the Exchange is proposing to make some modifications to the existing electronic trading processes utilized on the FLEX System platform.[4] In particular, as discussed in more detail below, the Exchange is proposing to (i) revise and enhance the process for opening FLEX Option series with existing open interest, (ii) eliminate certain Trade Conditions that will no longer be supported in the new system and to add a new Trade Condition, (iii) eliminate European-Capped exercise style and foreign currency provisions that will no longer be supported in the new system, (iv) modify and simplify the allocation algorithms applicable to the FLEX electronic book and to the FLEX electronic RFQ process, and (v) include a description of complex order handling under the electronic RFQ process.[5]

Opening Trading in Existing Series

The first purpose of this proposed rule change is to revise and enhance the process for opening electronic trading in FLEX Option series with existing open interest. Under the current FLEX trading procedures, there are no trading rotations conducted at the opening of trading.[6] Instead, to begin trading on a given day, a FLEX RFQ process is required to initiate a transaction when there are no FLEX Orders [7] currently resting in the electronic book in the particular series to be traded.[8] Resting FLEX Orders may only be entered in the electronic book as ''day orders'' and are cancelled at the close of each trade day if unexecuted. Therefore, there would be no orders resting in the book from the prior day.[9] As a result, under the current process, an initial RFQ is needed to open a particular series for trading each day. Once an RFQ is completed, the series is established in the FLEX System for the day and FLEX Orders may be entered directly into the FLEX electronic book throughout the day.

To make the process more efficient and useful for FLEX users, the Exchange is proposing to revise the procedure to provide that FLEX Option series with existing open interest will be automatically opened by the Exchange at a randomly selected time within a number of seconds after 8:30 a.m. (all times noted herein are Central Time), at which point in time FLEX Orders may be entered directly into the electronic book (if available) and/or FLEX RFQ auctions may be initiated pursuant to Rule 24B.5 As revised, it will no longer be necessary for there to be an initial RFQ each day before entering a FLEX Order in the electronic book in series with existing open interest. New FLEX Option series will continue to be subject to the existing requirement that there be an initial RFQ to initiate trading in the FLEX series on a given trading day.

Trade Conditions

The second purpose of this proposed rule change is to eliminate certain Trade Conditions that will no longer be supported for electronic trading in the new system and to add a new Trade Condition. Currently, under Rule 24B.1, a ''Trade Condition'' means a contingency that has been placed on an RFQ, RFQ Order [10] or FLEX Order. The following Trade Conditions are available in the System for a FLEX Trader to choose from: (i) Fill-or-Kill, which is a condition to execute an RFQ Order or FLEX Order in its entirety as soon as it is represented or canceled it; (ii) All-or-None, which is a condition to execute an RFQ Order or FLEX Order in its entirety or not at all; (iii) Minimum Fill, which is a condition to execute an RFQ Order or a FLEX Order in a minimum quantity or not at all; (iv) Lots Of, which is a condition to execute an RFQ Order or a FLEX Order in minimum lot sizes or not at all; (v) Intent to Cross, which is an RFQ condition indicating that the Submitting Trading Permit Holder intends to cross or act as principal and receive a crossing participation entitlement; and (vi)

FLEX rules in Chapters XXIVA and XXIVB. *See* CBOE Rules 24A.1(e) and (f), 24A.4(b)(1) and (c)(1), 24B.1(f) and (g), 24B.4(b)(1) and (c)(1), and 28.17. The rules governing the trading of FLEX Options on the FLEX Request for Quote (''RFQ'') System platform are contained in Chapter XXIVA. The rules governing the trading of FLEX Options on the FLEX Hybrid Trading System platform are contained in Chapter XXIVB.

[4] The Exchange notes that is [sic] rule change filing is primarily seeking to propose changes to the electronic trading processes utilized on the FLEX System platform. The Exchange is not proposing any changes to the open outcry trading processes for FLEX options, except for the proposed changes pertaining to foreign currencies.

[5] The FLEX System currently utilizes server software (residing on CBOE's servers) and client software (installed on Trading Permit Holder and Sponsored User workstations) that CBOE has licensed from Cinnober Financial Technology AB (''Cinnober''). In conjunction with the enhancements to the FLEX System, the Exchange will no longer utilize the Cinnober software and, as a result, the Exchange will no longer utilize the related Trading Permit Holder/Sponsored User software sublicense, which is part of the Sponsored User Agreement form that was put in place when the FLEX Hybrid Trading System was established. *See* Securities Exchange Act Release 56792 (November 15, 2007), 72 FR 65776 (November 23, 2007) (SR–CBOE–2006–99) (the ''Original FLEX System Approval Order''). The Exchange also notes that, in conjunction with the enhancements to the FLEX System, the Exchange intends to make available certain risk management application tools that CBOE Trading Permit Holders may determine to use to assist with mitigating potential risks associated with orders that exceed certain pre-trade thresholds.

[6] *See* Rule 24B.3.

[7] A ''FLEX Order'' refers to (i) FLEX bids and offers entered by FLEX Market-Makers and (ii) orders to purchase and orders to sell FLEX Options entered by FLEX Traders, in each case into the electronic book. A ''FLEX Market-Maker'' means a FLEX Trader that is appointed as a FLEX Appointed Market-Maker or a FLEX Qualified Market-Maker, each as described in Rule 24B.9. A ''FLEX Trader'' means a FLEX-participating Trading Permit Holder who has been approved by the Exchange to trade on the System. *See* Rule 24B.1(h), (j) and (l).

[8] The Exchange may determine in a class-by-class basis to make an electronic book available in the FLEX System. *See* Rule 24B.5(b).

[9] In the future, the Exchange may determine to enable ''good-til-cancelled'' functionality for FLEX Options. The introduction of such functionality would be the subject of a separate rule filing.

[10] An ''RFQ Order'' is an order to purchase or order to sell FLEX Options entered by the Submitting Trading Permit Holder during the RFQ Reaction Period. The ''RFQ Reaction Period'' means the period of time during which a Submitting Trading Permit Holder determined whether to accept or reject the RFQ Market. A ''Submitting Trading Permit Holder'' means the FLEX Trader that (i) initiates FLEX bidding and offering by submitting an RFQ or (ii) enters a FLEX Order into the electronic book. An ''RFQ Market'' means the bids or offers, or both, as applicable, entered in response to an electronic RFQ and FLEX Orders resting in the electronic book. *See* Rule 24B.1(s), (t), (v) and (x), and Rule 24B.5(a)(1)(iii).

Hedge, which is a RFQ or FLEX Order condition contingent on trade execution in Non-FLEX Options or other Non-FLEX components (*e.g.,* stock, futures, or other related instruments or interests). Trade Conditions, other than Intent to Cross or Hedge, are inputted but not disclosed on the System. FLEX Orders, other than those designated as Fill-or-Kill, are designated as day orders and, if unexecuted, are automatically cancelled at the close of each trade day.[11]

The Exchange is now proposing to eliminate the Fill-or-Kill, Minimum Fill, Lots Of, and Intent to Cross Trade Conditions, as these functions will not be supported under the FLEX System enhancements. The Fill-or-Kill, Minimum Fill, Lots Of[12] and Intent to Cross[13] Trade Conditions have generally not been actively used by FLEX Traders. Given the lack of use, the Exchange no longer plans to support these Trade Conditions under the new FLEX System enhancements.

The Exchange is also proposing to adopt an Immediate-or-Cancel Trade Condition. ''Immediate-or-Cancel'' will be defined as a condition to execute an RFQ Order or FLEX Order in its entirety or in part as soon as it is represented or cancel it. Thus, as proposed to be revised, there will be three Trade Conditions: Immediate-or-Cancel, All-or-None, and Hedge. Trade Conditions, other than Hedge, will be inputted but not disclosed on the System. In addition, FLEX Orders, other than those designated as Immediate-or-Cancel, will be designated as day orders and, if unexecuted, will be automatically cancelled at the close of each trade day.[14]

Foreign Currency Provisions

The third purpose of the proposed rule change is to eliminate certain provisions in the FLEX Rules that permit (i) FLEX Options to be designated with a European-Capped style exercise and (ii) FLEX Index Options to be designated for settlement in foreign currencies (and related index multiplier provisions for such currencies).[15] These European-Capped style and foreign currency provisions have generally not been actively utilized.[16] The Exchange no longer plans to support foreign currency settlements in the new FLEX System, so the Exchange is proposing to eliminate the provision within the rules and limit the [sic] currently for FLEX Index Options to U.S. dollars. These changes will apply to all FLEX trading on the Exchange, whether electronic or open outcry.[17]

Electronic Allocation Algorithms

The fourth purpose of the proposed rule change is to modify and simplify the allocation algorithms applicable to the FLEX electronic book and to the FLEX electronic RFQ process. Generally, and as discussed in more detail below, the algorithms are proposed to be simplified to be price-time priority, subject to public customer and non-Trading Permit Holder broker-dealer (''non-TPH broker-dealer'') priority and, if applicable, any applicable entitlement priority. In particular, the existing algorithms and proposed modifications are as follows:

FLEX Electronic Book: Currently, for the FLEX electronic book, all FLEX Orders are ranked and matched based on price-time priority, unless a FLEX Appointed Market-Maker is quoting at the best bid (offer) and a FLEX Appointed Market-Maker participation entitlement has been established.[18] If a FLEX Appointed Market-Maker participation entitlement has been established, allocation among multiple bids (offers) at the same price is as follows: (i) All FLEX Orders for the account of a public customer ranked ahead of the FLEX Appointed Market-Maker will participate in the execution based on time priority; (ii) any FLEX Orders that are subject to the FLEX Appointed Market-Maker participation entitlement will participate in the execution based on a participation entitlement formula specified in Rule 24B.5(d)(2)(ii); then (iii) all other FLEX Orders will participate based on time priority.

As proposed to be revised and simplified, allocation among multiple bids (offers) at the same price in the FLEX electronic book would be as follows: (i) Public customer and non-TPH broker-dealers will participate in the execution based on time priority; (ii) if applicable, any FLEX Orders that are subject to the FLEX Appointed Market-Maker participation entitlement will participate in the execution based on a

[11] *See* Rule 24B.1(y).

[12] *See* proposed changes to Rule 24B.1(y). The Fill-or-Kill, Minimum Fill and Lots Of Trade Conditions were originally designed, in part, as an additional tool to assist FLEX Traders that are electronically trading in meeting certain minimum value size requirements applicable to the trading of FLEX Options; however, the minimum size requirements have been eliminated on a pilot basis (which the Exchange believes is one of the reasons why the Trade Conditions are largely not used). *See, e.g.,* Rule 24B.4(a)(5) and .01(b). The minimum value size pilot is currently set to expire on March 30, 2012, unless otherwise extended or made permanent. It is the Exchange's intention to submit a separate rule change filing proposing to make the pilot permanent. In addition, if for some reason the minimum value size pilot is not extended or otherwise made permanent, FLEX Traders have other means to satisfy the minimum value size requirements (*e.g.,* utilizing the All-or-None Trade Condition, or entering RFQ Orders or FLEX Orders that would trade against the electronic book with value sizes that would result in transaction sizes sufficient to meet the minimum value size requirement).

[13] *See* proposed changes to Rules 24B.1(y) and 24B.5(a)(1)(iii)(D) and (d)(1)(i). The Exchange notes that the Intent to Cross Trade Condition is an optional feature that the Exchange may determine to make available electronically on a class-by-class basis in accordance with Rule 24B.5(d). The Intent to Cross Trade Condition was originally designed to allow for an electronic crossing participation entitlement for executions resulting from the electronic RFQ process. (To use the feature, the Submitting Trading Permit Holder must mark its RFQ with an ''intent to cross'' flag at the time the RFQ is originally submitted to be automatically allocated the applicable crossing participation entitlement for facilitation and solicitation transactions. If the RFQ is not flagged in this manner, the Submitting Member will not be automatically allocated the entitlement.) The Exchange notes that this crossing participation entitlement functionality has generally not been actively used by FLEX Traders. (The Exchange also notes that, apart from the Intent to Cross feature, a Submitting Trading Permit Holder also has (and will continue to have) the ability to enter an agency or proprietary FLEX Quote in response to the Submitting Member's own electronic RFQ in accordance with the provisions contained in Rule 24B.5(a)(1)(ii) and/or to cross FLEX Orders in accordance with the provisions contained in Rule 24B.5(b)(3). However, no crossing participation entitlement applies when these procedures are used.) In order to make a more efficient and effective trading platform offering available for FLEX Traders that includes a crossing participation entitlement feature, the Exchange has submitted a separate rule change filing proposing to make modified versions of the Automated Improvement Mechanism (''AIM'') and Solicitation Auction Mechanism (''SAM'')—which are currently available for non-FLEX Options under Rule 6.74A and 6.74B, respectively—available for FLEX Options. *See* SR–CBOE–2011–123.

[14] *See* note 9, *supra.*

[15] *See* proposed changes to Rules 24A.1(c) and (i), 24A.4(a)(2)(iii) and (b)(4), 24A.5(f), 24B.1(c) and (m), 24B.4(a)(2)(iii) and (b)(4), and 24B.5(e).

[16] The Exchange notes that there is currently no open interest in any FLEX Option series with a European-Capped style exercise and currently no open interest [sic] any FLEX Index Option series that is designated for settlement in a foreign currency.

[17] In the future, the Exchange may determine to re-enable the capability for settlement of FLEX Index Options in a foreign currency, such foreign currency settlement provisions would be the subject of a separate rule filing.

[18] The Exchange may establish from time to time a participation entitlement formula that is applicable to FLEX Appointed Market Makers on a class-by-class basis with respect to open outcry RFQs, electronic RFQs and/or electronic book transactions. Any such FLEX Appointed Market-Maker participation entitlement shall: (i) Be divided equally by the number of FLEX Appointed Market-Makers quoting at the BBO or BBO clearing price, as applicable; (ii) collectively be no more than: 50% of the amount remaining in the order when there is one other FLEX Market-Maker also quoting at the same price, 40% when there are two other FLEX Market-Makers also quoting at the same price; and 30% when there are three or more FLEX Market-Makers also quoting at the same price; and (iii) when combined with any crossing participation entitlement, shall not exceed 40% of the original order. *See* Rule 24B.5(d)(2)(ii).

participation entitlement formula specified in Rule 24B.5(d)(2)(ii);[19] then (iii) all other FLEX Orders will participate in the execution based on time priority.

FLEX Electronic RFQs: Currently, for the electronic RFQ process, executions of RFQ Orders occur at a single price that will leave bids and offers which cannot trade with each other (referred to as the ''BBO clearing price''). In determining the priority of bids and offers, the FLEX System gives priority to FLEX Quotes [20] and FLEX Orders whose price is better than the BBO clearing price, then to FLEX Quotes and FLEX Orders at the BBO clearing price. Currently, the allocation among multiple FLEX Quotes and FLEX Orders priced at the BBO clearing price is as follows:

- *General:* The allocation among multiple FLEX Quotes and FLEX Orders priced at the BBO clearing price is generally as follows: (i) Any FLEX Quotes subject to a FLEX Appointed Market-Maker participation entitlement will participate in the execution based on a participation entitlement formula (as described above); (ii) FLEX Orders resting in the electronic book will participate in the execution pursuant to the current book priority algorithm (discussed above); (iii) FLEX Quotes for the account of public customers and non-TPH broker-dealers will participate in the execution based on time priority; then (iv) all other FLEX Quotes will participate in the execution based on time priority.
- *Lock/Crossed Markets:* In the event the RFQ Market [21] is locked or crossed (*e.g.,* $1.25-$1.20), allocation among multiple FLEX Quotes and FLEX Orders that are priced at the BBO clearing price and are on the same side of the market as the RFQ Order is as follows: (i) FLEX Orders resting in the electronic book will participate in the execution pursuant to the current book priority algorithm (discussed above); (ii) if applicable, an RFQ Order for the account of a public customer or non-TPH broker-dealer will participate in the execution, then any FLEX Quotes subject to a FLEX Appointed Market-Maker participation entitlement will participate in the execution based on a participation entitlement formula (discussed above); (iii) FLEX Quotes for the account of public customers and non-TPH broker-dealers will participate in the execution based on time priority; (iv) if applicable, an RFQ Order for the account of a Trading Permit Holder will participate in the execution, then any FLEX Quotes that are subject to a FLEX Appointed Market-Maker participation entitlement will participate in the execution based on a participation entitlement formula (discussed above); then (v) all other FLEX Quotes will participate in the execution based on time priority.
- *Intent to Cross Trade Condition/ Crossing Participation Entitlement:* In the event the Submitting Trading Permit Holder has indicated an intention to cross with respect to any part of the FLEX trade, the Submitting Trading Permit Holder may obtain a crossing participation entitlement if a crossing participation entitlement has been established by the Exchange pursuant to Rule 24B.5(d), the Submitting Trading Permit Holder has indicated an intention to cross as part of the RFQ, and the RFQ Order submitted during the RFQ Reaction Period matches or improves the BBO clearing price. In such an event, the incoming RFQ Order will be eligible to trade with the FLEX Quotes and FLEX Orders at the BBO clearing price as discussed above. The allocation among multiple FLEX Quotes and FLEX Orders that are priced at the BBO clearing price and on the same side of the market as the crossing participation entitlement is as follows: (i) FLEX Orders resting in the electronic book will participate in the execution pursuant to the current book priority algorithm (discussed above); (ii) FLEX Quotes for the account of public customers and non-TPH broker-dealers will participate in the execution based on time priority; (iii) the crossing participation entitlement will participate in the execution pursuant to the crossing participation entitlement formula discussed in Rule 24B.5(d)(2)(i); (iv) any FLEX Quotes subject to a FLEX Appointed Market-Maker participation entitlement will participate in the execution pursuant to the participation entitlement formula (discussed above); then (v) all other FLEX Quotes will participate in the execution based on time priority.

As proposed to be revised and simplified, first, as discussed above, the Exchange would eliminate the ''Intent to Cross'' Trade Condition. As a result, the Intent to Cross/Crossing Participation Entitlement scenario under the electronic RFQ process described above would no longer be applicable.[22] Second, the Exchange would eliminate the concept of a ''BBO clearing price'' (except in the limited scenario noted below where the RFQ Market is locked or crossed). Thus, an incoming RFQ Order would be eligible to trade with FLEX Quotes and FLEX Orders at the best price(s) (*i.e.,* an incoming RFQ Order could trade at multiple price points). Third, at a given price point, allocation among multiple FLEX Quotes and FLEX Orders at the same price would be as follows:

- *General:* The allocation among multiple FLEX Quotes and FLEX Orders priced at the same price would be as follows: (i) FLEX Quotes and FLEX Orders for the account of public customers and non-TPH broker-dealers will participate in the execution based on time priority; (ii) any FLEX Quotes and FLEX Orders subject to a FLEX Appointed Market-Maker participation entitlement will participate in the execution (as described above); then (iii) all other FLEX Quotes and FLEX Orders will participate in the execution based on time priority.
- *Lock/Crossed Markets:* In the event the RFQ Market is locked or crossed (*e.g.,* $1.25-$1.20), FLEX Quotes and FLEX Orders would be eligible to trade at a single BBO clearing price pursuant to the existing BBO clearing price process (*i.e.,* (i) the BBO clearing price will leave bids and offers which cannot trade with each other; and (ii) in determining priority of FLEX Quotes and FLEX Orders to be traded, the System gives priority to FLEX Quotes and FLEX Orders whose price is better than the BBO clearing price, then to FLEX Quotes and FLEX Orders at the BBO clearing price based on the general allocation algorithm noted above). The allocation among multiple FLEX Quotes and FLEX Orders that are priced at the same price and are on the same side of the market as the RFQ Order would be as follows: (i) FLEX Quotes and FLEX Orders for the account of public customers and non-TPH broker-dealers will participate in the execution based on time priority; (ii) an RFQ Order will participate in the execution, then any FLEX Quotes and FLEX Orders that are subject to a FLEX Appointed Market-Maker participation entitlement will participate in the execution (as described above); then (iii) all other FLEX Quotes and FLEX Orders will participate in the execution based on time priority.

All other provisions of Rule 24B.5 will apply unchanged. As noted above,

[19] *Id.*

[20] A ''FLEX Quote'' refers to (i) FLEX bids and offers entered by FLEX Market-Makers and (ii) orders to purchase and orders to sell FLEX Options entered by FLEX Traders, in each case in response to an RFQ. *See* Rule 24B.1(k).

[21] The ''RFQ Market'' means the bids or offers, or both, as applicable, entered in response to an electronic Request for Quotes and FLEX Orders resting in the electronic book. *See* Rule 24B.1(s).

[22] *See* proposed changes to Rule 24B.5(a)(1)(iii)(D) and (d)(2)(i).

these changes re [sic] intended to simplify the allocation algorithms. The Exchange believes these changes will make the applicable programming for FLEX allocation algorithms less complicated, which should make for efficient and effective processing of complex orders (and also make it easier for users to understand) if there is a more consistent allocation algorithm applied across the various FLEX electronic processes described above (*i.e.,* for FLEX electronic book priority and for FLEX RFQ priority generally and in locked or crossed and crossing participation entitlement scenarios).

The Exchange notes that the proposed changes to the existing series opening process and allocation algorithms are similar to other existing opening processes and allocation algorithms.[23] As such, the Exchange believes that the proposed rule change does not present any new, unique or substantive issues.

Electronic RFQ Processing of Complex Orders

The fifth purpose of the proposed rule change is to amend the FLEX System rules to describe certain complex order handling procedures. Under the current FLEX electronic trading procedures, multi-legged RFQs and FLEX Orders are permitted. However, there is no provision for an electronic complex order book for multi-legged, complex orders to rest. The electronic book, to the extent the Exchange determines to make it available for a given class, is only available for simple orders.

To more fully describe the electronic processing of complex orders, the Exchange is proposing to adopt Interpretation and Policy .01 under Rule 24B.5. This Interpretation and Policy will provide that there is no electronic complex order book for multi-legged, complex orders. To trade electronically, complex orders will only be eligible to trade with other complex orders through the electronic RFQ process described in Rule 24B.5(a)(1). The order allocation for such complex orders executed through the RFQ process will [sic] the same as is applicable to simple orders (which is proposed to be amended as described above under the ''FLEX Electronic RFQ [sic] heading). To the extent the Exchange determines to make an electronic book available for simple, resting FLEX Orders, there will be no ''legging'' of complex orders represented in the electronic RFQ process with FLEX Orders that may be represented in the individual series legs represented in the electronic book. In the event there are bids (offers) in any of the individual component series legs represented in the electronic book when an electronic RFQ for a complex order strategy is submitted to the System, the electronic RFQ will not commence. In the event an unrelated FLEX Order in any of the individual series legs is received during the duration of an electronic RFQ, such FLEX Order will not be considered in the electronic RFQ allocation. Further, to the extent that a complex RFQ Order or responsive FLEX Quote is not executed, any remaining balance of the complex order or FLEX Quote will be automated [sic] cancelled if not traded at the conclusion of the electronic RFQ process.

Section 11(a)(1) of the Act

Finally, the Exchange believes the proposed changes to the priority and allocation rules for electronic FLEX trading are consistent with Section 11(a)(1) of the Act[24] and the rules promulgated thereunder. By way of background, when the FLEX Hybrid Trading System was originally approved, the Commission believed that the priority and allocation rules for electronic FLEX trading were consistent with Section 11(a) of the Act.[25] The Commission believed, however, that neither a Submitting Trading Permit Holder[26] who trades against an electronic RFQ Market nor any other FLEX Trader who itself submits an RFQ Quote electronically qualifies for the ''effect-versus-execute'' exception to [sic] section 11(a).[27] Nevertheless, the Commission believed that other exceptions may apply. For example, FLEX Market-Makers qualify for the market-maker exception. The Commission also noted that, with respect to non-market-maker Trading Permit Holders, the FLEX Hybrid Trading System appeared reasonably designed to cause RFQ Quotes constituting the RFQ Market and the RFQ Order that trades against the RFQ Market to yield to non-member interest, consistent with the ''G'' exception.[28] The Exchange believes the proposed changes [sic] the electronic RFQ process and allocation algorithms are consistent with the Original FLEX System Approval Order because the System will continue to be designed to cause RFQ Quotes constituting the RFQ Market and the RFQ Order that trades against the RFQ Market to yield to non-member interest (*i.e.*, public customers and non-TPH broker-dealers continue to have priority).

With respect to the electronic book, in the Original FLEX System Approval Order the Commission noted that, if the Exchange enables an electronic book in a FLEX Option class, any transaction involving a booked order must comply with Section 11(a) of the Act. If a FLEX Trader cannot avail itself of any other exception, it must rely on the ''G'' exception, which requires, among other things, that a member order yield to a non-member order at the same price, even if the member order has time priority. It was noted that the FLEX System has not been programmed to cause a member order on the electronic book to yield to a later-arriving non-member order at the same price, although Rule 24B.5(b)(2)(ii) prohibits a member order that is relying on the ''G'' exemption from resting on the electronic book. The Commission believed that a member may rely on the ''G'' exemption if it sends an order to the electronic book and then cancels it immediately if it is not executed in full. The Exchange notes that the proposed changes to the electronic book

[23] With respect to the existing series opening process, the Exchange notes that various exchanges' rules provide for automatic openings of existing series. *See, e.g.,* CBOE Rule 6.2B (which, among other things, provides for an opening rotation to automatically begin in index options at a randomly selected time within a number of seconds after 8:30 a.m. for index options). A distinction with FLEX Options is that an existing series will move immediately to an opening state (there is no rotation). The Exchange has designed the system this way for simplicity and due to the customized nature of FLEX Options, which has no or very limited secondary trading and no need for daily opening rotations. This aspect of the existing opening series process is not new or unique. In fact, CBOE Rule 24B.3 already provides that there shall be no trading rotations in FLEX Options, either at the opening or at the close of trading. With respect to the allocation algorithm, the Exchange notes that various exchanges' rules provide for executions at best price(s) and the use of price-time priority with public customer and participation entitlement priority overlays. *See, e.g.,* CBOE Rules 6.45A(a) and 6.45B(a) (which, among various allocation algorithm alternatives, may permit an executions [sic] at best price(s) using price-time priority with public customer and participation entitlements priority overlays).

[24] 15 U.S.C. 78k(a). Section 11(a)(1) prohibits a member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or an account over which it or its associated person exercises discretion unless an exception applies.

[25] *See* Original FLEX System Approval Order, note 5, *supra; see also* Securities Exchange Act Release No. 56311 (August 23, 2007), 72 FR 50133 (August 30, 2007) (SR–CBOE–2006–99) (notice of filing of the proposed FLEX System), which includes a more detailed discussion of the priority and allocation rules and section 11(a) and existing Rule 24B.5(b)(2)(ii) and (d)(4).

[26] The Exchange notes that, under the Original FLEX Approval Order, the term ''Submitting Member'' is used instead of ''Submitting Trading Permit Holder.'' The Exchange subsequently revised its rules to replace the term ''Member'' with ''Trading Permit Holder.'' See Securities Exchange Act Release No. 62382 (June 25, 2010), 75 FR 38164 (July 1, 2010) (SR–CBOE–2010–058).

[27] 17 CFR 240.11a2–2(T).

[28] *See* 15 U.S.C. 78k(a)(1)(G) (setting forth all requirements for the ''G'' exemption).

allocation algorithm are consistent with the Original FLEX System Approval Order and Trading Permit Holders and Rule 24B.5(b)(2)(ii), a Trading Permit Holder order that is relying on the ''G'' exemption continues to be prohibited from resting on the electronic book and such a Trading Permit Holder may rely on the ''G'' exemption if it sends an order to the electronic book and then cancels it immediately if it is not executed in full.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act [29] in general and furthers the objectives of Section 6(b)(5) of the Act [30] in particular in that it should promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest. In particular, the Exchange believes that the use of FLEX Options provide CBOE Trading Permit Holders and investors with additional tools to trade customized options in an exchange environment [31] and greater opportunities to manage risk. The proposed changes to the existing series opening process and the allocation algorithms should serve to further those objectives and encourage use of FLEX Options by enhancing and simplifying the existing processes, which should make the system more efficient and effective and easier for users to understand.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[29] 15 U.S.C. 78f(b).

[30] 15 U.S.C. 78f(b)(5).

[31] FLEX Options provide Trading Permit Holders and investors with an improved but comparable alternative to the over-the-counter (''OTC'') market in customized options, which can take on contract characteristics similar to FLEX Options but are not subject to the same restrictions. The Exchange believes that making these changes will make the FLEX Hybrid Trading System an even more attractive alternative when market participants consider whether to execute their customized options in an exchange environment or in the OTC market. CBOE believes market participants benefit from being able to trade customized options in an exchange environment in several ways, including, but not limited to the following: (1) Enhanced efficiency in initiating and closing out positions; (2) increased market transparency; and (3) heightened contra-party creditworthiness due to the role of The Options Clearing Corporation as issuer and guarantor of FLEX Options.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2011–122 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2011–122. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2011–122 and should be submitted on or before January 19, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–33449 Filed 12–28–11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66033; File No. SR–FINRA–2011–074]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Pilot Period Regarding the Use of Multiple MPIDs on FINRA Facilities

December 22, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 21, 2011, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Exchange Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to

[32] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to extend through January 25, 2013, the current rules regarding the use of multiple Market Participant Symbols (''MPIDs'') in FINRA Rules 6160 (with respect to Trade Reporting Facilities (''TRFs'')), 6170 (with respect to the Alternative Display Facility (''ADF'')), and 6480 (with respect to the OTC Reporting Facility (''ORF'')).

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA, at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

FINRA has three rules governing the use of multiple MPIDs on FINRA facilities: Rule 6160 (Multiple MPIDs for Trade Reporting Facility Participants), Rule 6170 (Primary and Additional MPIDs for Alternative Display Facility Participants), and Rule 6480 (Multiple MPIDs for Quoting and Trading in OTC Equity Securities). The pilot period for all three rules is scheduled to expire on January 27, 2012. FINRA believes that there continue to be legitimate business reasons for members to maintain multiple MPIDs for use on FINRA facilities. Consequently, FINRA is proposing to extend the pilot period for each of the three rules until January 25, 2013. FINRA is not proposing any other changes to the rules at this time; however, FINRA notes that it intends to file a proposed rule change within the next year that amends the rules governing multiple MPIDs, including a proposed rule change to make the rules permanent.

(1) Rule 6160

Rule 6160 provides that any Trade Reporting Facility Participant that wishes to use more than one MPID for purposes of reporting trades to a TRF must submit a written request to, and obtain approval from, FINRA Operations for such additional MPIDs. In addition, Supplementary Material to the rule states that FINRA considers the issuance of, and trade reporting with, multiple MPIDs to be a privilege and not a right. A Trade Reporting Facility Participant must identify the purpose(s) and system(s) for which the multiple MPIDs will be used. If FINRA determines that the use of multiple MPIDs is detrimental to the marketplace, or that a Trade Reporting Facility Participant is using one or more additional MPIDs improperly or for other than the purpose(s) identified by the Participant, FINRA staff retains full discretion to limit or withdraw its grant of the additional MPID(s) to such Trade Reporting Facility Participant for purposes of reporting trades to a TRF. FINRA believes that Rule 6160 is necessary to consolidate the process of issuing, and tracking the use of, multiple MPIDs used to report trades to TRFs.

Rule 6160 was approved by the Commission in 2006 on a pilot basis.[4] The pilot period has been extended several times since the rule was originally adopted and currently expires on January 27, 2012.[5]

(2) Rule 6170

Rule 6170 provides that a Registered Reporting ADF ECN may request additional MPIDs for displaying quotes and orders and reporting trades through the ADF trade reporting facility, TRACS, for any ADF-Eligible Security. Among other things, Registered Reporting ADF ECNs are prohibited from using an additional MPID to accomplish indirectly what they are prohibited from doing directly through their Primary MPID. In addition, FINRA staff retains full discretion to determine whether a bona fide regulatory and/or business need exists for being granted an additional MPID privilege and to limit or withdraw the additional MPID display privilege at any time. The procedures for requesting, and the restrictions surrounding the use of, multiple MPIDs are set forth in Supplementary Material to the rule.

The Commission approved Rule 6170 on a pilot basis on August 11, 2006.[6] The pilot period has been extended several times since the rule was originally adopted and currently expires on January 27, 2012.[7]

(3) Rule 6480

Like Rule 6160, Rule 6480 provides that any member that wishes to use more than one MPID for purposes of quoting an OTC Equity Security or reporting trades to the ORF must submit a written request to, and obtain approval from, FINRA Operations for such additional MPIDs. The rule also states that a member that posts a quotation in an OTC Equity Security and reports to a FINRA system a trade resulting from such posted quotation must utilize the same MPID for reporting purposes. In addition, Supplementary Material to the rule states that FINRA considers the issuance of, and trade reporting with, multiple MPIDs to be a privilege and not a right. When requesting an additional MPID(s), a member must identify the purpose(s) and system(s) for which the multiple MPIDs will be used. If FINRA determines that the use of multiple MPIDs is detrimental to the marketplace, or that a member is using one or more additional MPIDs improperly or for purposes other than the purpose(s) identified by the member, FINRA staff retains full discretion to limit or withdraw its grant of the additional MPID(s) to such member.

[4] *See* Securities Exchange Act Release No. 54715 (November 6, 2006), 71 FR 66354 (November 14, 2006); *see also* Securities Exchange Act Release No. 54715A (November 14, 2006), 71 FR 67183 (November 20, 2006).

[5] *See* Securities Exchange Act Release No. 63729 (January 18, 2011), 76 FR 4403 (January 25, 2011); Securities Exchange Act Release No. 61297 (January 6, 2010), 75 FR 2173 (January 14, 2010); Securities Exchange Act Release No. 59183 (December 30, 2008), 74 FR 842 (January 8, 2009); Securities Exchange Act Release No. 57217 (January 28, 2008), 73 FR 6234 (February 1, 2008); Securities Exchange Act Release No. 55206 (January 31, 2007), 72 FR 5479 (February 6, 2007).

[6] *See* Securities Exchange Act Release No. 54307 (August 11, 2006), 71 FR 47551 (August 17, 2006). By its terms, the initial pilot period expired on January 26, 2007, to coincide with the expiration of the ADF pilot period. *See* Securities Exchange Act Release No. 53699 (April 21, 2006), 71 FR 25271 (April 28, 2006). On January 26, 2007, the Commission approved a proposed rule change to make the ADF rules permanent. *See* Securities Exchange Act Release No. 55181 (January 26, 2007), 72 FR 5093 (February 2, 2007).

[7] *See* Securities Exchange Act Release No. 63729 (January 18, 2011), 76 FR 4403 (January 25, 2011); Securities Exchange Act Release No. 61297 (January 6, 2010), 75 FR 2173 (January 14, 2010); Securities Exchange Act Release No. 59183 (December 30, 2008), 74 FR 842 (January 8, 2009); Securities Exchange Act Release No. 57217 (January 28, 2008), 73 FR 6234 (February 1, 2008); Securities Exchange Act Release No. 55206 (January 31, 2007), 72 FR 5479 (February 6, 2007).

FINRA adopted Rule 6480 on a pilot basis on July 23, 2009.[8] The pilot period currently expires on January 27, 2012.[9]

FINRA has filed the proposed rule change for immediate effectiveness. The implementation date of the proposed rule change will be January 27, 2012.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[10] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change is consistent with these requirements because it will continue to provide a process by which members can request, and FINRA can properly allocate, the use of additional MPIDs for displaying quotes and orders through the ADF or reporting trades to a TRF or the ORF.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. 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 email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2011–074 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2011–074. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2011–074 and should be submitted on or before January 19, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–33447 Filed 12–28–11; 8:45 am]

BILLING CODE 8011–01–P

[8] *See* Securities Exchange Act Release No. 60414 (July 31, 2009), 74 FR 39721 (August 7, 2009).

[9] *See* Securities Exchange Act Release No. 63729 (January 18, 2011), 76 FR 4403 (January 25, 2011); *see also* Securities Exchange Act Release No. 61297 (January 6, 2010), 75 FR 2173 (January 14, 2010).

[10] 15 U.S.C. 78*o*–3(b)(6).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. FINRA has satisfied this requirement.

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66031; File No. SR–NYSE–2011–62]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Supplementary Material .26 (Pegging for d-Quotes and e-Quotes) to NYSE Rule 70

December 22, 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 December 14, 2011, New York Stock Exchange LLC (the ''Exchange'' or ''NYSE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Supplementary Material .26 (Pegging for d-Quotes and e-Quotes) to NYSE Rule 70. The text of the proposed rule change is available at the Exchange, at *www.nyse.com,* the Commission's Public Reference Room, and at *www.sec.gov.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Supplementary Material .26 (Pegging for d-Quotes and e-Quotes) to NYSE Rule 70.

Paragraph (i) of Supplementary Material .26 states that an e-Quote may be set to provide that it will be available for execution at the national best bid (''NBB'') (for an e-Quote that represents a buy order) or at the national best offer (''NBO'') (for an e-Quote that represents a sell order) as the national best bid or offer (''NBBO'') changes, so long as the NBBO is at or within the e-Quote's limit price. Paragraph (x) of Supplementary Material .26 further provides that, as long as the NBB or NBO is within the pegging price range selected by the Floor broker, the pegging e-Quote or d-Quote will join the NBB or NBO as it is autoquoted. As such, pegging interest may peg to a price that may not be displayed at the Exchange. For example, if the NBB is $10.05 and the Exchange best bid is $10.04, a pegging e-Quote to buy will display at the Exchange at $10.05, thus creating a new Exchange best bid.

Because pegging interest automatically pegs to the NBBO, under current rules and functionality, a pegging e-Quote could peg to an NBB or NBO that is locking or crossing an existing Exchange best bid or offer. For example, if the Exchange best bid is $10.04 and the NBO locks it at $10.04, a pegging e-Quote to sell would peg to the $10.04 NBO price and then immediately execute against the Exchange's best bid of $10.04. In such scenario, a pegging e-Quote, which is intended to be reactive, becomes taker interest. Similarly, if automatic executions on the buy (sell) side are suspended at the Exchange, for example, if a liquidity replenishment point is reached pursuant to NYSE Rule 1000, the NYSE would not be displaying a protected bid (offer) and therefore other markets could display a protected offer (bid) that crosses the Exchange best bid (offer). In such scenario, if the NBO moved to below the Exchange best bid of $10.04, a pegging e-Quote to sell would peg to that NBO, which would cross the Exchange best bid.

The Exchange proposes to add new paragraph (x)(A) to Supplementary Material .26 to provide that a pegging e-Quote or d-Quote to buy (sell) would not peg to an NBB (NBO) that is locking or crossing the Exchange best offer (bid), but would instead join the next available best-priced non-pegging interest that does not lock or cross the Exchange best offer (bid).[5] Customers have requested this change because in the infrequent circumstances when the NBBO is locking or crossing the Exchange best bid or offer,[6] customers do not want their pegging interest, for which the ultimate goal is to be passive liquidity for purposes of execution, to become taker interest. Because the next available best-priced non-pegging interest may be on an away market, the Exchange further proposes to amend paragraph (vii) to Supplementary .26 to specify that the non-pegging interest against which pegging interest pegs may either be available on the Exchange or may be a protected bid or offer on an away market. The Exchange believes that this is already implied in Supplementary .26, particularly because pegging interest can peg to the NBB or NBO, which may or may not be a displayed price at the Exchange,[7] and is proposing this change only to add greater specificity to Supplementary Material .26.

The Exchange also proposes to add new paragraph (x)(B) to Supplementary Material .26 to provide that the converse of paragraph (x) is also true. Specifically, if the NBB (NBO) is not within the pegging price range selected by the Floor broker, then a pegging e-Quote or d-Quote to buy (sell) will join the next available best-priced non-pegging interest that is within the price range selected by the Floor broker.

Finally, the Exchange proposes to amend paragraph (xiii) to Supplementary Material .26 to delete the text that permits Floor brokers to specify a maximum size validation for e-Quotes and d-Quotes. Floor brokers have not availed themselves of this functionality and the Exchange has therefore decided to eliminate it from Supplementary Material .26. In addition, because pegging interest is considered when assessing the minimum volume size of same-side interest against which to peg, the Exchange proposes to delete the last sentence of paragraph (xiii) to Supplementary Material .26.

Because of the related technology changes that this proposed rule change would require, the Exchange proposes to announce the initial implementation date and related roll-out schedule, if applicable, via Trader Update.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[8] in general, and furthers the objectives of Section 6(b)(5),[9] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest. Specifically, the Exchange believes that the proposed changes to Supplementary Material .26 to NYSE Rule 70 would promote just and equitable principles of trade and remove impediments to, and perfect the

[5] When an exception to the prohibition against trade-throughs is in effect, pursuant to Rule 611(b)(4) of Regulation NMS, technically, there are no available protected bids or offers against which an e-Quote or d-Quote can peg. In such situations, the pegging interest would peg to the next available best-priced non-pegging interest on the Exchange that is within the price range selected by the Floor broker.

[6] The Exchange would re-price pegging interest only if the NBBO is locking or crossing the Exchange best bid or offer and not if the NBBO is ''locking'' or ''crossing'' undisplayed liquidity at the Exchange. For example, where the Exchange best bid and offer is $10.02 and $10.04 and there is ''dark'' reserve buy interest at $10.03, if the NBO becomes $10.03, pegging sell interest will peg to the $10.03 NBO and will execute against the Exchange ''dark'' reserve interest priced at $10.03.

[7] *See* Securities Exchange Act Release No. 61072 (November 30, 2009), 74 FR 64103 (December 7, 2009) (SR–NYSE–2009–106).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

mechanism of, a free and open market because they would reduce the potential for the Exchange best bid or offer to be locked or crossed. The proposed changes would also promote transparency by adding greater specificity with respect to the interest to which pegging e-Quotes and d-Quotes may peg and would remove text corresponding to a functionality that Floor brokers have not availed themselves of and therefore is no longer necessary to promote just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6) thereunder.[11]

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 email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2011–62 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–2011–62. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2011–62 and should be submitted on or before January 19, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–33445 Filed 12–28–11; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 6825]

Shipping Coordinating Committee; Notice of Committee Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 9:30 a.m. on Wednesday, January 18, 2012, in Room 6103 of the United States Coast Guard Headquarters Building, 2100 2nd Street SW., Washington, DC 20593–7126. The primary purpose of the meeting is to prepare for the sixteenth Session of the International Maritime Organization's (IMO) Bulk Liquids and Gases Subcommittee to be held at the IMO Headquarters, United Kingdom, January 30–February 3, 2012.

The primary matters to be considered include:

—Decisions of other IMO bodies
—Evaluation of safety and pollution hazards of chemicals and preparation of consequential amendments
—Development of guidelines and other documents for uniform implementation of the 2004 BWM Convention
—Development of international measures for minimizing the transfer of invasive aquatic species through bio-fouling of ships
—Development of international code of safety for ships using gases or other low flashpoint fuels
—Development of revised IGC Code
—Review of relevant non-mandatory instruments as a consequence of the amended MARPOL Annex VI and the NO_X Technical Code
—Development of a code for the transport and handling of limited amounts of hazardous and noxious liquid substances in bulk in offshore support vessels
—Consideration of amendment to SOLAS to mandate enclosed space entry and rescue drills
—Consideration of IACS unified interpretations
—Casualty analysis
—Biennial agenda and provisional agenda for BLG 17
—Election of Chairman and Vice-Chairman for 2013
—Any other business
—Report to the Committees

Members of the public may attend this meeting up to the seating capacity of the room. To facilitate the building security process, and to request reasonable accommodation, those who plan to attend should contact the meeting coordinator, Mr. Thomas Felleisen, by email at *Thomas.J.Felleisen@uscg.mil,* by phone

at (202) 372–1424, by fax at (202) 372–1926, or in writing at Commandant (CG–5223), U.S. Coast Guard, 2100 2nd Street SW., Stop 7126, Washington, DC 20593–7126 not later than January 11, 2012, 7 days prior to the meeting. Requests made after January 11, 2012 might not be able to be accommodated. Please note that due to security considerations, two valid, government issued photo identifications must be presented to gain entrance to the Headquarters building. The Headquarters building is accessible by taxi and privately owned conveyance (public transportation is not generally available). However, parking in the vicinity of the building is extremely limited. Additional information regarding this and other IMO SHC public meetings may be found at: *www.uscg.mil/imo.*

Dated: December 22, 2011.

Brian Robinson,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. 2011–33502 Filed 12–28–11; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice 6972]

Shipping Coordinating Committee; Notice of Committee Meeting

The Shipping Coordinating Committee (SHC) will conduct two open meetings, one for the International Maritime Organization's Design and Equipment Sub-Committee (DE) and one for the International Maritime Organization's Marine Environment Protection Committee (MEPC).

The first open meeting will be held at 9:30 a.m. on Thursday, January 19, 2012, in Room 6103 of the United States Coast Guard Headquarters Building, 2100 2nd Street SW., Washington, DC 20593–7126. The primary purpose of the meeting is to prepare for the fifty-sixth session of the International Maritime Organization's Sub-Committee on Ship Design and Equipment (DE 56) to be held at the International Maritime Organization in London, United Kingdom from February 13th to February 17th, 2012.

The primary matters to be considered include:

—Adoption of the agenda;
—Decisions of other IMO Bodies;
—Performance standards for recovery systems for all types of ships;
—Development of amendments to SOLAS regulation II–1/40.2 concerning general requirements on electrical installations;
—Making the provisions of MSC.1/Circ.1206/Rev.1 mandatory;
—Development of new framework of requirements for life-saving appliances;
—Development of safety objectives and functional requirements of the Guidelines on alternative design and arrangements for SOLAS chapters II–1 and III;
—Development of amendments to the LSA Code for thermal performance of immersion suits;
—Development of amendments to the LSA Code for free-fall lifeboats with float free Capabilities;
—Development of a mandatory Code for ships operating in polar waters;
—Protection against noise on board ships;
—Provisions for the reduction of noise from commercial shipping and its adverse impacts on marine life;
—Classification of offshore industry vessels and consideration of the need for a Code for offshore construction support vessels;
—Consideration of IACS unified interpretations and amendments to the ESP Code;
—Development of guidelines for use of fiber reinforced plastic (FRP) within ship structures;
—Revision of testing requirements for lifejacket RTDs in resolution MSC.81(70);
—Amendments to SOLAS regulation II–1/11 and development of associated guidelines to ensure the adequacy of testing arrangements for watertight compartments;
—Revision of the Recommendation on conditions for the approval of servicing stations for inflatable liferafts (resolution A.761(18));
—Development of guidelines for wing-in-ground craft;
—Revision of the Revised guidelines on implementation of effluent standards and performance tests for sewage treatment plants (resolution MEPC.159(55));
—Biennial agenda and provisional agenda for DE 57;
—Election of Chairman and Vice-Chairman for 2013;
—Any other business;
—Revision of the Standard specification for shipboard incinerators (resolution MEPC.76(40));
—Provisions for the reduction of noise from commercial shipping and its adverse impacts on marine life;
—Report to the Maritime Safety Committee.

Members of the public may attend this meeting up to the seating capacity of the room. To facilitate the building security process, and to request reasonable accommodation, those who plan to attend should contact the meeting coordinator, Mr. Wayne Lundy, by email at *Wayne.M.Lundy@uscg.mil*, by phone at (202) 372–1379, by fax at (202) 372–1925, or in writing at Mr. Wayne Lundy, Commandant (CG–5213), U.S. Coast Guard Headquarters, 2100 2nd Street SW STOP 7126, Room 1300, Washington, DC 20593–7126 not later than January 12, 2012, 7 days prior to the meeting. Requests made after January 12, 2012 might not be able to be accommodated. Please note that due to security considerations, two valid, government issued photo identifications must be presented to gain entrance to the Headquarters building. The Headquarters building is accessible by taxi and privately owned conveyance (public transportation is not generally available). However, parking in the vicinity of the building is extremely limited. Additional information regarding this and other IMO SHC public meetings may be found at: *www.uscg.mil/imo.* Hard copies of documents associated with the 56th session of DE will be available at this meeting. To request further copies of documents please contact Mr. Wayne Lundy using the contact information above.

The second open meeting will be held at 9:30 a.m. on Wednesday, February 8, 2012, in Room 4202 of the United States Coast Guard Headquarters Building, 2100 Second Street SW., Washington, DC, 20593–7126. The primary purpose of the meeting is to prepare for the sixty-third session of the International Maritime Organization's Marine Environment Protection Committee (MEPC 63) to be held at the International Maritime Organization in London, United Kingdom from February 27th to March 2nd, 2012.

The primary matters to be considered include:

—Adoption of the Agenda;
—Harmful aquatic organisms in ballast water;
—Recycling of ships;
—Air pollution and energy efficiency;
—Reduction of GHG emissions from ships;
—Consideration and adoption of amendments to mandatory instruments;
—Interpretation of, and amendments to, MARPOL and related instruments;
—Implementation of the OPRC Convention and the OPRC–HNS Protocol and relevant Conference resolutions;
—Identification and protection of Special Areas and Particularly Sensitive Sea Areas;

—Inadequacy of reception facilities;
—Reports of sub-committees;
—Work of other bodies;
—Status of Conventions;
—Harmful anti-fouling systems for ships;
—Promotion of implementation and enforcement of MARPOL and related instruments;
—Technical Co-Operations sub-program for the Protection of the Marine Environment;
—Role of the human element;
—Noise from commercial shipping and its adverse impacts on marine life;
—Work program of the Committee and subsidiary bodies;
—Application of the Committees' Guidelines;
—Election of Chairman and Vice-Chairman for 2012;
—Any other business;
—Consideration of the report of the Committee.

Members of the public may attend this meeting up to the seating capacity of the room. To facilitate the building security process, and to request reasonable accommodation, those who plan to attend should contact the meeting coordinator, Ms. Regina Bergner, by email at *Regina.R.Bergner@uscg.mil*, by phone at (202) 372–1431, or in writing at Ms. Regina Bergner, Commandant (CG–5224), U.S. Coast Guard Headquarters, 2100 2nd Street SW STOP 7126, Room 1601, Washington, DC 20593–7126 not later than January 29, 2012, 10 days prior to the meeting. Requests made after January 29, 2012 might not be able to be accommodated. Please note that due to security considerations, two valid, government issued photo identifications must be presented to gain entrance to the Headquarters building. The Headquarters building is accessible by taxi and privately owned conveyance (public transportation is not generally available). However, parking in the vicinity of the building is extremely limited. Additional information regarding this and other IMO SHC public meetings may be found at: *www.uscg.mil/imo.* Hard copies of documents associated with the 63rd Session of MEPC will be available at this meeting. To request further copies of documents please contact Ms. Regina Bergner using the contact information above.

Dated: December 22, 2011.

Brian W. Robinson,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 2011–33499 Filed 12–28–11; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice 7744]

Request for Information for the 2012 Trafficking in Persons Report

SUMMARY: The Department of State (''the Department'') requests written information to assist in reporting on the degree to which the United States and foreign governments comply with the minimum standards for the elimination of trafficking in persons (''minimum standards'') that are prescribed by the Trafficking Victims Protection Act of 2000, (Div. A, Pub. L. 106–386) as amended (''TVPA''). This information will assist in the preparation of the Trafficking in Persons Report (''TIP Report'') that the Department submits annually to appropriate committees in the U.S. Congress on countries' level of compliance with the minimum standards. Foreign governments that do not comply with the minimum standards and are not making significant efforts to do so may be subject to restrictions on nonhumanitarian, nontrade-related foreign assistance from the United States, as defined by the TVPA. Submissions must be made in writing to the Office to Monitor and Combat Trafficking in Persons at the Department of State by February 13, 2012. Please refer to the Addresses, Scope of Interest and Information Sought sections of this Notice for additional instructions on submission requirements.

DATES: Submissions must be received by the Office to Monitor and Combat Trafficking in Persons by 5 p.m. on February 13, 2012.

ADDRESSES: Written submissions and supporting documentation may be submitted to the Office to Monitor and Combat Trafficking in Persons by the following methods:

- *Facsimile (fax):* (202) 312–9637.
- *Mail, Express Delivery, Hand Delivery and Messenger Service:* U.S. Department of State, Office to Monitor and Combat Trafficking in Persons (G/TIP), 1800 G Street NW., Suite 2148, Washington, DC 20520. Please note that materials submitted by mail may be delayed due to security screenings and processing.
- *Email (preferred): tipreport@state.gov* for submissions related to foreign governments and *tipreportUS@state.gov* for submissions related to the United States.

Scope of Interest: The Department requests information relevant to assessing the United States' and foreign governments' compliance with the minimum standards for the elimination of trafficking in persons in the year 2011. The minimum standards for the elimination of trafficking in persons are listed in the *Background* section. Submissions must include information relevant and probative of the minimum standards for the elimination of trafficking in persons and should include, but need not be limited to, answering the questions in the *Information Sought* section. These questions are designed to elicit information relevant to the minimum standards for the elimination of trafficking in persons. Only those questions for which the submitter has direct professional experience should be answered and that experience should be noted. For any critique or deficiency described, please provide a recommendation to remedy it. Note the country or countries that are the focus of the submission.

Submissions may include written narratives that answer the questions presented in this Notice, research, studies, statistics, fieldwork, training materials, evaluations, assessments, and other relevant evidence of local, state and federal government efforts. To the extent possible, precise dates should be included.

Where applicable, written narratives providing factual information should provide citations to sources and copies of the source material should be provided. If possible, send electronic copies of the entire submission, including source material. If primary sources are utilized, such as research studies, interviews, direct observations, or other sources of quantitative or qualitative data, details on the research or data-gathering methodology should be provided. The Department does not include in the report, and is therefore not seeking, information on prostitution, human smuggling, visa fraud, or child abuse, unless such conduct occurs in the context of human trafficking.

Confidentiality: Please provide the name, phone number, and email address of a single point of contact for any submission. It is Department practice not to identify in the TIP Report information concerning sources in order to safeguard those sources. Please note, however, that any information submitted to the Department may be releasable pursuant to the provisions of the Freedom of Information Act or other applicable law. When applicable, portions of submissions relevant to efforts by other U.S. government agencies may be shared with those agencies.

Response: This is a request for information only; there will be no response to submissions.

SUPPLEMENTARY INFORMATION:

I. Background

The TIP Report: The TIP Report is the most comprehensive worldwide report on foreign governments' efforts to combat trafficking in persons. It represents an updated, global look at the nature and scope of trafficking in persons and the broad range of government actions to confront and eliminate it. The U.S. Government uses the TIP Report to engage in diplomacy to encourage partnership in creating and implementing laws and policies to combat trafficking and to target resources on prevention, protection, and prosecution programs. Worldwide, the report is used by international organizations, foreign governments, and nongovernmental organizations alike as a tool to examine where resources are most needed. Freeing victims, preventing trafficking, and bringing traffickers to justice are the ultimate goals of the report and of the U.S Government's anti-human trafficking policy.

The Department prepares the TIP Report using information from across the U.S. government, U.S. embassies, foreign government officials, nongovernmental and international organizations, published reports, and research trips to every region. The TIP Report focuses on concrete actions that governments take to fight trafficking in persons, including prosecutions, convictions, and prison sentences for traffickers, as well as victim protection measures and prevention efforts. Each TIP Report narrative also includes a section on recommendations. These recommendations are then used to assist in measuring progress from one year to the next and determining whether governments comply with the minimum standards to eliminate trafficking in persons or are making significant efforts to do so.

The TVPA creates a three tier ranking system. This placement is based more on the extent of government action to combat trafficking than on the size of the problem, although that is a consideration. The Department first evaluates whether the government fully complies with the TVPA's minimum standards for the elimination of trafficking. Governments that fully comply are placed on Tier 1. For other governments, the Department considers the extent of efforts to reach compliance. Governments that are making significant efforts to meet the minimum standards are placed on Tier 2. Governments that do not fully comply with the minimum standards and are not making significant efforts to do so are placed on Tier 3. Finally, the Department considers Special Watch List criteria and, when applicable, moves Tier 2 countries to Tier 2 Watch List. For more information, the 2011 TIP Report can be found at *http://www.state.gov/g/tip/rls/tiprpt/2011/index.htm.*

Since the inception of the TIP Report in 2001, the number of countries included and ranked has more than doubled to include 181 countries in the 2011 TIP Report. Around the world, the TIP Report and the best practices reflected therein have inspired legislation, national action plans, implementation of policies and funded programs, protection mechanisms that complement prosecution efforts, and a comprehensive understanding of the issue.

Since 2003, the primary reporting on the United States' anti-trafficking activities has been through the annual Attorney General's Report to Congress and Assessment of U.S. Government Activities to Combat Human Trafficking (''AG Report'') mandated by section 105 of the TVPA (22 U.S.C. 7103(d)(7)). The United States voluntarily, through a collaborative interagency process, includes in the TIP Report an analysis of U.S. Government anti-trafficking efforts in light of the minimum standards to eliminate trafficking in persons set forth by the TVPA. This analysis in the TIP Report is done in addition to the AG Report, resulting in a multi-faceted self-assessment process of expanded scope.

II. Minimum Standards for the Elimination of Trafficking in Persons

The TVPA sets forth the minimum standards for the elimination of trafficking in persons as follows:

(1) The government of the country should prohibit severe forms of trafficking in persons and punish acts of such trafficking.

(2) For the knowing commission of any act of sex trafficking involving force, fraud, coercion, or in which the victim of sex trafficking is a child incapable of giving meaningful consent, or of trafficking which includes rape or kidnapping or which causes a death, the government of the country should prescribe punishment commensurate with that for grave crimes, such as forcible sexual assault.

(3) For the knowing commission of any act of a severe form of trafficking in persons, the government of the country should prescribe punishment that is sufficiently stringent to deter and that adequately reflects the heinous nature of the offense.

(4) The government of the country should make serious and sustained efforts to eliminate severe forms of trafficking in persons.

The following factors should be considered as indicia of serious and sustained efforts to eliminate severe forms of trafficking in persons:

(1) Whether the government of the country vigorously investigates and prosecutes acts of severe forms of trafficking in persons, and convicts and sentences persons responsible for such acts, that take place wholly or partly within the territory of the country, including, as appropriate, requiring incarceration of individuals convicted of such acts. For purposes of the preceding sentence, suspended or significantly reduced sentences for convictions of principal actors in cases of severe forms of trafficking in persons shall be considered, on a case-by-case basis, whether to be considered as an indicator of serious and sustained efforts to eliminate severe forms of trafficking in persons. After reasonable requests from the Department of State for data regarding investigations, prosecutions, convictions, and sentences, a government which does not provide such data, consistent with the capacity of such government to obtain such data, shall be presumed not to have vigorously investigated, prosecuted, convicted, or sentenced such acts. The Secretary of State may disregard the presumption contained in the preceding sentence if the government has provided some data to the Department of State regarding such acts and the Secretary has determined that the government is making a good faith effort to collect such data.

(2) Whether the government of the country protects victims of severe forms of trafficking in persons and encourages their assistance in the investigation and prosecution of such trafficking, including provisions for legal alternatives to their removal to countries in which they would face retribution or hardship, and ensures that victims are not inappropriately incarcerated, fined, or otherwise penalized solely for unlawful acts as a direct result of being trafficked, including by providing training to law enforcement and immigration officials regarding the identification and treatment of trafficking victims using approaches that focus on the needs of the victims.

(3) Whether the government of the country has adopted measures to prevent severe forms of trafficking in persons, such as measures to inform and educate the public, including potential victims, about the causes and consequences of severe forms of

trafficking in persons, measures to establish the identity of local populations, including birth registration, citizenship, and nationality, measures to ensure that its nationals who are deployed abroad as part of a peacekeeping or other similar mission do not engage in or facilitate severe forms of trafficking in persons or exploit victims of such trafficking, and measures to prevent the use of forced labor or child labor in violation of international standards.

(4) Whether the government of the country cooperates with other governments in the investigation and prosecution of severe forms of trafficking in persons.

(5) Whether the government of the country extradites persons charged with acts of severe forms of trafficking in persons on substantially the same terms and to substantially the same extent as persons charged with other serious crimes (or, to the extent such extradition would be inconsistent with the laws of such country or with international agreements to which the country is a party, whether the government is taking all appropriate measures to modify or replace such laws and treaties so as to permit such extradition).

(6) Whether the government of the country monitors immigration and emigration patterns for evidence of severe forms of trafficking in persons and whether law enforcement agencies of the country respond to any such evidence in a manner that is consistent with the vigorous investigation and prosecution of acts of such trafficking, as well as with the protection of human rights of victims and the internationally recognized human right to leave any country, including one's own, and to return to one's own country.

(7) Whether the government of the country vigorously investigates, prosecutes, convicts, and sentences public officials who participate in or facilitate severe forms of trafficking in persons, including nationals of the country who are deployed abroad as part of a peacekeeping or other similar mission who engage in or facilitate severe forms of trafficking in persons or exploit victims of such trafficking, and takes all appropriate measures against officials who condone such trafficking. After reasonable requests from the Department of State for data regarding such investigations, prosecutions, convictions, and sentences, a government which does not provide such data consistent with its resources shall be presumed not to have vigorously investigated, prosecuted, convicted, or sentenced such acts. The Secretary of State may disregard the presumption contained in the preceding sentence if the government has provided some data to the Department of State regarding such acts and the Secretary has determined that the government is making a good faith effort to collect such data.

(8) Whether the percentage of victims of severe forms of trafficking in the country that are non-citizens of such countries is insignificant.

(9) Whether the government of the country, consistent with the capacity of such government, systematically monitors its efforts to satisfy the criteria described in paragraphs (1) through (8) and makes available publicly a periodic assessment of such efforts.

(10) Whether the government of the country achieves appreciable progress in eliminating severe forms of trafficking when compared to the assessment in the previous year.

(11) Whether the government of the country has made serious and sustained efforts to reduce the demand for (A) commercial sex acts; and (B) participation in international sex tourism by nationals of the country.

III. Information Sought Relevant to the Minimum Standards

Submissions should include, but need not be limited to, answers to relevant questions below for which the submitter has direct professional experience and that experience should be noted. Citations to source material must also be provided. Note the country or countries that are the focus of the submission. Please see the *Scope of Interest* section for detailed information regarding submission requirements.

1. How have trafficking methods changed in the past 12 months? (*E.g.,* are there victims from new countries of origin? Is internal trafficking or child trafficking increasing? Has sex trafficking changed from brothels to private apartments? Is labor trafficking now occurring in additional types of industries or agricultural operations? Is forced begging a problem?)

2. In what ways has the government's efforts to combat trafficking in persons changed in the past year? What new laws, regulations, policies, and implementation strategies exist (*e.g.,* substantive criminal laws and procedures, mechanisms for civil remedies, and victim-witness security, generally, and in relation to court proceedings)?

3. Please provide observations regarding the implementation of existing laws and procedures.

4. Is the government equally vigorous in pursuing labor trafficking and sex trafficking?

5. Are the anti-trafficking laws and sentences strict enough to reflect the nature of the crime? Are sex trafficking sentences commensurate with rape sentences?

6. Do government officials understand the nature of trafficking? If not, please provide examples of misconceptions or misunderstandings.

7. Do judges appear appropriately knowledgeable and sensitized to trafficking cases? What sentences have courts imposed upon traffickers? How common are suspended sentences and prison time of less than one year for convicted traffickers?

8. Please provide observations regarding the efforts of police and prosecutors to pursue trafficking cases.

9. Are government officials (including law enforcement) complicit in human trafficking by, for example, profiting from, taking bribes, or receiving sexual services for allowing it to continue? Are government officials operating trafficking rings or activities? If so, have these government officials been subject to an investigation and/or prosecution? What punishments have been imposed?

10. Has the government vigorously investigated, prosecuted, convicted, and sentenced nationals of the country deployed abroad as part of a peacekeeping or other similar mission who engage in or facilitate trafficking?

11. Has the government investigated, prosecuted, convicted, and sentenced organized crime groups that are involved in trafficking?

12. Is the country a source of sex tourists and, if so, what are their destination countries? Is the country a destination for sex tourists and, if so, what are their source countries?

13. Please provide observations regarding government efforts to address the issue of unlawful child soldiering.

14. Does the government make a coordinated, proactive effort to identify victims? Is there any screening conducted before deportation to determine whether individuals were trafficked?

15. What victim services are provided (legal, medical, food, shelter, interpretation, mental health care, health care, repatriation)? Who provides these services? If nongovernment organizations provide the services, does the government support their work either financially or otherwise?

16. How could victim services be improved?

17. Are services provided equally and adequately to victims of labor and sex trafficking? Men, women, and children? Citizen and noncitizen?

18. Do service organizations and law enforcement work together

cooperatively, for instance, to share information about trafficking trends or to plan for services after a raid? What is the level of cooperation, communication, and trust between service organizations and law enforcement?

19. May victims file civil suits or seek legal action against their trafficker? Do victims avail themselves of those remedies?

20. Does the government repatriate victims? Does the government assist with third country resettlement? Does the government engage in any analysis of whether victims may face retribution or hardship upon repatriation to their country of origin? Are victims awaiting repatriation or third country resettlement offered services? Are victims indeed repatriated or are they deported?

21. Does the government inappropriately detain or imprison identified trafficking victims?

22. Does the government punish trafficking victims for forgery of documents, illegal immigration, unauthorized employment, or participation in illegal activities directed by the trafficker?

23. What efforts has the government made to prevent human trafficking?

24. Are there efforts to address root causes of trafficking such as poverty; lack of access to education and economic opportunity; and discrimination against women, children, and minorities?

25. Does the government undertake activities that could prevent or reduce vulnerability to trafficking, such as registering births of indigenous populations?

26. Does the government provide financial support to NGOs working to promote public awareness or does the government implement such campaigns itself? Have public awareness campaigns proven to be effective?

27. Please provide additional recommendations to improve the government's anti-trafficking efforts.

28. Please highlight effective strategies and practices that other governments could consider adopting.

Dated: December 22, 2011.

Luis CdeBaca,

Ambassador-at-Large, Office to Monitor and Combat Trafficking in Persons, U.S. Department of State.

[FR Doc. 2011–33498 Filed 12–28–11; 8:45 am]

BILLING CODE 4710–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Commercial Space Transportation Advisory Committee; Public Teleconference

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Commercial Space Transportation Advisory Committee Risk Management Working Group Teleconference.

SUMMARY: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. 2), notice is hereby given of a teleconference of the Commercial Space Transportation Advisory Committee (COMSTAC) Risk Management Working Group. The teleconference will take place on Tuesday, January 24, 2012, starting at 1:30 p.m. Eastern Standard Time. Individuals who plan to participate should contact Susan Lender, Designated Federal Officer (DFO), (the Contact Person listed below) by phone or email for the teleconference call in number. The National Aeronautics and Space Administration (NASA) and the FAA Office of Commercial Space Transportation (AST) have agreed to prepare a study on the availability of commercial insurance sufficient to meet the needs of NASA's Commercial Crew Program commercial providers for missions transporting NASA astronauts to and from the International Space Station. NASA's Commercial Crew Program requested this study (via a signed memorandum of understanding with the FAA AST) be conducted by AST because of its knowledge and resources in the commercial space industry.

The purpose of the teleconference is to:

1. Brief the COMSTAC Risk Management Working Group on the study,

2. Request assistance from the working group in preparing a response to NASA, and

3. Respond to any questions from the working group on the nature of this task.

Interested members of the public may submit relevant written statements for the COMSTAC members to consider under the advisory process. Statements may concern the issues mentioned above or additional issues that may be relevant for the U.S. commercial space transportation industry. Interested parties wishing to submit written statements should contact Susan Lender, DFO, (the Contact Person listed below) in writing (mail or email) by January 17, 2012, so that the information can be made available to COMSTAC members for their review and consideration before the January 24, 2012, teleconference. Written statements should be supplied in the following formats: one hard copy with original signature or one electronic copy via email.

This notice will be posted on the FAA Web site at *http://www.faa.gov/go/ast.*

Individuals who plan to participate and need special assistance should inform the Contact Person listed below in advance of the meeting.

FOR FURTHER INFORMATION CONTACT: Susan Lender (AST–5), Office of Commercial Space Transportation (AST), 800 Independence Avenue SW., Room 331, Washington, DC 20591, telephone (202) 267–8029; Email *susan.lender@faa.gov.* Complete information regarding COMSTAC is available on the FAA Web site at: *http://www.faa.gov/about/office_org/headquarters_offices/ast/advisory_committee/.*

Issued in Washington, DC.

George C. Nield,

Associate Administrator for Commercial Space Transportation.

[FR Doc. 2011–33353 Filed 12–28–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land-use Assurance; DuPage Airport, West Chicago, IL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The Federal Aviation Administration (FAA) is considering a proposal to change a portion of airport land from aeronautical use to non-aeronautical use and to authorize the sale of the airport property. The proposal consists of all or portions of Parcels 209A, 213, 217, 218, 219, 220, 221, 314, 315, 401, 402, 404, 406, 407, 408, 409, 410, 411, 412, 413, 414, and 416, totaling 605.3 acres. Presently the land is vacant and used as open land for control of FAR Part 77 surfaces and compatible land use and is not needed for aeronautical use, as shown on the Airport Layout Plan. The Parcels were acquired without Federal participation. It is the intent of the DuPage Airport Authority, as owner and operator of the DuPage Airport (DPA) to sell the aforementioned Parcels (605.3 Acres) in

fee to the DuPage County (22.7 acres for Kress Creek floodplain control), the City of West Chicago (37.7 acres for the ownership and maintenance of existing roadways), the Illinois Department of Transportation (11.3 acres for the improvement of State Route 38), and to private entities (533.6 acres for corporate/industrial development). This notice announces that the FAA is considering the proposal to authorize the disposal of the subject airport property at the DuPage Airport, West Chicago, IL. Approval does not constitute a commitment by the FAA to financially assist in disposal of the subject airport property nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. The disposition of proceeds from the disposal of the airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999.

In accordance with section 47107(h) of Title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

DATES: Comments must be received on or before January 30, 2012.

FOR FURTHER INFORMATION CONTACT: Richard Pur, Program Manager, 2300 East Devon Avenue, Des Plaines, IL 60018. Telephone Number (847) 294–7527/Fax Number (847) 294–7046. Documents reflecting this FAA action may be reviewed at this same location by appointment or at the DuPage Airport, 2700 International Drive, Suite 200, West Chicago, IL 60185.

SUPPLEMENTARY INFORMATION: The various parcels were combined into three large parcels for legal description purposes with exceptions for the portions of those parcels that are being retained by the DAA. Parcel A includes portions of Parcels 209A (SOUTH OF THE Union Pacific Railroad, 231 (south of the Union Pacific Railroad) and all of Parcels 217, 218, 219, 220, 221, 314 and 315 as per the Exhibit A. Parcel B includes Parcels 401, 402, 404, 406, 407, 408, 409, 410, 411, 414 (north of Fabyan Parkway), and 416 as per the Exhibit A. Parcel C includes Parcels 412, 413, and 414 (south of Fabyan Parkway) as per the Exhibit A. Following is a legal description of the property (located in DuPage County, Illinois, and described as follows:

Parcel A

THAT PART OF SECTION'S 7, 8, 17 AND 18 IN TOWNSHIP 39 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN IN DUPAGE COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS: BEGINNING AT THE FOUND CAST IRON MONUMENT MARKING THE WEST QUARTER CORNER OF SAID SECTION 18, PER DOCUMENT NO. 1633400, RECORDED MARCH 23, 1983 IN KANE COUNTY, ILLINOIS; THENCE EASTERLY ALONG THE EAST—WEST CENTERLINE OF SAID SECTION 18, HAVING AN ILLINOIS EAST ZONE GRID BEARING OF NORTH 89 DEGREES 06 MINUTES 02 SECONDS EAST 1959.41 FEET (1950.30 RECORD), ALONG SAID EAST—WEST CENTERLINE, SAID LINE ALSO BEING THE NORTHERLY LINE OF BATAVIA BUSINESS PARK SUBDIVISION RECORDED JUNE 30, 2000 AS DOCUMENT NO. R2000–099708, AND THE NORTHERLY LINE OF THE LANDS OF THE UNITED STATES ATOMIC ENERGY COMMISSION (A.K.A. FERMILAB) AS DESCRIBED BY DOCUMENT NO. R69–12012 RECORDED MARCH 21, 1969, TO A FOUND REBAR IN CONCRETE; THENCE NORTH 00 DEGREES 46 MINUTES 59 SECONDS EAST 227.53 FEET (227.38 RECORD) ALONG A DIVISION LINE DESCRIBED BY SAID DOCUMENT NO. R69–12012, TO A FOUND REBAR IN CONCRETE; THENCE NORTH 64 DEGREES 57 MINUTES 04 SECONDS EAST 4704.36 FEET, ALONG SAID NORTHERLY LINE OF THE UNITED STATES ATOMIC ENERGY COMMISSION (A.K.A. FERMILAB) SAID NORTHERLY LINE, ALSO BEING DESCRIBED BY DOCUMENT NO. R69–15549 RECORDED APRIL 14, 1969, TO A POINT ON THE WESTERLY LINE OF PARCEL 2 IN RAY W. McDONALD CANTERBURY ASSESSMENT PLAT, ACCORDING TO THE PLAT THEREOF RECORDED FEBRUARY 10, 1978 AS DOCUMENT NO. R78–12409; THENCE NORTH 00 DEGREES 00 MINUTES 58 SECONDS WEST 725.08 FEET, ALONG SAID WESTERLY LINE TO A POINT ON THE SOUTHERLY RIGHT OF WAY LINE OF FABYAN PARKWAY (A.K.A. BARTON ROAD AND DUPAGE COUNTY HIGHWAY 21) AS CONDEMNED BY DOCUMENT NO'S. 70J–3066 AND 70J–3009; THENCE WESTERLY ALONG SAID RIGHT OF WAY LINE, BEING A TANGENTIAL CURVE CONCAVE TO THE NORTHWEST, RADIUS 1492.40 FEET, CENTRAL ANGLE 34 DEGREES 02 MINUTES 34 SECONDS, 886.72 FEET, THE CENTER OF SAID CIRCLE BEARS NORTH 39 DEGREES 25 MINUTES 37 SECONDS WEST (THE CHORD BEARS SOUTH 67 DEGREES 35 MINUTES 40 SECONDS WEST 873.73 FEET); THENCE SOUTH 85 DEGREES 47 MINUTES 23 SECONDS WEST 244.90 FEET (245.09 RECORD) ALONG SAID RIGHT OF WAY LINE, SAID COURSE BEING A LINE NON TANGENT TO SAID CURVE; THENCE NORTH 86 DEGREES 13 MINUTES 26 SECONDS WEST 246.10 FEET, ALONG SAID RIGHT OF WAY LINE TO A POINT ON THE CENTERLINE OF McCHESNEY ROAD, BEING ORIGINALLY DEDICATED APRIL 30, 1842, IN BOOK "A" PAGE 128 OF THE WINFIELD TOWNSHIP ROAD RECORDS (NOW VACATED PER DOCUMENT NO. R95–177561, RECORDED DECEMBER 15, 1995); THENCE NORTH 07 DEGREES 36 MINUTES 07 SECONDS WEST 25.45 FEET, ALONG SAID CENTERLINE, SAID CENTERLINE ALSO, BEING THE SAID RIGHT OF WAY LINE; THENCE NORTH 85 DEGREES 57 MINUTES 05 SECONDS WEST 3213.47 FEET, ALONG SAID RIGHT OF WAY LINE, BEING ALSO, DEDICATED AND DESCRIBED BY DOCUMENT NO. R70–33932 RECORDED SEPTEMBER 21, 1970 AND BY CONDEMNATION CASE FILED AS C70–1716 IN THE DUPAGE CIRCUIT COURT, TO A POINT ON A 9499.31 FEET RADIUS CURVE, THE CENTER OF SAID BEARS SOUTH 03 DEGREES 38 MINUTES 59 SECONDS WEST FROM SAID POINT; THENCE WESTERLY ALONG SAID CURVE AND RIGHT OF WAY LINE, 615.71 FEET, CENTRAL ANGLE 03 DEGREES 42 MINUTES 49 SECONDS (THE CHORD BEARS NORTH 88 DEGREES 12 MINUTES 25 SECONDS WEST 615.60 FEET); THENCE NORTH 89 DEGREES 44 MINUTES 38 SECONDS WEST ALONG SAID RIGHT OF WAY LINE, BEING A LINE NON TANGENT TO SAID CURVE 1103.02 FEET (1102.96 RECORD), TO A POINT ON THE WEST LINE SOUTHWEST QUARTER OF SAID SECTION 7; THENCE SOUTH 00 DEGREES 19 MINUTES 53 SECONDS WEST 279.64 FEET, ALONG SAID WEST LINE AND THE WEST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 18 TO A CAST IRON MONUMENT MARKING THE NORTHEAST CORNER OF THE NORTHEAST QUARTER OF SECTION 13, TOWNSHIP 39 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN IN KANE COUNTY, ILLINOIS, PER DOCUMENT NO. S–84–45 RECORDED SEPTEMBER 10, 1984 IN DUPAGE COUNTY, ILLINOIS; THENCE SOUTH 00 DEGREES 03 MINUTES 04 SECONDS EAST 2636.99 FEET, ALONG SAID WEST LINE OF THE NORTHWEST QUARTER, TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM DUPAGE NATIONAL TECHNOLOGY PARK—SOUTH ASSESSMENT PLAT LOT 2, BEING PART OF THE SOUTHWEST QUARTER OF SECTION 7 AND THE NORTH HALF OF SECTION 18, ALL IN TOWNSHIP 39 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 10, 2007 AS DOCUMENT NUMBER R2007–184627, IN DUPAGE COUNTY, ILLINOIS.

ALSO EXCEPTING,

THAT PART OF SECTION'S 8, 17 AND 18 IN TOWNSHIP 39 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN IN DUPAGE COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS: COMMENCING AT THE FOUND CAST IRON MONUMENT MARKING THE WEST QUARTER CORNER OF SAID SECTION 18, PER DOCUMENT NO. 1633400, RECORDED MARCH 23, 1983 IN KANE COUNTY, ILLINOIS; THENCE EASTERLY ALONG THE EAST—WEST CENTERLINE OF SAID SECTION 18, HAVING AN ILLINOIS EAST ZONE GRID BEARING OF NORTH 89 DEGREES 06 MINUTES 02 SECONDS EAST 1959.41 FEET (1950.30 RECORD), ALONG SAID EAST—WEST CENTERLINE, SAID LINE ALSO BEING THE NORTHERLY LINE OF

BATAVIA BUSINESS PARK SUBDIVISION RECORDED JUNE 30, 2000 AS DOCUMENT NO. R2000–099708, AND THE NORTHERLY LINE OF THE LANDS OF THE UNITED STATES ATOMIC ENERGY COMMISSION (A.K.A. FERMILAB) AS DESCRIBED BY DOCUMENT NO. R69–12012 RECORDED MARCH 21, 1969, TO A FOUND REBAR IN CONCRETE; THENCE NORTH 00 DEGREES 46 MINUTES 59 SECONDS EAST 227.53 FEET (227.38 RECORD) ALONG A DIVISION LINE DESCRIBED BY SAID DOCUMENT NO. R69–12012, TO A FOUND REBAR IN CONCRETE; THENCE NORTH 64 DEGREES 57 MINUTES 04 SECONDS EAST 1493.07 FEET, ALONG SAID NORTHERLY LINE OF THE UNITED STATES ATOMIC ENERGY COMMISSION (A.K.A. FERMILAB) SAID NORTHERLY LINE, ALSO, BEING DESCRIBED BY DOCUMENT NO. R69–15549 RECORDED APRIL 14, 1969 TO THE SOUTHEASTERLY CORNER OF DUPAGE NATIONAL TECHNOLOGY PARK—SOUTH ASSESSMENT PLAT LOT 2, BEING PART OF THE SOUTHWEST QUARTER OF SECTION 7 AND THE NORTH HALF OF SECTION 18, ALL IN TOWNSHIP 39 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 10, 2007 AS DOCUMENT NUMBER R2007–184627, SAID SOUTHEASTERLY CORNER BEING THE POINT OF BEGINNING; THENCE CONTINUING NORTH 64 DEGREES 57 MINUTES 04 SECONDS EAST 3211.29 FEET, ALONG SAID NORTHERLY LINE TO A POINT ON THE WESTERLY LINE OF PARCEL 2 IN RAY W. McDONALD CANTERBURY ASSESSMENT PLAT, ACCORDING TO THE PLAT THEREOF RECORDED FEBRUARY 10, 1978 AS DOCUMENT NO. R78–12409; THENCE NORTH 00 DEGREES 00 MINUTES 58 SECONDS WEST 725.08 FEET, ALONG SAID WESTERLY LINE TO A POINT ON THE SOUTHERLY RIGHT OF WAY LINE OF FABYAN PARKWAY (A.K.A. BARTON ROAD AND DUPAGE COUNTY HIGHWAY 21) AS CONDEMNED BY DOCUMENT NO'S. 70J–3066 AND 70J–3009; THENCE WESTERLY ALONG SAID RIGHT OF WAY LINE, BEING A TANGENTIAL CURVE CONCAVE TO THE NORTHWEST, RADIUS 1492.40 FEET, CENTRAL ANGLE 34 DEGREES 02 MINUTES 34 SECONDS, 886.72 FEET, THE CENTER OF SAID CIRCLE BEARS NORTH 39 DEGREES 25 MINUTES 37 SECONDS WEST (THE CHORD BEARS SOUTH 67 DEGREES 35 MINUTES 40 SECONDS WEST 873.73 FEET); THENCE SOUTH 85 DEGREES 47 MINUTES 23 SECONDS WEST 244.90 FEET (245.09 RECORD) ALONG SAID RIGHT OF WAY LINE, SAID COURSE BEING A LINE NON TANGENT TO SAID CURVE; THENCE NORTH 86 DEGREES 13 MINUTES 26 SECONDS WEST 246.10 FEET, ALONG SAID RIGHT OF WAY LINE TO A POINT ON THE CENTERLINE OF McCHESNEY ROAD, BEING ORIGINALLY DEDICATED APRIL 30, 1842, IN BOOK ''A'' PAGE 128 OF THE WINFIELD TOWNSHIP ROAD RECORDS (NOW VACATED PER DOCUMENT NO. R95–177561, RECORDED DECEMBER 15, 1995); THENCE SOUTH 07 DEGREES 36 MINUTES 07 SECONDS EAST 189.47 FEET, ALONG SAID CENTERLINE; THENCE NORTH 84 DEGREES 53 MINUTES 25 SECONDS WEST 1149.25 FEET; THENCE SOUTH 69 DEGREES 29 MINUTES 24 SECONDS WEST 237.26 FEET; THENCE NORTH 88 DEGREES 03 MINUTES 16 SECONDS WEST 923.49 FEET; THENCE SOUTH 09 DEGREES 07 MINUTES 39 SECONDS WEST 68.87 FEET TO A POINT ON THE NORTHERLY LINE OF SAID DUPAGE NATIONAL TECHNOLOGY PARK—SOUTH ASSESSMENT PLAT LOT 2, SAID NORTHERLY LINE BEING A 2184.40 FEET RADIUS CURVE, CONCAVE SOUTHERLY; THENCE EASTERLY ALONG SAID NORTHERLY LINE AN ARC DISTANCE OF 64.21 FEET (THE CHORD BEARS NORTH 89 DEGREES 03 MINUTES 59 SECONDS EAST 64.21 FEET) TO THE NORTHEASTERLY CORNER OF SAID DUPAGE NATIONAL TECHNOLOGY PARK—SOUTH ASSESSMENT PLAT LOT 2; THENCE SOUTHERLY ALONG THE EASTERLY LINE OF SAID DUPAGE NATIONAL TECHNOLOGY PARK—SOUTH ASSESSMENT PLAT LOT 2, BEING A 1295.98 FEET RADIUS CURVE, CONCAVE EASTERLY AN ARC DISTANCE OF 322.53 FEET (THE CHORD BEARS SOUTH 10 DEGREES 33 MINUTES 16 SECONDS WEST 321.70 FEET); THENCE SOUTH 08 DEGREES 59 MINUTES 17 SECONDS WEST 210.74 FEET ALONG SAID EASTERLY LINE TO A POINT ON A 2262.61 FEET RADIUS CURVE, CONCAVE EASTERLY, SAID CURVE BEING SAID EASTERLY LINE; THENCE SOUTHERLY ALONG SAID EASTERLY LINE AN ARC DISTANCE OF 1254.97 FEET (THE CHORD BEARS SOUTH 34 DEGREES 27 MINUTES 05 SECONDS EAST 1238.95 FEET) TO THE POINT OF BEGINNING.

Said Parcel contains 148.4 acres, more or less.

Parcel B

THAT PART OF SECTION 7 AND 8 IN TOWNSHIP 39 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN IN DUPAGE COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS: BEGINNING AT THE FOUND CAST IRON MONUMENT MARKING THE EAST QUARTER CORNER OF SECTION 12, TOWNSHIP 39 NORTH, RANGE 8, EAST OF THE THIRD PRINCIPAL MERIDIAN IN KANE COUNTY, ILLINOIS, PER DOCUMENT NO. 1633402, RECORDED MARCH 23, 1983 IN KANE COUNTY, ILLINOIS; THENCE NORTHERLY ALONG THE WEST LINE OF SAID SECTION 7, HAVING A ILLINOIS EAST ZONE GRID BEARING OF NORTH 00 DEGREES 02 MINUTES 50 SECONDS EAST 1871.87 FEET ALONG SAID WEST LINE TO A POINT ON THE SOUTHERLY RIGHT OF WAY LINE OF THE CHICAGO AND NORTHWESTERN RAILROAD; THENCE NORTH 88 DEGREES 49 MINUTES 28 SECONDS EAST 313.31 FEET, TO A POINT ON THE SOUTHERLY RIGHT OF WAY LINE OF ROOSEVELT ROAD (A.K.A. IL. ROUTE 38 AND U.S. HIGHWAY 330) AS DEDICATED AND DESCRIBED BY DOCUMENT NO. 830737, RECORDED JANUARY 25, 1957; THENCE SOUTH 76 DEGREES 14 MINUTES 43 SECONDS EAST 747.67 FEET, ALONG SAID SOUTHERLY RIGHT OF WAY LINE OF ROOSEVELT ROAD; THENCE NORTH 13 DEGREES 45 MINUTES 17 SECONDS EAST 20.00 FEET, ALONG SAID RIGHT OF WAY LINE; THENCE SOUTH 76 DEGREES 14 MINUTES 43 SECONDS EAST 344.98 FEET, ALONG SAID RIGHT OF WAY LINE; THENCE SOUTH 13 DEGREES 45 MINUTES 17 SECONDS WEST 15.00 FEET, ALONG SAID RIGHT OF WAY LINE; THENCE SOUTH 76 DEGREES 14 MINUTES 43 SECONDS EAST 389.53 FEET, ALONG SAID RIGHT OF WAY LINE; THENCE SOUTH 00 DEGREES 01 MINUTES 39 SECONDS WEST 5.15 FEET, ALONG SAID RIGHT OF WAY LINE; THENCE SOUTH 76 DEGREES 14 MINUTES 43 SECONDS EAST 364.77 FEET, ALONG THE SOUTHERLY RIGHT OF WAY LINE OF SAID ROOSEVELT ROAD, AS DESCRIBED BY DOCUMENT NO. R88–32025 RECORDED APRIL 4, 1988 TO A POINT ON A 9350.88 FEET RADIUS CURVE, THE CENTER OF SAID BEARS SOUTH 13 DEGREES 42 MINUTES 56 SECONDS WEST FROM SAID POINT; THENCE EASTERLY ALONG SAID CURVE AND RIGHT OF WAY LINE, 723.44 FEET, CENTRAL ANGLE 04 DEGREES 25 MINUTES 58 SECONDS (THE CHORD BEARS SOUTH 74 DEGREES 04 MINUTES 05 SECONDS EAST 723.26 FEET) TO A FOUND IRON PIPE; THENCE SOUTH 71 DEGREES 51 MINUTES 06 SECONDS EAST ALONG SAID RIGHT OF WAY LINE NOT TANGENT TO SAID CURVE 1494.71 FEET, TO THE NORTHWEST CORNER OF LOT 1 IN R.J. SUBDIVISION, ACCORDING TO THE PLAT THEREOF RECORDED FEBRUARY 22, 1996 AS DOCUMENT NO. R96–27892, SAID NORTHWEST CORNER BEING A POINT ON THE EAST LINE OF LOT 3 IN CLARENCE ROLLAND'S ASSESSMENT PLAT, ACCORDING TO THE PLAT THEREOF RECORDED FEBRUARY 03, 1947 AS DOCUMENT NO. 515097; THENCE SOUTH 06 DEGREES 00 MINUTES 06 SECONDS WEST 545.52 FEET, ALONG THE WEST LINE OF SAID LOT 1 TO THE SOUTHWEST CORNER OF SAID LOT 1, SAID SOUTHWEST CORNER BEING A POINT ON THE SOUTHERLY LINE OF SAID R.J. SUBDIVISION, CLARENCE ROLLAND'S ASSESSMENT PLAT AND ALSO, BEING THE NORTHERLY LINE OF TRACT 1 IN HATTENDORF'S PLAT OF SURVEY, ACCORDING TO THE PLAT THEREOF RECORDED MARCH 30, 1964 AS DOCUMENT NO. R64–10011; THENCE SOUTH 87 DEGREES 05 MINUTES 44 SECONDS EAST 744.73 FEET, ALONG SAID SOUTHERLY LINE TO THE SOUTHEASTERLY CORNER OF LOT 1 IN SAID CLARENCE ROLLAND'S ASSESSMENT PLAT, SAID SOUTHEASTERLY CORNER BEING ALSO, BEING THE SOUTHWESTERLY CORNER OF LOT 2 IN KAELIN'S ASSESSMENT PLAT, ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 17, 1958 AS DOCUMENT NO. 895011 AND THE NORTHWESTERLY CORNER OF LOT 1 IN HAFFEY'S ASSESSMENT PLAT ACCORDING TO THE PLAT THEREOF RECORDED AUGUST 10, 1966 AS DOCUMENT NO. R66–31487; THENCE NORTH 06 DEGREES 04 MINUTES 07 SECONDS EAST 187.14 FEET, ALONG THE

WESTERLY LINE OF LOT 2 IN SAID KAELIN'S ASSESSMENT PLAT, SAID WESTERLY LINE ALSO, BEING THE EASTERLY LINE OF LOT 1 IN SAID CLARENCE ROLLAND'S ASSESSMENT PLAT, TO THE NORTHWESTERLY CORNER OF SAID LOT 2; THENCE SOUTH 80 DEGREES 24 MINUTES 36 SECONDS EAST 33.06 FEET, ALONG THE NORTHERLY LINE OF SAID LOT 2, TO A POINT ON THE EASTERLY RIGHT OF WAY LINE OF KRESS ROAD, AS DEDICATED BY SAID DOCUMENT NO. 895011, SAID EASTERLY LINE ALSO, BEING THE WESTERLY LINE OF LOT 1 IN SAID KAELIN'S ASSESSMENT PLAT; THENCE NORTH 06 DEGREES 04 MINUTES 07 SECONDS EAST 163.19 FEET, ALONG SAID EASTERLY RIGHT OF WAY LINE TO A POINT ON THE SOUTHERLY RIGHT OF WAY LINE OF ROOSEVELT ROAD AS DEDICATED AND DESCRIBED BY DOCUMENT NO.314776, RECORDED JULY 10, 1931, SAID SOUTHERLY RIGHT OF WAY LINE ALSO, BEING THE NORTHERLY LINE OF SAID LOT 1 AND THE NORTHERLY LINE OF LOT 1 IN A.J. FREY'S PLAT OF SURVEY, ACCORDING TO THE PLAT THEREOF RECORDED JULY 29, 1948 AS DOCUMENT NO. 548319; THENCE SOUTH 71 DEGREES 51 MINUTES 06 MINUTES EAST 498.48 FEET, ALONG SAID SOUTHERLY RIGHT OF WAY LINE; THENCE SOUTHEASTERLY ALONG A TANGENTIAL CURVE CONCAVE TO THE NORTH, RADIUS 12,782.43 FEET, CENTRAL ANGLE 00 DEGREES 16 MINUTES 40 SECONDS, 61.97 FEET (THE CHORD BEARS SOUTH 71 DEGREES 59 MINUTES 26 SECONDS EAST 61.97 FEET) TO A POINT ON THE WESTERLY RIGHT OF WAY LINE OF McCHESNEY ROAD, BEING A ROAD 4 RODS (66.00 FEET) WIDE AS ORIGINALLY DEDICATED APRIL 30, 1842, IN BOOK ''A'' PAGE 128 OF THE WINFIELD TOWNSHIP ROAD RECORDS, SAID WESTERLY LINE ALSO, BEING THE EASTERLY LINE OF SAID LOT 1 OF A.J. FREY'S PLAT OF SURVEY; THENCE SOUTH 22 DEGREES 22 MINUTES 51 SECONDS WEST 213.13 FEET (220.35 RECORD), ALONG SAID WESTERLY RIGHT OF WAY LINE TO THE SOUTHEASTERLY CORNER OF SAID LOT 1, SAID SOUTHEASTERLY CORNER BEING A POINT ON THE NORTHERLY LINE OF SAID HAFFEY'S ASSESSMENT PLAT; THENCE NORTH 86 DEGREES 51 MINUTES 13 SECONDS WEST 18.01 FEET, ALONG SAID NORTHERLY LINE TO A POINT ON THE WESTERLY RIGHT OF WAY LINE OF AS DEDICATED BY SAID DOCUMENT NO. R66–31487; THENCE SOUTH 22 DEGREES 22 MINUTES 51 SECONDS WEST 191.07 FEET, ALONG SAID RIGHT OF WAY LINE, TO A POINT ON THE SOUTHERLY LINE OF SAID HAFFEY'S ASSESSMENT PLAT; THENCE SOUTH 86 DEGREES 47 MINUTES 58 SECONDS EAST 18.00 FEET, ALONG SAID SOUTHERLY LINE, TO A POINT ON THE WESTERLY RIGHT OF WAY LINE OF SAID ORIGINAL McCHESNEY ROAD; THENCE SOUTH 22 DEGREES 22 MINUTES 51 SECONDS WEST 441.65 FEET, ALONG SAID RIGHT OF WAY LINE TO THE NORTHWESTERLY CORNER OF VACATED McCHESNEY ROAD, PER DOCUMENT NO. R95–177561, RECORDED DECEMBER 15, 1995; THENCE SOUTH 67 DEGREES 37 MINUTES 09 SECONDS EAST 33.00 FEET, ALONG THE NORTHERLY LINE OF SAID VACATED McCHESNEY ROAD, TO A POINT ON THE CENTERLINE OF SAID ORIGINAL McCHESNEY ROAD; THENCE NORTH 89 DEGREES 59 MINUTES 02 SECONDS EAST 987.34 FEET (985.04 RECORD) ALONG THE NORTH LINE OF PARCEL ''E–2'' AS DESCRIBED AND PLATTED BY DOCUMENT NO. R88–008915, RECORDED JANUARY 26, 1988, TO THE WESTERLY LINE OF PARCEL 4 IN RAY W. McDONALD CANTERBURY ASSESSMENT PLAT, ACCORDING TO THE PLAT THEREOF RECORDED FEBRUARY 10, 1978 AS DOCUMENT NO. R78–12409; THENCE SOUTH 00 DEGREES 00 MINUTES 58 SECONDS EAST 1705.71 FEET TO A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF FABYAN PARKWAY (A.K.A. BARTON ROAD AND DUPAGE COUNTY HIGHWAY 21) AS CONDEMNED BY DOCUMENT NO'S. 70J–3066 AND 70J–3009; THENCE WESTERLY ALONG SAID RIGHT OF WAY LINE, BEING A TANGENTIAL CURVE CONCAVE TO THE NORTHWEST, RADIUS 1372.40 FEET, CENTRAL ANGLE 38 DEGREES 17 MINUTES 20 SECONDS, 917.13 FEET, THE CENTER OF SAID CIRCLE BEARS NORTH 43 DEGREES 40 MINUTES 37 SECONDS WEST (THE CHORD BEARS SOUTH 65 DEGREES 28 MINUTES 03 SECONDS WEST 900.16 FEET); THENCE NORTH 86 DEGREES 52 MINUTES 07 SECONDS WEST 223.03 FEET (222.92 RECORD) ALONG SAID RIGHT OF WAY LINE, SAID COURSE BEING A LINE NON TANGENT TO SAID CURVE; THENCE NORTH 86 DEGREES 13 MINUTES 26 SECONDS WEST 231.70 FEET, ALONG SAID RIGHT OF WAY LINE TO A POINT ON THE EASTERLY RIGHT OF WAY LINE OF SAID ORIGINAL McCHESNEY ROAD; THENCE NORTH 01 DEGREES 26 MINUTES 47 SECONDS EAST 122.13 FEET, ALONG SAID EASTERLY RIGHT OF WAY LINE TO THE SOUTHEASTERLY CORNER OF SAID VACATED McCHESNEY ROAD; THENCE NORTH 88 DEGREES 33 MINUTES 13 SECONDS WEST 66.00 FEET, ALONG THE SOUTHERLY LINE OF SAID VACATED McCHESNEY ROAD, TO A POINT ON THE WESTERLY RIGHT OF WAY LINE OF SAID ORIGINAL McCHESNEY ROAD; THENCE SOUTH 01 DEGREES 26 MINUTES 47 SECONDS WEST 144.30 FEET, TO A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF FABYAN PARKWAY AS DEDICATED AND DESCRIBED BY DOCUMENT NO. R71–28358 RECORDED JUNE 23, 1971; THENCE NORTH 85 DEGREES 57 MINUTES 05 SECONDS WEST 2770.99 FEET, ALONG SAID NORTHERLY RIGHT OF WAY LINE, ALSO BEING DEDICATED AND DESCRIBED BY DOCUMENT NO. R71–28360 RECORDED JUNE 23, 1971, DOCUMENT NO. R71–27774 RECORDED JUNE 21, 1971 AND DOCUMENT NO. R70–24257 RECORDED JULY 17, 1970, TO A POINT ON THE EASTERLY LINE OF LOT 2 IN HAFFEY'S PLAT OF SURVEY ACCORDING TO THE PLAT THEREOF RECORDED AS DOCUMENT NO. 601320; THENCE NORTH 86 DEGREES 24 MINUTES 12 SECONDS WEST 488.08 FEET, ALONG THE NORTHERLY RIGHT OF WAY LINE OF FABYAN PARKWAY, AS DEDICATED AND DESCRIBED BY DOCUMENT NO. R70–33933, RECORDED SEPTEMBER 21, 1970, TO A POINT ON THE WESTERLY LINE OF SAID LOT 2, SAID POINT ALSO, BEING THE SOUTHEASTERLY CORNER OF LOT 3 IN PAYTON'S SUBDIVISION, ACCORDING TO THE PLAT THEREOF RECORDED JANUARY 21, 1959 AS DOCUMENT NO. 909951; THENCE NORTH 85 DEGREES 39 MINUTES 52 SECONDS WEST 873.89 FEET, ALONG THE SOUTHERLY LINE OF SAID PAYTON'S SUBDIVISION, SAID SOUTHERLY LINE ALSO, BEING THE ORIGINAL NORTHERLY RIGHT OF WAY LINE OF BARTON ROAD AS DEDICATED MARCH 19, 1851 IN THE WINFIELD TOWNSHIP BOOK OF ROAD RECORDS, SAID NORTHERLY RIGHT OF WAY LINE BEING DEDICATED AND DESCRIBED BY DOCUMENT NO. R71–28359, RECORDED JUNE 23, 1971; THENCE SOUTH 85 DEGREES 12 MINUTES 58 SECONDS WEST 542.06 FEET, ALONG SAID NORTHERLY RIGHT OF WAY LINE; THENCE NORTH 89 DEGREES 44 MINUTES 38 SECONDS WEST 87.00 FEET, TO A POINT ON A LINE 135.00 FEET EAST OF AND PARALLEL TO THE WEST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 7; THENCE NORTH 00 DEGREES 19 MINUTES 53 SECONDS EAST 799.82 FEET (799.84 RECORD), ALONG SAID PARALLEL LINE; THENCE NORTH 89 DEGREES 40 MINUTES 07 SECONDS WEST 135.00 FEET, TO A POINT ON THE WEST LINE OF SAID SOUTHWEST QUARTER; THENCE NORTH 00 DEGREES 19 MINUTES 53 SECONDS EAST 1455.98 FEET (1456.15 RECORD), ALONG SAID WEST LINE, TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM DUPAGE NATIONAL TECHNOLOGY PARK—NORTH ASSESSMENT PLAT LOT 3, BEING PART OF THE NORTHWEST QUARTER OF SECTION 7, TOWNSHIP 39 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 10, 2007 AS DOCUMENT NUMBER R2007–184625; EXCEPT THAT PART LYING NORTH OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE NORTHWEST CORNER OF SAID LOT 3; THENCE SOUTH 00 DEGREES 18 MINUTES 30 SECONDS WEST (BEING AN ASSUMED BEARING) ALONG THE WEST LINE OF SAID LOT 3 A DISTANCE OF 48.91 FEET, TO THE POINT OF BEGINNING; THENCE SOUTH 79 DEGREES 44 MINUTES 05 SECONDS EAST, TO A POINT ON THE EAST LINE OF SAID LOT 3 ALSO BEING THE WEST LINE OF TECHNOLOGY BOULEVARD DEDICATED PER DOCUMENT NUMBER R2007–131936, SAID POINT LYING 13.17 FEET SOUTH OF THE POINT OF COMPOUND CURVATURE OF SAID TECHNOLOGY BOULEVARD; SAID POINT ALSO BEING THE POINT OF TERMINUS, IN DUPAGE COUNTY, ILLINOIS.

ALSO EXCEPTING, DUPAGE NATIONAL TECHNOLOGY PARK—NORTH ASSESSMENT PLAT LOT 4, BEING PART OF THE EAST HALF OF SECTION 7, TOWNSHIP 39 NORTH, RANGE 9 EAST OF

THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 10, 2007 AS DOCUMENT NUMBER R2007–184624, IN DUPAGE COUNTY, ILLINOIS.

ALSO EXCEPTING, DUPAGE NATIONAL TECHNOLOGY PARK—NORTH ASSESSMENT PLAT LOT 5, BEING PART OF THE SOUTHEAST QUARTER OF SECTION 7, TOWNSHIP 39 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 10, 2007 AS DOCUMENT NUMBER R2007–184620, IN DUPAGE COUNTY, ILLINOIS.

ALSO EXCEPTING, DUPAGE NATIONAL TECHNOLOGY PARK—NORTH ASSESSMENT PLAT LOT 6, BEING PART OF THE WEST HALF OF SECTION 7, TOWNSHIP 39 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 10, 2007 AS DOCUMENT NUMBER R2007–184621, IN DUPAGE COUNTY, ILLINOIS.

ALSO EXCEPTING, DUPAGE NATIONAL TECHNOLOGY PARK—NORTH ASSESSMENT PLAT LOT 7, BEING PART OF THE SOUTHWEST QUARTER OF SECTION 7, TOWNSHIP 39 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 10, 2007 AS DOCUMENT NUMBER R2007–184622, IN DUPAGE COUNTY, ILLINOIS.

ALSO EXCEPTING, DUPAGE NATIONAL TECHNOLOGY PARK—NORTH ASSESSMENT PLAT LOT 8, BEING PART OF THE SOUTHWEST QUARTER OF SECTION 7, TOWNSHIP 39 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 10, 2007 AS DOCUMENT NUMBER R2007–184626, IN DUPAGE COUNTY, ILLINOIS.

ALSO EXCEPTING, DUPAGE NATIONAL TECHNOLOGY PARK—NORTH ASSESSMENT PLAT LOT 9, BEING PART OF THE SOUTHWEST QUARTER OF SECTION 7, TOWNSHIP 39 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 10, 2007 AS DOCUMENT NUMBER R2007–184623, IN DUPAGE COUNTY, ILLINOIS.

Said Parcel contains 401.9 acres, more or less.

Parcel C

THAT PART OF SECTION 7 IN TOWNSHIP 39 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN IN DUPAGE COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS: COMMENCING AT THE FOUND CAST IRON MONUMENT MARKING THE NORTHEAST CORNER OF SECTION 12, TOWNSHIP 39 NORTH, RANGE 8, EAST OF THE THIRD PRINCIPAL MERIDIAN IN KANE COUNTY, ILLINOIS, PER DOCUMENT NO. S–84–41, RECORDED SEPTEMBER, 10 1984 IN DUPAGE COUNTY, ILLINOIS; THENCE SOUTHERLY ALONG THE WEST LINE OF THE OF SAID SECTION 7, HAVING A ILLINOIS EAST ZONE GRID BEARING OF SOUTH 00 DEGREES 02 MINUTES 50 SECONDS WEST 781.46 FEET ALONG SAID WEST LINE TO A POINT ON THE SOUTHERLY RIGHT OF WAY LINE OF THE CHICAGO AND NORTHWESTERN RAILROAD; THENCE NORTH 88 DEGREES 49 MINUTES 28 SECONDS EAST 779.06 FEET ALONG SAID SOUTHERLY RIGHT OF WAY LINE, TO A POINT OF INTERSECTION WITH THE NORTHERLY RIGHT OF WAY LINE OF ROOSEVELT ROAD (A.K.A. IL. ROUTE 38 AND U.S. HIGHWAY 330) AS DEDICATED AND DESCRIBED BY DOCUMENT NO. 830737, RECORDED JANUARY 25, 1957, SAID POINT BEING THE POINT OF BEGINNING; THENCE NORTH 88 DEGREES 49 MINUTES 28 SECONDS EAST 4020.55 FEET, ALONG SAID SOUTHERLY RIGHT OF WAY LINE OF THE CHICAGO AND NORTHWESTERN RAILROAD, TO A POINT ON THE WESTERLY RIGHT OF WAY LINE OF KRESS ROAD (A.K.A. DUPAGE COUNTY HIGHWAY 18) AS DEDICATED AND DESCRIBED BY DOCUMENT NO. R96–086069 RECORDED MAY 23, 1996; THENCE SOUTH 06 DEGREES 07 MINUTES 54 SECONDS WEST 116.44 FEET, ALONG SAID WESTERLY RIGHT OF WAY LINE; THENCE SOUTH 01 DEGREES 26 MINUTES 36 SECONDS EAST 770.37 FEET, ALONG SAID RIGHT OF WAY LINE; THENCE SOUTH 10 DEGREES 13 MINUTES 33 SECONDS EAST 352.37 FEET, ALONG SAID RIGHT OF WAY LINE; THENCE SOUTH 57 DEGREES 16 MINUTES 33 SECONDS WEST 58.42 FEET (57.25 RECORD), ALONG SAID RIGHT OF WAY LINE, TO A POINT ON THE NORTHERLY LINE OF ROOSEVELT ROAD AS DEDICATED AND DESCRIBED BY DOCUMENT NO. R81–54590, RECORDED OCTOBER 7, 1981; THENCE NORTH 71 DEGREES 51 MINUTES 06 SECONDS WEST 1988.83 FEET, ALONG SAID NORTHERLY RIGHT OF WAY LINE, ALSO, BEING DEDICATED AND DESCRIBED BY DOCUMENT NO. R82–20391 RECORDED MAY 21, 1982, TO A POINT ON THE WESTERLY LINE OF BALAMENTI'S CONSOLIDATION PLAT, ACCORDING TO THE PLAT THEREOF RECORDED APRIL 23, 1958 AS DOCUMENT NO. 877324; THENCE SOUTH 12 DEGREES 22 MINUTES 16 SECONDS WEST 42.96 FEET, ALONG SAID WESTERLY LINE, TO A POINT ON THE ORIGINAL CENTERLINE OF ROOSEVELT ROAD; THENCE NORTH 72 DEGREES 07 MINUTES 12 SECONDS WEST 432.49 FEET, ALONG SAID CENTERLINE TO A POINT ON THE EASTERLY LINE OF HAFFEY'S SUBDIVISION, ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 24, 1966 AS DOCUMENT NO. R66–42232; THENCE NORTH 00 DEGREES 26 MINUTES 12 SECONDS EAST 29.90 FEET, ALONG SAID EASTERLY LINE TO THE SOUTHEAST CORNER OF LOT 1 IN SAID HAFFEY'S SUBDIVISION, SAID SOUTHEAST CORNER ALSO, BEING A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF ROOSEVELT ROAD, SAID POINT BEING ON A 9460.88 FEET RADIUS CURVE, THE CENTER OF SAID BEARS SOUTH 16 DEGREES 03 MINUTES 35 SECONDS WEST FROM SAID POINT; THENCE WESTERLY ALONG SAID CURVE AND RIGHT OF WAY LINE, 200.50 FEET, CENTRAL ANGLE 01 DEGREES 12 MINUTES 51 SECONDS (THE CHORD BEARS NORTH 74 DEGREES 32 MINUTES 51 SECONDS WEST 200.50 FEET), TO A POINT ON THE WESTERLY LINE OF SAID LOT 1; THENCE NORTH 00 DEGREES 25 MINUTES 08 SECONDS EAST 10.67 FEET, ALONG SAID WESTERLY LINE, SAID WESTERLY LINE BEING A NON RADIAL LINE TO SAID CURVE, TO A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF ROOSEVELT ROAD AS DEDICATED AND DESCRIBED BY DOCUMENT NO. R81–54588 RECORDED OCTOBER 7, 1981; THENCE WESTERLY ALONG SAID NORTHERLY RIGHT OF WAY LINE BEING A CURVE 10.00 FEET NORTHERLY OF AND PARALLEL TO THE LAST DESCRIBED CURVE, RADIUS 9470.88 FEET, 184.09 FEET (THE CHORD BEARS NORTH 75 DEGREES 43 MINUTES 37 SECONDS WEST 184.09); THENCE NORTH 76 DEGREES 14 MINUTES 43 SECONDS WEST 1398.13 FEET, ALONG SAID NORTHERLY RIGHT OF WAY LINE OF ROOSEVELT ROAD, BEING A LINE NOT TANGENT TO SAID CURVE, AND SAID LINE ALSO, BEING DEDICATED BY DOCUMENT NO. R81–54585 RECORDED OCTOBER 7, 1981 AND SAID DOCUMENT NO. 830737, TO THE POINT OF BEGINNING.

Said Parcel contains 55.0 acres, more or less.

Issued in Des Plaines, Illinois, on December 20, 2011.

Jim Keefer,

Manager, Chicago Airports District Office, FAA, Great Lakes Region.

[FR Doc. 2011–33465 Filed 12–28–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land-Use Assurance; Ohio State University Airport, Columbus, OH

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The Federal Aviation Administration (FAA) is considering a proposal to change a portion of the Ohio State University Airport from aeronautical use to non-aeronautical use and to authorize the swap of the airport property. The proposal consists of the swap of vacant, unimproved land owned by the State of Ohio (State) for land owned by the Board of Trustees of the Ohio State University (University).

The State has requested from FAA a ''Release from Federal agreement obligated land covenants'' to swap one (1) parcel of property acquired by the

State without Federal funding for three (3) parcels owned by the University.

The above mentioned land is not needed for aeronautical use, as shown on the Airport Layout Plan. There are no impacts to the airport by allowing the State to dispose of the vacant property. Approval does not constitute a commitment by the FAA to financially assist in the disposal of the airport property nor a determination of eligibility for grant-in-aid funding from the FAA. The disposition of proceeds from the disposal of the airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999.

In accordance with section 47107(h) of title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

DATES: Comments must be received on or before January 30, 2012.

ADDRESSES: Documents reflecting this FAA action may be reviewed at the Detroit Airports District Office, 11677 South Wayne Road, Suite 107, Romulus, Michigan 48174.

FOR FURTHER INFORMATION CONTACT: Mr. David J. Welhouse, Program Manager, Detroit Airports District Office, 11677 South Wayne Road, Suite 107, Romulus, Michigan 48174. Telephone Number (734) 229–2952/Fax Number (734) 229–2950.

SUPPLEMENTARY INFORMATION: Following is a legal description of the property located in the City of Columbus, Franklin County, Ohio, and described as follows:

Description of Parcel 30B Being Released (9.009 Acres)

Situate in the State of Ohio, County of Franklin, City of Columbus lying in Quarter Township 4, Township 2 North, Range 19 West, United States Military District, being part of the 49.198 acre tract conveyed to The State of Ohio for the use and benefit of The Ohio State University of record in Instrument Number 200907280110625, (all records herein are from the Recorder's Office, Franklin County, Ohio) and being bounded and more particularly described as follows:

Begin for reference at the intersection of the centerline of Federated Boulevard (100 feet in width) and the centerline of Dublin-Granville Road (State Route 161) (varies in width) of record in Plat Book 64, Pages 19 and 20;

Thence the following two (2) courses and distances along the centerline of said Dublin-Granville Road;

1. South 76° 02′ 22″ East, a distance of 862.52 feet to an angle point;

2. South 79° 49′ 22″ East, a distance of 195.69 feet, to a point being at northwesterly corner of an original 76.063 acre tract conveyed to The Board of Trustees of The Ohio State University by deed of record in Deed Book 2881, Page 455;

Thence South 03° 44′ 43″ West, a distance of 1832.48 feet, along the westerly line of said 76.063 acre tract, a line common to a 27.026 acre tract (Tract II) conveyed to the Board of Trustees of the Ohio State University by deed of record in Official Record 8726 B03 and said original 30.539 acre tract passing a ¾ inch iron pipe found at 30.26 feet on the southerly right-of-way line of said Dublin-Granville Road, to a ¾ inch iron pipe found on the northwesterly on the northwesterly line of said 49.198 acre tract;

Thence the following three (3) courses and distances along the said 49.198 acre tract:

1. North 46° 40′ 09″ East, a distance of 236.55 feet, along a westerly line of said 49.198 acre tract to a ¾ inch iron pipe found;

2. South 34° 42′ 36″ East, a distance of 188.90 feet, to a ¾ inch iron pipe found;

3. North 04° 04′ 31″ East, a distance of 145.41 feet, to a ¾ inch iron pipe set at the Point of True Beginning for the herein described tract:

Thence the following three (3) courses and distances continuing along the said 49.198 acre tract:

1. North 04° 04′ 31″ East, a distance of 377.62 feet, to a ¾ inch iron pipe found;

2. South 86° 01′ 05″ East, a distance of 1031.25 feet, to a ¾ inch iron pipe found;

3. South 03° 28′ 31″ West, a distance of 381.99 feet, to a ¾ inch iron pipe set;

Thence North 85° 46′ 36″ West, a distance of 1035.25 feet, across the said 49.198 acre tract to the Point of True Beginning, containing 9.009 acres more or less, which lies in Auditor's Tax Parcel 610–288199 and being subject to all easements, restrictions and rights-of-way of record.

The bearings shown herein are based on the Grid Bearing of North 79° 49′ 22″ West for the centerline of Dublin-Granville Road, as established by a GPS network of field observations performed in August 2003, (State Plane Coordinate System, South Zone, 1986 adjustment, NAD 83).

Issued in Romulus, Michigan, on November 30, 2011.

John L. Mayfield, Jr.,

Manager, Detroit Airports District Office, FAA, Great Lakes Region.

[FR Doc. 2011–33469 Filed 12–28–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2011–0001–N–21]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, (FRA), Department of Transportation (DOT).

ACTION: Notice and Request for Comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requirements (ICRs) abstracted below are being forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describe the nature of the information collections and their expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collections of information was published on October 14, 2011 (76 FR 63990).

DATES: Comments must be submitted on or before January 30, 2012.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave. SE., 3rd Floor, Mail Stop 25, Washington, DC 20590 (telephone: (202) 493–6292), or Ms. Kimberly Toone, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave. SE., 3rd Floor, Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6132). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, Section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR Part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On October 14,

2011, FRA published a 60-day notice in the **Federal Register** soliciting comment on these ICRs for which the agency is seeking OMB approval. 76 FR 63990. FRA received no comments in response to this notice.

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30 day notice is published. 44 U.S.C. 3507 (b)–(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30 day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication of this Notice to best ensure having their full effect. 5 CFR 1320.12(c); *see also* 60 FR 44983, Aug. 29, 1995.

The summary below describes the nature of the information collection requirements (ICRs) and the expected burden being submitted for clearance by OMB as required by the PRA.

Title: Identification of Cars Moved in Accordance with Order 13528.

OMB Control Number: 2130–0506.

Type of Request: Extension without change of a currently approved collection.

Affected Public: Businesses.

Abstract: This collection of information identifies a freight car being moved within the scope of Order 13528 (now codified at under 49 CFR 232.3). Otherwise, an exception will be taken, and the car will be set out of the train and not delivered. The information that must be recorded is specified at 49 CFR 232.3(d)(3), which requires that a car be properly identified by a card attached to each side of the car and signed stating that such movement is being made under authority of the Order. Section 232.2(d)(3) does not require retaining cards or tags. When a car bearing a tag for movement under this provision arrives at its destination, the tags are simply removed. This requirement/record comes into play only when a railroad finds it necessary to move equipment as specified above. FRA estimates that approximately 400 cars per year are moved under this Order.

Form Number(s): N/A.

Total Annual Estimated Burden Hours: 67 hours.

Addressee: Send comments regarding this information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street NW., Washington, DC 20503, Attention: FRA Desk Officer. Comments may also be sent via email to OMB at the following address: *oira-submissions@omb.eop.gov.*

Comments are invited on the following: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC, on December 22, 2011.

Michael Logue,

Acting Director, Office of Financial Management, Federal Railroad Administration.

[FR Doc. 2011–33350 Filed 12–28–11; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2011–0001–N–22]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, (FRA), Department of Transportation (DOT).

ACTION: Notice and Request for Comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requirements (ICRs) abstracted below are being forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describe the nature of the information collections and their expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collections of information was published on October 17, 2011 (76 FR 64172).

DATES: Comments must be submitted on or before January 30, 2012.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave. SE., 3rd Floor, Mail Stop 25, Washington, DC 20590 (telephone: (202) 493–6292), or Ms. Kimberly Toone, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave. SE., 3rd Floor, Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6132). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, Section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR Part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On October 17, 2011, FRA published a 60-day notice in the **Federal Register** soliciting comment on these ICRs for which the agency is seeking OMB approval. 76 FR 64172. FRA received no comments in response to this notice.

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30 day notice is published. 44 U.S.C. 3507 (b)-(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30 day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication of this Notice to best ensure having their full effect. 5 CFR 1320.12(c); *see also* 60 FR 44983, Aug. 29, 1995.

The summary below describes the nature of the information collection requirements (ICRs) and the expected burden being submitted for clearance by OMB as required by the PRA.

Title: U.S. Locational Requirement for Dispatching U.S. Rail Operations.

OMB Control Number: 2130–0556.

Type of Request: Extension without change of a currently approved collection.

Affected Public: Businesses.

Abstract: Part 241 requires, in the absence of a waiver, that all dispatching of railroad operations that occurs in the United States be performed in this country, with a minor exception. A railroad is allowed to conduct extraterritorial dispatching from Mexico or Canada in emergency situations, but only for the duration of the emergency. A railroad relying on the exception must provide written notification of its action to the FRA Regional Administrator of each FRA region in which the railroad operation occurs; such notification is not required before addressing the emergency situation. The information collected under this rule will be used as part of FRA's oversight function to ensure that extraterritorial dispatchers comply with applicable safety regulations.

Form Number(s): N/A.

Total Annual Estimated Burden Hours: 8 hours.

Addressee: Send comments regarding this information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street NW., Washington, DC, 20503, Attention: FRA Desk Officer. Comments may also be sent via email to OMB at the following address: *oira-submissions@omb.eop.gov.*

Comments are invited on the following: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC, on December 22, 2011.

Michael Logue,

Acting Director, Office of Financial Management, Federal Railroad Administration.

[FR Doc. 2011–33352 Filed 12–28–11; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Request for Comment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), this notice announces that the Information Collection Request (ICR) abstracted below will be submitted to the Office of Management and Budget (OMB) for review. The ICR describes the nature of the information collection and its expected burden. A **Federal Register** Notice with a 60-day comment period soliciting public comments on the following information collection was published on June 13, 2011 (**Federal Register**/Vol. 76, No. 113/pp. 34290–34291).

DATES: Submit comments to the Office of Management and Budget (OMB) on or before January 30, 2012.

FOR FURTHER INFORMATION CONTACT: Alan Block at the National Highway Traffic Safety Administration, Office of Behavioral Safety Research (NTI–131), W46–499, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590. Mr. Block's phone number is (202) 366–6401 and his email address is *alan.block@dot.gov*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2127-New.

Title: The National Survey of Pedestrian and Bicyclist Attitudes, Knowledge, and Behaviors.

Form No.: NHTSA Form 1148.

Type of Review: Regular.

Respondents: Telephone interviews will be administered to a national sample of people 16 and older who have access to a residential landline and/or a personal cell phone.

Estimated Number of Respondents: 15 pre-test respondents and 9,000 survey respondents.

Estimated Time per Response: 20 minutes per interview.

Total Estimated Annual Burden Hours: 3,005 hours.

Frequency of Collection: The survey will be administered a single time.

Abstract: The National Highway Traffic Safety Administration (NHTSA) proposes to collect information from the public to ascertain the scope and magnitude of bicycle and pedestrian activity and the public's behavior and attitudes regarding bicycling and walking. A national telephone survey will be administered to 9,000 randomly selected respondents drawn from all 50 States and the District of Columbia. The national survey will be preceded by a pretest administered to 15 respondents. The survey will ask about the characteristics of bicycling and walking trips, conspicuity, community design for bicycling and walking, bicycle helmet use, and general opinions about bicycling and walking. Interview length will average 20 minutes. NHTSA will use the findings from this proposed collection of information to assist States, localities, and communities in developing and refining bicycling and walking safety programs.

In conducting the proposed telephone interviews, the interviewers would use computer-assisted telephone interviewing to reduce interview length and minimize recording errors. No personally identifiable information will be collected during the telephone interviews.

ADDRESSES: Send comments regarding the burden estimate, including suggestions for reducing the burden, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for Department of Transportation, National Highway Traffic Safety Administration, or by email at *oira_submission@omb.eop.gov,* or fax: (202) 395–5806.

Comments Are Invited On: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department of Transportation, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is most effective if OMB receives it within 30 days of publication of this notice.

Authority: 44 U.S.C. Section 3506(c)(2)(A).

Issued in Washington, DC, on December 23, 2011.

Jeff Michael,

Associate Administrator, Research and Program Development.

[FR Doc. 2011–33473 Filed 12–28–11; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2011–0182; Notice 1]

Receipt of Petition for Decision That Nonconforming 2000–2003 Kawasaki ZR750 Motorcycles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Receipt of petition.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that nonconforming 2000–2003 Kawasaki ZR750 motorcycles that were not originally manufactured to comply with all applicable Federal Motor Vehicle Safety Standards (FMVSS) are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is January 30, 2012.

ADDRESSES: Comments should refer to the docket and notice numbers above and be submitted by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

Instructions: Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

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

How to Read Comments submitted to the Docket: You may read the comments received by Docket Management at the address and times given above. You may also view the documents from the Internet at *http://www.regulations.gov.* Follow the online instructions for accessing the dockets. The docket ID number and title of this notice are shown at the heading of this document notice. Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically search the Docket for new material.

FOR FURTHER INFORMATION CONTACT: George Stevens, Office of Vehicle Safety Compliance, NHTSA (202) 366–5308.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

US SPECS, LLC (''US SPECS''), of Havre de Grace, Maryland (Registered Importer 03–321) has petitioned NHTSA to decide whether non-U.S. certified 2000–2003 Kawasaki ZR750 motorcycles are eligible for importation into the United States. The vehicles that US SPECS believes are substantially similar are 2000–2003 Kawasaki ZR750 motorcycles that were manufactured for sale in the United States and certified by their manufacturer as conforming to all applicable FMVSS.

The petitioner claims that it carefully compared non-U.S. certified 2000–2003 Kawasaki ZR750 motorcycles to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most FMVSS.

US SPECS submitted information with its petition intended to demonstrate that non-U.S. certified 2000–2003 Kawasaki ZR750 motorcycles, as originally manufactured, conform to many FMVSS in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 2000–2003 Kawasaki ZR750 motorcycles are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 106 *Brake Hoses,* 116 *Brake Fluid,* 119 *New Pneumatic Tires for Vehicles other than Passenger Cars,* and 122 *Motorcycle Brake Systems.*

The petitioner further contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated below:

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* Installation of the following U.S.-certified components on vehicles not already so equipped: (a) Headlamp; (b) front and rear side-mounted reflex reflectors; (c) rear-mounted reflex reflector; and (d) rear turn signal lamps.

Standard No. 111 *Rearview Mirrors:* Inspection of all vehicles, and installation of U.S.-model mirrors on vehicles that are not already so equipped.

Standard No. 120 *Tire Selection and Rims for Vehicles other than Passenger Cars:* Installation of a tire information placard.

Standard No. 123 *Motorcycle Controls and Displays:* Installation of a U.S.-model speedometer/odometer unit.

Standard No. 205 *Glazing Materials:* Inspection of all vehicles, and removal of noncompliant glazing or replacement of the glazing with U.S.-certified components on vehicles that are not already so equipped.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above addresses both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: December 21, 2011.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2011–33453 Filed 12–28–11; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. NOR 42131]

Canexus Chemicals Canada L.P. v. BNSF Railway Company

The Surface Transportation Board will hold oral argument on Tuesday, January 17, 2012, at 9:30 a.m., in the hearing room at the Board's headquarters located at 395 E Street SW., Washington, DC. The argument will address *Canexus Chemicals Canada L.P.* v. *BNSF Railway Company,* Docket No. NOR 42131. The oral argument will be open for public observation, but only counsel for the parties will be permitted to present argument.

Canexus Chemicals Canada L.P. (Canexus) has filed a complaint asking the Board to issue an order compelling BNSF Railway Company (BNSF) to establish common carrier rates and service terms between North Vancouver, B.C., and Kansas City, Mo., and between Marshall, Wash., and Kansas City, Mo. Currently, BNSF is hauling Canexus shipments of chlorine from North Vancouver and Marshall to Kansas City in joint line service under temporary rates. According to the complaint, BNSF interchanges with Union Pacific Railroad Company (UP) in Kansas City and the shipments are hauled by UP to their final destinations in Illinois, Texas, and Arkansas.[1] This dispute arises from BNSF's position that, in the future, it will carry the chlorine only as far as Spokane, Wash. (for movements originating from Marshall), and Portland, Or. (for movements originating from North Vancouver), where it will interchange with UP. Canexus and UP object to BNSF's proposed interchange points.

To preserve rail service, as BNSF temporary rates were set to expire, the Board issued an emergency service order directing BNSF to provide service while the Board adjudicates the merits of this case. *Canexus Chemicals Canada L.P.* v. *BNSF Ry.,* FD 35524 *et al.* (STB served Oct. 14, 2011). In that same decision, the Board issued a procedural schedule for opening statements, replies, and rebuttals. Subsequently, BNSF offered to provide service voluntarily and the Board found that, with such service in place, the emergency service order could be terminated.

On November 3, 2011, UP, Canadian Pacific Railway Company (CP),[2] and Canexus filed opening statements. BNSF filed a reply on November 23, 2011. Canexus and UP filed rebuttals on December 5, 2011.

By January 12, 2012, each party shall submit to the Board the name of the counsel who will be presenting argument and the name of the party counsel will be representing. CP is invited to participate in the argument, but is not required to do so. Canexus and UP shall have 30 minutes to present their argument and BNSF shall have 30 minutes to present its argument. Canexus and UP, in their filings, shall advise the Board how they choose to divide their time and shall address the requested time reserved for rebuttal, if any.

Counsel for the parties shall check in with Board staff in the hearing room prior to the argument.

A video broadcast of the oral argument will be available via the Board's Web site at *http://www.stb.dot.gov,* under ''Information Center''/''Webcast''/''Live Video'' on the home page.

[1] On November 3, 2011, in its opening statement, Canexus noted that since the filing of its May 25, 2011 complaint, its contract with UP has been amended to add 2 additional end users located in Louisiana and Missouri.

[2] CP was identified by BNSF as a possible participant in an alternative routing for Canexus' traffic.

Instructions for Attendance at Argument

The STB requests that all persons attending the argument use the Patriots Plaza Building's main entrance at 395 E Street SW. (closest to the northeast corner of the intersection of 4th and E Streets). There will be no reserved seating, except for those scheduled to present oral arguments. The building will be open to the public at 7 a.m., and participants are encouraged to arrive early. There is no public parking in the building.

Upon arrival, check in at the 1st floor security desk in the main lobby. Be prepared to produce valid photographic identification (driver's license or local, state, or Federal government identification); sign-in at the security desk; receive a hearing room pass (to be displayed at all times); submit to an inspection of all briefcases, handbags, etc.; then pass through a metal detector. Persons choosing to exit the building during the course of the argument must surrender their hearing room passes to security personnel and will be subject to the above security procedures if they choose to re-enter the building. Hearing room passes likewise will be collected from those exiting the argument upon its conclusion.

Laptops and recorders may be used in the hearing room, but no provision will be made for connecting personal computers to the Internet. Cellular telephone use is not permitted in the hearing room; cell phones may be used quietly in the corridor surrounding the hearing room or in the building's main lobby.

The Board's hearing room complies with the Americans with Disabilities Act, and persons needing such accommodations should call (202) 245–0245 by the close of business on January 16, 2012.

For further information regarding the oral argument, contact Amy Ziehm, (202) 245–0391. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at (800) 877–8339.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Oral argument in this proceeding will be held on January 17, 2012, at 9:30 a.m. in the Surface Transportation Board Hearing Room, at 395 E Street SW., Washington, DC, as described above.

2. By January 12, 2012, the participants shall submit to the Board the names of the counsel who will be

presenting argument and the name of the party counsel will be representing. Canexus and UP, in their filings, also shall advise the Board how they choose to divide their time and address the requested time reserved for rebuttal, if any.

3. This decision is effective on the date of service.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2011–33444 Filed 12–28–11; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Open Meeting of the President's Advisory Council on Financial Capability

AGENCY: Department of the Treasury.

ACTION: Notice of meeting.

SUMMARY: The President's Advisory Council on Financial Capability (''Council'') will convene for a public meeting on January 19, 2012 at the Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC, beginning at 10 a.m. Eastern Time. The meeting will be open to the public. The Council will: (1) Receive a report from the Council's subcommittees (Financial Access, Research and Evaluation, Partnerships, and Youth) on their progress; (2) review membership and composition of the subcommittees, and (3) hear from outside experts about practices and innovations regarding financial capability in the workplace.

DATES: The meeting will be held on January 19, 2012, at 10 a.m. Eastern Time.

SUBMISSION OF WRITTEN STATEMENTS: The public is invited to submit written statements to the Council. Written statements should be sent by any one of the following methods:

Electronic Statements

Email *ofe@treasury.gov;* or

Paper Statements

Send paper statements to the Department of the Treasury, Office of Financial Education and Financial Access, Main Treasury Building, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

In general, the Department will make all statements available in their original format, including any business or personal information provided such as names, addresses, email addresses, or telephone numbers, for public inspection and photocopying in the Department's library, Room 1428, Main Department Building, 1500 Pennsylvania Avenue NW., Washington, DC 20220, on official business days between the hours of 10 a.m. and 5 p.m. You can make an appointment to inspect statements by calling (202) 622–0990. All statements received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. You should only submit information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Louisa Quittman, Director, Community Programs, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220, at (202) 622–5770 or *ofe@treasury.gov.*

SUPPLEMENTARY INFORMATION: On January 29, 2010, the President signed Executive Order 13530, creating the Council to assist the American people in understanding financial matters and making informed financial decisions, thereby contributing to financial stability. The Council is composed of two *ex officio* Federal officials and 13 non-governmental members appointed by the President with relevant backgrounds, such as financial services, consumer protection, financial access, and education. The role of the Council is to advise the President and the Secretary of the Treasury on means to promote and enhance individuals' and families' financial capability. The Council held its first meeting on November 30, 2010. At that meeting, the Chair recommended the establishment of five subcommittees to focus on the following strategic areas: National Strategy, Financial Access, Research and Evaluation, Partnerships, and Youth. The Council met again on April 21, 2011, and approved two recommendations: that the Department of the Treasury hold a challenge to the private sector to create applications for mobile devices that promote financial capability and financial access, and that the Department of the Treasury support the Workplace Leaders in Financial Education Award. On July 12, 2011, the Council held a public meeting via webcast. The Council presented the proposed themes and principles for the Council's consideration. For more information about the proposed themes and principles, please go to *http://www.treasury.gov,* click on Resource Center, then Office of Financial Education and Financial Access, and then on the President's Advisory Council on Financial Capability. The Council also recommended that the United States join other Organization for Economic Cooperation and Development countries in administering the 2012 Programme for International Student Assessment financial literacy assessment, and identify funding to support this implementation. On November 8, 2011 the Council held its fourth meeting, where it heard from experts about youth financial capability and the use of technology in improving financial capability and made recommendations to the Department of the Treasury on the development of outcome metrics, evaluation and research standards in connection with the subcommittees' report, and to work with FINRA on a second National Financial Capability Study.

In accordance with section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 2 and the regulations thereunder, Josh Wright, Designated Federal Officer of the Council, has ordered publication of this notice that the Council will convene its fifth meeting on January 19, 2012 at the Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC, beginning at 10 a.m. Eastern Time. The meeting will be open to the public. Members of the public who plan to attend the meeting must RSVP with their name, organization represented (if any), phone number, and email address. To register, please go to *http://www.treasury.gov,* click on Resource Center, then Office of Financial Education and Financial Access, and then on the President's Advisory Council on Financial Capability or call (202) 622–5770 by 5 p.m. Eastern Time on January 12, 2011. For entry into the building on the date of the meeting, attendees must present a government-issued ID, such as a driver's license or passport, which includes a photo. The purpose of the meeting is to receive an update from the Council's subcommittees on their progress. The Council will review the membership and the composition of its subcommittees. The Council will also hear from outside experts about practices and innovations around financial capability in the workplace.

Alastair Fitzpayne,

Executive Secretary, U.S. Department of the Treasury.

[FR Doc. 2011–33357 Filed 12–28–11; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Designation of Two Individuals Pursuant to Executive Order 13553

SUB-AGENCY: Office of Foreign Assets Control.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the names of two individuals newly-designated as persons whose property and interests in property are blocked pursuant to Executive Order 13553 of September 28, 2010, ''Blocking Property of Certain Persons With Respect to Serious Human Rights Abuses by the Government of Iran and Taking Certain Other Actions.''

DATES: The designation by the Director of OFAC of the two individuals identified in this notice, pursuant to Executive Order 13553 of September 28, 2010, is effective December 13, 2011.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Sanctions Compliance and Evaluation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, Tel.: (202) 622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, Tel.: (202) 622–0077.

Background

On September 28, 2010, the President issued Executive Order 13553, ''Blocking Property of Certain Persons With Respect to Serious Human Rights Abuses by the Government of Iran and Taking Certain Other Actions'' (the ''Order'') pursuant to, *inter alia,* the International Emergency Economic Powers Act (50 U.S.C. 1701–06) (''IEEPA'') and the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (Pub. L. 111–195). In the Order, the President took additional steps with respect to the national emergency declared in Executive Order 12957 of March 15, 1995.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, that come within the United States, or that are or come within the possession or control of any United States person, of persons listed in the Annex to the Order and of persons determined by the Secretary of the Treasury, in consultation with or at the recommendation of the Secretary of State, to meet any of the criteria set forth in the Order.

The Annex to the Order listed eight individuals whose property and interests in property are blocked pursuant to the Order.

On December 13, 2011, the Director of OFAC, in consultation with or at the recommendation of the Secretary of State, designated, pursuant to one or more of the criteria set forth in subparagraphs (a)(ii)(A) through (a)(ii)(C) of Section 1 of the Order, two individuals whose property and interests in property are blocked, pursuant to the Order. Agents or affiliates of Iran's Islamic Revolutionary Guard Corps whose property and interests in property are blocked pursuant to IEEPA include a reference to the ''IRGC'' in their listings on OFAC's Specially Designated Nationals and Blocked Persons List. See 31 CFR 561.201(a)(5) note.

The listing for these individuals is as follows:

- ARAGHI, Abdollah (a.k.a. ARAQI, Abdollah; a.k.a. ARAQI, Abdullah; a.k.a. ERAGHI, Abdollah; a.k.a. ERAQI, Abdollah); DOB 1945; POB Iran; Lieutenant Commander, IRGC Ground Force; Deputy Commander, IRGC Ground Forces; Brigadier General; Former Commander, Greater Tehran's Mohammad Rasulollah IRGC; Former Chief, Greater Tehran Revolutionary Guards (individual) [IRGC] [IRAN–HR]
- FIROUZABADI, Hassan (a.k.a. AQAI–FIRUZABADI, Hassan; a.k.a. FIROOZABADI, Hassan; a.k.a. FIRUZABADI, Hasan); DOB 3 Feb 1951; POB Mashhad, Iran; Chief of Staff of the Joint Armed Forces of the Islamic Republic of Iran; Chairman of the Armed Forces' Joint Chiefs of Staff; Major General (individual) [IRAN–HR]

Dated: December 13, 2011.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2011–33349 Filed 12–28–11; 8:45 am]

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Part II

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 622

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Generic Annual Catch Limits/Accountability Measures Amendment for the Gulf of Mexico; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 100217097–1757–02]

RIN 0648–AY22

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Generic Annual Catch Limits/Accountability Measures Amendment for the Gulf of Mexico

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement the Generic Annual Catch Limits/Accountability Measures Amendment (Generic ACL Amendment) to the Red Drum, Reef Fish Resources, Shrimp, and Coral and Coral Reefs Fishery Management Plans for the Gulf of Mexico (FMPs) as prepared and submitted by the Gulf of Mexico Fishery Management Council (Council). This rule defers management of selected species to other Federal or state agencies; removes species not currently in need of Federal management from the FMPs; develops species groups; modifies framework procedures; establishes annual catch limits (ACLs); and establishes accountability measures (AMs). The intent of this final rule is to specify ACLs for species not undergoing overfishing while maintaining sustainable catch levels.

DATES: This rule is effective January 30, 2012 except for the amendments to § 622.32(b)(2)(iii) and § 622.39(b)(1)(ii). NOAA will publish a document announcing the effective date of the amendments to § 622.32(b)(2)(iii) and § 622.39(b)(1)(ii) in the **Federal Register.**

ADDRESSES: Electronic copies of the Generic ACL Amendment, which includes a final environmental impact statement (FEIS), an initial regulatory flexibility analysis (IRFA), and a regulatory impact review, may be obtained from the Southeast Regional Office Web Site at *http://sero.nmfs.noaa.gov/sf/pdfs/Final_Generic_ACL_AM_Amendment_September_9_2011.pdf.*

FOR FURTHER INFORMATION CONTACT: Rich Malinowski, Southeast Regional Office, NMFS, telephone (727) 824–5305; email: *Rich.Malinowski@noaa.gov.*

SUPPLEMENTARY INFORMATION: The fisheries for reef fish, red drum, shrimp, and coral and coral reefs of the Gulf of Mexico (Gulf) are managed under their respective FMPs. The FMPs were prepared by the Council and are implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On September 26, 2011, NMFS published a notice of availability for the Generic ACL Amendment and requested public comment (76 FR 59373). On October 25, 2011, NMFS published a proposed rule for the Generic ACL Amendment and requested public comment (76 FR 66021). The proposed rule and the Generic ACL Amendment outline the rationale for the actions contained in this final rule. A summary of the actions implemented by this final rule are provided below.

Through this final rule NMFS will defer to other entities' management of selected stocks that are uncommon in Gulf Federal waters and are primarily harvested within areas under the jurisdiction of the South Atlantic Fishery Management Council (South Atlantic Council). This final rule will remove Nassau grouper from the Reef Fish FMP, and the Council has requested that the Secretary designate the South Atlantic Council as the responsible council for Nassau grouper. Similarly, the rule will remove octocorals from the Coral and Coral Reefs FMP. Removal of these species from their respective FMPs avoids unnecessary duplication of management efforts. NMFS is delaying the effective date for removing the prohibition on the harvest of Nassau grouper in the Gulf until the South Atlantic Council has implemented the appropriate changes to the FMP for the Snapper-Grouper Fishery of the South Atlantic to prevent any lapse in the protective regulations necessary for the species.

This rule will remove 10 species from the Reef Fish FMP that the Council determined are not in need of Federal management. The species to be removed include those species for which average landings are less than 15,000 lb (6,804 kg) annually, or that are harvested primarily in state waters. Additionally, this rule revises or creates five species groups within the Reef Fish FMP to combine species with similar fishery characteristics, such as habitat and harvest methods, to allow for more effective management.

To facilitate timely adjustments to harvest parameters and other management measures, this final rule revises the current framework procedures. This revision gives the Council and NMFS greater flexibility to more promptly alter harvest parameters and other management measures as new scientific information becomes available.

This rule establishes initial ACLs for species or species groups not subject to overfishing. Additionally, the ACL for the other shallow water grouper (SWG) complex will be revised. The ACL for the other SWG complex includes black grouper, scamp, yellowfin grouper, and yellowmouth grouper, and does not include gag and red grouper which have ACLs that are already in place. The rule also establishes allowable biological catch (ABC) limits in the Gulf Council's area of jurisdiction for several species managed separately by both the Gulf and South Atlantic Councils, but for which only single stock assessments, and single ABCs covering both Council's areas of jurisdiction, were provided. This rule establishes commercial and recreational harvest allocations for black grouper for the Gulf based upon historical landings.

To implement both in-season and post-season management of a stock to control or mitigate harvest levels with respect to the ACL, this rule establishes AMs for selected stocks. With the exception of royal red shrimp, the stocks and stock complexes requiring AMs are in the reef fish fishery management unit (FMU).

For species within the commercial sector of a Gulf individual fishing quota (IFQ) program, this rule will make the IFQ program itself the AM for the commercial sector because commercial landings are closely monitored and IFQ participants are limited to their specific IFQ allocation each fishing year. Therefore, this rule will implement AMs for the recreational sector in the event of a stock ACL overage for the IFQ related species.

For non-IFQ related species this rule will implement new ACLs and AMs in both sectors for the following: Vermilion snapper, lane snapper, mid-water snappers (silk snapper, wenchman, blackfin snapper, and queen snapper), mutton snapper, yellowtail snapper, gray snapper, cubera snapper, hogfish, jacks (lesser amberjack, almaco jack, and banded rudderfish), and royal red shrimp.

For stocks for which an ACL would be set through this rulemaking, none are currently overfished, in a rebuilding plan, or undergoing overfishing.

The Generic ACL Amendment retains Federal management for, and keeps within their respective fishery management units, several species that do not have specifically codified ACLs and AMs. These species are red drum, goliath grouper, and corals (excluding

octocorals). Harvesting these species is currently prohibited in Gulf Federal waters, and they therefore have a functional ACL of zero. Additionally, the harvest prohibition serves as a functional AM to manage the ACL.

Comments and Responses

NMFS received nine comment letters on the Generic ACL Amendment and the proposed rule. Comments were received from both individuals and organizations. Additionally, two submissions were from Federal agencies indicating they had no comment. Comments related to the actions contained in the amendment or the proposed rule are summarized and responded to below.

Comment 1: The criteria for removing reef fish species using average annual landings of 15,000 lb (6,804 kg) or less is inadequate, and the list of species that meet this criterion has not been fully analyzed. Insufficient information is presented in the Generic ACL Amendment regarding overall catch and effort, life history, species vulnerability, species location, landings relative to population size, and any population status indicator information. The Council should have considered the vulnerability of the various stocks, as has been done for Pacific coast groundfish. The analysis should include susceptibility to the fishery and species productivity. In addition, the amendment failed to conduct a vigorous analysis regarding the composition and grouping of stocks in the Reef Fish FMP, which would have been more beneficial than this attempt to remove species. The Council and NMFS should work to revise the Reef Fish FMP in the future with more detailed analyses of the status and vulnerability of species and species complexes.

Response: The criteria for species removal included more than just an evaluation of landings. In determining which species to remove, the Council and NMFS considered landings data, trends in landings, and landings history, as well as life history parameters, management uncertainty and scientific vulnerability, as it is known for each species. All the related factors are discussed in sections 2.1, and 2.2 of the Generic ACL Amendment, and are thoroughly analyzed throughout the amendment. Several species, initially considered for removal, were retained in the Reef Fish FMP for these reasons. National Standard guidelines state that the principle implicit in National Standard 7 is that not every fishery needs Federal regulation. The Magnuson-Stevens Act requires Councils to prepare FMPs only for overfished fisheries and for other fisheries where regulation would serve some useful purpose and where the present or future benefits of Federal regulation would justify the costs. The Council concluded, and NMFS agrees, that continued inclusion of these species in the Reef Fish FMP is unnecessary. There is no apparent need to improve the condition of the stock, resolve competing interests, or produce a more efficient utilization of these resources. No management measures have ever applied to harvest of these species, other than certain aggregate bag limits and aggregate commercial trip limits.

The species removed from the Reef Fish FMP are landed in very low numbers, thus they are either not targeted or are not particularly susceptible to the fishery. These species represent less than one percent of the total reef fish landings, and trends in landing histories did not indicate any changes over time. This, in addition to the other factors addressed in the amendment, indicated to the Council that Federal conservation and management measures were not currently necessary for these species. Further, the Council determined, and NMFS agrees, that defining ACLs on such small landings values would not provide meaningful management benchmarks. The Council has indicated that it will continue to evaluate landings and other available information on species removed from the Reef Fish FMP at least every 5 years, and if it is determined a removed species is in need of management, the species would be added back into the fishery management unit. NMFS and the Council recognize that management needs change over time, and are committed to continued monitoring of Gulf fishery resources.

Comment 2: Removing species creates potential management gaps that could allow fishing pressure to go unchecked. Retaining these species would allow the Council to take more timely action before issues become a crisis. Removal of the species without strong justification is not consistent with the requirements of the Magnuson-Stevens Act. The Magnuson-Stevens Act requires Councils to manage fish stocks to prevent overfishing and rebuild overfished stocks. The purpose of this requirement is to conserve and manage these resources, not remove them from the ability to conserve and manage them. Trends in landings still need to be monitored to detect any shifts in harvest.

Response: It is highly unlikely that additional fisheries will develop to target and harvest these removed species and other species not included in the management unit for the Reef Fish FMP. These species have been in the management unit since 1986, without any specific Federal regulations, other than their inclusion in certain aggregate bag limits and part of any aggregate commercial trip limits. The Council's Scientific and Statistical Committee (SSC) noted that the species were originally placed in the Reef Fish FMP to ensure that they would be included in any monitoring programs, rather than because they were considered to be in need of Federal management. Data on catches of these species have been collected over that time period. Based on those available data, the Council concluded, and NMFS agrees, the landings trends for these species do not reflect any changes over time. In light of this fact, and the consideration of the other factors addressed in the amendment, the species could be removed from the management unit, consistent with the requirements of the Magnuson-Stevens Act. Species that are removed by this final rule will continue to have their commercial and recreational landings monitored through standard record-keeping requirements of the Marine Recreational Information Program (MRIP) and commercial trip ticket records. Should a change in landings be noted, or other indications of a need for conservation and management arise, the Council could develop a plan amendment to add the species back into the management unit.

Comment 3: Several species (*e.g.,* red porgy, white grunt, black sea bass) have not been considered for inclusion in the Reef Fish FMP.

Response: In setting ACLs for all species subject to the Reef Fish FMP, the Council did not explicitly consider adding new species to the management unit. Additional species can always be considered for inclusion as part of a fishery management unit in an FMP, should landings data indicate Federal management is needed, but this action was not considered as part of the Generic ACL Amendment. As to the species specifically noted, the Council removed all porgies, grunts, and sea basses (except the dwarf sand perches) from the fishery management unit in 1998 (December 30, 1997, 62 FR 67714), based on a similar determination that Federal management of the species was not required. The Council's Reef Fish Advisory Panel has recommended that red porgy be included in an IFQ program to be developed by the Council. Should such an IFQ program be

developed, then red porgy would be added to the Reef Fish FMP at that time.

Comment 4: The ABC control rule is an overall significant step in the right direction. There are, nonetheless, aspects of the ABC control rule in need of improvement. During the process of applying the ABC control rule to various species and species groups, it became clear that the tiering system needs modification. In addition, the ABC control rule fails to adequately account for discard mortality in unassessed stocks. The Council and NMFS should explore alternative methodologies such as ''management strategy evaluation'' techniques or other data-poor methodologies such as ''depletion-corrected average catch'' and ''depletion-based stock reduction analyses''. The Council and NMFS need to address these shortcomings to improve the ABC control rule.

Response: The Council and the SSC are aware of the potential issues with the ABC control rule and the claims that it would benefit from modification and improvement. The SSC has already made plans to begin addressing these issues in 2012. The Council, the SSC, and NMFS all recognize that establishing and maintaining ACLs and AMs for the various fisheries will continue to evolve as new information becomes available.

Comment 5: The Council does not currently have a risk policy in place for guiding its choice of desired probabilities of overfishing. The Council needs the results of a risk analysis that considers short-term and long-term costs and benefits to the resource and the fishing community in regard to fishing at various levels. We urge NMFS to invest the resources needed to develop appropriate techniques that will provide adequate risk analyses.

Response: The Council's ABC control rule explicitly addresses the probability of overfishing within each tier. In addition, the Council instructed the SSC to provide ABCs based on a risk of overfishing of between 15 and 45 percent. In most cases, the SSC has been more risk adverse than the upper limit. The Council, the SSC, and NMFS all recognize that this process will continue to be improved over time as new information becomes available. This final rule to implement ACLs and AMs is part of an ongoing process to improve the overall management strategy for Gulf federally managed species.

Comment 6: The ACL/annual catch target (ACT) control rule does not account for management uncertainty from unknown bycatch amounts. The management uncertainty buffer is based on an arbitrary scaling. The size of the buffer is determined by an arbitrary scale, with a maximum of 25 percent. The control rule needs to be improved by scaling the maximum size of the buffer by the frequency and magnitude of overages, rather than by an arbitrary scale.

Response: NMFS disagrees that the scaling of the uncertainty buffer in the ACL/ACT control rule is arbitrary. The Council rejected more simplified control rules because they were overly prescriptive and did not allow adequate input by the SSC. The ACL/ACT control rule selected by the Council and the SSC is the result of an iterative adaptive process, in which earlier versions of the control rule were developed, evaluated, and in some cases applied to actual stocks, and modified based on the results. The control rule management process is adaptive and ongoing and is based on the best scientific judgment of the SSC following accepted scientific procedures. The control rule varies the size of the uncertainty buffer based on frequency of overages, precision of available recreational and commercial data, timeliness of reporting, and stock status (if known). The Gulf Council may increase or decrease the ACL or ACT based on additional information or their expert opinion, except that the ACT cannot exceed the ACL and the ACL cannot exceed the ABC.

The framework procedures implemented through this final rule provide a means by which the control rule can be modified as improvements are identified and incorporated. As with the ABC control rule, the Council intends to continue to develop and modify the ACL/ACT control rule as better information becomes available.

Comment 7: The generic framework procedures should specifically state that all analyses and procedures required under other applicable law must still be undertaken for framework actions.

Response: The framework procedures do specifically identify the need for consistency with other applicable law. Under Step 6, the framework notes that for all framework action requests, the NMFS Regional Administrator will review the Council's recommendations and supporting information and notify the Council of the determinations, in accordance with the Magnuson-Stevens Act and other applicable law.

Comment 8: The National Standard 1 (NS1) guidelines recommend accounting for management uncertainty with the use of ACTs to maintain catch at or below the ACL so that overfishing does not occur. The ACT, in conjunction with AMs, is intended to capture management uncertainty in the fisheries. The Council has elected to account for management uncertainty by setting ACTs that are only minimally reduced from the ACL (ABC) level. No specific management measures are proposed that would maintain catch levels for any of the species within the Generic ACL Amendment at the ACT level. Under this scenario, the ACT has no specific function as a management target. There is a limited capacity to monitor fisheries in a timely fashion to close them when ACLs are projected to be exceeded. There are significant lag times present in the data reporting for both recreational and commercial fisheries. If an ACL is exceeded, it would be better to have post-season AMs that enable catch reductions by the amount necessary to maintain catches at the ACT level the following year.

Response: Most ACTs for reef fish are set 15 to 20 percent lower than the ACL; more importantly, the ACTs are set 35 percent or more lower than the overfishing limit (OFL). Management measures are generally tailored to achieve the ACT, and NMFS intends for harvest to remain between this target and the ACL threshold. With respect to reducing catches the following year for overages, the Council determined that this was not needed because none of the reef fish stocks are overfished or under a rebuilding plan. Rather, the AMs selected provide for in-season monitoring and closures before an ACL is exceeded for some species, and an adjustment in the following year for other species.

Comment 9: In-season monitoring for vermilion snapper, based on delayed and preliminary data, may not sufficiently or accurately project when ACLs might be met or exceeded. A post-season AM that reduces the fishing season to the ACT level for vermilion snapper would provide the Council and NMFS with a very important and useful tool to maintain catch levels within the ACL. The Council should consider revising its AMs to better address keeping harvests levels below the designated ACLs, and apply these procedures consistently across all reef fish species, even the ones that already have ACLs and AMs (e.g. gag).

Response: If an established ACL has been reached, the Regional Administrator has the authority to initiate a harvest closure for a species to prevent the ACL from being exceeded. A procedure is in place, in accordance with NS1 guidance to re-evaluate the ACL if it is exceeded more than once during a 4-year period. ACLs and AMs were established previously for red snapper, gray triggerfish, greater amberjack, gag grouper, and red grouper. The mechanisms controlling

harvest differ among these species, but all were established following NS1 guidance. NMFS has determined adequate landings monitoring is in place and has the ability to enact in-season closures, which in some cases, are preferred to post-season AMs as a method to prevent overages. The Council's choice for AMs includes in-season monitoring for vermilion snapper and a closure of all harvest before the ACL is projected to be met. For all other reef fish species, the Council chose to have AMs address any ACL overages the following fishing year. For the Generic ACL Amendment, that AM would rely on in-season monitoring, as with vermilion snapper. However, the Council is not precluded from taking additional action the following fishing year, such as setting a restricted season or placing other harvesting restrictions on the fishery. The Council can revisit all species it manages at any time if it is determined revisions to harvesting controls are necessary.

Comment 10: NMFS should analyze the risks of stock group management and review the appropriateness of proposed stock groups in light of the proposed species removals and modifications made to initially propose stock groups to accommodate the IFQ program.

Response: NMFS believes these risks and the appropriateness of stock group management were adequately reviewed in the Generic ACL Amendment and its associated analysis. Although ecosystem-based or single-species ACLs may be desirable for many species, stock groups provide a solution for setting ACLs for species lacking stock specific information. In establishing stock groups, the Council considered the geographic and depth distribution of species, life history characteristics, exploitation patterns, and vulnerabilities. The considerations and conclusions for remaining stocks are unaffected by the removal of species from the FMU. The species removed through this final rule from the IFQ stock complexes are not expected to alter the appropriateness of the remaining species contained within the revised IFQ stock complexes. As noted, the Council has the opportunity to make changes in its management strategy at any time, as new information and understanding of species relationships and complexes arises.

Comment 11: The Generic ACL Amendment does not define stock status determination criteria (SSDC) for unassessed reef fish species. NMFS disapproved the Council's proposed SSDCs from the Generic Sustainable Fisheries Act Amendment (May 19, 2000, 65 FR 31831). No definitions of maximum sustainable yield (MSY), OY, or minimum stock size threshold (MSST) exist for unassessed reef fish stocks. Without these criteria, the Council and NMFS are not able to detect if a stock or stock group is overfished. ACLs are intended to prevent overfishing and rebuild overfished stocks, but without SSDCs, it is not possible to measure if this goal is being attained. In addition, the amendment fails to provide a definition of OY; thus it is not possible for the Council to determine if it achieving that goal as well.

Response: Although some SSDCs have not been defined for unassessed reef fish stocks, the MSA requires that we establish ACLs for these stocks, and the Council has done so in this rule based on the best scientific information available. The Council and NMFS recognize that OFLs, ABCs, and ACLs in this amendment have been established utilizing different methodologies than utilized to set many SSDCs in past, but these methods for unassessed stocks are still based on the best scientific information available, and are appropriate for the stocks at issue. In the instances where requisite SSDCs have not been approved, the OFL, ABC, and ACL values contained in the generic amendment will serve as proxies for those SSDCs until other adequate SSDCs have been submitted by the Council and approved by NMFS. The Council and NMFS intend to revisit these criteria to establish SSDCs that are equivalent and compatible with the ACLs and OFLs when the revised MRIP information becomes available. Until these revisions occur, NMFS will make overfishing determinations based on the OFLs, as provided for in the Generic ACL Amendment.

Comment 12: Setting ACLs on data-poor species using historical landings data from the Marine Recreational Fisheries Statistics Survey (MRFSS) is inappropriate. Setting ACLs and implementing AMs based on this information is inappropriate and AMs should not be implemented until a more reliable data collection system is developed and implemented.

Response: The data available has been determined to be the best scientific information available by the Southeast Fisheries Science Center and the Council's SSC, which determined which data were to be used in developing ACLs. Further, a number of Federal courts have agreed that the MRFSS data constitute the best scientific information available, and therefore must be used in managing fisheries. NMFS is currently implementing the new MRIP, which has modified the methods used to monitor recreational catch and effort. Information from this newly revised program will be available in 2012. When these data become available, the Council may need to revise its current management strategies of ACLs and AMs.

Comment 13: ACLs do not need to be set on red drum or shrimp species. Red drum is managed successfully by the states, and an ACL is not needed. Shrimp only live 2 years and populations are affected by other variables more than catch.

Response: The Magnuson-Stevens Act requires the Council to establish ACLs for all species it manages. The only applicable exceptions are annual species and any stocks considered to be ecosystem stocks. The Council already prohibits the harvest of red drum in Federal waters; this rule reinforces that current harvest prohibition and equates it to an ACL of zero. This does not affect the harvest of these species in state waters, or how states may variably manage red drum in their respective state waters.

For shrimp, the Generic ACL Amendment and this final rule only establishes a commercial ACL for royal red shrimp, which is the only federally managed shrimp species that has an extended life span. Other shrimp species, such as brown, pink, and white shrimp are considered annual crops, and are thus exempt from the ACL requirements.

Changes From the Proposed Rule

The regulatory references within the codified text for the definitions section and for the IFQ program for Gulf groupers and tilefishes were revised. The introductory paragraph in § 622.20 has been revised through this final rule and NMFS has identified that the regulatory citations in that introductory paragraph in the proposed rule for DWG and SWG were incorrect. The regulatory citation within the IFQ program for Gulf groupers and tilefishes for DWG was revised from § 622.20 (b)(2)(vi) to § 622.20 (a)(7) and for SWG from § 622.20 (b)(2)(v) to § 622.20 (a)(6). Additionally, within § 622.2, Definitions and Acronyms, the definitions for DWG and SWG have been revised to reflect the correct regulatory citations within the introductory paragraph of § 622.20 (a).

Classification

The Regional Administrator, Southeast Region, NMFS has determined that this final rule is necessary for the conservation and

management of the species within the Generic ACL Amendment and is consistent with the Magnuson-Stevens Act, and other applicable law.

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

As required by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), NMFS prepared a final regulatory flexibility analysis (FRFA) for this action. The FRFA incorporates the initial regulatory flexibility analysis (IRFA), a summary of the significant economic issues raised by public comments, NMFS' responses to those comments, and a summary of the analyses completed to support the action. No public comments specific to the IRFA were received and therefore no public comments are addressed in the following FRFA.

NMFS agrees with the Council's choice of preferred alternatives as those which would be expected to best achieve the Council's objectives while minimizing, to the extent practicable, the adverse effects on fishers, support industries, and associated communities. The preambles of the proposed rule and this rule provide a summary of the actions contained within this rule and is not repeated here.

The purpose of this rule, pursuant to the Magnuson-Stevens Act and the National Standard 1 guidelines, is to establish the methods for implementing ACLs, AMs and associated parameters for stocks managed by the Gulf Council, along with initial specifications of an ACL that may be changed under the framework procedures for specifying an ACL. Additionally, this rule is intended to improve management capability to prevent or end overfishing and to maintain stocks at healthy levels, and to do so in a consistent and structured manner across all FMPs.

The Magnuson-Stevens Act provides the statutory basis for this rule.

The rule would not establish any new reporting, record-keeping or compliance requirements. The AMs may constitute a new compliance requirement and were analyzed in the IRFA. No duplicative, overlapping, or conflicting Federal rules have been identified for this rule. Management of certain species affected by this rule was developed with explicit consideration of applicable rules in the state of Florida and the South Atlantic Council.

The rule is expected to directly affect commercial harvesting and for-hire fishing vessels that harvest reef fish, royal red shrimp, red drum, or octocorals in the Gulf. It should be noted that harvest and possession of red drum in the Gulf EEZ is currently prohibited. The Small Business Administration has established size criteria for all major industry sectors in the U.S., including fish harvesters and for-hire operations. A business involved in fish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $4.0 million (NAICS code 114111, finfish fishing) for all its affiliated operations worldwide. For for-hire vessels, all the above qualifiers apply except that the annual receipts threshold is $7.0 million (NAICS code 713990, recreational industries).

In 2009, there were 999 vessels with Gulf commercial reef fish permits and 430 vessels with Gulf royal red shrimp permits. There is no entity possessing a Federal permit for harvesting red drum or octocorals in the Gulf EEZ. Based on home states, as reported in Federal permit applications, vessels with commercial reef fish permits were distributed as follows: 37 vessels in Alabama, 814 vessels in Florida, 48 vessels in Louisiana, 15 vessels in Mississippi, 77 vessels in Texas, and 8 vessels in other states. The corresponding distribution of vessels with royal red shrimp permits is as follows: 57 vessels in Alabama, 65 vessels in Florida, 88 vessels in Louisiana, 25 vessels in Mississippi, 152 vessels in Texas, and 43 vessels in other states. In 2008 and 2009, the maximum annual commercial fishing revenue by an individual vessel with a commercial Gulf reef fish permit was approximately $606,000 (2008 dollars). The maximum revenue by an individual vessel in the royal red shrimp or coral fisheries was far less than $606,000.

The for-hire fleet is comprised of charterboats, which charge a fee on a vessel basis, and headboats, which charge a fee on an individual angler (head) basis. In 2009, there were 1,419 for-hire vessels that were permitted to operate in the Gulf reef fish fishery. These vessels were distributed as follows: 141 vessels in Alabama, 876 vessels in Florida, 100 vessels in Louisiana, 52 vessels in Mississippi, 232 vessels in Texas, and 18 vessels in other states. The for-hire permit does not distinguish between headboats and charter boats, but in 2009 the headboat survey program included 79 headboats. The majority of headboats were located in Florida (43), followed by Texas (22), Alabama (10), and Louisiana (4). The average charterboat is estimated to earn approximately $88,000 (2008 dollars) in annual revenues, while the average headboat is estimated to earn approximately $461,000 (2008 dollars).

Based on the foregoing revenue estimates, all commercial and for-hire vessels expected to be directly affected by this rule are determined for the purpose of this analysis to be small business entities. Some fleet activity (i.e., multiple vessels owned by a single entity) may exist in the for-hire sector but its extent is unknown, and all vessels are treated as independent entities in this analysis.

Because all entities expected to be directly affected by this rule are small business entities, no disproportionate effects on small entities relative to large entities are expected because of this rule.

Removing octocorals from the Coral and Coral Reefs FMP is mainly administrative in nature and would have no direct effects on the profitability of small business entities. Removing Nassau grouper from the Reef Fish FMP, with eventual management of the species being assumed by the South Atlantic Council, has no direct effects on the profits of small entities, given the current prohibition on the harvest of this species. Removing species from the Reef Fish FMP which have average annual landings of 15,000 lb (6,804 kg) or less (except those misidentified as another species or those exhibiting a trend in landings that may indicate a change is status), or those mainly harvested in state waters, such as anchor tilefish, blackline tilefish, red hind, rock hind, misty grouper, schoolmaster, dog snapper, mahogany snapper, sand perch, and dwarf sand fish, will not directly change the current harvest or use of a resource, and therefore will not affect the profitability of small entities. Similarly, rearranging species into species groupings will not directly change the current harvest or use of a resource, and therefore will not affect the profitability of small entities.

The establishment of an ABC control rule is not anticipated to directly affect the harvest and other typical uses of the resource since this action is administrative in nature. As such, this management action is not expected to result in any direct effects on the profits of small entities.

The establishment of an ACL/ACT control rule is an administrative action and will not affect the harvest and other customary uses of the resource. Therefore, this action has no direct consequence on the profitability of small entities.

Modifications to the framework procedure are also administrative in nature. Since these modifications will not affect the harvest and other

customary uses of the resource, they would have no direct consequence on the profitability of small entities.

Any management actions enacted through the modified framework procedure will be evaluated as to their effects on the profits of small entities at the time of their implementation. Initial ACL specification for royal red shrimp will set the ACL for the species at 334,000 lb tails (151,500 kg) which is significantly above the historical landings (138,116 lb (62,648 kg) in 2008). This action, therefore, will not affect harvests and profits of small entities in the foreseeable future.

Apportioning black grouper between the Gulf and South Atlantic Council's jurisdictional areas will result in an increase of profits (producer surplus) to the commercial sector ranging from approximately $90,000 to $113,000 annually for all vessels combined. The effects on for-hire profits are expected to be positive but cannot be quantified with available information. The apportionment of yellowtail snapper between the Gulf and South Atlantic Council's jurisdictional areas is very close to the recent landings ratio of the species between the two jurisdictional areas. Thus, this management action is expected to have minimal effects on the profits of small entities in both areas.

The apportionment of mutton snapper between the Gulf and South Atlantic Council's jurisdictional areas will favor the Gulf fishing fleet and thus will be expected to increase the profits of the Gulf fishing fleet. The effects on the profits of the South Atlantic fishing fleet will, in turn, decrease. In the absence of sufficient information to quantify the effects of this action, its net effects on the fishing fleets of both areas cannot be determined.

The apportionment of black grouper in the Gulf between the commercial and recreational sectors will tend to favor the commercial over the recreational sector. In this sense, the commercial sector is expected to experience profit increases ranging from approximately $11,000 to $14,000 annually for all vessels combined. The negative effects on the for-hire fleet cannot be estimated with available information.

Potential effects on small entities anticipated from the implementation of ACLs and/or ACTs for reef fish stocks and stock groupings will depend on the extent to which the ACLs and ACTs being implemented will affect the harvest or other customary uses of the resource. Aggregate ACLs and ACTs are specified for both the commercial and recreational sectors and together with the specific ACLs and ACTS set for the commercial sector, will allow for increased harvest levels for both sectors. Therefore, positive effects on the profits of small entities are expected to result from this action in the near future.

Specifying in-season AMs for vermilion snapper when the ACL is reached or projected to be reached within the fishing year will result in short-term negative effects on the profits of small entities. The expectation, however, over the medium and long-term is for profits of these small entities to increase or at least not be further impaired due to increased protection for the stock. Implementing AMs for royal red shrimp and other reef fish species that do not currently have AMs enacted the following year after their ACLs are exceeded will negatively affect the short-term profits of small entities. Again, the expectation is for this action to improve medium and long-term profitability.

Three alternatives, including the preferred alternative, were considered for the management of octocorals. The first alternative, the no action alternative, would retain the management of species under the Gulf Coral and Coral Reefs FMP. The second alternative would remove the species from the FMP, with eventual management of the species being the responsibility of the South Atlantic Council. Similar to the preferred alternative of removing octocorals from the Coral and Coral Reefs FMP, these two other alternatives will have no direct effects on the profits of small entities. The second alternative would mainly entail additional administrative cost on the part of the South Atlantic Council.

Three alternatives, including the preferred alternative, were considered for the management of Nassau grouper. The first alternative, the no action alternative, would retain the management of the species under the Gulf Reef Fish FMP. The second alternative would remove the species from the FMP, with eventual management of the species being the responsibility of the South Atlantic Council. Similar to the preferred alternative of removing Nassau grouper from the Reef Fish FMP, these two other alternatives would have no direct effects on the profits of small entities. The second alternative would mainly entail additional administrative cost on the part of the South Atlantic Council.

Four alternatives, including the preferred alternative, were considered for the management of yellowtail snapper. The first alternative would remove the species from the Gulf Reef Fish FMP. The second alternative would remove the species from the FMP, with eventual management of the species being the responsibility of the South Atlantic Council. The third alternative would add the species to a joint plan with the South Atlantic Council. Similar to the preferred no action alternative, these three other alternatives would have no effects on the profits of small entities. The second alternative would mainly entail additional administrative cost on the part of the South Atlantic Council.

Four alternatives, including the preferred alternative, were considered for the management of mutton snapper. The first alternative would remove the species from the Gulf Reef Fish FMP. The second alternative would remove the species from the FMP, with eventual management of the species being the responsibility of the South Atlantic Council. The third alternative would add the species to a joint plan with the South Atlantic Council. Similar to the preferred no action alternative, these three other alternatives would have no direct effects on the profits of small entities. The second alternative would mainly entail additional administrative cost on the part of the South Atlantic Council while the third alternative would entail additional administrative costs on both Councils.

Five alternatives, of which two are the preferred alternatives, were considered for removing stocks from the Reef Fish FMP. The first alternative, the no action alternative, would not remove any species from Gulf Reef Fish FMP. This alternative would have no direct effects on the short-term profitability of small entities, but over time this is more likely to result in profit reduction than the preferred alternative when certain species with historically low landings become subject to restrictive measures. The second alternative would remove species with average landings of 100,000 lb (45,359 kg) or below from the Reef Fish FMP, except for species that are long-lived, may be misidentified as another species, or have trends in landings that may indicate a change in status. This alternative would have no direct short-term effects on profits of small entities, but with a relatively high historical landings threshold certain species may not be well protected for long-term sustainability. This alternative could then eventually lead to lower harvest and lower profits to small entities over time. The third alternative would remove species from the Reef Fish FMP if Federal waters are at the edge of the species distribution. This alternative would not directly affect the profitability of small entities, and could possibly have similar long-term effects as the preferred alternative.

Five alternatives, of which two with one sub-alternative are the preferred alternatives, were considered for species groupings. The first alternative, the no action alternative, would maintain the current species groupings. This alternative would have no direct short-term economic effects on small entities. The second alternative would revise the species groupings by adding groupings when life history and landings data may be too sparse to set individual catch limits. Although this alternative would have no direct consequence on the economic status of small entities, it would provide for a greater number of groupings. The third alternative would use species groupings based on NMFS analysis, which uses fishery-dependent data from multiple sectors over multiple years, and life history data when available, to create complexes and sub-complexes. This alternative would have no direct effects on the economic status of small entities, but it would provide for more groupings than the preferred alternative. In addition to these alternatives, two other sub-alternatives were considered regarding the selection of an indicator species within each grouping, noting that the preferred sub-option is not to use any indicator species. The first sub-option is to use as an indicator species the most vulnerable stock in the group based on productivity-susceptibility analysis. This sub-option would likely result in more restrictive environment that would condition the implementation of ACLs and other management measures. The second sub-option would use the assessed species as an indicator species. This sub-option has similar effects as the first sub-option but it would be relatively less constrictive.

Three alternatives, including the preferred alternative, were considered for the ABC control rule. The first alternative, the no action alternative, would not specify an ABC control rule. This alternative would have no immediate effects on the economic status of small entities, but it may not comply with the Magnuson-Stevens Act National Standard 1 guidelines, which require Councils to establish an acceptable ABC control rule. The second alternative would adopt an ABC control rule fixing the buffer between the overfishing limit and ABC at a level such that ABC is equal to 75 percent of the overfishing limit or ABC is equal to the yield at 75 percent of F_{MSY} (fishing mortality at maximum sustainable yield). Although this alternative is simpler than the preferred alternative, it lacks the stock specificity contained in the preferred alternative.

Five alternatives, including the preferred alternative, were considered for the ACL/ACT control rule. The first alternative, the no action alternative, would not establish an ACL/ACT control rule. The second alternative would establish an initial estimate of ACL/ACT based upon a flow chart method that reviews data availability, data timeliness, and data quality to develop the ACT buffer percentage, and followed by a review by the Council's Socioeconomic Panel. This alternative would have economic effects similar to the preferred alternative, but it would produce a less conservative buffer when comparing stock complexes or stocks with high dead discard levels. Therefore, this alternative may result in less adverse economic impacts in the short-term than the preferred alternative. The third alternative would set the buffer between ACL and ACT at a fixed percentage: 25 percent for all sectors; 0 percent for IFQ fisheries and 25 percent for all other sectors; or 2 percent for IFQ fisheries and 25 percent for all other sectors, and will be followed by a review by the Council's Socioeconomic Panel. This alternative may result in lower economic benefits than the preferred alternative, because it would establish control rules that may not take account of stock specificity. The fourth alternative would set the buffer between ACL and ACT at a fixed percentage of 0 percent, 10 percent, 15 percent, or 25 percent, followed by a review by the Council's Socioeconomic Panel. This alternative has about the same economic implications as the third alternative, except possibly when dealing with IFQ species, so that it would also tend to provide lower economic benefits than the preferred alternative.

Four alternatives, including the preferred alternative, were considered for the generic framework procedures. The first alternative, the no action alternative, would retain the current framework procedures for implementing management measures. The second alternative would add modifications that would make the framework procedures broader than the preferred alternative while the third alternative would make the framework procedures narrower than the preferred alternative. Similar to the preferred alternative, these three other alternatives would have no direct economic effects on small entities.

Three alternatives, including the preferred alternative, were considered for specifying ACL for royal red shrimp. The first alternative, the no action alternative, would not set an ACL for the species. This alternative is the least likely to affect the profits of small entities, but it would not meet the legal requirements for establishing an ACL by 2011. The second alternative would set an ACL for the species based on average landings from 1962–2008 (141,379 lb (64,128 kg) of tails), from the last 5 years (191,860 lb (87,026 kg) of tails), or from the last 10 years (233,182 lb (105,770 kg) of tails). This alternative would likely result in a harvest reduction and profit reduction as well, except when the ACL is set at the highest of the three sub-options. Other sub-options would set the ACL equal to 75 percent of ABC (250,500 lb (113,625 kg)) or set the ACL corresponding to the ACL/ACT control rule. These sub-options would be unlikely to result in short-term profit reductions, although they are more restrictive than the preferred alternative/sub-alternative, because these sub-options would provide for ACLs that are much higher than historical landings.

Three alternatives, including the preferred alternative, were considered for establishing the Gulf portion of the jurisdictional apportionment of the black grouper ABC, as agreed upon by both councils. The first alternative, the no action alternative, would not apportion the species ABC between the Gulf and South Atlantic Councils. This alternative would tend to maintain the distribution of landings and potentially the economic benefits between the Gulf and South Atlantic fishing fleets. The second alternative would evenly apportion the species' ABC between the Gulf and South Atlantic Councils. The effects of this alternative on small entities would be lower profits than the preferred alternative.

Four alternatives, including the preferred alternative, were considered for establishing the Gulf portion of the jurisdictional apportionment of the yellowtail snapper ABC, as agreed upon by both councils. The first alternative, the no action alternative, would not apportion the species ABC between the Gulf and South Atlantic Councils. This alternative would tend to maintain the distribution of landings and potentially the economic benefits between the Gulf and South Atlantic fishing fleets. The second alternative would apportion 73 percent of the species ABC to the South Atlantic Council and 27 percent to the Gulf Council. This alternative would potentially yield higher profits to the Gulf fishing fleet than the preferred alternative, but the difference in the profit outcome of the two alternatives would be relatively small. The third alternative would apportion 77 percent to the South Atlantic Council and 23 percent to the Gulf Council. This

alternative would result in lower profits to the Gulf fishing fleet than the preferred alternative, although the difference in profit outcome between the two alternatives would be relatively small.

Three alternatives, including the preferred alternative, were considered for establishing the Gulf portion of the jurisdictional apportionment of the mutton snapper ABC, as agreed upon by both councils. The first alternative, the no action alternative, would not apportion the species ABC between the Gulf and South Atlantic Councils. This alternative would tend to maintain the distribution of landings and potentially economic benefits between the Gulf and South Atlantic fishing fleets. The second alternative would apportion 79 percent of the species' ABC to the South Atlantic Council and 21 percent to the Gulf Council. This alternative would result in lower profits to Gulf fishing fleet than the preferred alternative, although the difference in profit outcome between the two alternatives would be relatively small.

Four alternatives, including the preferred alternative, were considered for the sector allocation of black grouper. The first alternative, the no action alternative, would not establish sector allocation of the species. This alternative would tend to maintain the distribution of landings and potentially economic benefits between the commercial and recreational sectors. The second alternative would allocate 18 percent of the species' ACL to the recreational sector and 82 percent to the commercial sector. This alternative would result in higher profit increases to the commercial sector than the preferred alternative. However, it would also result in lower profits for the for-hire fleet. The net effects of this alternative cannot be estimated with available information. The third alternative would allocate 24 percent of the species ACL to the recreational sector and 76 percent to the commercial sector. This alternative would provide slightly higher profitability to the commercial sector and lower profitability to the for-hire sector than the preferred alternative. The net effects of this alternative cannot be estimated with available information.

Three alternatives, including the preferred alternative, and two sub-options, one of which is the preferred sub-option, were considered for specifying ACLs/ACTs for reef fish stocks and stock groupings. The first alternative, the no action alternative, would not set an annual ACL/ACT for stocks or stock groups, but this would not meet the legal requirements for establishing an ACL by 2011. The second alternative would set a 10 percent buffer between the ABC and ACL or between the ACL and ACT if ACL is equal to ABC. This alternative would likely result in lower profits to small entities than the preferred alternative. The second sub-option would set the ABC equal to the value specified in the ACL/ACT control rule, with the ACT not being used unless specified otherwise by the Council. This alternative would likely result in profits to small entities that would be equal to or less than those of the preferred alternative.

Four alternatives, of which two are the preferred alternatives, and five sub-options, of which two are the preferred sub-options, were considered for AMs. The first alternative, the no action alternative, would not create new AMs for reef fish and royal red shrimp. This alternative would likely result in higher profits for small entities than the preferred alternative, but it would not be consistent with the legal requirement that NMFS establish AMs for stocks managed by the Council. The second alternative would implement only post-season AMs for stocks and sectors that do not currently have AMs, should the ACL for a year be exceeded. This alternative would likely result in larger profit reductions in the short-term than the preferred alternative due to possibly more restrictive corrective actions being implemented to address ACL overages. The first sub-option would set the trigger for post-season AMs if the average landings for the past 3 years exceed the ACL. This sub-option would likely result in lower short-term profit reductions than the preferred alternative, although over time it would result in larger profit reductions due to more restrictive actions to remedy the overages. The second sub-option would set the trigger for post-season AMs if average landings for the past 5 years, after excluding the highest and lowest values, exceed the ACL. This alternative would have nearly similar effects as the second alternative. The third sub-option would provide for an overage adjustment if the ACL for the stock or sector is exceeded and the stock is under a rebuilding plan. The amount of adjustment would equal the full amount of the overage, unless the best scientific information shows a lesser amount is needed to mitigate the effects of exceeding the ACL. This sub-option would result in larger profit reductions in the short-term than the preferred alternative due to harvest reductions that would be implemented to mitigate the overages.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: December 20, 2011.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

§ 622.1 [Amended]

■ 2. In § 622.1, paragraph (b), in Table 1, remove the row titled, ''FMP for Coral and Coral Reefs of the Gulf of Mexico''.

■ 3. In § 622.2, the definitions for ''deep-water grouper (DWG)'' and ''shallow-water grouper (SWG)'' are revised to read as follows:

§ 622.2 Definitions and acronyms.

* * * * *

Deep-water grouper (DWG) means, in the Gulf, yellowedge grouper, warsaw grouper, snowy grouper, and speckled hind. In addition, for the purposes of the IFQ program for Gulf groupers and tilefishes in § 622.20, scamp are also included as DWG as specified in § 622.20(a)(7).

* * * * *

Shallow-water grouper (SWG) means, in the Gulf, gag, red grouper, black grouper, scamp, yellowfin grouper, and yellowmouth grouper. In addition, for the purposes of the IFQ program for Gulf groupers and tilefishes in § 622.20, speckled hind and warsaw grouper are also included as SWG as specified in § 622.20(a)(6).

* * * * *

■ 4. In § 622.3, paragraph (c) is revised to read as follows:

§ 622.3 Relation to other laws and regulations.

* * * * *

(c) For allowable octocoral, if a state has a catch, landing, or gear regulation that is more restrictive than a catch, landing, or gear regulation in this part, a person landing in such state allowable octocoral taken from the South Atlantic EEZ must comply with the more restrictive state regulation.

* * * * *

■ 5. In § 622.4, the first sentence of paragraph (a)(2)(ix) and paragraph (a)(3)(ii) are revised to read as follows:

§ 622.4 Permits and fees.

(a) * * *

(2) * * *

(ix) *Gulf IFQ vessel accounts.* For a person aboard a vessel, for which a commercial vessel permit for Gulf reef fish has been issued, to fish for, possess, or land Gulf red snapper or Gulf groupers (including DWG and SWG, as specified in § 622.20(a)) or tilefishes (including goldface tilefish, blueline tilefish, and tilefish), regardless of where harvested or possessed, a Gulf IFQ vessel account for the applicable species or species groups must have been established. * * *

* * * * *

(3) * * *

(ii) *Allowable octocoral.* For an individual to take or possess allowable octocoral in the South Atlantic EEZ, other than allowable octocoral that is landed in Florida, a Federal allowable octocoral permit must have been issued to the individual. Such permit must be available for inspection when the permitted activity is being conducted and when allowable octocoral is possessed, through landing ashore.

* * * * *

■ 6. In § 622.20, the first three sentences in paragraph (a) are revised to read as follows:

§ 622.20 Individual fishing quota (IFQ) program for Gulf groupers and tilefishes.

(a) *General.* This section establishes an IFQ program for the commercial components of the Gulf reef fish fishery for groupers (including DWG, red grouper, gag, and other SWG) and tilefishes (including goldface tilefish, blueline tilefish, and tilefish). For the purposes of this IFQ program, DWG includes yellowedge grouper, warsaw grouper, snowy grouper, speckled hind, and scamp, but only as specified in paragraph (a)(7) of this section. For the purposes of this IFQ program, other SWG includes black grouper, scamp, yellowfin grouper, yellowmouth grouper, warsaw grouper, and speckled hind, but only as specified in paragraph (a)(6) of this section. * * *

* * * * *

■ 7. In § 622.31, paragraphs (f) and (n) are revised to read as follows:

§ 622.31 Prohibited gear and methods.

* * * * *

(f) *Power-assisted tools.* A power-assisted tool may not be used in the Caribbean EEZ to take a Caribbean coral reef resource, in the Gulf EEZ to take prohibited coral or live rock, or in the South Atlantic EEZ to take allowable octocoral, prohibited coral, or live rock.

* * * * *

(n) Gulf reef fish may not be used as bait in any fishery, except that, when purchased from a fish processor, the filleted carcasses and offal of Gulf reef fish may be used as bait in trap fisheries for blue crab, stone crab, deep-water crab, and spiny lobster.

■ 8. In § 622.32, the first sentence of paragraph (b)(2)(iii) is revised to read as follows:

§ 622.32 Prohibited and limited-harvest species.

* * * * *

(b) * * *

(2) * * *

(iii) Red drum may not be harvested or possessed in or from the Gulf EEZ. * * *

* * * * *

■ 9. In § 622.34, the third sentence of paragraph (g)(1) is revised to read as follows:

§ 622.34 Gulf EEZ seasonal and/or area closures.

* * * * *

(g) * * *

(1) * * * The provisions of this paragraph do not apply to hogfish.

* * * * *

■ 10. In § 622.37, paragraph (d)(1)(iii) is revised to read as follows:

§ 622.37 Size limits.

* * * * *

(d) * * *

(1) * * *

(iii) Cubera, gray, and yellowtail snappers—12 inches (30.5 cm), TL.

* * * * *

■ 11. In § 622.39, the first sentence in paragraph (b)(1)(ii) and paragraph (b)(1)(v) are revised to read as follows:

§ 622.39 Bag and possession limits.

* * * * *

(b) * * *

(1) * * *

(ii) Groupers, combined, excluding goliath grouper—4 per person per day, but not to exceed 1 speckled hind or 1 warsaw grouper per vessel per day, or 2 gag per person per day. * * *

* * * * *

(v) Gulf reef fish, combined, excluding those specified in paragraphs (b)(1)(i) through (b)(1)(iv) and paragraphs (b)(1)(vi) through (b)(1)(vii) of this section—20.

* * * * *

■ 12. In § 622.42, paragraph (a)(1)(ii), the introductory text for paragraph (a)(1)(iii), paragraph (a)(1)(iii)(A), paragraph (a)(1)(iv), and paragraph (b) are revised to read as follows:

§ 622.42 Quotas.

(a) * * *

(1) * * *

(ii) Deep-water groupers (DWG) have a combined quota, as specified in paragraphs (a)(1)(ii)(A) through (E) of this section. These quotas are specified in gutted weight, that is eviscerated, but otherwise whole.

(A) For fishing year 2012—1.127 million lb (0.511 million kg).

(B) For fishing year 2013—1.118 million lb (0.507 million kg).

(C) For fishing year 2014—1.110 million lb (0.503 million kg).

(D) For fishing year 2015—1.101 million lb (0.499 million kg).

(E) For fishing year 2016 and subsequent fishing years—1.024 million lb (0.464 million kg).

(iii) Shallow-water groupers (SWG) have separate quotas for gag and red grouper and a combined quota for other shallow-water grouper (SWG) species (including black grouper, scamp, yellowfin grouper, and yellowmouth grouper), as specified in paragraphs (a)(1)(iii)(A) through (C) of this section. These quotas are specified in gutted weight, that is, eviscerated but otherwise whole.

(A) *Other SWG combined.* (*1*) For fishing year 2012—509,000 lb (230,879 kg).

(*2*) For fishing year 2013—518,000 lb (234,961 kg).

(*3*) For fishing year 2014—523,000 lb (237,229 kg).

(*4*) For fishing year 2015 and subsequent fishing years—525,000 lb (238,136 kg).

* * * * *

(iv) Tilefishes (including goldface tilefish, blueline tilefish, and tilefish)—582,000 lb (263,991 kg), gutted weight, that is, eviscerated but otherwise whole.

* * * * *

(b) *South Atlantic allowable octocoral.* The quota for all persons who harvest allowable octocoral in the EEZ of the South Atlantic is 50,000 colonies. A colony is a continuous group of coral polyps forming a single unit.

* * * * *

■ 13. In § 622.43, paragraph (a)(2) is revised to read as follows:

§ 622.43 Closures.

(a) * * *

(2) *South Atlantic allowable octocoral.* Allowable octocoral may not be harvested or possessed in the South Atlantic EEZ and the sale or purchase of

allowable octocoral in or from the South Atlantic EEZ is prohibited.

* * * * *

■ 14. In § 622.48, paragraphs (d), (e), (i), and (j) are revised, paragraphs (m), (n), and (o) are added and reserved, and paragraph (p) is added to read as follows:

§ 622.48 Adjustment of management measures.

* * * * *

(d) *Gulf reef fish.* For a species or species group: Reporting and monitoring requirements, permitting requirements, bag and possession limits (including a bag limit of zero), size limits, vessel trip limits, closed seasons or areas and reopenings, annual catch limits (ACLs), annual catch targets (ACTs), quotas (including a quota of zero), accountability measures (AMs), MSY (or proxy), OY, TAC, management parameters such as overfished and overfishing definitions, gear restrictions (ranging from regulation to complete prohibition), gear markings and identification, vessel markings and identification, allowable biological catch (ABC) and ABC control rules, rebuilding plans, sale and purchase restrictions, transfer at sea provisions, and restrictions relative to conditions of harvested fish (maintaining fish in whole condition, use as bait).

(e) *Gulf royal red shrimp.* Reporting and monitoring requirements, permitting requirements, size limits, vessel trip limits, closed seasons or areas and reopenings, annual catch limits (ACLs), annual catch targets (ACTs), quotas (including a quota of zero), accountability measures (AMs), MSY (or proxy), OY, TAC, management parameters such as overfished and overfishing definitions, gear restrictions (ranging from regulation to complete prohibition), gear markings and identification, vessel markings and identification, allowable biological catch (ABC) and ABC control rules, rebuilding plans, sale and purchase restrictions, transfer at sea provisions, and restrictions relative to conditions of harvested shrimp (maintaining shrimp in whole condition, use as bait).

* * * * *

(i) *Gulf shrimp.* For a species or species group: Reporting and monitoring requirements, permitting requirements, size limits, vessel trip limits, closed seasons or areas and reopenings, annual catch limits (ACLs), annual catch targets (ACTs), quotas (including a quota of zero), accountability measures (AMs), MSY (or proxy), OY, TAC, management parameters such as overfished and overfishing definitions, gear restrictions (ranging from regulation to complete prohibition), gear markings and identification, vessel markings and identification, allowable biological catch (ABC) and ABC control rules, rebuilding plans, sale and purchase restrictions, transfer at sea provisions, restrictions relative to conditions of harvested shrimp (maintaining shrimp in whole condition, use as bait), target effort and fishing mortality reduction levels, bycatch reduction criteria, BRD certification and decertification criteria, BRD testing protocol, certified BRDs, and BRD specification.

(j) *Gulf red drum.* Reporting and monitoring requirements, permitting requirements, bag and possession limits (including a bag limit of zero), size limits, vessel trip limits, closed seasons or areas and reopenings, annual catch limits (ACLs), annual catch targets (ACTs), quotas (including a quota of zero), accountability measures (AMs), MSY (or proxy), OY, TAC, management parameters such as overfished and overfishing definitions, gear restrictions (ranging from regulation to complete prohibition), gear markings and identification, vessel markings and identification, allowable biological catch (ABC) and ABC control rules, rebuilding plans, sale and purchase restrictions, transfer at sea provisions, and restrictions relative to conditions of harvested fish (maintaining fish in whole condition, use as bait).

* * * * *

(p) *Gulf coral resources.* For a species or species group: Reporting and monitoring requirements, permitting requirements, bag and possession limits (including a bag limit of zero), size limits, vessel trip limits, closed seasons or areas and reopenings, annual catch limits (ACLs), annual catch targets (ACTs), quotas (including a quota of zero), accountability measures (AMs), MSY (or proxy), OY, TAC, management parameters such as overfished and overfishing definitions, gear restrictions (ranging from regulation to complete prohibition), gear markings and identification, vessel markings and identification, allowable biological catch (ABC) and ABC control rules, rebuilding plans, sale and purchase restrictions, transfer at sea provisions, and restrictions relative to conditions of harvested corals.

■ 15. In § 622.49, the section heading and paragraph (a)(3) are revised, paragraphs (c) and (e), (f), (g), and (h) are added and reserved, and paragraphs (a)(6) through (a)(16) and paragraph (d) are added to read as follows:

§ 622.49 Annual catch limits (ACLs) and accountability measures (AMs).

(a) * * *

(3) *Other shallow-water grouper (SWG) combined (including black grouper, scamp, yellowfin grouper, and yellowmouth grouper)*—(i) *Commercial sector.* The IFQ program for groupers and tilefishes in the Gulf of Mexico serves as the accountability measure for other commercial SWG. The commercial ACL for other SWG is equal to the applicable quota specified in § 622.42(a)(1)(iii)(A).

(ii) *Recreational sector.* If the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock complex ACL specified in paragraph (a)(3)(iii) of this section, then during the following fishing year, if the sum of the commercial and recreational landings reaches or is projected to reach the applicable ACL specified in (a)(3)(iii) of this section, the AA will file a notification with the Office of the Federal Register to close the recreational sector for the remainder of that fishing year.

(iii) The stock complex ACLs for other SWG, in gutted weight, are 688,000 lb (312,072 kg) for 2012, 700,000 lb (317,515 kg) for 2013, 707,000 lb (320,690 kg) for 2014, and 710,000 lb (322,051 kg) for 2015 and subsequent years.

* * * * *

(6) *Deep-water grouper (DWG) combined (including yellowedge grouper, warsaw grouper, snowy grouper, and speckled hind)*—

(i) *Commercial sector.* The IFQ program for groupers and tilefishes in the Gulf of Mexico serves as the accountability measure for commercial DWG. The commercial ACL for DWG is equal to the applicable quota specified in § 622.42(a)(1)(ii).

(ii) *Recreational sector.* If the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock complex ACL specified in paragraph (a)(6)(iii) of this section, then during the following fishing year, if the sum of commercial and recreational landings reaches or is projected to reach the applicable ACL specified in (a)(6)(iii) of this section, the AA will file a notification with the Office of the Federal Register to close the recreational sector for the remainder of that fishing year.

(iii) The stock complex ACLs for DWG, in gutted weight, are 1.216 million lb (0.552 million kg) for 2012, 1.207 million lb (0.547 million kg) for 2013, 1.198 million lb (0.543 million kg) for 2014, 1.189 million lb (0.539 million

kg) for 2015, and 1.105 million lb (0.501 million kg) for 2016 and subsequent years.

(7) *Tilefishes combined (including goldface tilefish, blueline tilefish, and tilefish)*—(i) *Commercial sector.* The IFQ program for groupers and tilefishes in the Gulf of Mexico serves as the accountability measure for commercial tilefishes. The commercial ACL for tilefishes is equal to the applicable quota specified in § 622.42(a)(1)(iv).

(ii) *Recreational sector.* If the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock complex ACL specified in paragraph (a)(7)(iii) of this section, then during the following fishing year, if the sum of commercial and recreational landings reaches or is projected to reach the applicable ACL specified in (a)(7)(iii) of this section, the AA will file a notification with the Office of the Federal Register to close the recreational sector for the remainder of that fishing year.

(iii) The stock complex ACL for tilefishes is 608,000 lb (275,784 kg), gutted weight.

(8) *Lesser amberjack, almaco jack, and banded rudderfish, combined.* If the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock complex ACL, then during the following fishing year, if the sum of commercial and recreational landings reaches or is projected to reach the stock complex ACL, the AA will file a notification with the Office of the Federal Register to close the commercial and recreational sectors for the remainder of that fishing year. The stock complex ACL for lesser amberjack, almaco jack, and banded rudderfish, is 312,000 lb (141,521 kg), round weight.

(9) *Silk snapper, queen snapper, blackfin snapper, and wenchman, combined.* If the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock complex ACL, then during the following fishing year, if the sum of commercial and recreational landings reaches or is projected to reach the stock complex ACL, the AA will file a notification with the Office of the Federal Register to close the commercial and recreational sectors for the remainder of that fishing year. The stock complex ACL for silk snapper, queen snapper, blackfin snapper, and wenchman, is 166,000 lb (75,296 kg), round weight.

(10) *Vermilion snapper.* If the sum of the commercial and recreational landings, as estimated by the SRD, reaches or is projected to reach the stock ACL, the AA will file a notification with the Office of the Federal Register to close the commercial and recreational sectors for the remainder of the fishing year. The stock ACL for vermilion snapper is 3.42 million lb (1.55 million kg), round weight.

(11) *Lane snapper.* If the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock ACL, then during the following fishing year, if the sum of commercial and recreational landings reaches or is projected to reach the stock ACL, the AA will file a notification with the Office of the Federal Register to close the commercial and recreational sectors for the remainder of that fishing year. The stock ACL for lane snapper is 301,000 lb (136,531 kg), round weight.

(12) *Gray snapper.* If the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock ACL, then during the following fishing year, if the sum of commercial and recreational landings reaches or is projected to reach the stock ACL, the AA will file a notification with the Office of the Federal Register to close the commercial and recreational sectors for the remainder of that fishing year. The stock ACL for gray snapper is 2.42 million lb (1.10 million kg), round weight.

(13) *Cubera snapper.* If the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock ACL, then during the following fishing year, if the sum of commercial and recreational landings reaches or is projected to reach the stock ACL, the AA will file a notification with the Office of the Federal Register to close the commercial and recreational sectors for the remainder of that fishing year. The stock ACL for cubera snapper is 5,065 lb (2,297 kg), round weight.

(14) *Yellowtail snapper.* If the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock ACL, then during the following fishing year, if the sum of commercial and recreational landings reaches or is projected to reach the stock ACL, the AA will file a notification with the Office of the Federal Register to close the commercial and recreational sectors for the remainder of that fishing year. The stock ACL for yellowtail snapper is 725,000 lb (328,855 kg), round weight.

(15) *Mutton snapper.* If the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock ACL, then during the following fishing year, if the sum of commercial and recreational landings reaches or is projected to reach the stock ACL, the AA will file a notification with the Office of the Federal Register to close the commercial and recreational sectors for the remainder of that fishing year. The stock ACL for mutton snapper is 203,000 lb (92,079 kg), round weight.

(16) *Hogfish.* If the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock ACL, then during the following fishing year, if the sum of commercial and recreational landings reaches or is projected to reach the stock ACL, the AA will file a notification with the Office of the Federal Register to close the commercial and recreational sectors for the remainder of that fishing year. The stock ACL for hogfish is 208,000 lb (94,347 kg), round weight.

* * * * *

(d) *Royal red shrimp in the Gulf.* (1) *Commercial sector.* If commercial landings, as estimated by the SRD, exceed the commercial ACL, then during the following fishing year, if commercial landings reach or are projected to reach the commercial ACL, the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of that fishing year. The commercial ACL for royal red shrimp is 334,000 lb (151,500 kg), tail weight.

(2) [Reserved]

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16. In Appendix A to part 622, Table 3 is revised to read as follows:

Appendix A to Part 622—Species Tables

* * * * *

Table 3 of Appendix A to Part 622—Gulf Reef Fish

Balistidae—Triggerfishes
- Gray triggerfish, *Balistes capriscus*

Carangidae—Jacks
- Greater amberjack, *Seriola dumerili*
- Lesser amberjack, *Seriola fasciata*
- Almaco jack, *Seriola rivoliana*
- Banded rudderfish, *Seriola zonata*

Labridae—Wrasses
- Hogfish, *Lachnolaimus maximus*

Lutjanidae—Snappers
- Queen snapper, *Etelis oculatus*
- Mutton snapper, *Lutjanus analis*
- Blackfin snapper, *Lutjanus buccanella*
- Red snapper, *Lutjanus campechanus*
- Cubera snapper, *Lutjanus cyanopterus*
- Gray (mangrove) snapper, *Lutjanus griseus*
- Lane snapper, *Lutjanus synagris*
- Silk snapper, *Lutjanus vivanus*
- Yellowtail snapper, *Ocyurus chrysurus*
- Wenchman, *Pristipomoides aquilonaris*
- Vermilion snapper, *Rhomboplites aurorubens*

Malacanthidae—Tilefishes
- Goldface tilefish, *Caulolatilus chrysops*
- Blueline tilefish, *Caulolatilus microps*
- Tilefish, *Lopholatilus chamaeleonticeps*

Serranidae—Groupers
- Speckled hind, *Epinephelus drummondhayi*
- Yellowedge grouper, *Epinephelus flavolimbatus*
- Goliath grouper, *Epinephelus itajara*

Red grouper, *Epinephelus morio*
Warsaw grouper, *Epinephelus nigritus*
Snowy grouper, *Epinephelus niveatus*
Black grouper, *Mycteroperca bonaci*
Yellowmouth grouper, *Mycteroperca interstitialis*
Gag, *Mycteroperca microlepis*
Scamp, *Mycteroperca phenax*
Yellowfin grouper, *Mycteroperca venenosa*

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Part III

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 622

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources in the Gulf of Mexico and Atlantic Region; Amendment 18; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 101206604–1758–02]

RIN 0648–BB33

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources in the Gulf of Mexico and Atlantic Region; Amendment 18

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Amendment 18 to the Fishery Management Plan for the Coastal Migratory Pelagic Resources in the Gulf of Mexico and Atlantic Region (FMP), as prepared and submitted by the Gulf of Mexico (Gulf) and South Atlantic Fishery Management Councils (Councils). This rule removes species from the FMP; modifies the framework procedures; establishes two migratory groups for cobia; and establishes annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs) for king mackerel, Spanish mackerel, and cobia. In addition, Amendment 18 sets allocations for Atlantic migratory group cobia and establishes control rules for king mackerel, Spanish mackerel, and cobia. The intent of this rule is to specify ACLs for species not undergoing overfishing while maintaining sustainable catch levels.

DATES: This rule is effective January 30, 2012. Written comments specific to the revisions to § 622.44(b)(2) must be received on or before January 30, 2012.

ADDRESSES: You may submit comments on the specific revisions contained in this final rule to § 622.44(b)(2), identified by ''NOAA–NMFS–2011–0202'' by any of the following methods:

- *Electronic submissions:* Submit electronic comments via the Federal e-Rulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Susan Gerhart, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

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.

To submit comments through the Federal e-Rulemaking Portal: *http://www.regulations.gov,* click on ''submit a comment,'' then enter ''NOAA–NMFS–2011–0202'' in the keyword search and click on ''search.'' To view posted comments during the comment period, enter ''NOAA–NMFS–2011–0202'' in the keyword search and click on ''search.'' NMFS will accept anonymous comments (enter N/A in the required field if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Comments received through means not specified in this rule will not be considered.

Electronic copies of Amendment 18, which includes an environmental assessment and an initial regulatory flexibility analysis (IRFA), may be obtained from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov/sf/MackerelHomepage.htm.*

FOR FURTHER INFORMATION CONTACT: Susan Gerhart, telephone: (727) 824–5305, or email: *Susan.Gerhart@noaa.gov.*

SUPPLEMENTARY INFORMATION: The coastal migratory pelagic (CMP) fishery in the Gulf and the Atlantic is managed under the FMP. The FMP was prepared by the Councils and implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On September 29, 2011, NMFS published a notice of availability for Amendment 18 and requested public comment (76 FR 60444). On October 24, 2011, NMFS published a proposed rule for Amendment 18 and requested public comment (76 FR 65662). The proposed rule and Amendment 18 outline the rationale for the actions contained in this final rule. A summary of the actions implemented by this final rule are provided below.

Removal of Species from the FMP

The Councils have determined that cero, little tunny, dolphin (in the Gulf), and bluefish (in the Gulf) are not in need of Federal management and will therefore be removed from the FMP with this final rule. The species were originally included in the FMP ''for data collection purposes,'' but data collection on any species is required of fishermen and dealers that hold Federal permits, regardless of the presence of that species in an FMP. If landings or effort change for any of these species and the Councils determine management at the Federal level is needed, these species could be added back into the FMP at a later date.

Cobia Migratory Groups

This final rule establishes two migratory groups for cobia, a Gulf migratory group and an Atlantic migratory group. The boundary is the line of demarcation between the Gulf exclusive economic zone (EEZ) and the South Atlantic EEZ. ACLs and AMs are established separately for each migratory group. The stock ACL for Gulf migratory group cobia is 1.46 million lb (0.66 million kg) and for Atlantic migratory group cobia, the stock ACL is 1,571,399 lb (712,775 kg). However, this rule does not change the current possession limit of two cobia per person per day for either commercial or recreational fishermen.

Gulf Migratory Group King Mackerel

For Gulf migratory group king mackerel, this final rule establishes separate ACLs and AMs for the commercial and recreational sectors based on sector allocations. The commercial sector AMs will close by zone, subzone, or gear type when the commercial quota for the applicable zone, subzone, or gear type is reached or is projected to be reached. The commercial sector ACL is equivalent to the commercial sector quota which is set for the 2012 to 2013 fishing year at 3.808 million lb (1.728 million kg) and for the 2013 to 2014 fishing year and subsequent fishing years, at 3.456 million lb (1.568 million kg). For Gulf migratory group king mackerel, the recreational sector ACL is set at 8.092 million lb (3.670 million kg). In addition, current trip limit adjustments will remain in place as specified at § 622.44(a)(2).

For the recreational sector AMs, the Regional Administrator will have the authority to revert the bag and possession limit to zero if the recreational allocation (recreational ACL) is reached or projected to be reached. This bag and possession limit would also apply on board a vessel for which a valid charter vessel/headboat permit has been issued, without regard to where such species were harvested, *i.e.* in state or Federal waters.

Atlantic Migratory Group King Mackerel

For Atlantic migratory group king mackerel, this final rule establishes separate ACLs for the commercial and recreational sectors based on sector allocations. The commercial sector ACL is equivalent to the commercial quota of 3.88 million lb (1.76 million kg). This rule also sets a stock ACL and an ACT for the recreational sector. The recreational ACT for the commercial sector is set at 6.11 million lb (2.77 million kg and the stock ACL for Atlantic migratory group king mackerel is 10.46 million lb (4.75 million kg).

The AM for the commercial sector is that the sector will close when the commercial ACL is reached or projected to be reached. When the commercial sector closes, harvest and possession of king mackerel would be prohibited for persons aboard a vessel for which a commercial permit for king mackerel has been issued. If that vessel also has a valid charter vessel/headboat permit on board for CMP species and is operating as a charter vessel or headboat, harvest and possession of king mackerel would be limited to the applicable bag limit. Also, sale and purchase of king mackerel would be prohibited, including king mackerel taken under the bag or possession limits, without regard to where such species were harvested, *i.e.* in state or Federal waters.

For the recreational sector AM, if the stock ACL is exceeded in any year, the bag limit will be reduced the next fishing year by the amount necessary to ensure recreational landings may achieve the recreational ACT, but do not exceed the recreational ACL. A payback will be assessed if Atlantic migratory group king mackerel are determined to be overfished and the stock ACL is exceeded, and will include a reduction in the sector ACL for the following year by the amount of the overage by that sector in the prior fishing year.

Gulf Migratory Group Spanish Mackerel

This final rule establishes stock ACLs and AMs for Gulf migratory group Spanish mackerel. For AMs for Gulf migratory group Spanish mackerel, both the commercial and recreational sectors will close when the stock ACL is reached or projected to be reached. Harvest, possession, sale, and purchase of Spanish mackerel would be prohibited, without regard to where such species were harvested, *i.e.* in state or Federal waters. The stock ACL for Gulf migratory group Spanish mackerel is 5.15 million lb (4.75 million kg).

Atlantic Migratory Group Spanish Mackerel

For Atlantic migratory group Spanish mackerel, this final rule establishes separate ACLs for the commercial and recreational sectors based on sector allocations. This rule also sets an ACT for the recreational sector. The commercial sector ACL is equivalent to the commercial sector quota of 3.13 million lb (1.42 million kg). The recreational sector ACT is 2.32 million lb (1.05 million kg) and the recreational sector ACL is 2.56 million lb (1.16 million kg).

The AM for the commercial sector is that the commercial sector will close when the commercial quota is reached or projected to be reached. In addition, current trip limit adjustments will remain in place as specified at § 622.44(b). When the commercial sector closes, harvest and possession of Spanish mackerel would be prohibited for persons aboard a vessel for which a commercial permit for Spanish mackerel has been issued. If that vessel also has a valid charter vessel/headboat permit on board for CMP species and is operating as a charter vessel or headboat, harvest and possession of Spanish mackerel would be limited to the applicable bag limit. Also, sale and purchase of Spanish mackerel would be prohibited, including Spanish mackerel taken under the bag or possession limits, without regard to where such species were harvested, *i.e.* in state or Federal waters.

For the recreational sector AM, if the stock ACL is exceeded in any year, the bag limit will be reduced the next fishing year by the amount necessary to ensure recreational landings may achieve the recreational ACT, but do not exceed the recreational ACL in the following fishing year. A payback will be assessed if the Atlantic migratory group Spanish mackerel are determined to be overfished and the stock ACL is exceeded. The payback will include a reduction in the sector ACL for the following year by the amount of the overage by that sector in the prior fishing year.

Gulf Migratory Group Cobia

This final rule establishes stock ACLs and AMs for Gulf migratory group cobia. A stock ACT will be set that is 90 percent of the ACL. The AMs to be implemented are that both the commercial and recreational sectors will close when the stock ACT is reached or projected to be reached. For Gulf migratory group cobia, the stock ACT is 1.31 million lb (0.59 million kg) and the stock ACL is 1.46 million lb (0.66 million kg).

Atlantic Migratory Group Cobia

This final rule also establishes separate ACLs for Atlantic migratory group cobia for the commercial and recreational sectors based on sector allocations and establishes sector AMs. Amendment 18 sets an allocation of 8 percent of the ACL for the commercial sector and 92 percent of the ACL for the recreational sector. This rule also sets an ACT for the recreational sector. The commercial sector ACL is equivalent to the commercial sector quota of 125,712 lb (57,022 kg). The AM is that the commercial sector would close when the commercial ACL is reached or projected to be reached. Sale and purchase of cobia would be prohibited, including cobia taken under the possession limit, without regard to where such species were harvested, *i.e.* in state or Federal waters.

The recreational sector ACT is set at 1,184,688 lb (537,365 kg) and the recreational sector ACL is set at 1,445,687 (655,753 kg). The AM to be implemented for the recreational sector is that if the stock ACL is exceeded in any year, the fishing season will be reduced the following year by the amount necessary to ensure that recreational landings may achieve the recreational ACT, but do not exceed the recreational ACL in the following fishing year. A payback will be assessed if Atlantic migratory group cobia are determined to be overfished and the stock ACL is exceeded. The payback will include a reduction in the sector ACL for the following year by the amount of the overage by that sector in the prior fishing year.

Modification of Generic Framework Procedures

To facilitate timely adjustments to harvest parameters and other management measures, this final rule revises the current framework procedures. This revision gives the Councils and NMFS greater flexibility to more promptly alter harvest parameters and other management measures as new scientific information becomes available.

Comments and Responses

NMFS received public comment submissions from 11 individuals and one non-governmental organization on Amendment 18 and the proposed rule. Two Federal agencies also submitted letters stating they had no comment on the rule. Four comments were generally in favor of the amendment and three were generally in opposition. Five

comments suggested additional management measures for coastal migratory species including changing the fishing year for cobia in the Atlantic, increasing the minimum size limit for cobia, buying back king mackerel Federal permits, increasing the commercial quota for the Gulf's Florida west coast subzone, and requiring fishermen to declare in which zone they will fish for mackerel. These management measures are not included in Amendment 18 but may be considered in future amendments and framework actions. Comments that pertain to specific actions addressed in Amendment 18 or the proposed rule are summarized and responded to below.

Comment 1: Spanish mackerel (Atlantic migratory group) show signs of rebuilding and last year's large year-class will increase the chance of a commercial closure in 2012. The 2008 stock assessment used poor data and was rejected; the ABC shouldn't be reduced because of that mistake. The ABC and ACL should stay at the current 7.04 million lb (3.19 million kg) until the 2012 assessment is complete.

Response: Because the most recent assessment was rejected, the South Atlantic Council's Science and Statistical Committee (SSC) determined the ABC for Spanish mackerel would be calculated using the ABC control rule for unassessed species. Originally, they had used the median of landings, which is appropriate for stocks where an increase in catch would lead to a decline in stock or stock concerns, according to the control rule. After reconsidering the ABC for Spanish mackerel, they determined an increase in catch would not lead to a decline in stock or stock concerns, so the 80th percentile, or in this case the third highest landings over a 10 year period, was set as the ABC. The ABC and ACL for Spanish mackerel will likely change after the 2012 stock assessment; however, the Councils and their SSCs chose to be relatively precautionary in their establishment of an ABC and ACL at this time.

Comment 2: Do not specify a recreational sector ACT for Atlantic migratory group Spanish mackerel.

Response: ACTs provide a buffer from the ACL to account for management uncertainty. Because recreational landings are survey based, there is greater uncertainty associated with those data than for commercial landings information that are reported by dealers. Establishment of an ACT will help keep landings from exceeding the ACL and triggering AMs. A recreational ACT for Atlantic migratory group Spanish mackerel is also consistent with the recreational ACTs set for Atlantic migratory group king mackerel and cobia.

Comment 3: The entire timeframe should be used for allocation of cobia (Atlantic migratory group) between the commercial and recreational sectors.

Response: The allocation chosen by the Councils was based on landings from the years 2000–2008, with greater weight given to landings during 2006–2008. The Councils determined this method best reflected how the fishery is currently prosecuted.

Comment 4: NMFS should disapprove the action to remove species. The rule does not provide a scientifically sound justification for removing species from Federal management and may put those populations unknowingly at risk of overfishing. It is not clear how removing these species from any conservation and management without strong justification and much more thorough analysis accomplishes any of the following: prevents overfishing and protects, restores and promotes the long-term health of the fishery; rebuilds, restores or maintains fishery resources and the marine environment; or avoids irreversible or long-term adverse effects on fishery resources and the marine environment.

Response: According to National Standard 7 guidelines, the Magnuson-Stevens Act requires Councils to prepare FMPs only for overfished fisheries and for other fisheries where regulation would serve some useful purpose and where the present or future benefits of regulation would justify the costs. The guidelines further state that the principle implicit in National Standard 7 of the Magnuson-Stevens Act is that not every fishery needs regulation. As thoroughly discussed in Amendment 18, an analysis of the factors contained in the National Standard 7 guidelines does not support the retention in the FMP of the species currently sought to be removed.

The species in question were originally placed in the FMP to assure that they would be included in any monitoring programs, rather than because they were considered to be in need of management. These species have been in the management unit since 1983 without any Federal regulations, and there is no reason to believe additional fisheries will develop now to target and harvest these and other species not included in the management unit for the FMP. The overfishing status of these stocks is unknown, except that little tunny in the Gulf are not undergoing overfishing. During the development of both Councils' respective ACL amendments, the SSCs met multiple times to set ABCs and OFLs for federally managed species, including many unassessed stocks. However, the SSCs never included cero, little tunny, bluefish, or dolphin (in the Gulf) in their deliberations. The indication is they had no concern that these stocks are in need of additional management.

Future overfishing or risks to these species would not be expected to occur without NMFS knowledge. Species that are removed by this final rule will continue to have their commercial and recreational landings monitored through standard record-keeping requirements of the Marine Recreational Information Program and commercial trip ticket records. Should a substantial change in landings or effort be noted, or should some other concern indicating a need for conservation arise, the Councils could develop a plan amendment to add the species back into the management unit. If the species were retained in the FMP, the Councils would have to follow the same plan amendment process or implement new measures via the framework process established in the FMP. Therefore, retention of species in the FMP would not significantly improve the timeliness of implementing the action.

Comment 5: Four species are removed from the FMU even though they have a high level of landings compared to the criteria used by these Councils to justify the removal of species from Federal management in other amendments. Three of the four species (*i.e.,* bluefish, little tunny, and dolphinfish) have substantial fisheries, primarily in the recreational sector and in waters off Florida's coast. In addition, one species (cero) may have identification or reporting issues with similar species.

Response: Decisions whether to retain species in the FMP are necessarily made on a case by case basis consistent with the principles established in the MSA and the National Standard guidelines. Landings criteria were not as explicitly evaluated in Amendment 18 as they were in other FMPs and by other councils. The landings criteria developed for other ACL amendments to each FMP in the Gulf, South Atlantic, and the Caribbean considered specific characteristics of the fishery and the species. For example, for the Gulf reef fish fishery, average landings needed to be 15,000 lb (6,804 kg) or less (among other criteria) for a species to be considered for removal; for the South Atlantic snapper-grouper fishery, less than 5 percent of landings (among other criteria) must come from Federal waters for a species to be considered for removal.

Criteria based on landings level or harvest location were not used in Amendment 18 because the species included are so vastly different from one another that a single criterion would not be practical. Landings that are ''high'' for one stock may be ''low'' for another stock. Instead, guidelines for National Standard 7 were used to determine if a stock is in need of Federal management. This guidance gives seven factors, each of which was considered for the four species in question.

NMFS recognizes that cero are often mistaken for king mackerel; however, best available data indicate that cero are caught infrequently and in low numbers. ACLs for species with very low landings do not provide meaningful management benchmarks. Further, the difficulty in tracking landings and monitoring could prove costly to implement. Therefore, the benefits of imposing an ACL on a species with such low landings would not justify the costs. In addition, since 1983, the Councils have not found a need to impose regulations on cero, and no benefit of doing so now is apparent. Councils should prepare FMPs only for overfished fisheries and for other fisheries where regulation would serve some useful purpose and where the present or future benefits of regulation would justify the costs.

Comment 6: Amendment 18 ignores available data with which to set catch limits for these species proposed for removal. Peer-reviewed, scientifically valid methods have been developed that provide a means to develop catch levels for species for which catch or landings statistics are the primary data available. The amendment does not analyze state regulations for the four species to determine whether they are sufficient or whether the state managing agencies will extend their management into Federal waters. The rule relies on criteria of National Standard 7 to provide the rationale for this action without sufficient analysis.

Response: Landings data for all four species proposed for removal are provided in Section 1 of Amendment 18. The decision to remove species was not based on availability of data, but on the need for Federal management. If the species were retained in the FMP, landings data could be used to set ACLs for some species, although ACLs for species with very low landings (*e.g.,* cero) would not provide meaningful management benchmarks. However, despite addressing other unassessed species, neither Council's SSC chose to develop ABC or overfishing limit recommendations upon which an ACL could be based.

No Federal regulations currently exist for these species, but some states have regulations for CMP species that apply to fishing in state waters. For example, Florida has a size and recreational bag limit for dolphin in state waters. If Federal management does not exist, states have always had the option to extend their regulations into Federal waters, but chose not to. Because the fishery for these species has proceeded under this scenario for many years, removal of these species from the FMP retains the same level of regulation as the status quo.

As set forth fully in Amendment 18, landings data for all four species proposed for removal are provided in Section 1 of Amendment 18. National Standard 7 has seven factors to be considered when determining if a stock is in need of Federal management. Each was considered for the species proposed for removal and has been adequately analyzed in Amendment 18. National Standard 7 implicitly states that every fishery does not need regulation. If it is subsequently determined a removed species is in need of Federal management, the species could be added back into the FMU through the FMP amendment process.

Changes From the Proposed Rule

The adjusted commercial quota for Atlantic migratory group Spanish mackerel was revised. When finalizing the commercial ACL, which equals the commercial quota specified at § 622.42(c)(2)(ii), NMFS realized that the adjusted commercial quota for Atlantic migratory group Spanish mackerel needed to be revised as well. The adjusted commercial quota is relevant to trip limits for the commercial sector and is specified at § 622.44(b)(2), but it was inadvertently not changed in the proposed rule. In this final rule, NMFS revises the adjusted quota from 3.63 million lb (1.64 million kg) to 2.88 million lb (1.31 million kg) as a result of the ACL designated through this rulemaking. In addition, language was added to § 622.44(b)(2) to clarify that while the intent of the adjusted quota is to allow continued harvest after the adjusted quota is reached, total harvest for the fishing year is still necessarily constrained by the ACL and AM contained in § 622.49(h)(4). This means that if the ACL is reached, commercial harvest will not be able to occur for the remainder of the fishing year, even with the implementation of the 500 lb (227 kg) trip limit. Public comment is solicited regarding the adjusted commercial quota for Atlantic migratory group Spanish mackerel as this adjusted quota had not been provided in the proposed rule for Amendment 18. Following the comment period ending January 30, 2012, NMFS will publish in the **Federal Register** rulemaking that discusses any relevant comments and that this action is in effect.

Classification

The Regional Administrator, Southeast Region, NMFS has determined that this final rule is necessary for the conservation and management of the species within Amendment 18 and is consistent with the Magnuson-Stevens Act, and other applicable law.

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

NMFS prepared a final regulatory flexibility analysis (FRFA), as required by section 604 of the Regulatory Flexibility Act, for this final rule. The FRFA describes the economic impact this final rule is expected to have on small entities. A description of the rule, why it is being considered, the objectives of, and legal basis for this rule are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A copy of the full analysis is available from NMFS (see **ADDRESSES**). A summary of the FRFA follows.

The Magnuson-Stevens Act provides the statutory basis for this final rule. No duplicative, overlapping, or conflicting Federal rules have been identified.

No significant issues were raised by public comments in response to the IRFA. Therefore, no changes were made in the final rule as a result of such comments.

This final rule affects all fishing in the EEZ that is managed under the FMP. This includes the EEZ in the Gulf and South Atlantic, as well as the EEZ in the Mid-Atlantic for king mackerel, Spanish mackerel, and cobia. For purposes of fishery management, Atlantic and Gulf migratory groups have been designated for each of the mackerels, and, under this rule, cobia.

This final rule is expected to apply to 1,000 to 2,000 commercial fishing vessels and as many as 2,500 vessels that have Federal permits to engage in for-hire fishing for CMP species. The commercial fishing vessels expected to be affected by this final rule are estimated to average $28,000 to $46,000 (2008 dollars) in gross revenue per vessel for vessels fishing for king and Spanish mackerel, and $16,000 to $277,000 for vessels harvesting other CMP species (the lower value is for vessels harvesting cero while the upper value is for vessels harvesting dolphin;

this range encompasses the vessels harvesting all the remaining CMP species). The for-hire vessels expected to be affected by this rule are mostly charter boats, which charge by the trip, often with six or fewer anglers (paying passengers), and a smaller number of head boats, which charge for each individual angler (only 15 percent of all of the vessels possessing a for-hire permit for CMP species can carry more than six anglers). Including revenue from all activities, charter boats are estimated to average approximately $88,000 (2008 dollars) in gross revenue per year, while headboats average approximately $461,000 (2008 dollars).

The Small Business Administration has established size criteria for all major industry sectors in the U.S. including fish harvesters. A business involved in commercial finfish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $4.0 million (NAICS code 114111, finfish fishing) for all its affiliated operations worldwide. A for-hire business involved in fish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $7.0 million (NAICS code 713990, recreational industries). Based on the average revenue estimates provided above, all commercial and for-hire fishing vessels expected to be directly affected by this final rule are determined for the purpose of this analysis to be small business entities.

The actions in this final rule can be classified into three categories: (1) Actions that are jointly applicable to the Gulf and Atlantic migratory groups; (2) actions that are applicable to only the Gulf migratory groups; and (3) actions that are applicable to only the South Atlantic migratory groups. All of the actions in this final rule that are jointly applicable to the Gulf and Atlantic migratory groups are either administrative or allow status quo harvest behavior. As a result, none of these actions are expected to result in any direct economic impacts on small entities.

With the exception of the AMs for the Gulf migratory groups of king mackerel, Spanish mackerel, and cobia, the actions in this final rule applicable to the Gulf migratory groups are either administrative or allow status quo harvests and fishing behavior. As a result, these actions are not expected to result in any direct economic impacts on small entities. The AMs for king mackerel, Spanish mackerel, and cobia, if triggered, will result in unquantifiable short-term reductions in economic benefits as a result of the harvest restrictions implemented to correct for harvest overages, should such overages be forecast or occur. These impacts cannot be quantified at this time because the overages, and necessary corrections, cannot be forecast. However, any harvest correction, and associated reduction in short-term economic benefits, will aid the preservation of the long-term biological goals and economic benefits associated with the harvest of these stocks.

Because the majority of the actions in this final rule applicable to the Atlantic migratory groups are either administrative or allow status quo harvests and fishing behavior, few economic effects are expected to occur. Only the Spanish mackerel ACL and AMs for king mackerel, Spanish mackerel, and cobia, if triggered, are expected to result in direct adverse economic impacts. The specification of the Spanish mackerel ACL is expected to result in a reduction in ex-vessel revenue to commercial fishermen of approximately $680,000 because of the reduction in the allowable commercial harvest and the AM requirement that harvest, possession, and sale of Spanish mackerel be prohibited when the commercial quota is met. The economic activity associated with this reduced revenue is an estimated 17 harvester and 10 dealer/processor full-time equivalent jobs. The relative effect of this estimated reduction per small entity is unknown. For the 2004/2005 through 2008/2009 fishing years, an average of 349 vessels recorded Atlantic migratory group Spanish mackerel harvests in the Southeast Federal logbook program. These vessels averaged approximately $28,000 in ex-vessel revenue per vessel per year from all species recorded in the logbook. If divided among these vessels, the estimated reduction in Spanish mackerel revenue equates to a reduction in average vessel gross revenue of approximately 7 percent. These results do not include any reduction in gross revenue for other species if trips are cancelled as a result of a prohibition on Spanish mackerel commercial harvest. Total Federal logbook-recorded landings of Atlantic migratory group Spanish mackerel accounted for approximately 57 percent (approximately 2.03 million lb (0.9 million kg)) of the total Atlantic migratory group Spanish mackerel harvest (approximately 3.57 million lb (1.62 million kg)) during this period. A significant portion of the difference between these harvest totals may be attributed to harvest in Florida state waters where Federal permits and logbooks are not required for the harvest or possession of Spanish mackerel. The average annual revenue profile of the vessels that harvested the remaining portion (43 percent) of Spanish mackerel is unknown. As a result, the total relative effect of the projected reduction in ex-vessel revenue on the profit of all affected commercial vessels is not known.

Similar to the discussion of the effects of the Gulf migratory group AMs, the AMs for Atlantic migratory group king mackerel, Spanish mackerel, and cobia, if triggered, will result in unquantifiable short-term reductions in economic benefits as a result of the harvest restrictions implemented to correct for harvest overages, should such overages be forecast or occur. These impacts cannot be quantified at this time because the overages, and necessary corrections, cannot be forecast. However, any harvest correction, and associated reduction in short-term economic benefits, will aid the preservation of the long-term biological goals and economic benefits associated with the harvest of these stocks.

Three alternatives, including 13 options or sub-options, were considered for the action to modify the FMU. This final rule incorporates 7 of the 13 options and sub-options and removes cero, little tunny, and dolphin from the FMP for both the Gulf and South Atlantic regions, and removes bluefish from the FMP for the Gulf region. The no-action alternative, which would retain the four subject species in the FMP for data-collection purposes only, was not adopted because it would not satisfy the Magnuson-Stevens Act guidelines, which do not allow species to be retained in an FMU for data collection purposes only. The third alternative would add the four species to the FMU and set ACLs and AMs for each, following the stated geographic designations. This alternative was not adopted because the Councils determined that these species no longer require Federal management in the respective regions. This action is not expected to result in any direct economic impact on small entities.

Five alternatives, including three options, were considered for the action to modify the framework procedures. The no-action alternative would not change the framework procedures and was not adopted because it is not consistent with current assessment and management methods. The remaining alternatives were not adopted either because they would either allow fewer

or more management aspects to be changed through framework procedures, or would give the Councils and NMFS either too much or too little authority to change management outside of the plan amendment process. This action is administrative in nature and is not expected to result in any direct economic impact on small entities.

Three alternatives were considered for the action to establish separate Atlantic and Gulf migratory groups of cobia. This rule separates cobia into two groups at the Gulf and South Atlantic jurisdictional boundary. The no-action alternative would not split cobia into two migratory groups and was not adopted because the Councils determined that sufficient information exists to demonstrate there are at least two cobia migratory groups and regional management is appropriate. The third alternative would establish two migratory groups and split the migratory group jurisdiction at the Miami-Dade/Monroe County line. This alternative was not adopted because the Councils determined that it would not best meet the goals and objectives established for the FMP. This action is administrative in nature and is not expected to result in any direct economic impact on small entities.

Four alternatives were considered for the action to set the ACL for Gulf migratory group cobia. This rule establishes a single stock ACL and sets the ACL equal to the ABC. The no-action alternative was not adopted because it would not establish an ACL, as required by the Magnuson-Stevens Act. Another alternative would also set the total ACL equal to the ABC, but would specify recreational and commercial sector ACLs. This alternative was not adopted because both sectors are currently managed with the same harvest restrictions and sector separation would not be expected to be beneficial at this time. The remaining alternatives and associated options would establish a buffer between the ACL and ABC and result in lower stock or sector ACLs. These alternatives and options were not adopted because the Councils elected to establish a buffer to the ABC for this species through the ACT rather than the ACL.

Three alternatives, including four options, were considered for the action to set the ACT for Gulf migratory group cobia. This final rule specifies a single stock ACT and sets the ACT equal to 90 percent of the ACL. The no-action alternative would not establish an ACT, but would be an acceptable action because an ACT is not required. This alternative was not adopted because the Councils determined that a buffer between the ABC and allowable harvest was appropriate for this stock and the adoption of the no-action alternative would be inconsistent with the Councils' decision to establish this buffer through the ACT instead of the ACL. The other options were not adopted because they would establish sector ACTs, which would be inconsistent with the decision to establish a single stock ACL, and/or they would specify a lower stock ACT than this rule and, thereby, establish a larger buffer than is expected to be necessary for this stock.

Three alternatives, including seven options (options listed under the no-action alternative were not included in this tabulation), were considered for the action to set AMs for Gulf migratory group cobia. This rule sets an in-season AM and prohibits harvest for the remainder of the fishing year from the date the ACT is reached or is projected to be reached. AMs for the commercial harvest of this stock do not exist under the status quo. As a result, the no-action alternative was not adopted because it would not establish AMs that account for the harvest from all sectors, as required by the Magnuson-Stevens Act. Two options to the rule would also establish in-season AMs but would trigger the AMs when 90 percent of the ACT is reached or is projected to be reached. Both options would reduce the possession limit to one fish per person per day, but only one option would prohibit possession of cobia and only if the ACL is reached. These options were not adopted because just reducing the possession limit would provide insufficient assurance that the ACL would not be exceeded and data monitoring issues in tandem with the minimal buffer between the AM trigger and the ACT would likely render adjustment at the 90-percent threshold ineffective. The remaining alternative and associated four options would establish post-season AMs, each varying in method (overage payback, reduction in possession limit, reduced season) or period of assessment (the overage assessment would be based on multi-year averages). These options were not adopted because the Councils determined that in-season assessment would be more effective in ensuring the ACL is not exceeded. This action is not expected to result in any direct economic impact on small entities because the ACT (1.31 million lb (0.59 million kg)) exceeds the estimated status-quo harvest (1.07 million lb (0.49 million kg)) for Gulf migratory group cobia.

Five alternatives, including 12 options, were considered for the action to set the ACL for Gulf migratory group king mackerel. This final rule sets the aggregate (stock) ACL equal to the ABC, and sets sector ACLs using current allocation percentages. The no-action alternative would set the stock ACL equal to the current total allowable catch (TAC), and was not adopted because the TAC is less than the ABC and, as a result, would have resulted in less economic benefits than the stock ACL set by this final rule. The remaining three alternatives would set the stock ACL at 80–90 percent of ABC, and were not adopted because each would have allowed lower harvest, and associated economic benefits, than this final rule, and the Councils have determined that the condition of this stock and level of management uncertainty does not require a buffer between the ACL and ABC. The stock ACL set by this final rule is expected to allow continued average annual harvest. As a result, this action is not expected to result in any direct economic impacts on small entities.

Three alternatives, including 7 options or sub-options (options and sub-options listed under the no-action alternative were not included in this tabulation), were considered for the action to set AMs for Gulf migratory group king mackerel. This rule adopts the no-action alternative and does not set new AMs for this stock. The alternatives, and associated options or sub-options, to this final rule can be divided into two general categories: alternatives that would change the current in-season AMs (two options), and alternatives that would set post-season AMs (two options encompassing five sub-options). None of these options or sub-options were adopted because the Councils determined that current Federal regulations provide sufficient AMs for the recreational and commercial sectors. This action is not expected to have any direct economic impact on small entities.

Four alternatives, including nine options, were considered for the action to set the ACL for Gulf migratory group Spanish mackerel. This final rule sets the aggregate ACL equal to the ABC and establishes a single stock ACL encompassing harvest by both the recreational and commercial sectors. The no-action alternative would maintain an ACL equal to the current TAC. This alternative was not adopted because the ACL cannot exceed the ABC and the status quo TAC is greater than the proposed ABC. Some options to the rule would establish sector ACLs. These options were not adopted because the Councils determined the establishment of sector ACLs would unnecessarily

restrict catch. The remaining two alternatives, encompassing six options, would specify a single stock ACL as a portion of ABC (80 percent or 90 percent of ABC). These alternatives and options would result in less economic benefits than this final rule and were not adopted because the Councils determined that a buffer between the ACL and ABC was not needed for this stock.

Three alternatives, including six options or sub-options (options and sub-options listed under the no-action alternative were not included in this tabulation), were considered for the action to set AMs for Gulf migratory group Spanish mackerel. This rule establishes in-season AMs that allow harvest of Gulf migratory group Spanish mackerel to be prohibited if the stock ACL is reached or is projected to be reached. The no-action alternative would maintain current Gulf migratory group Spanish mackerel AMs and was not adopted because the current AMs are implemented by sector and are inconsistent with the decision to establish a single stock ACL. One option within Amendment 18 would establish in-season AMs that implement a commercial trip limit and reduced recreational bag limits if the stock ACL is reached or is projected to be reached. This option was not adopted because it would require multiple in-season actions and may result in a lower certainty that the ACL not be exceeded compared to this final rule as it would not be prohibited to harvest Gulf migratory group Spanish mackerel. The remaining alternative and associated options would establish post-season AMs. These options were not adopted because they would be expected to impose an increased and unnecessary burden on fishermen and the administration. This action is not expected to have any short-term economic impact on small entities because the stock ACL (5.15 million lb (2.34 million kg)) is greater than the 5-year average (3.63 million lb (1.65 million kg)) or 10-year average (3.95 million lb (1.79 million kg) landings.

Five alternatives, including five options, were considered for the action to set the ACL and OY for Atlantic migratory group king mackerel. This final rule sets the ACL and OY equal to the ABC, with the ABC set equal to the average of the current South Atlantic Council's SSC's ABC recommendations for the 2011–2013 seasons. This results in an ACL of 10.46 million lb (4.75 million kg). The no-action alternative was not adopted because it would not have resulted in as concise of a methodology for setting the ACL and OY and would have resulted in a lower ACL, 10.0 million lb (4.54 million kg). Two alternatives to this final rule would also set the ACL and OY equal to the ABC but would set the ABC equal to the lowest and highest SSC recommended ABCs for 2011–2013, respectively. These alternatives were not adopted because they were determined to be excessively or insufficiently conservative, respectively. The final alternative for this action, which included five options, would set the ACL and OY equal to a percentage of the ABC, varying from 65–90 percent. These options were not adopted because the Councils determined that the status and management certainty of the king mackerel stock did not require a buffer between the ACL or OY and the ABC.

Four alternatives were considered for the action to set the recreational sector ACT for Atlantic migratory group king mackerel. This final rule sets the ACT based on the uncertainty associated with the estimate of the ACL and results in a recreational sector ACT of 6.11 million lb (2.77 million kg), which is less than the recreational sector ACL, but greater than current average annual harvests. As a result, this action is not expected to result in any reduction in current recreational harvest or associated economic benefits to small entities. The no-action alternative would not set a recreational sector ACT and was not adopted because the Councils determined that the management uncertainty associated with the recreational harvest of this stock is sufficient to require a buffer between allowable harvest and the ACL. The two remaining alternatives for this action would set the recreational sector ACT based on alternative fixed percentages of the ACL. Neither of these alternatives was adopted because each would result in an ACT that was less reflective of the uncertainty associated with the estimation of the ACL and each of these alternatives would result in a lower recreational harvest, and reduced economic benefits, than this final rule.

Four alternatives, including ten options, were considered for the action to set AMs for Atlantic migratory group king mackerel. This final rule includes seven of the options spread over three alternatives. This final rule continues in-season quota monitoring and closure if the commercial sector ACL is met or projected to be met, as occurs under the status quo, and adopts post-season adjustments. These adjustments include reduction in the recreational bag limit, based on moving multi-year average harvests, to assure that the recreational sector ACL is not exceeded. Post-season bag limit reduction will only occur, however, if the stock ACL (both sectors) is exceeded. Post-season overage payback will be required for both sectors, where appropriate, if the stock is overfished and the stock ACL is exceeded. The no-action alternative would continue the current quota monitoring for the commercial sector, and closure when appropriate; it also includes authority under the framework procedures for the Regional Administrator to implement several actions, including reduction of the recreational bag limit to zero, if the recreational allocation has been met or is projected to be met. This alternative was not adopted because it would not have been as flexible as the procedures established by this final rule in factoring in the status of the stock, the total harvest, and annual harvest variability by the recreational sector into the AM decision. One option within Amendment 18 would reduce the length of the subsequent recreational fishing season instead of a reduction in the bag limit in the event of a recreational overage. This alternative was not adopted because allowing the sector to continue harvest all year under a reduced bag limit, as will be allowed under this rule, is expected to result in more economic benefits than a closed season. The remaining options for this action would impose sector paybacks regardless of stock status. These options were not adopted because each would be expected to result in unnecessary reductions in economic benefits.

Three alternatives, including five options, were considered for the action to set the ACL and OY for Atlantic migratory group Spanish mackerel. This final rule sets the ACL and OY equal to the ABC. The no-action alternative was not adopted because it would not result in as concise a procedure as the preferred alternative to determine the ACL based on the ABC, and the resultant ACL would exceed the proposed ABC, which would be inconsistent with the Magnuson-Stevens Act National Standard 1 guidelines (January 16, 2009, 74 FR 3178). The third alternative for this action, which included five options, would set the ACL equal to a percentage of the ABC, varying from 75–95 percent. These options were not adopted because they would be inconsistent with the determination by the Councils that specification of a buffer for this stock could be adequately accomplished through the ACT.

Four alternatives were considered for the action to set a recreational sector ACT for Atlantic migratory group Spanish mackerel. In this final rule, the recreational sector Atlantic migratory

group Spanish mackerel ACT will be based on the uncertainty associated with the estimate of the sector ACL, and will equal 2.32 million lb (1.05 million kg), which is less than the recreational sector ACL, but greater than current average annual harvests. As a result, no reduction in current harvest or associated economic benefits or impacts on small entities in the recreational sector is expected to occur. The no-action alternative would not set a recreational sector ACT and was not adopted because the Councils determined that the management uncertainty associated with the recreational harvest of this stock requires a buffer between allowable harvest and the ACL. The two remaining alternatives would set the recreational sector ACT based on alternative fixed percentages of the ACL. Neither of these alternatives was adopted because they would result in an ACT that was less reflective of the uncertainty associated with the estimation of the ACL. Each of these alternatives would also result in a lower recreational harvest and reduced economic benefits than the ACT established by this rule.

Four alternatives, including nine options, were considered to set AMs for Atlantic migratory group Spanish mackerel. This rule includes six of the options spread over three alternatives. This rule will result in enhanced quota monitoring for the commercial sector and impose post-season adjustments for the recreational sector based on moving multi-year average harvests, including a reduction in the bag limit to assure that the sector ACL is not exceeded, if the stock ACL is exceeded. This final rule will also result in sector payback, where appropriate, if the stock is overfished and the stock ACL is exceeded. The no-action alternative would continue the current quota monitoring and staged trip limits for the commercial sector in place of sector closure. The no-action alternative also includes authority under the framework procedures for the RA to implement several actions, including reduction of the recreational bag limit to zero, if the recreational allocation has been met or is projected to be met. This alternative was not adopted because it would not be as flexible in factoring in the status of the stock, the total harvest, and annual harvest variability by the recreational sector into the AM decision. This alternative was also not adopted because it would not provide for an in-season closure for the commercial sector. In the event of a sector overage, one option within Amendment 18 would have reduced the length of the subsequent recreational fishing season (no reduction in the bag limit) to assure that the sector ACL is not exceeded. This option was not adopted because it would result in lower economic benefits than this final rule. The remaining two options would have imposed sector paybacks regardless of stock status. These options were not adopted because each would be expected to result in unnecessary reductions in economic benefits.

Three alternatives, including five options, were considered for the action to set the ACL and OY for Atlantic migratory group cobia. This rule sets the ACL and OY equal to the ABC. The no-action alternative was not adopted because it would not set the ACL or OY, as required by the Magnuson-Stevens Act guidelines. The third alternative, which included five options, would set the ACL and OY equal to a percentage of the ABC, varying from 75–95 percent. These options were not adopted because the Councils determined that specification of a buffer for this stock could be adequately accomplished through the ACT.

Four alternatives were considered for the action to set a recreational sector ACT for Atlantic migratory group cobia. This final rule sets the ACT based on the uncertainty associated with the estimate of the ACL and results in a recreational sector ACT of 1,184,688 lb (537,365 kg), which is less than the sector ACL but equal to current average annual harvests. As a result, no reduction in current recreational harvest or associated economic benefits or impacts on small entities is expected to occur. The no-action alternative would not set a recreational sector ACT and was not adopted because the Councils determined that the management uncertainty associated with the recreational harvest of this stock requires a buffer between allowable harvest and the sector ACL. The two remaining alternatives would set the recreational sector ACT based on alternative fixed percentages of the ACL. Neither of these alternatives was adopted because each would result in an ACT that was less reflective of the uncertainty associated with the estimation of the ACL than the methodology established by this final rule.

Five alternatives, including seven options, were considered for the action to set AMs for Atlantic migratory group cobia. This rule includes five of these options spread over three alternatives and implements in-season quota monitoring for the commercial sector; adopts post-season adjustments for the recreational sector based on moving multi-year average harvests, including a reduction in the season length to assure that the sector ACL is not exceeded if the stock ACL is exceeded; and requires sector overage payback, where appropriate, if the stock is overfished and the stock ACL is exceeded. The no-action alternative would continue the current authority to reduce the recreational and commercial possession limit to zero if the sectors have met or are projected to meet their allocation. This alternative was not adopted because it would not be as flexible as the AMs established by this final rule in factoring the status of the stock, the total harvest, and annual harvest variability by the recreational sector into the AM decision. One alternative to this final rule would explicitly prohibit the purchase and sale of cobia if the commercial quota is met or projected to be met. This restriction would be functionally equivalent to the status quo because a zero possession limit would preclude purchase or sale. This alternative would not establish additional AMs for the recreational sector, resulting in current recreational AMs remaining in effect. Thus, this alternative would be functionally equivalent to the status quo. Nevertheless, this alternative was not adopted because it would not be as flexible as the AMs established by this rule, similar to the no-action alternative, in factoring the status of the stock, the total harvest, and annual harvest variability by the recreational sector into the AM decision. The remaining options would impose sector paybacks regardless of stock status. These options were not adopted because each would be expected to result in unnecessary reductions in economic benefits.

Additional actions and alternatives were considered in Amendment 18 but are not included in this rule because they either simply establish management reference points or do not result in regulatory change. Discussion of these actions and alternatives was published in the proposed rule and is not repeated here.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: December 20, 2011.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

§ 622.1 [Amended]

■ 2. In § 622.1, in Table 1, remove footnotes 2 and 3 and redesignate footnotes 4 through 6 as footnotes 2 through 4.

■ 3. In § 622.2, the definitions for ''Coastal migratory pelagic fish'', ''Dolphin'', and ''Migratory group'' are revised to read as follows:

§ 622.2 Definitions and acronyms.

* * * * *

Coastal migratory pelagic fish means a whole fish, or a part thereof, of one or more of the following species:

(1) Cobia, *Rachycentron canadum.*

(2) King mackerel, *Scomberomorus cavalla.*

(3) Spanish mackerel, *Scomberomorus maculatus.*

* * * * *

Dolphin means a whole fish, or a part there of, of the species *Coryphaena equiselis* or *C. hippurus.*

* * * * *

Migratory group, for king mackerel, Spanish mackerel, and cobia, means a group of fish that may or may not be a separate genetic stock, but that is treated as a separate stock for management purposes. King mackerel, Spanish mackerel, and cobia are divided into migratory groups—the boundaries between these groups are as follows:

(1) *King mackerel*—(i) *Summer separation.* From April 1 through October 31, the boundary separating the Gulf and Atlantic migratory groups of king mackerel is 25°48′ N. lat., which is a line directly west from the Monroe/Collier County, FL, boundary to the outer limit of the EEZ.

(ii) *Winter separation.* From November 1 through March 31, the boundary separating the Gulf and Atlantic migratory groups of king mackerel is 29°25′ N. lat., which is a line directly east from the Volusia/Flagler County, FL, boundary to the outer limit of the EEZ.

(2) *Spanish mackerel.* The boundary separating the Gulf and Atlantic migratory groups of Spanish mackerel is 25°20.4′ N. lat., which is a line directly east from the Miami-Dade/Monroe County, FL, boundary to the outer limit of the EEZ.

(3) *Cobia.* The boundary separating the Gulf and Atlantic migratory groups of cobia is the line of demarcation between the Atlantic Ocean and the Gulf of Mexico, as specified in § 600.105(c) of this chapter.

* * * * *

■ 4. In § 622.4, revise the first sentence of paragraph (a)(2)(iv) to read as follows:

§ 622.4 Permits and fees.

(a) * * *

(2) * * *

(iv) *Spanish mackerel.* For a person aboard a vessel to be eligible for exemption from the bag limits, a commercial vessel permit for Spanish mackerel must have been issued to the vessel and must be on board. * * *

* * * * *

■ 5. In § 622.41, remove paragraph (c)(1)(vi), redesignate paragraph (c)(1)(vii) as paragraph (c)(1)(vi), and revise paragraph (c)(1)(v) and newly redesignated paragraph (c)(1)(vi) to read as follows:

§ 622.41 Species specific limitations.

* * * * *

(c) * * *

(1) * * *

(v) Cobia in the Mid-Atlantic and South Atlantic EEZ—automatic reel, bandit gear, handline, rod and reel, and pelagic longline.

(vi) Cobia in the Gulf EEZ—all gear except drift gillnet and long gillnet.

* * * * *

■ 6. In § 622.42, revise paragraph (c) to read as follows:

§ 622.42 Quotas.

* * * * *

(c) *Coastal migratory pelagic fish.* King and Spanish mackerel quotas apply to persons who fish under commercial vessel permits for king or Spanish mackerel, as required under § 622.4(a)(2)(iii) or (iv). Cobia quotas apply to persons who fish for cobia and sell their catch. A fish is counted against the quota for the area where it is caught.

(1) *Migratory groups of king mackerel*—(i) *Gulf migratory group.* For the 2012 to 2013 fishing year, the quota for the Gulf migratory group of king mackerel is 3.808 million lb (1.728 million kg). For the 2013 to 2014 fishing year and subsequent fishing years, the quota for the Gulf migratory group of king mackerel is 3.456 million lb (1.568 million kg). The Gulf migratory group is divided into eastern and western zones separated by 87°31.1′ W. long., which is a line directly south from the Alabama/Florida boundary. Quotas for the eastern and western zones are as follows:

(A) *Eastern zone.* The eastern zone is divided into subzones with quotas as follows:

(*1*) *Florida east coast subzone.* For the 2012 to 2013 fishing year, the quota is 1,215,228 lb (551,218 kg). For the 2013 to 2014 fishing year and subsequent fishing years, the quota is 1,102,896 lb (500,265 kg).

(*2*) *Florida west coast subzone.* (*i*) *Southern.* For the 2012 to 2013 fishing year, the quota is 1,215,228, (515,218 kg). For the 2013 to 2014 fishing year and subsequent fishing years, the quota is 1,102,896 lb (500,265 kg), which is further divided into a quota for vessels fishing with hook-and-line and a quota for vessels fishing with run-around gillnets. For the 2012 to 2013 fishing year, the hook-and-line quota is 607,614 lb (275,609 kg) and the run-around gillnet quota is 607,614 lb (275,609 kg). For the 2013 to 2014 fishing year and subsequent fishing years, the hook-and-line quota is 551,448 lb (250,133 kg) and the run-around gillnet quota is 551,448 lb (250,133 kg).

(*ii*) *Northern.* For the 2012 to 2013 fishing year, the quota is 197,064 lb (89,387 kg). For the 2013 to 2014 fishing year and subsequent fishing years, the quota is 178,848 lb (81,124 kg).

(*3*) Description of Florida subzones. From November 1 through March 31, the Florida east coast subzone is that part of the eastern zone south of 29°25′ N. lat. (a line directly east from the Flagler/Volusia County, FL, boundary) and north of 25°20.4′ N. lat. (a line directly east from the Miami-Dade/Monroe County, FL, boundary). From April 1 through October 31, the Florida east coast subzone is no longer part of the Gulf migratory group king mackerel area; it is part of the Atlantic migratory group king mackerel area. The Florida west coast subzone is that part of the eastern zone south and west of 25°20.4′ N. lat. The Florida west coast subzone is further divided into southern and northern subzones. From November 1 through March 31, the southern subzone is that part of the Florida west coast subzone that extends south and west from 25°20.4′ N. lat., north to 26°19.8′ N. lat. (a line directly west from the Lee/Collier County, FL, boundary). From April 1 through October 31, the southern subzone is that part of the Florida west coast subzone that is between 26°19.8′ N. lat. and 25°48′ N. lat. (a line directly west from the Monroe/Collier County, FL, boundary). The northern subzone is that part of the Florida west coast subzone that is between 26°19.8′ N. lat. north and west to 87°31.1′ W. long. (a line directly south from the Alabama/Florida boundary) year round.

(B) *Western zone.* For the 2012 to 2013 fishing year, the quota is 1,180,480 lb (535,457 kg). For the 2013 to 2014 fishing year and subsequent fishing

years, the quota is 1,071,360 lb (485,961 kg).

(ii) *Atlantic migratory group.* The quota for the Atlantic migratory group of king mackerel is 3.88 million lb (1.76 million kg). No more than 0.40 million lb (0.18 million kg) may be harvested by purse seines.

(2) *Migratory groups of Spanish mackerel*—(i) *Gulf migratory group.* [Reserved]

(ii) *Atlantic migratory group.* The quota for the Atlantic migratory group of Spanish mackerel is 3.13 million lb (1.42 million kg).

(3) *Migratory groups of cobia*—(i) *Gulf migratory group.* [Reserved]

(ii) *Atlantic migratory group.* The quota for the Atlantic migratory group of cobia is 125,712 lb (57,022 kg).

* * * * *

■ 7. In § 622.43, revise the heading of paragraph (a), add a sentence at the end of the introductory text in paragraph (a), revise the heading of paragraph (a)(3), remove the introductory text in paragraph (a)(3), and revise paragraphs (a)(3)(iii), (b)(1), and (c) to read as follows:

§ 622.43 Closures.

(a) *Quota closures.* * * * (See § 622.49 for closure provisions when an ACL is reached or projected to be reached).

(3) *Coastal migratory pelagic fish.*

* * * * *

(iii) The sale or purchase of king mackerel, Spanish mackerel, or cobia of the closed species, migratory group, subzone, or gear type, is prohibited, including any king or Spanish mackerel taken under the bag limits, or cobia taken under the limited-harvest species possession limit specified in § 622.32(c)(1).

* * * * *

(b) * * *

(1) The prohibition on sale/purchase during a closure for Gulf reef fish, coastal migratory pelagic fish, royal red shrimp, or specified snapper-grouper species in paragraphs (a)(1), (a)(3)(iii), (a)(4), or (a)(5) and (a)(6), respectively, of this section does not apply to the indicated species that were harvested, landed ashore, and sold prior to the effective date of the closure and were held in cold storage by a dealer or processor.

* * * * *

(c) *Reopening.* When a sector has been closed based on a projection of the quota specified in § 622.42, or the ACL specified in 622.49, being reached and subsequent data indicate that the quota or ACL was not reached, the Assistant Administrator may file a notification to that effect with the Office of the Federal Register. Such notification may reopen the sector to provide an opportunity for the quota or ACL to be harvested.

■ 8. In § 622.44, paragraph (b)(2) is revised to read as follows:

§ 622.44 Commercial trip limits.

* * * * *

(b) * * *

(2) For the purpose of paragraph (b)(1)(ii) of this section, the adjusted quota is 2.88 million (1.31 million kg). The adjusted quota is the quota for Atlantic migratory group Spanish mackerel reduced by an amount calculated to allow continued harvests of Atlantic migratory group Spanish mackerel at the rate of 500 lb (227 kg) per vessel per day for the remainder of the fishing year after the adjusted quota is reached. Total commercial harvest is still subject to the annual catch limit and accountability measures. By filing a notification with the Office of the Federal Register, the Assistant Administrator will announce when 75 percent and 100 percent of the adjusted quota is reached or projected to be reached.

* * * * *

■ 9. In § 622.48, revise paragraph (c) to read as follows:

§ 622.48 Adjustment of management measures.

* * * * *

(c) *Coastal migratory pelagic fish.* For a species or species group: Reporting and monitoring requirements, permitting requirements, bag and possession limits (including a bag limit of zero), size limits, vessel trip limits, closed seasons or areas and reopenings, annual catch limits (ACLs), annual catch targets (ACTs), quotas (including a quota of zero), accountability measures (AMs), MSY (or proxy), OY, TAC, management parameters such as overfished and overfishing definitions, gear restrictions (ranging from regulation to complete prohibition), gear markings and identification, vessel markings and identification, allowable biological catch (ABC) and ABC control rules, rebuilding plans, sale and purchase restrictions, transfer at sea provisions, and restrictions relative to conditions of harvested fish (maintaining fish in whole condition, use as bait).

* * * * *

■ 10. In § 622.49, add paragraph (h) to read as follows:

§ 622.49 Annual catch limits (ACLs) and accountability measures (AMs).

* * * * *

(h) *Coastal migratory pelagic fish*—(1) *Gulf migratory group king mackerel*—(i) *Commercial sector.* If commercial landings, as estimated by the SRD, reach or are projected to reach the applicable quota specified in § 622.42(c)(1)(i) (commercial ACL), the AA will file a notification with the Office of the Federal Register to close the commercial sector for that zone, subzone, or gear type for the remainder of the fishing year.

(ii) *Recreational sector.* If recreational landings, as estimated by the SRD, reach or are projected to reach the recreational ACL of 8.092 million lb (3.670 million kg), the AA will file a notification with the Office of the Federal Register to implement a bag and possession limit for Gulf migratory group king mackerel of zero, unless the best scientific information available determines that a bag limit reduction is unnecessary. This bag and possession limit would also apply in the Gulf on board a vessel for which a valid Federal charter vessel/headboat permit for coastal migratory pelagic fish has been issued, without regard to where such species were harvested, *i.e.* in state or Federal waters.

(iii) For purposes of tracking the ACL, recreational landings will be monitored based on the commercial fishing year, July 1 through June 1.

(2) *Atlantic migratory group king mackerel*—(i) *Commercial sector*—(A) If commercial landings, as estimated by the SRD, reach or are projected to reach the quota specified in § 622.42(c)(1)(ii) (commercial ACL), the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year.

(B) In addition to the measures specified in paragraph (h)(2)(i)(A) of this section, if the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock ACL, as specified in paragraph (h)(2)(iii) of this section, and Atlantic migratory group king mackerel are overfished, based on the most recent status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the commercial quota (commercial ACL) for that following year by the amount of any commercial sector overage in the prior fishing year.

(ii) *Recreational sector.* (A) If the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock ACL, as specified in paragraph (h)(2)(iii) of this section, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing

year to reduce the bag limit by the amount necessary to ensure recreational landings may achieve the recreational annual catch target (ACT), but do not exceed the recreational ACL, in the following fishing year. The recreational ACT is 6.11 million lb (2.77 million kg). The recreational ACL is 6.58 million lb (2.99 million lb).

(B) In addition to the measures specified in paragraph (h)(2)(ii)(A) of this section, if the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock ACL, as specified in paragraph (h)(2)(iii) of this section, and Atlantic migratory group king mackerel are overfished, based on the most recent status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the recreational ACL and ACT for that following year by the amount of any recreational sector overage in the prior fishing year.

(C) For purposes of tracking the ACL, recreational landings will be evaluated based on the commercial fishing year, March through February. Recreational landings will be evaluated relative to the ACL based on a moving multi-year average of landings, as described in the FMP.

(iii) The stock ACL for Atlantic migratory group king mackerel is 10.46 million lb (4.75 million kg).

(3) *Gulf migratory group Spanish mackerel*—(i) If the sum of the commercial and recreational landings, as estimated by the SRD, reaches or is projected to reach the stock ACL, as specified in paragraph (h)(3)(iii) of this section, the AA will file a notification with the Office of the Federal Register to close the commercial and recreational sectors for the remainder of the fishing year. On and after the effective date of such a notification, all sale and purchase of Gulf migratory group Spanish mackerel is prohibited and the harvest and possession limit of this species in or from the Gulf EEZ is zero. This possession limit also applies in the Gulf on board a vessel for which a valid Federal charter vessel/headboat permit for coastal migratory pelagic fish has been issued, without regard to where such species were harvested, *i.e.,* in state or Federal waters.

(ii) For purposes of tracking the ACL, recreational landings will be evaluated based on the commercial fishing year, April through March.

(iii) The stock ACL for Gulf migratory group Spanish mackerel is 5.15 million lb (4.75 million kg).

(4) *Atlantic migratory group Spanish mackerel*—(i) *Commercial sector*—(A) If commercial landings, as estimated by the SRD, reach or are projected to reach the quota specified in § 622.42(c)(2)(ii) (commercial ACL), the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year.

(B) In addition to the measures specified in paragraph (h)(4)(i)(A) of this section, if the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock ACL, as specified in paragraph (h)(4)(iii), and Atlantic migratory group Spanish mackerel are overfished, based on the most recent status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the commercial quota (commercial ACL) for that following year by the amount of any commercial sector overage in the prior fishing year.

(ii) *Recreational sector.* (A) If the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock ACL, as specified in paragraph (h)(4)(iii) of this section, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the bag limit by the amount necessary to ensure recreational landings may achieve the recreational ACT, but do not exceed the recreational ACL, in the following fishing year. The recreational ACT is 2.32 million lb (1.05 million kg). The recreational ACL is 2.56 million lb (1.16 million kg).

(B) In addition to the measures specified in paragraph (h)(4)(ii)(A) of this section, if the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock ACL, as specified in paragraph (h)(4)(iii) of this section, and Atlantic migratory group Spanish mackerel are overfished, based on the most recent status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the recreational ACT for that following year by the amount of any recreational sector overage in the prior fishing year.

(C) For purposes of tracking the ACL and ACT, recreational landings will be evaluated based on the commercial fishing year, March through February. Recreational landings will be evaluated relative to the ACL based on a moving multi-year average of landings, as described in the FMP.

(iii) The stock ACL for Atlantic migratory group Spanish mackerel is 5.69 million lb (2.58 million kg).

(5) *Gulf migratory group cobia*—(i) If the sum of the commercial and recreational landings, as estimated by the SRD, reaches or is projected to reach the stock ACT, as specified in paragraph (h)(5)(ii) of this section, the AA will file a notification with the Office of the Federal Register to close the commercial and recreational sectors for the remainder of the fishing year. On and after the effective date of such a notification, all sale and purchase of Gulf migratory group cobia is prohibited and the harvest and possession limit of this species in or from the Gulf EEZ is zero. This bag and possession limit also applies in the Gulf on board a vessel for which a valid Federal charter vessel/headboat permit for coastal migratory pelagic fish has been issued, without regard to where such species were harvested, *i.e.* in state or Federal water.

(ii) The stock ACT for Gulf migratory group cobia is 1.31 million lb (0.59 million kg). The stock ACL for Gulf migratory group cobia is 1.46 million lb (0.66 million kg).

(6) *Atlantic migratory group cobia*—(i) *Commercial sector*—(A) If commercial landings, as estimated by the SRD, reach or are projected to reach the quota specified in § 622.42(c)(3)(ii) (commercial ACL), the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year.

(B) In addition to the measures specified in paragraph (h)(6)(i)(A) of this section, if the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock ACL, as specified in paragraph (h)(6)(iii) of this section, and Atlantic migratory group cobia are overfished, based on the most recent status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the commercial quota (commercial ACL) for that following year by the amount of any commercial sector overage in the prior fishing year.

(ii) *Recreational sector.* (A) If the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock ACL, as specified in paragraph (h)(6)(iii) of this section, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings may achieve the recreational ACT, but do not exceed the recreational ACL in the following fishing year. Further, during that

following year, if necessary, the AA may file additional notification with the Office of the Federal Register to readjust the reduced fishing season to ensure recreational harvest achieves but does not exceed the intended harvest level. The recreational ACT is 1,184,688 lb (537,365 kg). The recreational ACL is 1,445,687 (655,753 kg).

(B) In addition to the measures specified in paragraph (h)(6)(ii)(A) of this section, if the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock ACL, as specified in paragraph (h)(6)(iii) of this section, and Atlantic migratory group cobia are overfished, based on the most recent status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the recreational ACL and ACT for that following year by the amount of any recreational sector overage in the prior fishing year.

(C) Recreational landings will be evaluated relative to the ACL based on a moving multi-year average of landings, as described in the FMP.

(iii) The stock ACL for Atlantic migratory group cobia is 1,571,399 lb (712,775 kg).

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FEDERAL REGISTER

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Part IV

The President

Presidential Determination No. 2012–03 of December 2, 2011—Suspension of Limitations Under the Jerusalem Embassy Act

Federal Register
Vol. 76, No. 250
Thursday, December 29, 2011

Presidential Documents

Title 3—

The President

Presidential Determination No. 2012–03 of December 2, 2011

Suspension of Limitations Under the Jerusalem Embassy Act

Memorandum for the Secretary of State

Pursuant to the authority vested in me as President by the Constitution and the laws of the United States, including section 7(a) of the Jerusalem Embassy Act of 1995 (Public Law 104–45) (the ''Act''), I hereby determine that it is necessary, in order to protect the national security interests of the United States, to suspend for a period of 6 months the limitations set forth in sections 3(b) and 7(b) of the Act.

You are hereby authorized and directed to transmit this determination to the Congress, accompanied by a report in accordance with section 7(a) of the Act, and to publish the determination in the *Federal Register*.

This suspension shall take effect after the transmission of this determination and report to the Congress.

THE WHITE HOUSE,
Washington, December 2, 2011.

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H.R. 470/P.L. 112–72
Hoover Power Allocation Act of 2011 (Dec. 20, 2011; 125 Stat. 777)

H.R. 2061/P.L. 112–73
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