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

SMALL BUSINESS ADMINISTRATION

13 CFR Part 107

RIN 3245-AF86

Small Business Investment Companies—Energy Saving Qualified Investments

AGENCY: U.S. Small Business Administration

ACTION: Final rule.

SUMMARY: In this rule, the U.S. Small Business Administration (SBA) sets forth defined terms for “Energy Saving Qualified Investment” and “Energy Saving Activities” for the Small Business Investment Company (SBIC) Program. These definitions are established to implement a provision of the Energy Independence and Security Act of 2007 (Energy Act), which allows an SBIC making an “energy saving qualified investment” to obtain SBA leverage by issuing a deferred interest “energy saving debenture”. This rule also implements a provision of the Energy Act that provides access to additional SBA leverage for SBICs that have made Energy Saving Qualified Investments in Smaller Enterprises. This final rule includes changes based on public comments received on the proposed rule published in the **Federal Register** on January 11, 2011. Generally, the changes allow a broader range of potential investments to qualify as Energy Saving Qualified Investments and reduce the need for SBICs to obtain pre-financing determinations of eligibility from SBA.

DATES: This rule is effective April 19, 2012.

FOR FURTHER INFORMATION CONTACT: Carol Fendler, Office of Investment, (202) 205-7559 or sbic@sba.gov.

SUPPLEMENTARY INFORMATION:

I. Background Information

The Energy Independence and Security Act of 2007, Public Law 110-140, Title XII, section 1205(a), amended section 303 of the Small Business Investment Act of 1958 (SBI Act) by authorizing SBICs licensed after September 30, 2008, to issue Energy Saving Debentures. Section 1205(b) of the Energy Act amended section 103 of the SBI Act by adding the new defined terms “energy saving debenture” and “energy saving qualified investment.” Section 1206 of the Energy Act amended section 303(b)(2) of the SBI Act to make SBICs licensed after September 30, 2008, eligible for additional leverage if they have made Energy Saving Qualified Investments. An SBIC making maximum use of this provision could have approximately 11% more leverage outstanding than would be permitted under the standard leverage eligibility formula.

On January 11, 2011, SBA published a proposed rule to implement the SBIC-related provisions of the Energy Act (76 FR 2029). SBA received eleven sets of comments on the proposed rule, primarily falling into three areas: (1) Definitions; (2) procedures and timing when SBA must make a pre-financing determination of eligibility, including the details of SBA’s collaboration with the Department of Energy (DOE); and (3) impact of the Energy Saving Debenture on SBIC program costs. SBA discusses the comments in the following section-by-section analysis.

II. Section by Section Analysis

Section 107.50—Definitions. The Energy Act provides that Energy Saving Debentures are to be issued at a discount with a five- or ten-year maturity, and require no interest payment or annual charge for the first five years. Although an SBIC can use other funds to make an Energy Saving Qualified Investment, an SBIC that issues an Energy Saving Debenture must use the proceeds only to make an Energy Saving Qualified Investment. To implement these statutory provisions, SBA proposed to add “Energy Saving Qualified Investment” and “Energy Saving Activities” as defined terms in § 107.50. SBA is finalizing both definitions with modifications.

“Energy Saving Qualified Investment”

The proposed regulatory definition of Energy Saving Qualified Investment had several key points. First, as required by statute, an Energy Saving Qualified Investment can only be made by an SBIC licensed after September 30, 2008. Second, the investment must be made in a Small Business, as defined in 13 CFR part 107. Third, the investment must be in the form of a Loan, a Debt Security (a debt instrument that includes an equity feature, such as warrants or rights to convert to equity), or an Equity Security. Fourth, the Small Business must be “primarily engaged” in business activities that reduce the use or consumption of non-renewable energy sources (“Energy Saving Activities”).

Four commenters suggested that SBA broaden the criteria under which a Small Business is presumed to be “primarily engaged” in Energy Saving Activities. In the proposed rule, the presumption applied only to a Small Business that derived at least 50% of its revenues during its most recently completed fiscal year from Energy Saving Activities. The commenters’ concern was that a Small Business would not be able to satisfy a historical revenue-based test if it was either a start-up or an established company expanding its business to include Energy Saving Activities. While the proposed rule would have allowed SBA to make a determination of eligibility in such cases, SBA agrees that a broader presumption of eligibility would be an effective way to encourage investment and reduce administrative burden. In considering how to expand the presumption in the final rule, SBA favored a test that would be simple to apply and would focus on prospective rather than historical activity. In the final rule, SBA has retained the proposed revenue-based presumption while adding a second presumption: a Small Business is presumed to meet the “primarily engaged” test if it will utilize 100% of the proceeds of a financing to engage in Energy Saving Activities.

“Energy Saving Activities”

The proposed rule defined Energy Saving Activities largely by referencing certain criteria established by the Department of Energy and other Federal agencies to identify energy efficient products and services and renewable energy sources. As one example, the

design or manufacturing of products that satisfy the criteria for use of the Energy Star trademark label would qualify as an Energy Saving Activity.

Paragraph (1) of the proposed definition provided that Energy Saving Activities would include not only manufacturing or research and development of energy-efficient final products, but also “integral product components, integral material, or related software”. One commenter asked SBA to clarify that Small Businesses producing “supply chain” components for products eligible for federal tax credits are included in the definition of Energy Saving Activities. SBA intended paragraph (1) of the proposed definition to include the activities of “supply chain” Small Businesses. SBA believes the proposed rule was sufficiently clear on this point and does not require modification.

SBA received a comment to include under the definition of Energy Saving Activities any Small Business activity that qualifies for either the Residential Energy Tax Credit or an Advanced Research Project Agency—Energy (ARPA-E) grant award. With the agreement of DOE, SBA has added paragraph (1)(v) to the Energy Saving Activities definition to include those activities, as well as any other technology commercialization activity that has qualified for a DOE Small Business Innovation Research (SBIR) or Small Business Technology Transfer (STTR) award.

SBA received, but did not adopt, a comment suggesting that paragraph (1)(iii) of the definition, which describes activities that improve “automobile” efficiency, should be broadened to include other means of transport such as trucks, buses, trains, and aircraft. This provision of the proposed rule was based upon DOE’s specific expertise in energy savings activities related to passenger vehicles, whereas other transportation alternatives would fall across the purview of several Federal agencies. SBA expects that many activities aimed at achieving results similar to those described in paragraph (1)(iii) for forms of transportation other than automobiles would qualify as Energy Saving Activities under paragraph (4) of the definition.

SBA received five comments suggesting the definition of Energy Saving Activities be expanded to specifically include the biomass preprocess of pyrolysis, which is one method of biomass conversion for the ultimate production of renewable solid fuels. Based on consultation with DOE, SBA did not adopt this suggestion, as each preprocess of biomass is

situational and specific and there are currently no approved standards by which to evaluate all levels of biomass preprocesses and conversion methods. With the many possible technological permutations, SBA believes that potential SBIC investments involving pyrolysis or any type of preprocessing of biomass should be evaluated on a case-by-case basis under paragraph (4) of the definition.

SBA received one comment to expand the definition of Energy Saving Activities to include “earthquake disaster potential and pipeline safety” of both non-renewable and renewable energy sources. While SBA agrees that these are important concerns, they are outside the scope of activities contemplated by the Energy Act.

SBA received one comment to broaden the definition of Energy Saving Activities “* * * to include all forms of commercialization of R[esearch] &D[evelopment], including ‘licensing’ and ‘outsourcing’ as well as revenues generated by those activities.” Paragraphs (1) and (4) of the proposed definition already encompassed research and development activities; the commenter’s suggestion would also treat the receipt of licensing fees, royalties, or similar payments as an Energy Saving Activity if such payments were generated from the results of previously conducted research and development that would have qualified as Energy Saving Activities. SBA does not believe that the passive receipt of payments is appropriate for inclusion in the definition. Furthermore, if a Small Business generates revenues solely from licensing or similar activities, it would be ineligible for SBIC financing under existing § 107.720(b), which prohibits the financing of a passive business. It should be noted, however, that a Small Business that outsources the manufacturing of its products may still qualify for financing (and its activities may qualify as Energy Saving Activities) if it is actively engaged in product design or deployment.

Paragraph (1)(v) of the Energy Saving Activities definition in the proposed rule (redesignated as paragraph (1)(vi) in the final rule) included activities that meet the standards for receiving Energy Credits as defined in Internal Revenue Code section 48, among which is a credit related to qualified fuel cell power plants. In the final rule, at the suggestion of DOE, SBA has added paragraph (1)(vii) to the Energy Saving Activities definition, to clarify that the definition includes the provision of highly efficient conversion systems for fuel cells that can use renewable or non-renewable fuel.

SBA has also made non-substantive edits to improve the clarity of paragraphs (1)(viii) and (2)(v) of the Energy Saving Activities definition. Paragraph (1)(viii) concerns manufacturing or research and development activities that improve electricity delivery efficiency by supporting one or more defined smart grid functions; paragraph (2)(v) concerns deployment of products, services or functionalities for the same purpose.

Section 107.610—Required Certifications for Loans and Investments. SBA received two comments on the certification requirements for Energy Saving Qualified Investments in proposed § 107.610(f), in particular the requirements in paragraph (f)(2) applicable to investments for which SBA must make a pre-financing determination of eligibility. In such cases, the proposed rule would have required materials submitted to SBA to be certified as true and correct by both the Small Business and the SBIC to the best of their knowledge. The commenters pointed out that an SBIC might not be in a position to make the required certification at the date of submission because due diligence on the prospective investment would probably still be in its early stages. SBA agrees that this is a valid concern and has modified the final rule so that only the Small Business must provide a certification at the date of submission. As of the closing date of the Financing all due diligence should be completed, and at that time the SBIC would be required to certify that, to the best of its knowledge, it has no reason to believe that the materials submitted to SBA are incorrect.

As part of its review of the certification requirements in response to the comments on the proposed rule, SBA noted that proposed paragraph (f)(1), which concerns Energy Saving Qualified Investments that do not require a pre-financing determination of eligibility by SBA, required a certification by the SBIC but not by the concern receiving the financing. Because not all information can be independently confirmed, an SBIC must rely to some degree on the integrity of the information that a concern provides. Therefore, in the final rule, § 107.610(f)(1)(iv) adds a requirement under which a concern receiving financing must certify, as true and correct to the best of its knowledge, any information it provided to an SBIC in connection with the determination that the concern was eligible to receive an Energy Saving Qualified Investment.

As discussed earlier in this preamble, SBA has revised the definition of Energy Saving Qualified Investment by adding a presumption that a Small Business will be considered “primarily engaged” in Energy Saving Activities if it intends to use all of the proceeds of a proposed financing for such activities. In connection with that revision, SBA has added post-investment requirements for documentation of the actual use of proceeds in § 107.610(f)(5). Under these provisions, the Small Business must provide the SBIC with documentation of the use of proceeds no later than six months after the closing date of the financing; if some or all of the proceeds have not yet been spent, further updates would be required at six-month intervals. SBA expects, given the substantial investment amounts typically involved, that an SBIC would monitor use of proceeds at least this frequently in the ordinary course of business. The SBIC would be responsible for reviewing the information submitted by the Small Business and documenting that it had reasonably determined that the financing proceeds were used appropriately to fund Energy Saving Activities.

SBA has also slightly reorganized § 107.610(f) for greater clarity; in the final rule, § 107.610(f)(2) includes only the requirements for an SBIC seeking a determination from SBA that an activity in which a concern is engaged is an Energy Saving Activity. The requirements for an SBIC seeking a determination from SBA that a concern is “primarily engaged” in Energy Saving Activities appear separately in § 107.610(f)(3). The requirement for certification by the SBIC as of the closing date of the financing appears in § 107.610(f)(4).

SBA also received three comments dealing more generally with the process and timeframe for obtaining a pre-financing determination of eligibility from SBA. Commenters suggested that SBA allow SBICs to submit materials electronically and develop an expected timeline for consideration for SBA to reach a decision in consultation with DOE.

SBA has and will continue to consult with DOE technical experts on an as-needed basis when evaluating whether certain small business concerns are primarily engaged in an energy saving activity (per request of an SBIC as part of the pre-financing determination of eligibility of use for the Energy Savings Debenture program). As discussed in the “Paperwork Reduction Act” section of this preamble, SBA will electronically collect information from an SBIC

through the “Financing Eligibility Statement for Usage of Energy Saving Debenture”.

Section 107.1150—Maximum Amount of Leverage for a Section 301(c) Licensee. New paragraph (d) implements a provision of the Energy Act that may provide additional leverage eligibility to SBICs licensed on or after October 1, 2008, that make Energy Saving Qualified Investments in Smaller Enterprises. SBA received no comments on this provision and is finalizing the section as proposed.

Other Comments. In addition to the comments received on specific provisions of the proposed rule, SBA received four comments suggesting that SBA report on various topics, including among others: Energy Saving Debenture usage, number of Small Businesses financed, resulting breakthroughs in technology, comparative studies quantifying energy savings, and performance of Small Businesses financed. While SBA is concerned about minimizing any increases in the reporting burden placed on SBICs and Small Businesses, SBA recognizes a particular need to monitor the performance of investments financed with the proceeds of Energy Saving Debentures, because of their potential impact on fees charged to all SBICs utilizing debenture leverage. SBA plans to ask SBICs to identify each financing that is an Energy Saving Qualified Investment through a certification made at the time of such financing and through quarterly and annual financial reports to SBA. SBICs will also be asked to indicate whether an Energy Saving Qualified Investment was financed with the proceeds of an Energy Saving Debenture or a standard debenture. With these identifiers, SBA will be able to track the performance of Energy Saving Qualified Investments and the SBICs that have made them. SBA expects to make the information collected available to the public in aggregated form.

Energy Saving Debenture

As discussed in the preamble to the proposed rule, section 1205(b) of the Energy Act provided for SBA leverage in the form of an “energy saving debenture”, which would be a five- or ten-year debenture issued at a discount so as to be, in effect, a “zero coupon” debenture for the first five years. SBA leverage fees would be paid as required under current § 107.1130, except for the annual charge in § 107.1130(d) which would be deferred for the first five years and thereafter be payable semi-annually along with the debenture interest. For example, an SBIC issuing a \$1,000,000

ten-year debenture with a combined interest rate and annual charge of 6% would receive roughly \$750,000 upon issuance and would make no payments of interest or annual charge for the first five years. Starting with the sixth year, the SBIC would make semi-annual payments of interest and charges on the debenture’s face amount of \$1,000,000. At maturity the SBIC would pay the \$1,000,000 face amount of the debenture.

Each SBIC licensed after September 30, 2008, that is eligible to issue debentures under current regulations would be eligible to issue an Energy Saving Debenture for the purpose of making an Energy Saving Qualified Investment. No regulatory changes are necessary to implement this new type of debenture. However, SBA did receive a number of comments concerning the Energy Saving Debenture.

SBA received two comments stating that SBA should clarify how an SBIC will be able to calculate the net proceeds it can expect to receive when it issues an Energy Saving Debenture. The same two commenters also asked whether the interest rate on an Energy Saving Debenture could change after issuance if SBA were to include the debenture in a pool of securities offered for public or private sale, and if so whether the change might affect the funds available to the SBIC.

As discussed elsewhere in this preamble, the cash received by an SBIC issuing an Energy Saving Debenture would be the face value of the debenture discounted by the present value of the interest and annual charge for the five-year discount period. SBA currently maintains a calculator that an SBIC can use to estimate the net proceeds of an LMI debenture, which has the same structure as the Energy Saving Debenture. The LMI calculator can be accessed through <http://www.sba.gov/content/lmi-debenture-calculator>.

SBA does not anticipate that Energy Saving Debentures will be pooled. SBICs can expect the interest rate on such debentures to remain fixed for their entire term.

SBA received two comments stating that SBICs planning to use Energy Saving Debentures must be able to understand how SBA intends to apportion availability. Beginning in fiscal year 2012, SBA expects to hold annual Energy Saving Debenture allocations on a semi-annual basis, authorizing up to half of the overall annual allocation amount in the first allocation period and the remainder in the second period. SBA will limit the maximum initial Energy Saving Debenture allocation for an individual

SBIC to an amount equal to the SBIC's Regulatory Capital (i.e., one tier of leverage) in any fiscal year. If aggregate demand at one tier of leverage is greater than the amount available, SBA will scale back SBICs' leverage requests as necessary. An SBIC that received an allocation of Energy Saving Debenture leverage in the first allocation period may seek an additional allocation in the second period, subject to availability.

Finally, SBA received two comments regarding the impact of the Energy Saving Debenture on program costs; these comments are discussed in the section of this preamble concerning compliance with Executive Order 12866.

Electronic Access to Criteria for Evaluation of "Energy Saving Activities"

As discussed in the preamble to the proposed rule, SBA intends to link its Investment Division Web site (www.sba.gov/inv) to other government Web sites that will assist users in determining whether a company providing or developing particular products or services is engaged in Energy Saving Activities. Some sites allow users to search for a specific product by name, while others provide performance criteria or outcomes that a qualifying product or service must satisfy. The current addresses for these sites are repeated here for the convenience of the reader:

1. Energy Star

www.energystar.gov/products

2. Federal Energy Management Program

www1.eere.energy.gov/femp/technologies/ep_purchasingspecs.html

3. Renewable Electricity Production Tax Credit (Internal Revenue Code Section 45)

http://www.irs.gov/irb/2010-18_IRB/ar11.html

4. Energy Credit (Internal Revenue Code Section 48)

[http://frwebgate.access.gpo.gov/cgi-bin/usc.cgi?ACTION=RETRIEVE&FILE=\\$\\$xa\\$\\$busc26.wais&start=1688508&SIZE=98870&TYPE=PDF](http://frwebgate.access.gpo.gov/cgi-bin/usc.cgi?ACTION=RETRIEVE&FILE=$$xa$$busc26.wais&start=1688508&SIZE=98870&TYPE=PDF)

5. Installation-Related Federal Tax Credits for Consumer Energy Efficiency

http://www.energystar.gov/index.cfm?c=tax_credits.tx_index

III. Justification for Immediate Effective Date

The Administrative Procedure Act (APA), 5 U.S.C. 553(d)(3), requires that

"publication or service of a substantive rule shall be made not less than 30 days before its effective date, except * * * as otherwise provided by the agency for good cause found and published with the rule."

The purpose of this provision is to provide interested and affected members of the public sufficient time to adjust their behavior before the rule takes effect. In the case of this rulemaking, however, there should be no need for any member of the public, including any SBIC, to make any changes in order to prepare for the rule taking effect. This rule implements changes to the SBIC program to encourage financings in Energy Saving Qualified Investments, which are expected to contribute to the important goal of reducing U.S. dependence on non-renewable fuels. Any further delay in making leverage available to SBICs in the form of Energy Saving Debentures will only hold back the potential benefits of investment in small business engaged in Energy Saving Activities. SBA therefore finds that there is good cause for making this rule effective immediately instead of observing the 30-day period between publication and effective date.

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

OMB has determined that this rule is a "significant" regulatory action under Executive Order 12866. In the proposed rule, SBA set forth its initial regulatory impact analysis, which addressed the following: Necessity of the regulation; alternative approaches to the proposed rule; and the potential benefits and costs of the regulation. SBA received comments which addressed both alternative approaches to and potential costs of the regulation. Those comments are discussed in the final Regulatory Impact Analysis set forth below:

1. Necessity of Regulation

This regulatory action implements sections 1205 and 1206 of the Energy Independence and Security Act of 2007, Public Law 110-140. The statutory revisions provide an SBIC seeking to make an "energy saving qualified investment" with a new SBA leverage option in the form of an "energy saving debenture."

2. Alternative Approaches to Regulation

Because the regulatory definition of Energy Saving Qualified Investment must be consistent with the statutory definition, SBA had a limited ability to

consider alternatives. The statute defines "energy saving qualified investment" as an "investment in a small business concern that is primarily engaged in researching, manufacturing, developing, or providing products, goods, or services that reduce the use or consumption of non-renewable energy resources." The SBA considered adopting this statutory definition without modification. However, SBA did not select this approach due to concerns that without some interpretation of the broad statutory language, it would be difficult to evaluate (a) whether qualifying investments would actually contribute to the energy-saving objectives of the statute and (b) what constitutes "primarily engaged".

In considering alternatives for determining whether a qualifying investment would likely contribute to the energy-saving objectives of the statute, the SBA conferred with DOE to consider two options besides using the broad statutory definition: (1) Defining a list of specific industries and (2) referencing existing standards developed for Federal programs that promote energy efficiency. SBA did not adopt the first option to identify a list of specific industries because (1) "energy saving" efforts take place across a broad spectrum of industries; (2) the North American Industrial Classification System (NAICS) codes, typically used to identify industries, are inadequate for capturing whether a business is involved in "energy saving" across this spectrum; and (3) developing a static list does not adequately allow for either a full range of products and services or the rapid growth in this area that might further the statutory goals. Given the number of Federal programs already directed towards "energy saving" activities, SBA chose to adopt the second option in order to improve standardization across agencies, allow growth as DOE and other agencies update program standards to reflect new "energy saving" initiatives, and to address the broadest spectrum of products and services. Towards those goals, SBA recognizes that SBICs may wish to invest in Small Businesses that are manufacturing or researching products or performing services that have not been identified by existing Federal standards. Therefore, SBA will also consider other investments on a case by case basis, based on the SBIC's ability to demonstrate energy savings associated with the Small Business's activities.

To determine whether a concern is "primarily engaged" in Energy Saving Activities, SBA considered using either

a specific quantitative standard or an evaluation based on total facts and circumstances. For simplicity, the proposed rule presumed that a business is “primarily engaged” if it derived at least 50% of revenues during its most recently completed fiscal year from Energy Saving Activities. As a result of comments received, SBA supplemented this historical test with an alternative, prospective test; in the final rule, a Small Business that will use 100% of the financing proceeds for Energy Saving Activities will also be presumed to be “primarily engaged” in such activities. SBA believes this change will encourage SBICs to make Energy Saving Qualified Investments by reducing the associated administrative burden. As in the proposed rule, an SBIC may also ask SBA to determine whether a concern is “primarily engaged” in Energy Saving Activities based on an evaluation of various factors, including “the distribution of revenues, employees and expenditures, intellectual property rights held, and business plans presented to investors as part of a formal solicitation”.

3. Potential Benefits and Costs

As stated in the proposed rule, SBA initially estimated demand for Energy Saving Debentures at approximately 5 percent of the overall SBIC debenture program. This estimate was based on SBA’s analysis of SBICs’ usage of the “low and moderate income” (LMI) debenture, which has the same structure as the Energy Saving Debenture, and on venture capital industry data for “Cleantech” investments, which SBA believes are fairly representative of energy saving investments. SBA estimated that level of demand would result in an increase to the annual fee of 14.3 basis points versus a formulation with no Energy Saving Debentures. When calculating the SBA Fiscal Year 2012 budget, SBA found that the same level of demand would increase the annual fee for SBIC licensees by 15.5 basis points versus a formulation with no Energy Saving Debentures. This increase reflects an overall increase in the size of the SBIC program while taking into account the additional risk associated with SBIC equity investments contemplated in the usage of the Energy Saving Debenture.

SBA received two comments stating that Energy Saving Debentures should not be combined with standard debentures when calculating the annual fee charged to all debenture users. The commenters expressed concern that all SBIC debenture issuers would be required to subsidize the higher-risk Energy Saving Debenture, including

those SBICs whose access to the Energy Saving Debenture is prohibited because they were licensed before October 1, 2008.

SBA understands the commenters’ concern about spreading the costs of the Energy Saving Debenture across the entire debenture program. In order to limit the impact of fee increases, SBA has decided to cap the amount of Energy Saving Debentures available in a given fiscal year at 5 percent of the overall SBIC program debenture program level for the year, even if demand proves to be higher. However, SBA does not believe it is feasible to accommodate the commenters’ request to separate the Energy Saving Debenture from the standard debenture. On a stand-alone basis, the annual fee for the Energy Saving Debenture would exceed the statutory maximum of 1.38%, meaning that SBA would be unable to implement the statutory provisions of the Energy Act. SBA will review the demand for and performance of the Energy Saving Debenture on an annual basis to determine whether the modeling assumptions underlying this Regulatory Impact Analysis should be changed.

Executive Order 12988

This action meets applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or presumptive effect.

Executive Order 13132

For the purposes of Executive Order 13132, SBA has determined that this final rule will not have substantial, direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, for the purposes of Executive Order 13132, Federalism, SBA has determined that this final rule has no federalism implications warranting the preparation of a federalism assessment.

Paperwork Reduction Act, 44 U.S.C. Ch. 35

SBA has determined that this rule imposes additional reporting and recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C., chapter 35. This collection of information includes three different reporting requirements: (1) Information needed for SBA to determine whether a Small Business is “primarily engaged” in Energy Saving Activities, (2) information needed for SBA to

determine whether a particular activity is an “Energy Saving Activity”, and (3) identification of a completed financing as an Energy Saving Qualified Investment on the Portfolio Financing Report (an existing information collection approved under OMB Control Number 3245–0078). The descriptions of respondents and the titles and purpose of the information collections are discussed below with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

A. “Primarily Engaged” and “Energy Saving Activity” Determinations

Title: Financing Eligibility Statement for Usage of Energy Saving Debentures, SBA Form 2428.

Summary: The Financing Eligibility Statement for Usage of Energy Saving Debentures will be used by SBICs requesting either or both of the SBA determinations that may be requested under § 107.610(f)(2) and/or (f)(3) of the rule: (1) Whether a particular activity in which a Small Business is engaged is an Energy Saving Activity, and (2) whether a Small Business is “primarily engaged” in Energy Saving Activities. The Small Business must provide supporting evidence of the Small Business’s eligibility based on the factors listed in the proposed rule. SBA received no comments specifically related to the proposed information collection. However, as a result of two comments received on the proposed certification requirement in § 107.610(f), SBA has eliminated that requirement as it would have related to the SBIC. Only the Small Business providing the information must certify that the information is true and correct.

Need and Purpose: Section 1205 of the Energy Independence and Security Act of 2007 makes SBA leverage in the form of a deferred interest “energy saving debenture” available to SBICs licensed after September 30, 2008 for the purpose of making Energy Saving Qualified Investments. This final rule identifies various criteria under which a financing can qualify as an Energy Saving Qualified Investment; however, SBA recognizes that some proposed investments will need to be individually reviewed by SBA to determine whether they fulfill the energy saving objectives of the statute. SBA will use the submitted information to make those determinations.

Description of Respondents: SBICs will submit this form to obtain a

determination from SBA as to whether a proposed financing is an Energy Saving Qualified Investment. There are approximately 294 active SBICs; only about 17% of these are debenture SBICs that were licensed after September 30, 2008, and are eligible to issue Energy Saving Debentures to make Energy Saving Qualified Investments. Based on anticipated new licensing activity, SBA is estimating the number of eligible SBICs at 60. Assuming each of these SBICs will invest in five companies per year, that 5% of all investments will be in energy-saving companies, and that one-third of those will require SBA to make a pre-financing determination of eligibility, SBA estimates five responses per year.

SBA estimates the burden of this collection of information as follows: An applicant will complete this collection once for each prospective Energy Saving Qualified Investment that requires SBA to make a pre-financing determination of eligibility. SBA estimates that the time needed to complete this collection will average 10 hours. SBA estimates that the cost to complete this collection will be approximately \$150 per hour. Total estimated burden is 50 hours per annum costing a total of \$7,500 for the year.

B. Portfolio Financing Report

Title: Portfolio Financing Report, SBA Form 1031 (OMB Control Number 3245-0078).

Summary: SBA Form 1031 is a currently approved information collection. SBA regulations (§ 107.640) require SBICs to submit a Portfolio Financing Report on SBA Form 1031 for each financing that an SBIC provides to a small business concern. The form is SBA's primary source of information for compiling statistics on the SBIC program as a provider of capital to small businesses. SBA also uses the information provided on Form 1031 to evaluate SBIC compliance with regulatory requirements. SBA has revised the form by adding one new question, which would ask the SBIC to use a pull-down menu to identify whether a completed financing was an Energy Saving Qualified Investment. SBA's financial reporting software would automatically transfer this designation to the SBA Form 468 (SBIC Financial Statements), the source of data needed to determine eligibility for additional leverage based on Energy Saving Qualified Investments under § 107.1150(d)(2)(i). This revised form was approved by OMB on March 16, 2011.

Need and Purpose: Section 1206 of the Energy Independence and Security

Act of 2007 increases the maximum amount of leverage potentially available to an SBIC licensed on or after October 1, 2008, that makes Energy Saving Qualified Investments. In this rule, § 107.1150(d) adjusts the basic leverage eligibility formula in § 107.1150(a) by subtracting from an SBIC's outstanding leverage the cost basis of Energy Saving Qualified Investments that the SBIC has made in Smaller Enterprises. The amount that can be subtracted is limited to 33% of the SBIC's Leverageable Capital. SBA will use the information submitted on Form 1031 to track Energy Saving Qualified Investments that an SBIC may use in its leverage eligibility calculation, as well as for overall program evaluation purposes.

Description of Respondents: All SBICs are required to submit SBA Form 1031 within 30 days after closing an investment. The current estimate of 2,800 responses per year is not affected by this rule. SBA has added one field to the form to identify whether the investment is an Energy Saving Qualified Investment.

SBA estimates the burden of this collection of information as follows: An SBIC making an Energy Saving Qualified Investment will select that descriptor from a pull-down menu on SBA Form 1031. There is no incremental burden attributable to completion of this additional field. An SBIC will complete SBA Form 1031 for each of its completed financing transactions. The currently approved hour burden for this collection is 12 minutes per response (0.2 hours), at a cost of \$7.00 per response (based on \$35.00 per hour). The total estimated burden is 560 hours per annum at an aggregate cost of \$19,600.

The recordkeeping requirements under the final rule relate to the information that an SBIC must maintain in its files to support the required certifications for Energy Saving Qualified Investments under § 107.610(f)(1). SBA expects that SBICs will be able to obtain the necessary documentation with minimal effort. The SBIC would first document that the contemplated investment is in a company that provides products or services included in the definition of Energy Saving Activities, generally by referring to one of the government Web sites discussed in this preamble. Second, the SBIC would document that the company derives at least 50% of its revenues from the sales of these products or services, or, that the company will utilize 100% of the proceeds from the financing for Energy Saving Activities; the company would

have this information available in the ordinary course of business.

Compliance With the Regulatory Flexibility Act, 5 U.S.C. 601-612

When an agency promulgates a rule, the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612) requires the agency to prepare an initial regulatory flexibility analysis (IRFA) which describes the potential economic impact of the rule on small entities and alternatives that may minimize that impact. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an IRFA, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities. This final rule affects all SBICs issuing debentures, of which there are approximately 160, most of which are small entities. Therefore, SBA has determined that this rule will have an impact on a substantial number of small entities. However, SBA has determined that the impact on entities affected by the rule will not be significant. The Energy Saving Qualified Investment definition identifies the type of investment for which an SBIC will be permitted to seek SBA funding in the form of an Energy Saving Debenture; this instrument, because of its deferred interest feature, is expected to provide SBICs with greater flexibility in structuring qualified investments. The Energy Saving Debenture is expected to increase the annual fee charged on all new debenture commitments by approximately 15.5 basis points during fiscal year 2012; however, the fee would continue to remain well below the statutorily set maximum fee. Accordingly, the Administrator of the SBA hereby certifies that this rule will not have a significant impact on a substantial number of small entities.

List of Subjects in 13 CFR Part 107

Investment companies, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

For the reasons stated in the preamble, SBA amends part 107 of title 13 of the Code of Federal Regulations as follows:

PART 107—SMALL BUSINESS INVESTMENT COMPANIES

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

Authority: 15 U.S.C. 681 et seq., 683, 687(c), 687b, 687d, 687g, 687m and Pub. L. 106-554, 114 Stat. 2763; and Pub. L. 111-5, 123 Stat. 115.

- 2. Amend § 107.50 by adding in alphabetical order definitions of

“Energy Saving Activities” and “Energy Saving Qualified Investment”, to read as follows:

§ 107.50 Definitions of terms.

* * * * *

Energy Saving Activities means any of the following:

(1) Manufacturing or research and development of products, integral product components, integral material, or related software that meet one or more of the following:

(i) Improves residential energy efficiency as demonstrated by meeting Department of Energy or Environmental Protection Agency criteria for use of the Energy Star trademark label;

(ii) Improves commercial energy efficiency as demonstrated by being in the upper 25% of efficiency for all similar products as designated by the Department of Energy’s Federal Energy Management Program;

(iii) Improves automobile efficiency or reduces consumption of non-renewable fuels through the use of advanced batteries, power electronics, or electric motors; advanced combustion engine technology; alternative fuels; or advanced materials technologies, such as lightweighting;

(iv) Improves industrial energy efficiency through combined heat and power (CHP) prime mover or power generation technologies, heat recovery units, absorption chillers, desiccant dehumidifiers, packaged CHP systems, more efficient process heating equipment, more efficient steam generation equipment, heat recovery steam generators, or more efficient use of water recapture, purification and reuse for industrial application;

(v) Advances commercialization of technologies developed by recipients of awards from the Department of Energy under the Advanced Research Projects Agency—Energy, Small Business Innovation Research, or Small Business Technology Transfer programs;

(vi) Reduces the consumption of non-renewable energy by providing renewable energy sources, as demonstrated by meeting the standards, applicable to the year in which the investment is made, for receiving a Renewable Electricity Production Tax Credit as defined in Internal Revenue Code Section 45 or an Energy Credit as defined in Internal Revenue Code Section 48;

(vii) Reduces the consumption of non-renewable energy for electric power generation as described in Internal Revenue Code Section 48(c)(1)(A) by providing highly efficient energy conversion systems that can use

renewable or non-renewable fuel through fuel cells; or

(viii) Improves electricity delivery efficiency by supporting one or more of the smart grid functions as identified in 42 U.S.C. 17386(d), by means of a product, service, or functionality that serves one or more of the following smart grid operational domains: Equipment manufacturing, customer systems, advanced metering infrastructure, electric distribution systems, electric transmission systems, storage systems, and cyber security.

(2) Installation and/or inspection services associated with the deployment of energy saving products as identified by meeting one or more of the following standards:

(i) Deploys products that qualify, in the year in which the investment is made, for installation-related Federal Tax Credits for Residential Consumer Energy Efficiency;

(ii) Deploys products related to commercial energy efficiency as demonstrated by deploying commercial equipment that is in the upper 25% of efficiency for all similar products as designated by the Department of Energy’s Federal Energy Management Program;

(iii) Deploys combined heat and power products, goods, or services;

(iv) Deploys products that qualify, in the year in which the investment is made, for receiving a Renewable Electricity Production Tax Credit as defined in Internal Revenue Code Section 45 or an Energy Credit as defined in Internal Revenue Code Section 48; or

(v) Deploys a product, service, or functionality that improves electricity delivery efficiency by supporting one or more of the smart grid functions as identified in 42 U.S.C. 17386(d), and that serves one or more of the following smart grid operational domains: Equipment manufacturing, customer systems, advanced metering infrastructure, electric distribution systems, electric transmission systems, or grid cyber security.

(3) Auditing or consulting services performed with the objective of identifying potential improvements of the type described in paragraph (1) or (2) of this definition.

(4) Other manufacturing, service, or research and development activities that use less energy to provide the same level of energy service or reduce the consumption of non-renewable energy by providing renewable energy sources, as determined by SBA. A Licensee must obtain such determination in writing prior to providing Financing to a Small

Business. SBA will consider factors including but not limited to:

(i) Results of energy efficiency testing performed in accordance with recognized professional standards, preferably by a qualified third-party professional, such as a certified energy assessor, energy auditor, or energy engineer;

(ii) Patents or grants awarded to or licenses held by the Small Business related to Energy Saving Activities listed in subsection (1) or (2) above;

(iii) For research and development of products or services that are anticipated to reduce the consumption of non-renewable energy, written evidence from an independent, certified third-party professional of the feasibility, commercial potential, and projected energy savings of such products or services; and

(iv) Eligibility of the product or service for a Federal tax credit cited in this definition that is not available in the year in which the investment is made, but was available in a previous year.

Energy Saving Qualified Investment means a Financing which:

(1) Is made by a Licensee licensed after September 30, 2008;

(2) Is in the form of a Loan, Debt Security, or Equity Security, each as defined in this section;

(3) Is made to a Small Business that is primarily engaged in Energy Saving Activities. A Licensee must obtain a determination from SBA prior to the provision of Financing as to whether a Small Business is primarily engaged in Energy Saving Activities. SBA will consider the distribution of revenues, employees and expenditures, intellectual property rights held, and Energy Saving Activities described in a business plan presented to investors as part of a formal solicitation in making its determination. However, a Small Business is presumed to be primarily engaged in Energy Saving Activities, and no pre-Financing determination by SBA is required, if:

(i) The Small Business derived at least 50% of its revenues during its most recently completed fiscal year from Energy Saving Activities; or

(ii) The Small Business will utilize 100% of the Financing proceeds received from a Licensee to engage in Energy Saving Activities.

* * * * *

■ 3. Amend § 107.610 by revising the last sentence of the introductory text and adding paragraph (f) to read as follows:

§ 107.610 Required certifications for Loans and Investments.

* * * Except for information and documentation prepared under paragraphs (f)(2) and (3) of this section, you must keep these documents in your files and make them available to SBA upon request.

* * * * *

(f) For each Energy Saving Qualified Investment:

(1) If a pre-Financing determination of eligibility by SBA is not required under the definition of Energy Saving Activities or Energy Saving Qualified Investment:

(i) A certification by you, dated as of the closing date of the Financing, as to the basis for the qualification of the Financing as an Energy Saving Qualified Investment;

(ii) Supporting documentation of the Energy Saving Activities engaged in by the concern;

(iii) Supporting documentation of either the percentage of its revenues derived from Energy Saving Activities during the concern's most recently completed fiscal year, which must be at least 50 percent, or the concern's intended use of the Financing proceeds, all of which must be used for Energy Saving Activities; and

(iv) A certification by the concern, dated as of the closing date of the Financing, that any information it provided to you in connection with this paragraph (f)(1) is true and correct to the best of its knowledge.

(2) If, prior to providing Financing, you must obtain a determination from SBA that the activities in which a concern is engaged are Energy Saving Activities, submit to SBA in writing a description of the product or service being provided or developed, including all available documentation of the energy savings produced or anticipated, addressing the factors considered under paragraph (4) of the definition of "Energy Saving Activities" in § 107.50 and certified by the concern to be true and correct to the best of its knowledge.

(3) If, prior to providing Financing, you must obtain a determination from SBA that the concern is "primarily engaged" in Energy Saving Activities, submit to SBA in writing all available information concerning the factors considered under paragraph (3) of the definition of "Energy Saving Qualified Investment" in § 107.50, certified by the concern to be true and correct to the best of its knowledge.

(4) For each Financing closed after you obtain a determination from SBA under paragraph (f)(2) or (3) of this section, a certification by you, dated as

of the closing date of the Financing, that to the best of your knowledge, you have no reason to believe that the materials submitted are incorrect.

(5) For each Financing closed based on supporting documentation of the concern's intended use of proceeds for Energy Saving Activities under paragraph (f)(1)(iii) of this section:

(i) Documentation by the concern, dated no later than six months after the closing of the Financing, of the proceeds used to date for Energy Saving Activities, with further updates provided at six month intervals until 100 percent of the Financing proceeds have been accounted for; and

(ii) Documentation that you have reviewed the information submitted by the concern under paragraph (f)(5)(i) of this section and have reasonably determined that 100 percent of the Financing proceeds were used for Energy Saving Activities.

■ 4. Amend § 107.1150 by adding a sentence at the end of paragraph (c) introductory text and adding paragraph (d) to read as follows:

§ 107.1150 Maximum amount of Leverage for a Section 301(c) Licensee.

* * * * *

(c) * * * Any investment that you use as a basis to seek additional leverage under this paragraph (c) cannot also be used to seek additional leverage under paragraph (d) of this section.

* * * * *

(d) *Additional Leverage based on Energy Saving Qualified Investments in Smaller Enterprises.* (1) Subject to SBA's credit policies, if you were licensed on or after October 1, 2008, you may have outstanding Leverage in excess of the amounts permitted by paragraphs (a) and (b) of this section in accordance with this paragraph (d). Any investment that you use as a basis to seek additional Leverage under this paragraph (d) cannot also be used to seek additional Leverage under paragraph (c) of this section.

(2) To determine whether you may request a draw that would cause you to have outstanding Leverage in excess of the amount determined under paragraph (a) of this section:

(i) Determine the cost basis, as reported on your most recent filing of SBA Form 468, of any Energy Saving Qualified Investments in a Smaller Enterprise that individually do not exceed 20% of your Regulatory Capital.

(ii) Calculate the amount that equals 33% of your Leverageable Capital.

(iii) Subtract from your outstanding Leverage the lesser of (d)(2)(i) or (ii).

(iv) If the amount calculated in paragraph (d)(2)(iii) is less than the

maximum Leverage determined under paragraph (a) of this section, the difference between the two amounts equals your additional Leverage availability.

Dated: February 9, 2012.

Karen G. Mills,
Administrator.

[FR Doc. 2012-9454 Filed 4-18-12; 8:45 am]

BILLING CODE 8025-01-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA-2009-0330; Directorate Identifier 2008-NE-43-AD; Amendment 39-17015; AD 2012-07-09]

RIN 2120-AA64

Airworthiness Directives; Turbomeca S.A. Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding an existing airworthiness directive (AD) for Turbomeca S.A. Arrius 2F turboshaft engines with P3 air pipe (first section) part number (P/N) 0 319 71 918 0, installed. That AD currently requires inspections of the P3 air pipe (first section) and right-hand (RH) rear half-wall for proper clearance and readjustment of the pipe if necessary. This new AD requires the same inspections for installed engines, eliminates readjusting of the P3 air pipe (first section), requires replacement of the RH rear half-wall under certain conditions, and adds an optional terminating action. This AD was prompted by Turbomeca determining that the clearance between the P3 air pipe (first section) and the RH rear half-wall might change during installation of the engine on the helicopter. We are issuing this AD to prevent an uncommanded power loss to flight idle, which could result in an emergency autorotation landing or accident.

DATES: This AD is effective May 24, 2012.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of May 24, 2012.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in the AD as of August 19, 2009 (74 FR 34221, July 15, 2009).

ADDRESSES: For service information identified in this AD, contact

Turbomeca, 40220 Tarnos, France; phone: 33 (0)5 59 74 40 00; telex 570 042; fax 33 (0)5 59 74 45 15. You may review copies of the referenced service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781-238-7125.

Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800-647-5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT:

Mark Riley, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781-238-7758; fax: 781-238-7199; email: mark.riley@faa.gov.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2009-14-11, Amendment 39-15961 (74 FR 34221, July 15, 2009). That AD applies to the specified products. The NPRM published in the **Federal Register** on December 13, 2011 (76 FR 77446). That NPRM proposed to continue to require inspections of the P3 air pipe (first section) and right-hand (RH) rear half-wall for proper clearance. That NPRM also proposed to require eliminating readjusting of the P3 air pipe (first section), replacing the RH rear half-wall under certain conditions, and adding an optional terminating action.

Service Bulletin Reference

In AD 2009-14-11 (74 FR 34221, July 15, 2009), "Version A" was inadvertently omitted from the reference to Turbomeca Mandatory Service Bulletin No. 319 75 4810, dated May 14, 2008. In this AD, the service bulletin reference reads correctly as "Turbomeca Mandatory Service Bulletin No. 319 75 4810, Version A, dated May 14, 2008."

Comments

We gave the public the opportunity to participate in developing this AD. We

received no comments on the NPRM (76 FR 77446, December 13, 2011).

Credit for Previous Action Added

Since we issued the NPRM (76 FR 77446, December 13, 2011) the European Aviation Safety Agency (EASA) superseded AD 2011-0182, dated September 22, 2011, to include a credit for inspections done using Turbomeca Mandatory Service Bulletin (MSB) No. 319 75 4810, Version A, dated May 14, 2008. We added a paragraph for credit for previous action, which states that inspections performed on an installed engine before the effective date of this AD using Turbomeca MSB No. 319 75 4810, Version A, dated May 14, 2008, satisfies the inspection requirements in paragraphs (e)(1)(i) and (e)(1)(ii) of this AD. We also changed the EASA AD reference to EASA AD 2011-0182R1, dated February 3, 2012.

Conclusion

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

Costs of Compliance

We estimate that this AD will affect about 120 Arrius 2F turboshaft engines installed on helicopters of U.S. registry. We also estimate that it will take about 2 work-hours per engine to comply with this AD. The average labor rate is \$85 per work-hour. Required parts will cost about \$2,565 per engine. Based on these figures, we estimate the cost of the AD on U.S. operators to be \$328,200. Our cost estimate is exclusive of possible warranty coverage.

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 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 removing airworthiness directive (AD) 2009-14-11, Amendment 39-15961 (74 FR 34221, July 15, 2009), and adding the following new AD:

2012-07-09 Turbomeca S.A: Amendment 39-17015; Docket No. FAA-2009-0330; Directorate Identifier 2008-NE-43-AD.

(a) Effective Date

This airworthiness directive (AD) is effective May 24, 2012.

(b) Affected ADs

This AD supersedes AD 2009-14-11, Amendment 39-15961 (74 FR 34221, July 15, 2009).

(c) Applicability

This AD applies to Turbomeca S.A. Arrius 2F turboshaft engines with right-hand (RH) rear half-wall, part number (P/N) 0319 99 824 0, installed.

(d) Unsafe Condition

The P3 air pipe (first section) and the RH rear half-wall could rub each other. Rubbing

between the pipe and the RH rear half-wall may lead to rupture of the P3 air pipe (first section), which could cause an uncommanded power loss to flight idle. We are issuing this AD to prevent an uncommanded power loss to flight idle, which could result in an emergency autorotation landing or accident.

(e) Compliance

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

(1) For installed engines, within 100 engine hours (EH) after the effective date of this AD:

(i) Inspect the clearance between the P3 air pipe (first section) and the RH rear half-wall for sufficient clearance (0.5 mm or more).

(ii) Use paragraph 2.B.(1) of Turbomeca Mandatory Service Bulletin (MSB) No. 319 75 4810, Version B, dated January 25, 2011 to do the inspection.

(2) Thereafter, repeat the inspections in paragraphs (e)(1)(i) through (e)(1)(ii) of this AD as follows:

(i) At every installation of a RH rear half-wall P/N 0 319 99 824 0 on an installed engine, and

(ii) After every installation or reinstallation of an engine with a RH rear half-wall P/N 0 319 99 824 0 installed.

(3) If the P3 air pipe (first section) or the RH rear half-wall P/N 0 319 99 824 0 is found damaged, then before further flight, replace the damaged part(s) with parts eligible for installation.

(4) If the P3 air pipe (first section) and the RH rear half-wall P/N 0 319 99 824 0 are found contacting each other but are not damaged, replace the RH rear half-wall with a RH rear half-wall eligible for installation.

(5) If both the P3 air pipe (first section) and the RH rear half-wall are found not damaged during the inspections specified in paragraph (e)(1) or (e)(2) of this AD, and the clearance between them is less than 0.5 mm, but they are not contacting each other, then repeat the inspection in paragraphs (e)(1)(i) and (e)(1)(ii) of this AD within every 100 EH.

(6) Installation of RH rear half-wall, P/N 0 319 99 008 0, is terminating action to the inspections required by paragraphs (e)(1), (e)(2), and (e)(5) of this AD.

(7) Once a RH rear half-wall, P/N 0 319 99 008 0, is installed on an engine, do not install a RH rear half-wall, P/N 0 319 99 824 0, on that engine.

(f) Definition

For the purpose of this AD, parts eligible for installation is defined as:

(1) An undamaged P3 air pipe (first section).

(2) An undamaged RH rear half-wall P/N 0 319 99 824 0.

(3) A new design RH rear half-wall P/N 0 319 99 008 0.

(g) Credit for Previous Action

An inspection performed on an installed engine before the effective date of this AD using Turbomeca MSB No. 319 75 4810, Version A, dated May 14, 2008, satisfies the inspection requirement in paragraphs (e)(1)(i) and (e)(1)(ii) of this AD.

(h) Alternative Methods of Compliance (AMOCs)

The Manager, Engine Certification Office, may approve alternative methods of compliance for this AD. Use the procedures found in 14 CFR 39.19 to make your request.

(i) Related Information

(1) For more information about this AD, contact Mark Riley, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781-238-7758; fax: 781-238-7199; email: mark.riley@faa.gov.

(2) European Aviation Safety Agency AD 2011-0182R1, dated February 3, 2012, pertains to the subject of this AD.

(3) For service information identified in this AD, contact. You may review copies of the referenced service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781-238-7125.

(j) Material Incorporated by Reference

You must use the following service information to do the actions required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference (IBR) under 5 U.S.C. 552(a) and 1 CFR part 51 of the following service information.

(1) Turbomeca Mandatory Service Bulletin No. 319 75 4810, Version A, dated May 14, 2008, approved for IBR August 19, 2009 (74 FR 34221, July 15, 2009).

(2) Turbomeca Mandatory Service Bulletin No. 319 75 4810, Version B, dated January 25, 2011, approved for IBR May 24, 2012.

(3) For service information identified in this AD, contact Turbomeca, 40220 Tarnos, France; telephone 33 (0)5 59 74 40 00; telex 570 042; fax 33 (0)5 59 74 45 15.

(4) You may review copies of the referenced service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781-238-7125.

(5) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal-register/cfr/ibr_locations.html.

Issued in Burlington, Massachusetts, on April 3, 2012.

Colleen M. D'Alessandro,

Assistant Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2012-8584 Filed 4-18-12; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2011-1115; Directorate Identifier 2010-SW-011-AD; Amendment 39-17017; AD 2012-08-01]

RIN 2120-AA64

Airworthiness Directives; Sikorsky Aircraft Corporation Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for Sikorsky Aircraft Corporation (Sikorsky) Model S-92A helicopters. This AD was prompted by the manufacturer's analysis of engine data that revealed the data was inaccurate in dealing with available above specification engine power margin. This AD requires revising the Operating Limitations section of the Sikorsky Model S-92A Rotorcraft Flight Manual (RFM). The actions are intended to prevent the use of inaccurate engine performance data in calculating maximum gross weight by revising the Operating Limitations section of the RFM.

DATES: This AD is effective May 24, 2012.

ADDRESSES: For service information identified in this AD, contact Sikorsky Aircraft Corporation, Attn: Manager, Commercial Technical Support, Mailstop s581a, 6900 Main Street, Stratford, CT 06614; telephone (800) 562-4409; email tsslibrary@sikorsky.com; or at <http://www.sikorsky.com>. You may review a copy of the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

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 AD, any incorporated-by-reference service information, the economic evaluation, any comments received, and other information. The street address for the Docket Operations Office (phone: 800-647-5527) is U.S. Department of Transportation, Docket Operations Office, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: John Coffey, Aviation Safety Engineer, Boston Aircraft Certification Office, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238-7173; email john.coffey@faa.gov.

SUPPLEMENTARY INFORMATION:

Discussion

On October 26, 2011, at 76 FR 66207, the **Federal Register** published our Notice of proposed rulemaking (NPRM), which proposed to amend 14 CFR part 39 to include an AD that would apply to Sikorsky Model S-92A helicopters, certificated in any category. That NPRM proposed to require revising the Operating Limitations section, Part 1, Section 1, Weight Limits, of the appropriate Sikorsky Model S-92A RFM with the following statement “Performance credit for above specification engine power margin is prohibited.” The proposed requirements were intended to prevent the use of inaccurate performance data in calculating the maximum gross weight.

Comments

We gave the public the opportunity to participate in developing this AD, but we did not receive any comments on the NPRM.

Related Service Information

Sikorsky has published various RFM revisions correcting the charts in Parts I and IV of the RFM. If those revisions have previously been incorporated into the RFM, the RFM revision specified by the NPRM would not be required. The RFM revisions, all dated April 9, 2008, are as follows:

Affected RFM	Revision with correct charts
S92A-RFM-002	Revision 8.
S92A-RFM-003	Revision 7.
S92A-RFM-004	Revision 6.
S92A-RFM-005	Revision 5.
S92A-RFM-006	Revision 6.

FAA’s Determination

We have reviewed the relevant information and determined that an unsafe condition exists and is likely to exist or develop on other products of the same type design and that air safety and the public interest require adopting the AD requirements as proposed, except for minor editorial and formatting changes. These changes will not increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

We estimate that this AD will affect 37 helicopters of U.S. Registry.

We estimate that operators may incur the following costs in order to comply with this AD. It will take about 1 work-hour per helicopter to insert the revisions into the RFM at an average labor rate of \$85 per work-hour. Parts costs are not associated with this AD. Based on these figures, we estimate the total cost impact of this AD on U.S. operators to be \$3,145.

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 to the extent that it justifies making a regulatory distinction; 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.

We prepared an economic evaluation of the estimated costs to comply with this 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.

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):

2012-08-01 Sikorsky Aircraft Corporation:

Amendment 39-17017; Docket No. FAA-2011-1115; Directorate Identifier 2010-SW-011-AD.

(a) Applicability

This AD applies to Sikorsky Aircraft Corporation (Sikorsky) Model S-92A helicopters, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as inaccurate above specification engine power margin data. This condition could result in the use of inaccurate engine performance data in calculating maximum gross weight.

(c) Effective Date

This AD becomes effective May 24, 2012.

(d) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(e) Required Actions

Within 90 days:

(1) By making pen and ink changes, insert into the Operating Limitations section, Part 1, Section 1, Weight Limits, of Rotorcraft Flight Manuals (RFMs) SA S92A-RFM-002, -003, -004, -005, and -006 the following limitation “Performance credit for above specification engine power margin is prohibited.”

(2) If the RFM already contains the revisions appropriate for your helicopter as listed in the following Table 1, all dated April 9, 2008, with the correct performance charts, without the performance credit as depicted in the circled area of Figure 1 of this AD, the operating limitation required by paragraph (1) of this AD does not need to be inserted into the RFM.

TABLE 1

Affected RFM	Revision with correct charts
S92A-RFM-002	Revision 8.

TABLE 1—Continued

Affected RFM	Revision with correct charts
S92A-RFM-003	Revision 7.
S92A-RFM-004	Revision 6.

TABLE 1—Continued

Affected RFM	Revision with correct charts
S92A-RFM-005	Revision 5.
S92A-RFM-006	Revision 6.

Note to paragraph (e)(2) of this AD:
Previous RFM revisions allowed for the use of above-specification engine power margin as depicted in the circled area of Figure 1 of this AD.

CATEGORY 'A' OPERATIONS

See Figure 1 for the variation of allowable takeoff gross weight with altitude and temperature.

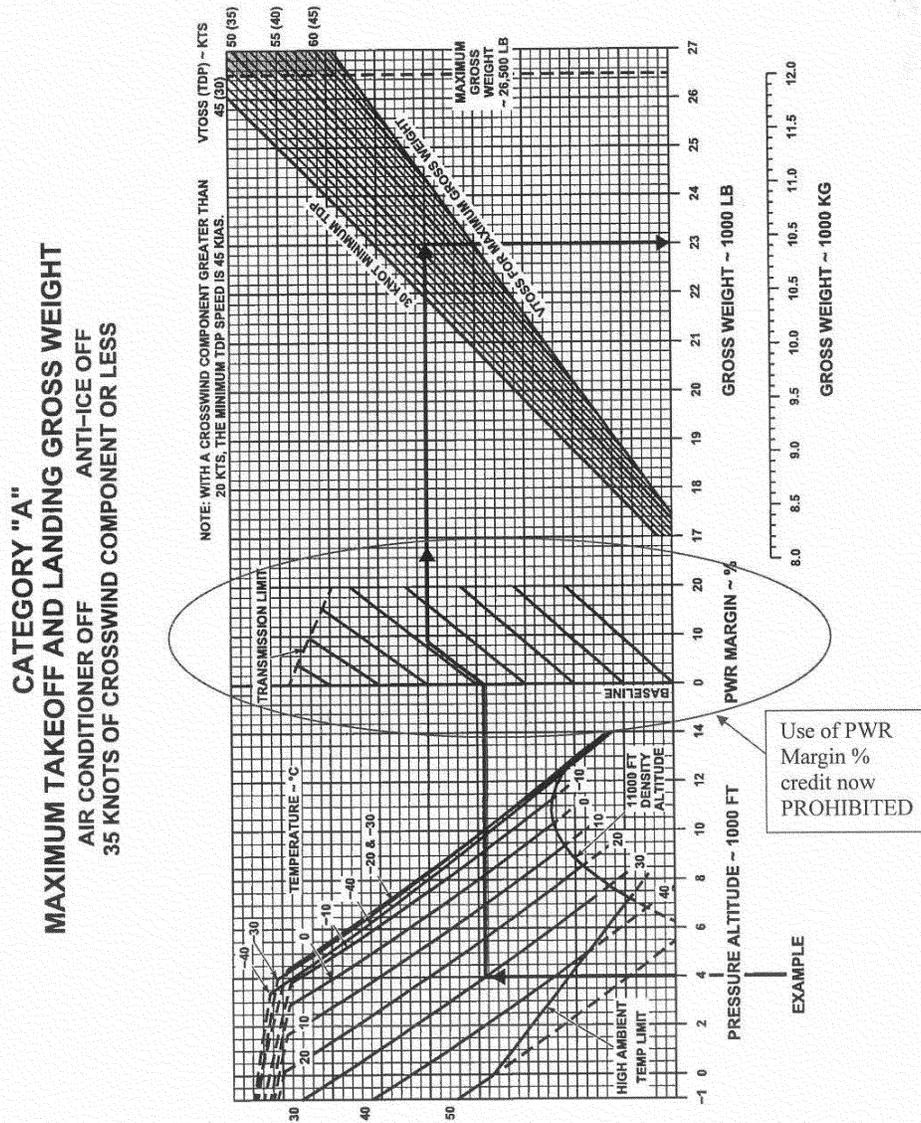


Figure 1. Cat 'A' Takeoff and Landing Gross Weight

(f) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Boston Aircraft Certification Office, FAA, may approve AMOCs for this AD. Send your proposal to: John Coffey, Aviation Safety Engineer, Boston Aircraft Certification Office, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803;

telephone (781) 238-7173; email john.coffey@faa.gov.

(2) For operations conducted under a Part 119 operating certificate or under Part 91, Subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office before operating any aircraft complying with this AD through an AMOC.

(g) Additional Information

Sikorsky Rotorcraft Flight Manuals SA S92A-RFM-002, Revision 8; -003, Revision 7; -004, Revision 6; -005, Revision 5; and -006, Revision 6, all dated April 9, 2008, which are not incorporated by reference, contain additional information about the subject of this AD. For this service information, contact Sikorsky Aircraft

Corporation, Attn: Manager, Commercial Technical Support, Mailstop s581a, 6900 Main Street, Stratford, CT 06614; telephone (800) 562-4409; email tsslibrary@sikorsky.com; or at <http://www.sikorsky.com>. You may review a copy of this service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

(h) Subject

Joint Aircraft Service Component (JASC) Code: 7200, Engine (Turbine/Turboprop).

Issued in Fort Worth, Texas, on April 9, 2012.

Lance T. Gant,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2012-9298 Filed 4-18-12; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2011-1226; Directorate Identifier 2011-NM-006-AD; Amendment 39-17001; AD 2012-06-20]

RIN 2120-AA64

Airworthiness Directives; Fokker Services B.V. Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Fokker Services B.V. Model F.28 Mark 0070 and 0100 airplanes. This AD was prompted by a report that the fuel crossfeed valves cannot be controlled when only emergency electrical power is available, that an unwanted configuration of the indication logic for the fuel fire shutoff valve was introduced during production, and that current fuel crossfeed indications are based on selection by the flightcrew instead of actual position of the crossfeed valve actuators. This AD requires modifying the crossfeed valve control and power supply, the crossfeed indication logic and power supply, and the indication logic for the fuel fire shutoff valve; modifying the overhead panel; and for certain airplanes, modifying the transfer logic of the center wing fuel tank. We are issuing this AD to prevent failure of an in-flight engine re-light following a double engine flame-out event, which could result in loss of the airplane.

DATES: This AD becomes effective May 24, 2012.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of May 24, 2012.

ADDRESSES: You may examine the AD docket on the Internet at <http://www.regulations.gov> or in person at the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057-3356; telephone (425) 227-1137; fax (425) 227-1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on November 8, 2011 (76 FR 69163). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

A recent safety review revealed that the fuel crossfeed valves cannot be controlled when only emergency electrical power is available.

This condition, if not corrected, could (in combination with other factors) prevent an in-flight engine re-light following a double engine flame-out event, possibly resulting in loss of the aeroplane.

Another review revealed that an unwanted configuration of the fuel fire shut-off valve indication logic had been introduced during production on a limited number of F28 Mark 0100 aeroplanes.

Furthermore, most of the current fuel crossfeed indications are based on the crossfeed selection made by the flight crew and not on the actual positions of the crossfeed valve actuators. In combination with other factors, the current crossfeed indications may mislead flight crews, possibly resulting in single engine in-flight shutdowns and/or unnecessary precautionary landings.

For the reasons described above, this [EASA] AD requires modifications of the crossfeed valve control and power supply, of the crossfeed indication logic and power supply and of the fuel fire shut-off valve indication logic.

* * * * *

Required actions also include modifying the overhead panel (introducing provisions for a modified crossfeed indication), and, for certain airplanes, modifying the transfer logic of the center wing fuel tank. You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (76 FR 69163, November 8, 2011) or on the determination of the cost to the public.

Explanation of Changes Made to This AD

We have revised the heading for and the wording in paragraph (i) of this AD; this change has not changed the intent of that paragraph. We have also revised the document citations throughout this AD to more clearly identify the documents and their attachments.

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting the AD with the changes described previously—and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (76 FR 69163, November 8, 2011) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (76 FR 69163, November 8, 2011).

Costs of Compliance

We estimate that this AD will affect 6 products of U.S. registry. We also estimate that it will take about 86 work-hours per product to comply with the basic requirements of this AD. The average labor rate is \$85 per work-hour. Required parts will cost about \$4,180 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 this AD to the U.S. operators to be \$68,940, or \$11,490 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 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 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. We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

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 the NPRM (76 FR 69163, November 8, 2011), 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.

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 AD:

2012-06-20 Fokker Services B.V.:
Amendment 39-17001, Docket No. FAA-2011-1226; Directorate Identifier 2011-NM-006-AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective May 24, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Fokker Services B.V. Model F.28 Mark 0070 and 0100 airplanes, certificated in any category, serial numbers 11244 through 11585 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 28: Fuel.

(e) Reason

This AD was prompted by a report that the fuel crossfeed valves cannot be controlled when only emergency electrical power is available, that an unwanted configuration of the indication logic for the fuel fire shutoff valve was introduced during production, and that current fuel crossfeed indications are based on selection by the flightcrew instead of actual position of the crossfeed valve actuators. We are issuing this AD to prevent failure of an in-flight engine re-light following a double engine flame-out event, which could result in loss 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) Modifications

Within 24 months after the effective date of this AD, modify the crossfeed valve control and power supply, the crossfeed indication logic and power supply, and the indication logic for the fuel fire shutoff valve, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100-28-047, Revision 3, dated May 2, 2011, including the attachments specified in paragraphs (g)(1) through (g)(39) of this AD (*the issue date is not specified on the drawing).

(1) Fokker Manual Change Notification—Operational Documentation MCNO-F100-060, dated June 10, 2011.

(2) Fokker Manual Change Notification—Operational Document MCNO-F100-049, Revision 1, dated May 30, 2011.

(3) Fokker Drawing D42770, Sheet 6, Issue U*.

(4) Fokker Drawing D42780, Sheet 6, Issue T*.

(5) Fokker Drawing W41074, Sheet 100, Issue GB*.

(6) Fokker Drawing W41074, Sheet 101, Issue FW*.

(7) Fokker Drawing W41194, Sheet 010, Issue J*.

(8) Fokker Drawing W41194, Sheet 011, Issue U*.

(9) Fokker Drawing W41194, Sheet 012, Issue J*.

(10) Fokker Drawing W41194, Sheet 013, Issue U*.

(11) Fokker Drawing W41194, Sheet 014, Issue S*.

(12) Fokker Drawing W41194, Sheet 015, Issue U*.

(13) Fokker Drawing W41194, Sheet 017, Issue Q*.

(14) Fokker Drawing W41194, Sheet 019, Issue S*.

(15) Fokker Drawing W41194, Sheet 020, Issue S*.

(16) Fokker Drawing W41319, Sheet 063, Issue DY*.

(17) Fokker Drawing W41319, Sheet 064, Issue DY*.

(18) Fokker Drawing W41319, Sheet 065, Issue DY*.

(19) Fokker Drawing W41319, Sheet 066, Issue DY*.

(20) Fokker Drawing W41319, Sheet 067, Issue DW*.

(21) Fokker Drawing W41319, Sheet 068, Issue DW*.

(22) Fokker Drawing W41319, Sheet 069, Issue DY*.

(23) Fokker Drawing W41319, Sheet 070, Issue DW*.

(24) Fokker Drawing W41319, Sheet 071, Issue DY*.

(25) Fokker Drawing W41319, Sheet 072, Issue DW*.

(26) Fokker Drawing W41319, Sheet 073, Issue DW*.

(27) Fokker Drawing W41319, Sheet 074, Issue DY*.

(28) Fokker Drawing W46211, Sheet 71, Issue DL, dated April 21, 2009.

(29) Fokker Drawing W46211, Sheet 74, Issue DN, dated July 16, 2010.

(30) Fokker Drawing W46254, Sheet 30, Issue BL, dated March 30, 2009.

(31) Fokker Drawing W46254, Sheet 31, Issue BL, dated March 30, 2009.

(32) Fokker Drawing W46254, Sheet 32, Issue BL, dated March 30, 2009.

(33) Fokker Drawing W46254, Sheet 33, Issue BL, dated March 30, 2009.

(34) Fokker Drawing W46254, Sheet 34, Issue BL, dated March 30, 2009.

(35) Fokker Drawing W46254, Sheet 35, Issue BL, dated March 30, 2009.

(36) Fokker Drawing W46254, Sheet 36, Issue BL, dated March 30, 2009.

(37) Fokker Drawing W46254, Sheet 37, Issue BP, dated March 30, 2009.

(38) Fokker Drawing W59221, Sheet 161, Issue FC, July 9, 2010.

(39) Fokker Drawing W59221, Sheet 162, Issue FC, July 9, 2010.

(h) Concurrent Modifications

Before or concurrent with the modification specified in paragraph (g) of this AD, do the applicable actions specified in paragraphs (h)(1) and (h)(2) of this AD:

(1) For all airplanes: Modify the overhead panel (introduce provisions for a modified crossfeed indication) in accordance with the Accomplishment Instructions of Fokker Proforma Service Bulletin SBF100-28-043, Revision 1, dated March 31, 2009, including

Appendix II, Revision 2, dated July 22, 2010, including the drawings specified in paragraphs (h)(i) through (h)(iv) of this AD, which are attached to Appendix II, Revision 2, dated July 22, 2010 (*the issue date is not specified on the drawing).

(i) Fokker Drawing W41194, Sheet 009, Issue F*.

(ii) Fokker Drawing W41194, Sheet 016, Issue N*.

(iii) Fokker Drawing W41194, Sheet 018, Issue S*.

(iv) Fokker Drawing W59221, Sheet 159, Issue ED, dated October 2, 2009.

(2) For airplanes with serial numbers 11442 through 11585, equipped with the automatic fuel transfer system: Modify the transfer logic of the center wing fuel tank, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100-28-052, dated June 15, 2009, including the attachments specified in paragraphs (h)(2)(i) through (h)(2)(vi) of this AD.

(i) Fokker Manual Change Notification—Operational Documentation MCNO-F100-052, dated June 15, 2009.

(ii) Fokker Manual Change Notification—Maintenance Documentation MCNM-F100-126, dated June 15, 2009.

(iii) Fokker Drawing D42126, Sheet 38, Issue AR, dated October 6, 1993.

(iv) Fokker Drawing D42213, Sheet 2, Issue H, dated May 23, 1990.

(v) Fokker Drawing D42220, Sheet 60, Issue V, dated September 1, 1991.

(vi) Fokker Drawing D42220, Sheet 71, Issue AQ, dated June 7, 1993.

(vii) Fokker Drawing D42250, Sheet 23, Issue U, dated April 1993.

(i) Credit for Previous Actions

This paragraph provides credit for modifications required by paragraphs (g) and (h) of this AD, if the modifications were performed before the effective date of this AD, using the applicable service bulletins specified in paragraphs (i)(1), (i)(2), (i)(3), and (i)(4) of this AD.

(1) Fokker Service Bulletin SBF100-28-043, including Appendix II, dated March 31, 2009.

(2) Fokker Service Bulletin SBF100-28-047, Revision 2, dated August 4, 2010.

(3) Fokker Service Bulletin SBF100-28-047, Revision 1, dated July 22, 2010.

(4) Fokker Service Bulletin SBF100-28-047, dated May 10, 2010.

(j) 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: Tom Rodriguez, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057-

3356; telephone (425) 227-1137; 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.

(k) Related Information

Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2010-0158R1, dated November 8, 2010, and the service bulletins specified in paragraphs (g) and (h) of this AD, for related information.

(l) Material Incorporated by Reference

(1) You must use the following service information to do the actions required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference (IBR) of the following service information under 5 U.S.C. 552(a) and 1 CFR part 51:

(i) Fokker Proforma Service Bulletin SBF100-28-043, Revision 1, dated March 31, 2009, including Appendix II, Revision 2, dated July 22, 2010, and including the following drawings which are attached to Appendix II, Revision 2, dated July 22, 2010 (*the issue date is not specified on the drawing):

(A) Fokker Drawing W41194, Sheet 009, Issue F*.

(B) Fokker Drawing W41194, Sheet 016, Issue N*.

(C) Fokker Drawing W41194, Sheet 018, Issue S*.

(D) Fokker Drawing W59221, Sheet 159, Issue ED, dated October 2, 2009.

(ii) Fokker Service Bulletin SBF100-28-047, Revision 3, dated May 2, 2011, including the following attachments (*the issue date is not specified on the drawing):

(A) Fokker Manual Change Notification—Operational Documentation MCNO-F100-060, dated June 10, 2011.

(B) Fokker Manual Change Notification—Operational Document MCNO-F100-049, Revision 1, dated May 30, 2011.

(C) Fokker Drawing D42770, Sheet 6, Issue U*.

(D) Fokker Drawing D42780, Sheet 6, Issue T*.

(E) Fokker Drawing W41074, Sheet 100, Issue GB*.

(F) Fokker Drawing W41074, Sheet 101, Issue FW*.

(G) Fokker Drawing W41194, Sheet 010, Issue J*.

(H) Fokker Drawing W41194, Sheet 011, Issue U*.

(I) Fokker Drawing W41194, Sheet 012, Issue J*.

(J) Fokker Drawing W41194, Sheet 013, Issue U*.

(K) Fokker Drawing W41194, Sheet 014, Issue S*.

(L) Fokker Drawing W41194, Sheet 015, Issue U*.

(M) Fokker Drawing W41194, Sheet 017, Issue Q*.

(N) Fokker Drawing W41194, Sheet 019, Issue S*.

(O) Fokker Drawing W41194, Sheet 020, Issue S*.

(P) Fokker Drawing W41319, Sheet 063, Issue DY*.

(Q) Fokker Drawing W41319, Sheet 064, Issue DY*.

(R) Fokker Drawing W41319, Sheet 065, Issue DY*.

(S) Fokker Drawing W41319, Sheet 066, Issue DY*.

(T) Fokker Drawing W41319, Sheet 067, Issue DW*.

(U) Fokker Drawing W41319, Sheet 068, Issue DW*.

(V) Fokker Drawing W41319, Sheet 069, Issue DY*.

(W) Fokker Drawing W41319, Sheet 070, Issue DW*.

(X) Fokker Drawing W41319, Sheet 071, Issue DY*.

(Y) Fokker Drawing W41319, Sheet 072, Issue DW*.

(Z) Fokker Drawing W41319, Sheet 073, Issue DW*.

(AA) Fokker Drawing W41319, Sheet 074, Issue DY*.

(BB) Fokker Drawing W46211, Sheet 71, Issue DL, dated April 21, 2009.

(CC) Fokker Drawing W46211, Sheet 74, Issue DN, dated July 16, 2010.

(DD) Fokker Drawing W46254, Sheet 30, Issue BL, dated March 30, 2009.

(EE) Fokker Drawing W46254, Sheet 31, Issue BL, dated March 30, 2009.

(FF) Fokker Drawing W46254, Sheet 32, Issue BL, dated March 30, 2009.

(GG) Fokker Drawing W46254, Sheet 33, Issue BL, dated March 30, 2009.

(HH) Fokker Drawing W46254, Sheet 34, Issue BL, dated March 30, 2009.

(II) Fokker Drawing W46254, Sheet 35, Issue BL, dated March 30, 2009.

(JJ) Fokker Drawing W46254, Sheet 36, Issue BL, dated March 30, 2009.

(KK) Fokker Drawing W46254, Sheet 37, Issue BP, dated March 30, 2009.

(LL) Fokker Drawing W59221, Sheet 161, Issue FC, July 9, 2010.

(MM) Fokker Drawing W59221, Sheet 162, Issue FC, July 9, 2010.

(iii) Fokker Service Bulletin SBF100-28-052, dated June 15, 2009, including the following attachments:

(A) Fokker Manual Change Notification—Operational Documentation MCNO-F100-052, dated June 15, 2009.

(B) Fokker Manual Change Notification—Maintenance Documentation MCNM-F100-126, dated June 15, 2009.

(C) Fokker Drawing D42126, Sheet 38, Issue AR, dated October 6, 1993.

(D) Fokker Drawing D42213, Sheet 2, Issue H, dated May 23, 1990.

(E) Fokker Drawing D42220, Sheet 60, Issue V, dated September 1, 1991.

(F) Fokker Drawing D42220, Sheet 71, Issue AQ, dated June 7, 1993.

(G) Fokker Drawing D42250, Sheet 23, Issue U, dated April 1993.

(2) For Fokker Services B.V. service information identified in this AD, contact Fokker Services B.V., Technical Services Dept., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands; telephone +31 (0)252-627-350; fax +31 (0)252-627-211; email technicalservices.fokkerservices@stork.com; Internet <http://www.myfokkerfleet.com>.

(3) You may review copies of the 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.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at an NARA facility, call 202-741-6030, or go to http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

Issued in Renton, Washington, on March 19, 2012.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012-9294 Filed 4-18-12; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2012-0395; Directorate Identifier 2012-SW-007-AD; Amendment 39-17016; AD 2012-02-51]

RIN 2120-AA64

Airworthiness Directives; Bell Helicopter Textron Canada Limited Helicopters

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule; request for comments.

SUMMARY: We are publishing a new airworthiness directive (AD) for Bell Helicopter Textron Canada Limited (Bell) Model 206L, 206L-1, 206L-3, and 206L-4 helicopters with certain main rotor blades installed to reduce the life limit of those blades. This AD is prompted by two accidents and the subsequent investigations that revealed that, in each accident, a main rotor blade failed because of fatigue cracking. These actions are intended to prevent failure of the main rotor blade and subsequent loss of control of the helicopter.

DATES: This AD becomes effective May 4, 2012 to all persons except those persons to whom it was made

immediately effective by Emergency AD No. 2012-02-51, issued on February 1, 2012, which contained the requirements of this AD.

We must receive comments on this AD by June 18, 2012.

ADDRESSES: You may send comments by any of the following methods:

- **Federal eRulemaking Docket:** Go to <http://www.regulations.gov>. Follow the online instructions for sending your comments electronically.

- **Fax:** 202-493-2251.

- **Mail:** Send comments to the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590-0001.

- **Hand Delivery:** Deliver to the "Mail" address 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 Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the economic evaluation, 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 service information identified in this AD, contact Bell Helicopter Textron Canada Limited, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4, telephone (450) 437-2862 or (800) 363-8023, fax (450) 433-0272, or at <http://www.bellcustomer.com/files/>. You may review a copy of the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT:

Sharon Miles, Aerospace Engineer, FAA, Rotorcraft Directorate, Regulations and Policy Group, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222-5110, email sharon.y.miles@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments prior to it becoming effective. However, we invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or

federalism impacts that resulted from adopting this AD. The most helpful comments reference a specific portion of the AD, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit them only one time.

We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this rulemaking during the comment period. We will consider all the comments we receive and may conduct additional rulemaking based on those comments.

Discussion

Transport Canada Civil Aviation (TCCA) issued TCCA AD No. CF-2011-44R1, on February 1, 2012, to correct this same unsafe condition on the Bell Model 206 L, L-1, L-3, and L-4 helicopters. TCCA advises that there is no reliable inspection method to detect the cracks on these blades before blade failure and has reduced the life limit on all affected blades from 3,600 hours time-in-service (TIS) to 1,400 hours TIS and mandated removal from service of those blades that exceed the new life limit. Bell has determined that the fatigue cracks occurred as a result of the use by a Bell supplier of unapproved manufacturing processes, which have since been corrected, and are limited to a specific range of part numbers and serial numbers.

We issued EAD 2012-02-51 also on February 1, 2012, for Bell Model 206L, 206L-1, 206L-3, and 206L-4 helicopters with certain main rotor blades installed and reduced the life limit on these blades to correct the unsafe condition caused by this fatigue cracking.

FAA's Determination

These helicopters have been approved by the aviation authority of Canada and are approved for operation in the United States. Pursuant to our bilateral agreement with Canada, TCCA, its technical representative, has notified us of the unsafe condition described in the TCCA AD. We are issuing this AD because we evaluated all information provided by the TCCA and determined the unsafe condition exists and is likely to exist or develop on other helicopters of these same type designs.

Related Service Information

Bell Helicopter Alert Service Bulletin No. 206L-09-159 Revision A, dated November 13, 2009, describes

procedures to identify and mark the affected main rotor blades, requires a “recurring wipe check,” and requires performing a one-time radiographic inspection with the results to be determined by Bell.

AD Requirements

This AD requires reducing the life limit from 3,600 hours time-in-service (TIS) to 1,400 hours TIS for certain part-numbered and serial-numbered main rotor blades, revising the life limit in the Airworthiness Limitations section of the Instructions for Continued Airworthiness or maintenance manual, and recording the revised life limit on the component history card or equivalent record.

Costs of Compliance

We estimate that this AD will affect 697 helicopters of U.S. Registry. At an average labor rate of \$85 per work-hour, we estimate the following costs:

- Determining the main rotor blades’ part and serial numbers will require about 1 work-hour for a cost per helicopter of \$85, or \$59,245 for the U.S. fleet.
- Replacing an affected main rotor blade will require about 8 work-hours for labor cost of \$680 per helicopter and parts costs of about \$44,958 per helicopter, for a total cost per helicopter of \$45,638.

FAA’s Justification and Determination of the Effective Date

Providing an opportunity for public comments prior to adopting these AD requirements would delay implementing the safety actions needed to correct this known unsafe condition. Therefore, we find that the risk to the flying public justifies waiving notice and comment prior to the adoption of this rule because the required corrective actions must be accomplished before further flight, a very short period of time.

Since an unsafe condition exists that requires the immediate adoption of this AD, we determined that notice and opportunity for public comment before issuing this AD are impracticable and contrary to the public interest and that good cause exists for making this amendment effective in less than 30 days.

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 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, 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 to the extent that it justifies making a regulatory distinction; 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.

We prepared an economic evaluation of the estimated costs to comply with this 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.

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):

2012–02–51 Bell Helicopter Textron

Canada Limited: Amendment 39–17016; Docket No. FAA–2012–0395; Directorate Identifier 2012–SW–007–AD.

(a) Applicability

This AD applies to Bell Helicopter Textron Canada Limited (Bell) Model 206L, 206L–1, 206L–3, and 206L–4 helicopters, certificated in any category, with a main rotor blade part number (P/N) 206–015–001–107, 206–015–001–109, 206–015–001–111, 206–015–001–115, 206–015–001–117, 206–015–001–119, or 206–015–001–121, and a main rotor blade serial number listed in Table 1 of this AD.

TABLE 1

Affected Main Rotor Blade Serial Numbers

(All blade serial numbers listed in Table 1 of this AD have the prefix “A-.”)

901 through 928	2285, 2286	2787, 2788	4293 through 4298	4684.
930 through 935	2290	2808 through 2817	4301	4686 through 4708.
937, 938	2292 through 2294	2819 through 2822	4305	4710.
941	2297	2824	4308	4713 through 4716.
943 through 994	2301, 2302	2826 through 2828	4314, 4315	4719 through 4722.
996 through 1000	2304, 2305	2832	4318	4725.
1002 through 1020	2308	2835	4330	4728, 4729.
1022 through 1032	2311	2840 through 2842	4334 through 4336	4731.
1034 through 1047	2313, 2314	2844	4381, 4382	4734 through 4737.
1049 through 1134	2316	2848 through 2850	4392	4739 through 4742.
1136 through 1140	2318, 2319	2852, 2853	4394, 4395	4744 through 4751.
1142 through 1157	2322 through 2324	2855	4405 through 4409	4753 through 4757.
1159 through 1166	2328 through 2331	2858	4416	4759.

TABLE 1—Continued

1168 through 1182	2357	2862 through 2864	4418	4762.
1184 through 1351	2374	2900	4423 through 4426	4764.
1353 through 1363	2379	2996	4433	4774.
1365 through 1382	2515	3212	4445	4778 through 4780.
1384 through 1401	2553, 2554	3219	4448	4784.
1403 through 1519	2561, 2562	3339	4462, 4463	4786 through 4825.
1521 through 1590	2564 through 2570	3369	4484	4827 through 4840.
1593 through 1646	2573	3381	4500	4842 through 4863.
1648 through 1718	2576	3447	4508	4865 through 4905.
1720 through 1798	2580	3571, 3572	4512	4907 through 4948.
1800 through 1821	2583	3622	4517	4950 through 4957.
1824 through 1829	2585, 2586	3705	4522	4959 through 4963.
1832 through 2060	2588, 2589	3831	4528, 4529	4965.
2062 through 2072	2593, 2594	3971, 3972	4532	4969 through 4973.
2074	2596, 2597	4025 through 4030	4534	4975.
2077 through 2081	2599	4117	4547	4979, 4980.
2092 through 2095	2602	4143	4550	4983, 4984.
2098, 2099	2604, 2605	4201 through 4205	4567	4987.
2101 through 2104	2607 through 2610	4209	4573	4989.
2107, 2108	2621	4214 through 4217	4590	4992.
2110 through 2124	2623, 2624	4248	4604, 4605	4994 through 5006.
2126 through 2145	2638	4250, 4251	4608, 4609	5010.
2147 through 2158	2640 through 2672	4253, 4254	4612 through 4621	5015.
2161 through 2163	2674 through 2701	4256 through 4260	4624 through 4629	5018.
2165, 2166	2706 through 2708	4262 through 4267	4631, 4632	5023.
2169 through 2175	2727, 2728	4269	4638, 4639	5036.
2177 through 2183	2730 through 2742	4271, 4272	4652	5047.
2185 through 2192	2744 through 2764	4274 through 4276	4654	5054.
2220, 2221	2766, 2767	4278	4657	5066, 5067.
2248	2769	4280 through 4284	4659	5071, 5072.
2257 through 2267	2771, 2772	4286, 4287	4662	5075, 5076.
2272 through 2283	2775 through 2777	4290, 4291	4666 through 4682	5081.
5087	5397	5535 through 5537	5679 through 5686	5851.
5094	5399 through 5400	5539, 5540	5688	5856.
5152	5402 through 5411	5542	5690 through 5705	5861 through 5865.
5155	5413, 5414	5546 through 5549	5707 through 5709	5870.
5158, 5159	5416 through 5439	5552, 5553	5711, 5712	5882.
5163, 5164	5441	5556 through 5561	5716 through 5721	5884 through 5886.
5166 through 5171	5443 through 5445	5566 through 5568	5723 through 5726	5889 through 5891.
5176 through 5178	5447	5570 through 5574	5729 through 5734	5899 through 5901.
5180 through 5182	5450	5576 through 5583	5736 through 5745	5903 through 5905.
5186 through 5191	5459	5588 through 5591	5747 through 5752	5912.
5193 through 5199	5465 through 5468	5594	5757	5915.
5201 through 5205	5472	5598 through 5600	5762	5921.
5207	5475	5602 through 5605	5766 through 5769	5925, 5926.
5209 through 5212	5481	5608, 5609	5771	5929 through 5951.
5218 through 5253	5483	5612	5781, 5782	5992.
5255 through 5273	5488	5616 through 5623	5791	6216.
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5291, 5292	5495	5628	5808	6270.
5297, 5298	5497 through 5507	5637 through 5641	5815 through 5817	6597.
5301 through 5321	5509 through 5512	5643	5822 through 5826	6611, 6612.
5323 through 5331	5516	5645 through 5653	5828, 5829	6661.
5333 through 5340	5518 through 5521	5655 through 5666	5833	6714.
5343	5526 through 5530	5668, 5669	5837.	
5345 through 5395	5533	5671 through 5677	5844, 5845.	

(b) Unsafe Condition

This AD defines the unsafe condition as fatigue cracking of a main rotor blade. This condition could result in failure of the main rotor blade and subsequent loss of control of the helicopter.

(c) Effective Date

This AD becomes effective May 4, 2012 to all persons except those persons to whom it was made immediately effective by Emergency AD No. 2012-02-51, issued on February 1, 2012.

(d) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(e) Required Actions

(1) Before further flight, reduce the life limit of the main rotor blades with a serial number listed in Table 1 of this AD from 3,600 hours time-in-service (TIS) to 1,400 hours TIS; revise the life limit in the Airworthiness Limitations section of the Instruction for Continued Airworthiness or maintenance manual; and record the revised

life limit on the component history card or equivalent record.

(2) Before further flight, remove from service any main rotor blade which has accumulated 1,400 or more hours TIS.

(f) Special Flight Permits

Special flight permits are prohibited.

(g) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: Sharon Miles, Aerospace Engineer, FAA, Rotorcraft

Directorate, Regulations and Policy Group, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222 5110, email sharon.y.miles@faa.gov.

(2) For operations conducted under a Part 119 operating certificate or under Part 91, Subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office, before operating any aircraft complying with this AD through an AMOC.

(h) Additional Information

(1) Bell Helicopter Alert Service Bulletin (ASB) No. 206L-09-159 Revision A, dated November 13, 2009, which is not incorporated by reference, contains additional information about the subject of this AD. For this service information, contact Bell Helicopter Textron Canada Limited, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4, telephone (450) 437-2862 or (800) 363-8023, fax (450) 433-0272, or at <http://www.bellcustomer.com/files/>. You may review a copy of this service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

(2) The subject of this AD is addressed in Transport Canada Civil Aviation AD No. CF-2011-44R1, dated February 1, 2012.

(i) Subject

Joint Aircraft Service Component (JASC) Code: 6210, Main rotor blades.

Issued in Fort Worth, Texas, on April 3, 2012.

Kim Smith,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2012-9314 Filed 4-18-12; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 31

[TD 9584]

RIN 1545-BJ01

Guidance on Reporting Interest Paid to Nonresident Aliens

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations regarding the reporting requirements for interest that relates to deposits maintained at U.S. offices of certain financial institutions and is paid to certain nonresident alien individuals. These regulations will affect commercial banks, savings institutions, credit unions, securities brokerages, and insurance companies that pay interest on deposits.

DATES: *Effective Date:* These regulations are effective April 19, 2012.

Applicability Date: These regulations apply to payments of interest made on or after January 1, 2013.

FOR FURTHER INFORMATION CONTACT:

Kathryn Holman, (202) 622-3840 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545-1725. The collection of information in these proposed regulations is in § 1.6049-4(b)(5)(i) and § 1.6049-6(e)(4)(i) and (ii). The collection of information is mandatory and the respondents are commercial banks, savings institutions, credit unions, securities brokerages, and insurance companies that maintain deposit accounts for nonresident alien individuals.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Information collected under these regulations will be return information as defined in 26 U.S.C. 6103. Tax returns and return information are confidential as required by 26 U.S.C. 6103.

Background

On January 7, 2011, the Treasury Department and the IRS published a notice of proposed rulemaking (REG 146097-09) (the 2011 proposed regulations) in the *Federal Register* (76 FR 1105, corrected by 76 FR 2852, 76 FR 20595, and 76 FR 22064) under section 6049 of the Internal Revenue Code (Code). The 2011 proposed regulations withdrew proposed regulations that had been issued on August 2, 2002 (67 FR 50386) (the 2002 proposed regulations). The 2002 proposed regulations would have required reporting of interest payments to nonresident alien individuals that are residents of certain specified countries. The 2011 proposed regulations provide that payments of interest aggregating \$10 or more on a deposit maintained at a U.S. office of a financial institution and paid to any

nonresident alien individual are subject to information reporting.

Written comments were received by the Treasury Department and the IRS in response to the 2011 proposed regulations. A public hearing on the 2011 proposed regulations was held on May 18, 2011, at which further comments were received. All comments were considered and are available for public inspection at <http://www.regulations.gov> or upon request. After consideration of the written comments and the comments provided at the public hearing, the 2011 proposed regulations are adopted as revised by this Treasury decision.

Explanation and Summary of Comments

Objectives of This Regulatory Action

The reporting required by these regulations is essential to the U.S. Government's efforts to combat offshore tax evasion for several reasons. First, it ensures that the IRS can, in appropriate circumstances, exchange information relating to tax enforcement with other jurisdictions. In order to ensure that U.S. taxpayers cannot evade U.S. tax by hiding income and assets offshore, the United States must be able to obtain information from other countries regarding income earned and assets held in those countries by U.S. taxpayers. Under present law, the measures available to assist the United States in obtaining this information include both treaty relationships and statutory provisions. The effectiveness of these measures depends significantly, however, on the United States' ability to reciprocate.

The United States has constructed an expansive network of international agreements, including income tax or other conventions and bilateral agreements relating to the exchange of tax information (collectively referred to as information exchange agreements), which provide for the exchange of information related to tax enforcement under appropriate circumstances. These information exchange relationships are based on cooperation and reciprocity. A jurisdiction's willingness to share information with the IRS to combat offshore tax evasion by U.S. taxpayers depends, in large part, on the ability of the IRS to exchange information that will assist that jurisdiction in combating offshore tax evasion by its own residents. These regulations, by requiring reporting of deposit interest to the IRS, will ensure that the IRS is in a position to exchange such information reciprocally with a treaty partner when it is appropriate to do so.

Second, in 2010, Congress supplemented the established network of information exchange agreements by enacting, as part of the Hiring Incentives to Restore Employment Act of 2010 (Pub. L. 111-147), provisions commonly known as the Foreign Account Tax Compliance Act (FATCA) that require overseas financial institutions to identify U.S. accounts and report information (including interest payments) about those accounts to the IRS. In many cases, however, the implementation of FATCA will require the cooperation of foreign governments in order to overcome legal impediments to reporting by their resident financial institutions. Like the United States, those foreign governments are keenly interested in addressing offshore tax evasion by their own residents and need tax information from other jurisdictions, including the United States, to support their efforts. These regulations will facilitate intergovernmental cooperation on FATCA implementation by better enabling the IRS, in appropriate circumstances, to reciprocate by exchanging information with foreign governments for tax administration purposes.

Finally, the reporting of information required by these regulations will also directly enhance U.S. tax compliance by making it more difficult for U.S. taxpayers with U.S. deposits to falsely claim to be nonresidents in order to avoid U.S. taxation on their deposit interest income.

International Standard for Transparency and Information Exchange

Under the international standard for transparency and exchange of information, which is reflected in the Organisation for Economic Cooperation and Development (OECD) Model Agreement on Exchange of Information on Tax Matters, the OECD Model Tax Convention, and the United Nations Model Double Tax Convention between Developed and Developing Countries, exchange of tax information cannot be limited by domestic bank secrecy laws or the absence of a specific domestic tax interest in the information to be exchanged. Accordingly, under this global standard a country cannot refuse to share tax information based on domestic laws that do not require banks to share the information. In addition, under the global standard, a country cannot opt out of information exchange based on the fact that the country does not itself need the information to enforce its own tax rules. Thus, even countries that do not impose income taxes, and therefore do not have tax

enforcement concerns, have entered into information exchange agreements to provide information about the accounts of nonresidents.

Comments Regarding Confidentiality and Improper Use of Information

Some comments on the 2011 proposed regulations expressed concerns that the information required to be reported under those regulations might be misused. For example, comments expressed concern that deposit interest information may be shared with a country that does not have laws in place to protect the confidentiality of the information exchanged or that would use the information for purposes other than the enforcement of its tax laws. These comments further suggested that these concerns could affect nonresident alien investors' decisions about the location of their deposits.

The Treasury Department and the IRS believe that the concerns raised by the comments are addressed by existing legal limitations and administrative safeguards governing tax information exchange. As discussed herein, information reported pursuant to these regulations will be exchanged only with foreign governments with which the United States has an agreement providing for the exchange and when certain additional requirements are satisfied. Even when such an agreement exists, the IRS is not compelled to exchange information, including information collected pursuant to these regulations, if there is concern regarding the use of the information or other factors exist that would make exchange inappropriate.

First, information reported pursuant to these regulations is return information under section 6103. Section 6103 imposes strict confidentiality rules with respect to all return information. Moreover, section 6103(k)(4) allows the IRS to exchange return information with a foreign government only to the extent provided in, and subject to the terms and conditions of an information exchange agreement. Thus, the IRS can share the information reported under these regulations only with foreign governments with which the United States has an information exchange agreement. Absent such an agreement, the IRS is statutorily barred from sharing return information with another country, and these regulations cannot and do not change that rule.

Second, consistent with established international standards, all of the information exchange agreements to which the United States is a party require that the information exchanged

under the agreement be treated and protected as secret by the foreign government. In addition, information exchange agreements generally prohibit foreign governments from using any information exchanged under such an agreement for any purpose other than the purpose of administering, collecting, and enforcing the taxes covered by the agreement. Accordingly, under these agreements, neither country is permitted to release the information shared under the agreement or use it for any other law enforcement purposes.

Third, consistent with the international standard for information exchange and United States law, the United States will not enter into an information exchange agreement unless the Treasury Department and the IRS are satisfied that the foreign government has strict confidentiality protections. Specifically, prior to entering into an information exchange agreement with another jurisdiction, the Treasury Department and the IRS closely review the foreign jurisdiction's legal framework for maintaining the confidentiality of taxpayer information. In order to conclude an information exchange agreement with another country, the Treasury Department and the IRS must be satisfied that the foreign jurisdiction has the necessary legal safeguards in place to protect exchanged information and that adequate penalties apply to any breach of that confidentiality.

Finally, even if an information exchange agreement is in effect, the IRS will not exchange information on deposit interest or otherwise with a country if the IRS determines that the country is not complying with its obligations under the agreement to protect the confidentiality of information and to use the information solely for collecting and enforcing taxes covered by the agreement. The IRS also will not exchange any return information with a country that does not impose tax on the income being reported because the information could not be used for the enforcement of tax laws within that country.

In addition, the IRS has options regarding the appropriate form of exchange. For example, the IRS might exchange information with another jurisdiction only upon specific request. In the case of specific exchange requests, the IRS evaluates the requesting country's current practices with respect to information confidentiality. The IRS also requires the requesting country to explain the intended permitted use of the information and justify the relevance of that information to the permitted use.

Alternatively, in appropriate circumstances, the IRS might exchange certain information on an automatic basis. The IRS currently exchanges deposit interest information on an automatic basis with only one jurisdiction (Canada). The IRS will not enter into a new automatic exchange relationship with a jurisdiction unless it has reviewed the country's policies and practices and has determined that such an exchange relationship is appropriate. Further, the IRS generally will not enter into an automatic exchange relationship with respect to the information collected under these regulations unless the other jurisdiction is willing and able to reciprocate effectively.

The Treasury Department and the IRS believe that the legal and administrative safeguards described in the preceding paragraphs regarding the use of information collected under these regulations should adequately address the concerns identified by the comments and, therefore, these regulations should not significantly impact the investment and savings decisions of the vast majority of nonresidents who are aware of and understand these safeguards and existing law and practice. Nevertheless, to enhance awareness and further address concerns, these final regulations revise the 2011 proposed regulations to require reporting only in the case of interest paid to a nonresident alien individual resident in a country with which the United States has in effect an information exchange agreement pursuant to which the United States agrees to provide, as well as receive, information and under which the competent authority is the Secretary of the Treasury or his delegate.

For this purpose, the Treasury Department and the IRS will publish a Revenue Procedure contemporaneously with these final regulations specifically identifying the countries with which the United States has in force such an information exchange agreement. The Revenue Procedure will be updated as appropriate. With respect to any calendar year, payors will only be required to report interest on deposits maintained at an office within the United States and paid to a nonresident alien individual who is a resident of a country identified in the Revenue Procedure as of December 31 of the prior calendar year as being a country with which the United States has in effect such an information exchange agreement. To address any potential burden associated with reporting on this basis, the final regulations provide that for any year for which the information return under § 1.6049-4(b)(5) is

required, a payor may elect to report interest payments to all nonresident alien individuals.

As previously discussed, the identification of a country as having an information exchange agreement with the United States does not necessarily mean that the information collected under these regulations will be reported to such foreign jurisdiction. As an additional measure to further increase awareness among concerned nonresidents regarding the IRS' use of information collected under these regulations, the Revenue Procedure also will include a second list identifying the countries with which the Treasury Department and the IRS have determined that it is appropriate to have an automatic exchange relationship with respect to the information collected under these regulations. This determination will be made only after further assessment of a country's confidentiality laws and practices and the extent to which the country is willing and able to reciprocate.

In addition, in response to comments, and given the information exchange practices described in the preceding paragraphs and the information that will be available in the Revenue Procedure, these final regulations eliminate the requirement in the 2011 proposed regulations for financial institutions to include in the information statement provided to nonresident alien individuals a statement informing the individual that the information may be furnished to the government of the country where the recipient resides. In addition, these final regulations clarify that a payor or middleman may rely on the permanent residence address provided on a valid Form W-8BEN, "Beneficial Owners Certificate of Foreign Status for U.S. Tax Withholding", for purposes of determining the country of residence of a nonresident alien to whom reportable interest is paid unless the payor or middleman knows or has reason to know that such documentation of the country of residence is unreliable or incorrect. The final regulations also modify § 31.3406(g)-1 of the proposed regulations to clarify that, consistent with the backup withholding rules generally, a payment of interest described in § 1.6049-8(a) is not subject to withholding under section 3406 if the payor may treat the payee as a foreign person, without regard to whether the payor reported such interest (although a payor may be subject to penalties if it fails to report as required). As under the prior regulations requiring the reporting of interest paid to Canadian nonresident alien individuals, the final

regulations define interest subject to reporting to mean interest paid on deposits as defined under section 871(i)(2)(A) (including deposits with persons carrying on a banking business, deposits with certain savings institutions, and certain amounts held by insurance companies under agreements to pay interest thereon).

Comments Regarding Authority and Congressional Intent

Some comments expressed the view that the Treasury Department and the IRS lack the authority to require the reporting required under the 2011 proposed regulations, or that the 2011 proposed regulations are contrary to Congressional intent. The relevant statutory provisions expressly contemplate that the Treasury Department and the IRS have authority to require reporting on deposit interest paid to nonresidents. Section 6049(a) provides generally for reporting with respect to interest payments. Section 6049(b)(2)(B) and (5) provides that, except to the extent otherwise provided in regulations, reportable interest does not include interest paid to nonresident alien individuals on deposits described in section 871(i)(2)(A). Section 6049(b)(2)(B) and (5) thus provides express authority for the Treasury Department and the IRS to issue regulations requiring reporting of such interest.

Special Analyses

It has been determined that these regulations are not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations.

When an agency promulgates a final rule, the Regulatory Flexibility Act, 5 U.S.C. chapter 6 (RFA), requires the agency to prepare a final regulatory flexibility analysis describing the impact of the final rule on small entities. 5 U.S.C. 604. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing a regulatory flexibility analysis, if the final rule is not expected to have a significant economic impact on a substantial number of small entities.

These regulations impose a collection of information, and thus, the Regulatory Flexibility Act (5 U.S.C. chapter 6) applies. It is hereby certified that the collection of information contained in these regulations will not have a

significant economic impact on a substantial number of small entities.

The preamble to the 2011 proposed regulations sets forth an analysis of the number of small entities that may be required to report under these regulations. Although this rule may affect a substantial number of small entities, the IRS has determined that the impact on entities affected by these final regulations will not be significant.

Some comments expressed concern that the regulations would impose a new administrative burden on U.S. financial institutions. In addition, some comments objected that collecting and reporting this information imposes burdens on certain types of financial institutions, including community banks and banks in certain states that have a larger percentage of customers who are nonresident alien individuals.

The Treasury Department and the IRS disagree. Under existing law, all U.S. financial institutions have responsibilities to withhold on and report with respect to depositors who are U.S. citizens, U.S. resident individuals, and Canadian resident individuals, and have developed the systems to perform such withholding and reporting.

All nonresident alien individual account holders who maintain accounts in the United States are already required to complete a Form W-8BEN, declaring their non-U.S. status and the country in which they reside. U.S. financial institutions can use their existing W-8 information to produce Form 1042-S disclosures for the relevant nonresident alien individual account holders. Nearly all U.S. banks and other financial institutions have automated systems to produce Form 1099-INT, "Interest Income", for U.S. accountholders and Form 1042-S, "Foreign Person's U.S. Source Income Subject to Withholding", for Canadian accountholders. As a result, the information collection requirements in these regulations build on reporting and information collection systems familiar to and currently used by U.S. financial institutions, including small business entities. The amount of time required to complete the Form 1042 and Form 1042-S is minimal, and the statement that is required to be collected is brief. Accordingly, it should not be a significant burden to adapt those systems to report with respect to depositors who are resident in other countries with which the United States has an information exchange agreement. Therefore, a regulatory flexibility analysis is not required.

Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these final regulations was

submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses. The Chief Counsel for Advocacy of the Small Business Administration did not comment on the notice of proposed rulemaking.

Drafting Information

The principal author of the regulations is Kathryn Holman, Office of Associate Chief Counsel (International). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social Security, Unemployment compensation.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 31 are amended as follows:

PART 1—INCOME TAXES

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

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

■ **Par. 2.** In § 1.6049-4, paragraph (b)(5) is revised to read as follows:

§ 1.6049-4 Return of information as to interest paid and original issue discount includible in gross income after December 31, 1982.

* * * * *

(b) * * *

(5) *Interest payments to certain nonresident alien individuals—(i) General rule.* In the case of interest aggregating \$10 or more paid to a nonresident alien individual (as defined in section 7701(b)(1)(B)) that is reportable under § 1.6049-8(a), the payor shall make an information return on Form 1042-S, "Foreign Person's U.S. Source Income Subject to Withholding," for the calendar year in which the interest is paid. The payor or middleman shall prepare and file Form 1042-S at the time and in the manner prescribed by section 1461 and the regulations under that section and by the form and its accompanying instructions. See §§ 1.1461-1(b) (rules regarding the preparation of a Form 1042) and 1.6049-6(e)(4) (rules for

furnishing a copy of the Form 1042-S to the recipient). To determine whether an information return is required for original issue discount, see §§ 1.6049-5(f) and 1.6049-8(a).

(ii) *Effective/applicability date.*

Paragraph (b)(5)(i) of this section shall be applicable for payments made on or after January 1, 2013. (For interest paid to a Canadian nonresident alien individual on or before December 31, 2012, see paragraph (b)(5) of this section as in effect and contained in 26 CFR part 1 revised April 1, 2000.)

* * * * *

■ **Par. 3.** Section 1.6049-5 is amended as follows:

■ 1. In paragraph (b)(12), the last sentence is revised.

■ 2. In paragraph (f), the last sentence is revised.

The revisions read as follows:

§ 1.6049-5 Interest and original issue discount subject to reporting after December 31, 1982.

* * * * *

(b) * * *

(12) * * * This paragraph (b)(12) does not apply to interest paid on or after January 1, 2013, to a nonresident alien individual to the extent provided in § 1.6049-8.

* * * * *

(f) * * * Original issue discount on an obligation (including an obligation with a maturity of not more than six months from the date of original issue) held by a nonresident alien individual or foreign corporation is interest described in paragraph (b)(1)(vi)(A) or (B) of this section and, therefore is not interest subject to reporting under section 6049 unless it is described in § 1.6049-8(a) (relating to deposit interest paid on or after January 1, 2013, to certain nonresident alien individuals).

* * * * *

■ **Par. 4.** Section 1.6049-6 is amended as follows:

■ 1. The paragraph heading and text of paragraph (e)(4) is revised.

■ 2. In paragraph (e)(5), the paragraph heading and first sentence are revised and a new sentence is added at the end of the paragraph.

The additions and revisions read as follows:

§ 1.6049-6 Statements to recipients of interest payments and holders of obligations for attributed original issue discount.

* * * * *

(e) * * *

(4) *Special rule for amounts described in § 1.6049-8(a).* In the case of amounts described in § 1.6049-8(a) (relating to

payments of deposit interest to certain nonresident alien individuals) paid on or after January 1, 2013, any person who makes a Form 1042-S, "Foreign Person's U.S. Source Income Subject to Withholding," under section 6049(a) and § 1.6049-4(b)(5) shall furnish a statement to the recipient either in person or by first class mail to the recipient's last known address. The statement shall include a copy of the Form 1042-S required to be prepared pursuant to § 1.6049-4(b)(5) and a statement to the effect that the information on the form is being furnished to the United States Internal Revenue Service.

(5) *Effective/applicability date.* Paragraph (e)(4) of this section applies to payee statements reporting payments of deposit interest to nonresident alien individuals paid on or after January 1, 2013. * * * (For interest paid to a Canadian nonresident alien individual on or before December 31, 2012, see paragraph (e)(4) of this section as in effect and contained in 26 CFR part 1 revised April 1, 2000.)

■ **Par. 5.** In § 1.6049-8, the section heading and paragraph (a) are revised to read as follows:

§ 1.6049-8 Interest and original issue discount paid to certain nonresident aliens.

(a) *Interest subject to reporting requirement.* For purposes of §§ 1.6049-4, 1.6049-6, and this section, and except as provided in paragraph (b) of this section, the term *interest* means interest described in section 871(i)(2)(A) that relates to a deposit maintained at an office within the United States, and that is paid to a nonresident alien individual who is a resident of a country that is identified, in an applicable revenue procedure (see § 601.601(d)(2) of this chapter) as of December 31 prior to the calendar year in which the interest is paid, as a country with which the United States has in effect an income tax or other convention or bilateral agreement relating to the exchange of tax information within the meaning of section 6103(k)(4), under which the competent authority is the Secretary of the Treasury or his delegate and the United States agrees to provide, as well as receive, information.

Notwithstanding the foregoing, for purposes of §§ 1.6049-4, 1.6049-6, and this section, for any year for which the information return under § 1.6049-4(b)(5) is required, a payor may elect to treat interest as including all interest described in section 871(i)(2)(A) that relates to a deposit maintained at an office within the United States and that

is paid to any nonresident alien individual. A payor shall make this election by reporting all such interest. For purposes of the regulations under section 6049 (§§ 1.6049-1 through 1.6049-8), a nonresident alien individual is a person described in section 7701(b)(1)(B). A payor or middleman may rely upon the permanent residence address provided on a valid Form W-8BEN, "Beneficial Owners Certificate of Foreign Status for U.S. Tax Withholding", to determine the country in which a nonresident alien individual is resident unless such payor or middleman knows or has reason to know that such documentation of the country of residence is unreliable or incorrect. Amounts described in this paragraph (a) are not subject to backup withholding under section 3406 if the payor may treat the payee as a foreign beneficial owner or foreign payee under the rules of § 1.6049-5(b)(12). See § 31.3406(g)-1(d) of this chapter. However, if the payor or middleman does not have either a valid Form W-8BEN or valid Form W-9, "Request for Taxpayer Identification Number and Certification", the payor or middleman must report the payment as made to a U.S. non-exempt recipient if it must so treat the payee under the presumption rules of § 1.6049-5(d)(2) and § 1.1441-1(b)(3)(iii), and the payor must also backup withhold under section 3406. (For interest paid to a Canadian nonresident alien individual on or before December 31, 2012, see paragraph (a) of this section as in effect and contained in 26 CFR part 1 revised April 1, 2000.)

* * * * *

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT THE SOURCE

■ **Par. 6.** The authority citation for part 31 continues to read in part as follows:

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

■ **Par. 7.** In § 31.3406(g)-1, paragraph (d) is revised to read as follows:

§ 31.3406(g)-1 Exception for payments to certain payees and certain other payments.

* * * * *

(d) *Reportable payments made to nonresident alien individuals.* A payment of interest to a nonresident alien individual that is described in § 1.6049-8(a) of this chapter is not subject to withholding under section 3406 if the payor may treat the payee as a foreign beneficial owner or foreign payee under the rules of § 1.6049-

5(b)(12). (For interest paid to a Canadian nonresident alien individual on or before December 31, 2012, see paragraph (d) of this section as in effect and contained in 26 CFR part 1 revised April 1, 2000.)

* * * * *

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

Approved: April 12, 2012.

Emily S. McMahon,

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

[FR Doc. 2012-9520 Filed 4-17-12; 4:15 pm]

BILLING CODE 4830-01-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2012-0257]

Safety Zones; Recurring Events in Captain of the Port New York Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce various safety zones in the Captain of the Port New York Zone on specified dates and times. This action is necessary to ensure the safety of vessels and spectators from hazards associated with fireworks displays. During the enforcement period, no person or vessel may enter the safety zone without permission of the Captain of the Port (COTP).

DATES: The regulations for the safety zones described in 33 CFR 165.160 will be enforced on the dates and times listed in the table below.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email Ensign Kimberly Farnsworth, Coast Guard; telephone 718-354-4163, email Kimberly.A.Farnsworth@uscg.mil.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zones listed in 33 CFR 165.160 on the specified dates and times as indicated in Table 1 below. If the event is delayed by inclement weather, the regulation will be enforced on the rain date indicated in Table 1 below. These regulations were published in the **Federal Register** on November 9, 2011 (76 FR 69614).

TABLE 1

<p>1. Intrepid Air and Sea Museum Fireworks Pier 90 Hudson River Safety Zone 33 CFR 165.160(5.4)</p>	<ul style="list-style-type: none"> • Launch site: A barge located in approximate position 40°46'11.8" N, 074°00'14.8" W (NAD 1983), approximately 375 yards west of Pier 90, Manhattan, NY. • Date: May 23, 2012. • Rain Date: May 24, 2012. • Time: 09:30 p.m.–10:42 p.m.
<p>2. Heritage of Pride Fireworks Pier 54 Hudson River Safety Zone 33 CFR 165.160(5.8)</p>	<ul style="list-style-type: none"> • Launch site: A barge located in approximate position 40°44'31" N, 074°01'00" W (NAD 1983), approximately 380 yards west of Pier 54, Manhattan, NY. • Date: June 24, 2012. • Time: 10:00 p.m.–11:20 p.m.
<p>3. Celebrate the Amboy's Fireworks Raritan Bay Safety Zone 33 CFR 165.160(2.5)</p>	<ul style="list-style-type: none"> • Launch site: A barge located in approximate position 40°30'04" N 074°15'35" W (NAD 1983), about 240 yards east of Raritan River Cutoff Channel Buoy 2 (LLNR 36595). • Date: July 3, 2012. • Time: 8:45 p.m.–10:05 p.m.

Under the provisions of 33 CFR 165.160, a vessel may not enter the regulated area unless given express permission from the COTP or the designated representative. Spectator vessels may transit outside the regulated area but may not anchor, block, loiter in, or impede the transit of other vessels. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

This notice is issued under authority of 33 CFR 165.160(a) and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide mariners with advanced notification of enforcement periods via the Local Notice to Mariners and marine information broadcasts. If the COTP determines that the regulated area need not be enforced for the full duration stated in this notice, a Broadcast Notice to Mariners may be used to grant general permission to enter the regulated area.

Dated: April 4, 2012.

L.L. Fagan,

Rear Admiral, U.S. Coast Guard, Captain of the Port New York.

[FR Doc. 2012–9363 Filed 4–18–12; 8:45 am]

BILLING CODE 9110–04–P

POSTAL SERVICE

39 CFR Part 501

Revisions to the Requirements for Authority To Manufacture and Distribute Postage Evidencing Systems

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: This rule establishes the responsibility of the providers of Postage Evidencing Systems (PES) to notify the U.S. Postal Service® of any cyber attacks to their systems.

DATES: This rule is effective May 21, 2012.

ADDRESSES: Mail or deliver written comments to the Manager, Payment Technology, U.S. Postal Service, 475 L'Enfant Plaza SW., Room 3436, Washington, DC 20260–0911. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, at the Payment Technology office.

FOR FURTHER INFORMATION CONTACT: Marlo Kay Ivey, Business Programs Specialist, Payment Technology, U.S. Postal Service, at 202–268–7613.

SUPPLEMENTARY INFORMATION: Providers currently must disclose all findings or results of any testing concerning the security or revenue protection features, capabilities, or failings of any PES, as well as all potential security weaknesses or methods of tampering with the PES. This rule applies the same standard to cyber attacks against the provider's systems.

List of Subjects in 39 CFR Part 501

Postal Service.

Accordingly, for the reasons stated, 39 CFR Part 501 is amended as follows:

PART 501—AUTHORIZATION TO MANUFACTURE AND DISTRIBUTE POSTAGE EVIDENCING SYSTEMS

■ 1. The authority citation for 39 CFR Part 501 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 410, 2601, 2605, Inspector General Act of 1978, as amended (Pub. L. 95–452, as amended); 5 U.S.C. App. 3.

■ 2. Section 501.11 is amended by adding paragraph (b)(3) as follows:

§ 501.11 Reporting Postage Evidencing System security weaknesses.

* * * * *
(b) * * *

(3) Cyber attacks that include, but are not limited to, gaining unauthorized access to digital systems for purposes of misappropriating assets or sensitive information, corrupting data, or causing operational disruption. Cyber attacks may also be carried out in a manner that does not require gaining unauthorized access, such as by causing denial-of-service attacks on Web sites. Cyber attacks may be carried out by third parties or insiders using techniques that range from highly sophisticated efforts to electronically circumvent network security or overwhelm Web sites to more traditional intelligence gathering and social engineering aimed at obtaining information necessary to gain access. Cyber security risk disclosures reported must adequately describe the nature of the material risks and specify how each risk affects the Postage Evidencing System.

* * * * *

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

[FR Doc. 2012–9396 Filed 4–18–12; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52, 60 and 61

[FRL 9660–3]

Change of Address for Region 4, State and Local Agencies; Technical Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendment.

SUMMARY: EPA is amending its regulations to reflect a change in address for EPA's Region 4 office as well as the state agencies for Georgia,

Mississippi, North Carolina and local agencies for Forsyth County, Mecklenburg County Land Use & Environmental Services Agency and Western North Carolina Regional Air Quality Agency. The jurisdiction of EPA Region 4 includes the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina and Tennessee. Certain EPA air pollution control regulations requiring submittal of notifications, reports and other documents to the EPA Regional office must also be submitted to the appropriate authorized state or local agency. This technical amendment updates and corrects the addresses for submitting such information to the EPA's Region 4 office as well as the state and local agency offices.

DATES: This final rule is effective April 19, 2012.

FOR FURTHER INFORMATION CONTACT: Lisa McKinley, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street SW., Atlanta, Georgia 30303-8960-8960. The telephone number is (404) 562-9403. Ms. McKinley can also be reached via electronic mail at mckinley.lisa@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

EPA is amending its regulations in 40 CFR parts 52, 60 and 61 to reflect a change in the address for EPA's Region 4 office as well as the state agencies for Georgia, Mississippi, North Carolina and local agencies for Forsyth County, Mecklenburg County Land Use & Environmental Services Agency, and Western North Carolina Regional Air Quality Agency. This technical amendment merely updates and corrects the address for EPA's Region 4 office as well as the state and local agencies. This action is editorial in nature and is intended to provide accuracy and clarity to the Agency's regulations. Consequently, EPA has determined that today's rule falls under the "good cause" exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding "good cause," authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Under section 553 of the APA, an agency may find good cause where procedures are "impractical, unnecessary, or contrary to the public

interest." "Public comment is "unnecessary" and "contrary to the public interest" since the address for EPA's Region 4 office as well as the state and local agencies has changed and immediate notice in the CFR benefits the public by updating citations.

II. Statutory and Executive Order Reviews

This final rule implements technical amendments to 40 CFR parts 52, 60 and 61 to reflect a change in the address for EPA's Region 4 office as well as the state and local agencies. It does not otherwise impose or amend any requirements. Consequently, under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. The rule would not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Because this action is merely editorial in nature, the Administrator certifies that it would not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The rule does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). This action does not have Federalism implications because it would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). Additionally, it does not have tribal implications because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This rule also is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), nor is it subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). It does not involve any technical standards that require the Agency's consideration of voluntary

consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995, Public Law 104-113, section 12(d) (15 U.S.C. 272 note). Finally, it 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).

III. Congressional Review Act

The Congressional Review Act (CRA), 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. Section 808 of the CRA allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA, if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary, or contrary to the public interest. This determination must be supported by a brief statement (5 U.S.C. 808(2)). As stated earlier, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of April 19, 2012. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 52

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

40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Aluminum, Ammonium sulfate plants, Batteries, Beverages, Carbon monoxide, Cement industry, Chemicals, Coal, Copper, Dry cleaners, Electric power plants, Fertilizers, Fluoride, Gasoline, Glass

and glass products, Grains, Graphic arts industry, Heaters, Household appliances, Insulation, Intergovernmental relations, Iron, Labeling, Lead, Lime, Metallic and nonmetallic mineral processing plants, Metals, Motor vehicles, Natural gas, Nitric acid plants, Nitrogen dioxide, Paper and paper products industry, Particulate matter, Paving and roofing materials, Petroleum, Phosphate, Plastics materials and synthetics, Polymers, Reporting and recordkeeping requirements, Sewage disposal, Steel, Sulfur oxides, Sulfuric acid plants, Tires, Urethane, Vinyl, Volatile organic compounds, Waste treatment and disposal, Zinc.

40 CFR Part 61

Environmental protection, Air pollution control, Arsenic, Asbestos, Benzene, Beryllium, Hazardous substances, Mercury, Radionuclides, Radon, Reporting and recordkeeping requirements, Uranium, Vinyl chloride.

Dated: March 26, 2012.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

40 CFR parts 52, 60 and 61 are amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

Authority: 42 U.S.C. 7401.

Subpart L—Georgia

■ 2. Section 52.581 is revised to read as follows:

§ 52.581 Significant deterioration of air quality.

(a) All applications and other information required pursuant to § 52.21 of this part from sources located in the State of Georgia shall be submitted to the State agency, Georgia Department of Natural Resources, Environmental Protection Division, Air Protection Branch, 4244 International Parkway, Suite 120, Atlanta, Georgia 30354 rather than to EPA's Region 4 office.

(b) [Reserved]

Subpart Z—Mississippi

■ 3. Section 52.1280 is revised to read as follows:

§ 52.1280 Significant deterioration of air quality.

(a) All applications and other information required pursuant to § 52.21 of this part from sources located or to

be located in the State of Mississippi shall be submitted to the State agency, Hand Deliver or Courier: Mississippi Department of Environmental Quality, Office of Pollution Control, Air Division, 515 East Amite Street, Jackson, Mississippi 39201; Mailing Address: Mississippi Department of Environmental Quality, Office of Pollution Control, Air Division, P.O. Box 2261, Jackson, Mississippi 39225, rather than to EPA's Region 4 office.

(b) [Reserved]

Subpart II—North Carolina

■ 4. Section 52.1778 is amended by revising paragraph (c) to read as follows:

§ 52.1778 Significant deterioration of air quality.

* * * * *

(c) All applications and other information required pursuant to § 52.21 of this part from sources located or to be located in the State of North Carolina shall be submitted to the State agency, North Carolina Department of Environment and Natural Resources, Division of Air Quality, 1641 Mail Service Center, Raleigh, North Carolina 27699–1641 or local agencies, Forsyth County Environmental Affairs, 201 North Chestnut Street, Winston-Salem, North Carolina 27101 or Forsyth County Air Quality Section, 537 North Spruce Street, Winston-Salem, North Carolina 27101; Mecklenburg County Land Use & Environmental Services Agency, Air Quality, 700 N. Tryon St., Suite 205, Charlotte, North Carolina 28202–2236; Western North Carolina Regional Air Quality Agency, 49 Mount Carmel Road, Asheville, North Carolina 28806, rather than to EPA's Region 4 office.

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

■ 5. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401.

Subpart A—General Provisions

■ 6. Section 60.4 is amended by:

■ a. Revising the Region IV listing in paragraph (a).

■ b. Revising paragraphs (b)(L), (b)(Z), and (b)(II).

The revisions read as follows:

§ 60.4 Address.

(a) * * *

Region 4 (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee), Director, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection

Agency, 61 Forsyth St. SW., Suite 9T43, Atlanta, Georgia 30303–8960.

* * * * *

(b) * * *

(L) State of Georgia: Georgia Department of Natural Resources, Environmental Protection Division, Air Protection Branch, 4244 International Parkway, Suite 120, Atlanta, Georgia 30354.

* * * * *

(Z) State of Mississippi: Hand Deliver or Courier: Mississippi Department of Environmental Quality, Office of Pollution Control, Air Division, 515 East Amite Street, Jackson, Mississippi 39201, Mailing Address: Mississippi Department of Environmental Quality, Office of Pollution Control, Air Division, P.O. Box 2261, Jackson, Mississippi 39225.

* * * * *

(II) State of North Carolina: North Carolina Department of Environment and Natural Resources, Division of Air Quality, 1641 Mail Service Center, Raleigh, North Carolina 27699–1641 or local agencies, Forsyth County Environmental Affairs, 201 North Chestnut Street, Winston-Salem, North Carolina 27101 or Forsyth County Air Quality Section, 537 North Spruce Street, Winston-Salem, North Carolina 27101; Mecklenburg County Land Use & Environmental Services Agency, Air Quality, 700 N. Tryon St., Suite 205, Charlotte, North Carolina 28202–2236; Western North Carolina Regional Air Quality Agency, 49 Mount Carmel Road, Asheville, North Carolina 28806.

* * * * *

PART 61—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

■ 7. The authority citation for part 61 continues to read as follows:

Authority: 42 U.S.C. 7401.

Subpart A—General Provisions

■ 8. Section 61.04 is amended by:

■ a. Revising the Region IV listing in paragraph (a).

■ b. Revising paragraphs (b)(L), (b)(Z), and (b)(II).

The revisions read as follows:

§ 61.04 Address.

(a) * * *

Region 4 (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee), Director, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, 61 Forsyth St. SW., Suite 9T43, Atlanta, Georgia 30303–8960.

* * * * *

(b) * * *

(L) State of Georgia: Georgia Department of Natural Resources, Environmental Protection Division, Air Protection Branch, 4244 International Parkway, Suite 120, Atlanta, Georgia 30354.

* * * * *

(Z) State of Mississippi: Hand Deliver or Courier: Mississippi Department of Environmental Quality, Office of Pollution Control, Air Division, 515 East Amite Street, Jackson, Mississippi 39201, Mailing Address: Mississippi Department of Environmental Quality, Office of Pollution Control, Air Division, P.O. Box 2261, Jackson, Mississippi 39225.

* * * * *

(II) State of North Carolina: North Carolina Department of Environment and Natural Resources, Division of Air Quality, 1641 Mail Service Center, Raleigh, North Carolina 27699-1641 or local agencies, Forsyth County Environmental Affairs, 201 North Chestnut Street, Winston-Salem, North Carolina 27101 or Forsyth County Air Quality Section, 537 North Spruce Street, Winston-Salem, North Carolina 27101; Mecklenburg County Land Use & Environmental Services Agency, Air Quality, 700 N. Tryon St., Suite 205, Charlotte, North Carolina 28202-2236; Western North Carolina Regional Air Quality Agency, 49 Mount Carmel Road, Asheville, North Carolina 28806.

* * * * *

[FR Doc. 2012-9234 Filed 4-18-12; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 63

[EPA-HQ-OAR-2009-0234; EPA-HQ-OAR-2011-0044; FRL-9654-8]

RIN 2060-AP52 and 2060-AR31

National Emission Standards for Hazardous Air Pollutants From Coal- and Oil-Fired Electric Utility Steam Generating Units and Standards of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: This document corrects certain preamble and regulatory text. This action corrects typographical errors, such as cross-reference errors and certain preamble text that is not consistent with the final regulatory text, which published in the **Federal Register** on Thursday, February 16, 2012 (77 FR 9304).

DATES: *Effective date:* April 19, 2012.

FOR FURTHER INFORMATION CONTACT: For the NESHAP action: Mr. William Maxwell, Energy Strategies Group, Sector Policies and Programs Division, (D243-01), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; Telephone number: (919) 541-5430; Fax number (919) 541-5450; email address: *maxwell.bill@epa.gov*. For the new source performance standard (NSPS) action: Mr. Christian Fellner, Energy Strategies Group, Sector Policies and Programs Division, (D243-01), Office of Air Quality Planning and Standards, U.S. Environmental

Protection Agency, Research Triangle Park, North Carolina 27711; Telephone number: (919) 541-4003; Fax number (919) 541-5450; email address: *fellner.christian@epa.gov*.

SUPPLEMENTARY INFORMATION: This document corrects certain preamble and regulatory text. It is proper to issue this final rule correction without notice and comment. Section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making this action final without prior proposal and opportunity for comment because the changes to the rule are minor technical corrections, are noncontroversial, and do not substantively change the agency actions taken in the final rule. Notice and comment is unnecessary, because these changes do not affect the rights or obligations of outside parties, and do not alter the substantive requirements of the code of federal regulations (CFR), except to the extent that one regulatory provision included an inadvertent typographical error that EPA must amend to align with the plain text of the Clean Air Act (CAA). We find that this constitutes good cause under 5 U.S.C. 553(b)(B). The corrections can be categorized generally as follows: Correction of typographical errors (e.g., cross-reference errors) and correction of certain preamble text that does not conform to the final regulatory text. Below, we identify each technical correction to the preamble and regulatory text.

1. Table 5 on page 9368 is corrected to read as follows:

TABLE 5—ALTERNATE EMISSION LIMITATIONS FOR EXISTING COAL- AND OIL-FIRED EGUS

Subcategory/pollutant	Coal-fired EGUs	IGCC	Liquid oil, continental	Liquid oil, non-continental	Solid oil-derived
SO ₂	2.0E-1 lb/MMBtu (1.5E0 lb/MWh).	NA	NA	NA	3.0E-1 lb/MMBtu (2.0E0 lb/MWh).
Total non-mercury metals.	5.0E-5 lb/MMBtu (5.0E-1 lb/GWh).	6.0E-5 lb/MMBtu (5.0E-1 lb/GWh).	8.0E-4 lb/MMBtu (8.0E-3 lb/MWh) ^a .	6.0E-4 lb/MMBtu (7.0E-3 lb/MWh) ^a .	4.0E-5 lb/MMBtu (6.0E-1 lb/GWh).
Antimony, Sb	8.0E-1 lb/TBtu (8.0E-3 lb/GWh).	1.4E0 lb/TBtu (2.0E-2 lb/GWh).	1.3E+1 lb/TBtu (2.0E-1 lb/GWh).	2.2E0 lb/TBtu (2.0E-2 lb/GWh).	8.0E-1 lb/TBtu (7.0E-3 lb/GWh).
Arsenic, As	1.1E0 lb/TBtu (2.0E-2 lb/GWh).	1.5E0 lb/TBtu (2.0E-2 lb/GWh).	2.8E0 lb/TBtu (3.0E-2 lb/GWh).	4.3E0 lb/TBtu (8.0E-2 lb/GWh).	3.0E-1 lb/TBtu (5.0E-3 lb/GWh).
Beryllium, Be	2.0E-1 lb/TBtu (2.0E-3 lb/GWh).	1.0E-1 lb/TBtu (1.0E-3 lb/GWh).	2.0E-1 lb/TBtu (2.0E-3 lb/GWh).	6.0E-1 lb/TBtu (3.0E-3 lb/GWh).	6.0E-2 lb/TBtu (5.0E-4 lb/GWh).
Cadmium, Cd	3.0E-1 lb/TBtu (3.0E-3 lb/GWh).	1.5E-1 lb/TBtu (2.0E-3 lb/GWh).	3.0E-1 lb/TBtu (2.0E-3 lb/GWh).	3.0E-1 lb/TBtu (3.0E-3 lb/GWh).	3.0E-1 lb/TBtu (4.0E-3 lb/GWh).
Chromium, Cr	2.8E0 lb/TBtu (3.0E-2 lb/GWh).	2.9E0 lb/TBtu (3.0E-2 lb/GWh).	5.5E0 lb/TBtu (6.0E-2 lb/GWh).	3.1E+1 lb/TBtu (3.0E-1 lb/GWh).	8.0E-1 lb/TBtu (2.0E-2 lb/GWh).
Cobalt, Co	8.0E-1 lb/TBtu (8.0E-3 lb/GWh).	1.2E0 lb/TBtu (2.0E-2 lb/GWh).	2.1E+1 lb/TBtu (3.0E-1 lb/GWh).	1.1E+2 lb/TBtu (1.4E0 lb/GWh).	1.1E0 lb/TBtu (2.0E-2 lb/GWh).

TABLE 5—ALTERNATE EMISSION LIMITATIONS FOR EXISTING COAL- AND OIL-FIRED EGUS—Continued

Subcategory/pollutant	Coal-fired EGUs	IGCC	Liquid oil, continental	Liquid oil, non-continental	Solid oil-derived
Lead, Pb	1.2E0 lb/TBtu (2.0E–2 lb/GWh).	1.9E+2 lb/TBtu (1.8E0 lb/GWh).	8.1E0 lb/TBtu (8.0E–2 lb/GWh).	4.9E0 lb/TBtu (8.0E–2 lb/GWh).	8.0E–1 lb/TBtu (2.0E–2 lb/GWh).
Manganese, Mn	4.0E0 lb/TBtu (5.0E–2 lb/GWh).	2.5E0 lb/TBtu (3.0E–2 lb/GWh).	2.2E+1 lb/TBtu (3.0E–1 lb/GWh).	2.0E+1 lb/TBtu (3.0E–1 lb/GWh).	2.3E0 lb/TBtu (4.0E–2 lb/GWh).
Mercury, Hg	NA	NA	2.0E–1 lb/TBtu (2.0E–3 lb/GWh).	4.0E–2 lb/TBtu (4.0E–4 lb/GWh).	NA.
Nickel, Ni	3.5E0 lb/TBtu (4.0E–2 lb/GWh).	6.5E0 lb/TBtu (7.0E–2 lb/GWh).	1.1E+2 lb/TBtu (1.1E0 lb/GWh).	4.7E+2 lb/TBtu (4.1E0 lb/GWh).	9.0E0 lb/TBtu (2.0E–1 lb/GWh).
Selenium, Se	5.0E0 lb/TBtu (6.0E–2 lb/GWh).	2.2E+1 lb/TBtu (3.0E–1 lb/GWh).	3.3E0 lb/TBtu (4.0E–2 lb/GWh).	9.8E0 lb/TBtu (2.0E–1 lb/GWh).	1.2E0 lb/TBtu (2.0E–2 lb/GWh).

NA = Not applicable.
 a Includes Hg.

The output-format values for the antimony and beryllium emission limits for existing solid oil-derived fuel-fired units were incorrect as published in the preamble to the final rule (i.e., the incorrect “8.0E–3 lb/GWh” instead of the correct “7.0E–3 lb/GWh” for antimony and the incorrect “6.0E–4 lb/GWh” instead of the correct “5.0E–4 lb/GWh” for beryllium). In addition, the format of the input- and output-based lead emissions limits for existing IGCC EGUs was incorrect as published in the preamble to the final rule (i.e., the incorrect “1.9E+2 lb/MMBtu or 1.8E0 lb/MWh” instead of the correct “1.9E+2 lb/TBtu or 1.8E0 lb/GWh”). In each case, the correct values are indicated in the spreadsheets found in docket entry EPA–HQ–OAR–2009–0234–20132 and the published values were transcription errors. This same correction is made to the regulatory text later in this document.

2. On page 9401, column 1, first full paragraph, the fourth sentence is corrected to read as follows: “This subcategory applies only to oil-fired EGUs that act as peaking units, as they generally address reliability issues.”

We are revising this sentence because the original sentence in the preamble to the final rule stated: “This subcategory applies only to oil-fired EGUs *that operate on oil alone* and act as peaking units, as they generally address reliability issues.” (emphasis added). The italicized language is not consistent with the regulatory definition of “oil-fired EGU” or the definition of “limited-use liquid oil-fired subcategory” because it incorrectly indicates that the subcategory applies only to oil-fired EGUs that operate on oil alone. See 40 CFR 63.10042.

3. The definition of “Boiler operating day” in § 60.41Da Definitions, the date “February 29, 2005” is corrected to read “March 1, 2005” because there was no February 29 in 2005.

4. Section 60.49Da(a)(4)(i) is revised to correct the typographical error related

to the incorrect cross reference to section 60.51a(d) which does not exist. The correct cross reference is to section 60.51Da(d).

5. Sections 63.9982(a)(1) and (a)(2) are revised to include the “\$” symbol which was inadvertently left off of the references to section 63.10042 (i.e., “63.10042” vs. the correct “§ 63.10042”).

6. Section 63.9982(d) is revised to correct the typographical error which left out the word “in” from the phrase “* * * change in process * * *”

7. Section 63.9985(a)(2) is revised to remove the words “or modification.” We erroneously included this language in the final rule definition of a new source for purposes of the NESHAP. The language included in the final rule comes from the CAA section 111 statutory definition for “new source,” instead of the CAA section 112 definition of “new source.” CAA section 112 does not include “modified” sources in the definition of new sources, and, thus, the inclusion of such sources in the definition was an inadvertent drafting error.

8. Section 63.9991(c) is revised to remove the term “coal-fired” from the phrase “coal-fired EGU.” This section expressly references Tables 1 and 2 of this subpart and those tables include alternative sulfur dioxide (SO₂) limits for all EGUs meeting the requirements of section 63.9991(c), not just coal-fired EGUs. Thus, the provision as written in the final rule was incorrectly limited to coal-fired EGUs.

9. Section 63.10000(c)(1) is revised to include integrated gasification combined cycle (IGCC) EGUs among the subcategories listed. Section 63.10000(c) addresses initial performance testing. IGCC EGUs are included in the requirements of section 63.10000(c)(1)(i) (which deals with initial performance testing for purposes of determining low emitting EGU (LEE) status) and, thus, the omission of IGCC EGUs from the introductory language in section 63.10000(c)(1) was an inadvertent error.

10. Section 63.10000(c)(1)(i)(B) is revised to correct a typographical error (“* * * solid oil-derived fuel-fired * * *” rather than the incorrect “* * * solid oil-fired fuel-fired * * *”).

11. Section 63.10000(c)(2)(iv) is revised to correct a typographical error and include “you” in the phrase “* * * but you must * * *”

12. Section 63.10000(d)(5)(i) is revised to correct the typographical error of including the incorrect term “CEMS” rather than the correct term “CMS.” The text of sections 63.10000(d)(2)(i), (3), and (4) all refer to the broader “CMS” (which includes both continuous parameter monitoring system (CPMS) and continuous emission monitoring system (CEMS)). Thus, use of the narrower CEMS in section 63.10000(d)(5)(i) was an inadvertent error. Further, the term “CPMS” in the last sentence of the section is corrected to read “PM CPMS” consistent with section 63.10010(h), which section is referenced in section 63.10000(d)(5)(i) and specifically addresses PM CPMS.

13. Section 63.10000(d)(5)(iv) is revised to use language consistent with section 63.8(d) (changing “ongoing data quality assurance procedures” to “quality control program”), as section 63.8 is cited in this section. The title of section 63.8(d) is “quality control program” and the phrase “ongoing data quality assurance procedures” does not appear in that provision.

14. Section 63.10000(f) is revised to correct a typographical error by replacing “distributions system” with the correct “distribution system.”

15. Section 63.10005(b)(2) is revised to correct a typographical error by changing “* * * valid data CMS data * * *” to “valid CMS data”.

16. Section 63.10005(d)(1) is revised to correct a typographical error (the correct “* * * Table 1 or 2 to this * * *” rather than the incorrect “* * * Table 1 or 2 of this * * *” in two places).

17. Section 63.10005(d)(4)(ii) is revised to correct the typographical error associated with the use of “corresponding” rather than the correct word “corresponds.”

18. Sections 63.10005(h)(3)(iii)(C)(1) and (2) are revised to correct the typographical errors associated with the conversion factors from million British thermal units per hour (MMBtu/hr) to trillion Btu/hr (TBtu/hr) (i.e., the correct 10^{-6} rather than the incorrect 10^6) and from megawatts (MW) to gigawatts (GW) (i.e., the correct 10^{-3} rather than the incorrect 10^3). The exponents as published are technically incorrect and the conversions would not work as published.

19. Section 63.10006(a) is revised to correct a typographical error. Specifically, we inadvertently omitted the word “fired” from the phrase “* * * solid oil-derived fuel- and * * *”. The phrase should read “* * * solid oil-derived fuel-fired and * * *”.

20. Section 63.10007(c) is revised to correct the typographical error associated with the incorrect cross reference to the non-existent section 63.10011(b)(5). The correct cross reference is to section 63.10011(b).

21. Section 63.10009(g) is revised to correct the typographical error related to the incorrect cross reference to sections 63.10009(f)(1) through (3). Section 63.10009(g) deals with determining weighted average emission rates, but section 63.10009(f) deals with demonstrating eligibility for an emissions averaging group and is, thus, an incorrect cross reference. The correct cross reference is to sections 63.10009(g)(1) through (2), which sections provide specific direction on the manner in which sources establish weighted average emission rates.

22. Section 63.10009(j)(2)(i)(A) is revised to correct the typographical error related to the incorrect cross reference to section 63.10009(h)(1), which does not exist. The correct cross reference is to section 63.10009(j)(1).

23. Sections 63.10010(a)(6)(iii) and (iv) are revised to correct the typographical errors related to the incorrect cross references to sections 63.10010(a)(5)(iii)(B) and (a)(5)(iii)(C), which do not exist. The correct cross references are to sections 63.10010(a)(6)(ii) and (iii), respectively.

24. Sections 63.10010(g), 63.10011(c)(1), 63.10021(b), and 63.10022(a)(1) are revised to correct the inadvertent omission of the alternate 90-day averaging period. The provisions as included in the final rule only referred to the 30-day averaging periods that are generally utilized for determining compliance with the final standards;

however, as indicated in section 63.10009(a)(2), sources are also authorized to use the alternate 90-day averaging period for certain standards when emissions averaging is employed at a facility.

25. Section 63.10020(d) is revised to correct a typographical error by replacing “of” with “from” in the phrase “* * * deviation from the * * *”.

26. Section 63.10030(e)(7)(i) is revised to correct the typographical error related to the incorrect cross reference to section 63.10006(i). Section 63.10006(i) addresses the tune-up requirement, but section 63.10030(e)(7)(i) concerns LEE requirements, not tune-up requirements. The correct cross reference is to section 63.10006(b), which addresses the reduced performance (i.e., stack) testing for LEE, which allows a source to test every 3 years as discussed in section 63.10030(e)(7)(i).

27. Section 63.10031(c)(4) is revised to correct an incorrect statement. The final rule does not require annual inspections; thus, the “annual” has been replaced with “every 36 (or 48) months” to be consistent with other rule text.

28. The definitions of “Non-mercury (Hg) HAP metals” and “Oil” in section 63.10042 are revised to correct the typographical error that did not separate the two definitions in the published rule.

29. Table 2 to Subpart UUUUU of Part 63 is revised to correct the typographical errors related to the lack of a superscript for footnotes (“²”) denoting “gross electric output” for filterable particulate matter emissions from “2. Coal-fired unit low rank virgin coal,” “3. IGCC,” “4. Liquid oil-fired unit—continental (excluding limited-use liquid oil-fired subcategory units),” “Liquid oil-fired unit—non-continental (excluding limited-use liquid oil-fired subcategory units),” and “6. Solid oil-derived fuel-fired unit.”

In addition, the format of the input-and output-based lead emissions limits for “3. IGCC unit” was incorrect as published (i.e., the incorrect “1.9E+2 lb/MMBtu or 1.8E0 lb/MWh” instead of the correct “1.9E+2 lb/TBtu or 1.8E0 lb/GWh”). Further, the output-format values for the antimony and beryllium emission limits for “6. Solid oil-derived fuel-fired unit” were incorrect as published (i.e., the incorrect “8.0E–3 lb/GWh” instead of the correct “7.0E–3 lb/GWh” for antimony and the incorrect “6.0E–4 lb/GWh” instead of the correct “5.0E–4 lb/GWh” for beryllium). In each case, the correct values are indicated in the spreadsheets found in docket entry EPA–HQ–OAR–2009–0234–20132 and

the published values are transcription errors.

30. For the reasons described in Paragraph 24 above, Table 7 to Subpart UUUUU of Part 63 is revised to address the inadvertent omission of the alternate 90-day averaging period that is available.

31. For the reasons described in Paragraph 24 above, Paragraphs 6.2.1.4 and 6.2.2.3 to Appendix A to Subpart UUUUU of Part 63 are revised to address the inadvertent omission of the alternate 90-day averaging period that is available.

32. Paragraph 7.2.4 to Appendix A to Subpart UUUUU of Part 63 is revised to correct the typographical error related to the incorrect cross reference to paragraphs 7.1.10.1 through 7.1.10.7; these paragraphs do not exist, however. The correct cross reference is paragraphs 7.1.9.1 through 7.1.9.7.

33. Paragraph 7.2.5.3.4 to Appendix A to Subpart UUUUU of Part 63 is revised to correct the typographical error related to the incorrect cross reference to paragraph 7.1.90.1; this paragraph does not exist, however. The correct cross reference is paragraph 7.1.9.1.

Statutory and Executive Order Reviews

Under Executive Order (EO) 12866, Regulatory Planning and Review (58 FR 51735, October 4, 1993), this action is not a “significant regulatory action” and is therefore not subject to review by the Office of Management and Budget (OMB). This action is not a “major rule” as defined by 5 U.S.C. 804(2). The technical corrections do not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Because EPA has made a “good cause” finding that this action is not subject to notice and comment requirements under the APA or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of the UMRA.

The corrections do not have substantial direct effects on the states, or on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in EO 13132, Federalism (64 FR 43255, August 10, 1999).

This action also does not significantly or uniquely affect the communities of tribal governments, as specified by EO 13175, Consultation and Coordination with Indian Tribal Governments (65 FR 67249, November 9, 2000). The technical corrections also are not subject to EO 13045, Protection of Children from Environmental Health and Safety Risks (62 FR 19885, April 23, 1997) because this action is not economically significant.

The corrections are not subject to EO 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 22, 2001) because this action is not a significant regulatory action under EO 12866.

The corrections do not involve changes to the technical standards related to test methods or monitoring methods; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply.

The corrections also do not involve special consideration of environmental justice-related issues as required by EO 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 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 U.S. The EPA submitted a report containing the final action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the U.S. This action is not a "major rule" as defined by 5 U.S.C. 804(2). The final rule will be effective on April 16, 2012.

The EPA's compliance with the above statutes and EOs for the underlying rule is discussed in the February 16, 2012, **Federal Register** document containing "National Emission Standards for Hazardous Air Pollutants from Coal- and Oil-fired Electric Utility Steam Generating Units and Standards of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units."

List of Subjects

40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: March 27, 2012.

Lisa P. Jackson,
Administrator.

Accordingly, title 40, chapter I, of the Code of the Federal Regulations is amended by making the following correcting amendments:

PART 60—[AMENDED]

■ 1. The authority citation for part 60 continues to read as follows:

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

■ 2. In § 60.41Da, revise the definition of "Boiler operating day" to read as follows:

§ 60.41Da Definitions.

* * * * *

Boiler operating day for units constructed, reconstructed, or modified before March 1, 2005, means a 24-hour period during which fossil fuel is combusted in a steam-generating unit for the entire 24 hours. For units constructed, reconstructed, or modified after February 28, 2005, *boiler operating day* means a 24-hour period between 12 midnight and the following midnight during which any fuel is combusted at any time in the steam-generating unit. It is not necessary for fuel to be combusted the entire 24-hour period.

* * * * *

■ 3. Revise § 60.49Da(a)(4)(i) to read as follows:

§ 60.49Da Emission monitoring.

- (a) * * *
- (4) * * *

(i) The affected facility combusts only gaseous fuels and/or liquid fuels (excluding residue oil) with a potential SO₂ emissions rate no greater than 26 ng/J (0.060 lb/MMBtu), and the unit operates according to a written site-specific monitoring plan approved by the permitting authority. This monitoring plan must include procedures and criteria for establishing and monitoring specific parameters for

the affected facility indicative of compliance with the opacity standard. For testing performed as part of this site-specific monitoring plan, the permitting authority may require as an alternative to the notification and reporting requirements specified in §§ 60.8 and 60.11 that the owner or operator submit any deviations with the excess emissions report required under § 60.51Da(d).

* * * * *

PART 63—[AMENDED]

■ 4. The authority citation for 40 CFR Part 63 continues to read as follows:

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

■ 5. Revise § 63.9982(a)(1), (a)(2), and (d) to read as follows:

§ 63.9982 What is the affected source of this subpart?

- (a) * * *

(1) The affected source of this subpart is the collection of all existing coal- or oil-fired EGUs, as defined in § 63.10042, within a subcategory.

(2) The affected source of this subpart is each new or reconstructed coal- or oil-fired EGU as defined in § 63.10042.

* * * * *

(d) An EGU is existing if it is not new or reconstructed. An existing electric steam generating unit that meets the applicability requirements after the effective date of this final rule due to a change in process (e.g., fuel or utilization) is considered to be an existing source under this subpart.

* * * * *

■ 6. Revise § 63.9985(a)(2) to read as follows:

§ 63.9985 What is a new EGU?

- (a) * * *

(2) An EGU that commenced reconstruction after May 3, 2011.

* * * * *

■ 7. In § 63.9991, revise paragraph(c) introductory text to read as follows:

§ 63.9991 What emission limitations, work practice standards, and operating limits must I meet?

* * * * *

(c) You may use the alternate SO₂ limit in Tables 1 and 2 to this subpart only if your EGU:

* * * * *

■ 8. In § 63.10000, revise paragraphs(c)(1) introductory text, (c)(1)(i)(B), (c)(2)(iv), (d)(5)(i), (d)(5)(iv) and (f) to read as follows:

§ 63.10000 What are my general requirements for complying with this subpart?

* * * * *

(c)(1) For coal-fired units, IGCC units, and solid oil-derived fuel-fired units, initial performance testing is required for all pollutants, to demonstrate compliance with the applicable emission limits.

(j) * * *

(B) You may not pursue the LEE option for Hg if your coal-fired, solid oil-derived fuel-fired EGU or IGCC EGU is new.

* * * * *

(2) * * *

(iv) If your unit qualifies as a limited-use liquid oil-fired as defined in § 63.10042, then you are not subject to the emission limits in Tables 1 and 2, but you must comply with the performance tune-up work practice requirements in Table 3.

* * * * *

(d) * * *

(5) * * *

(i) Installation of the CMS or sorbent trap monitoring system sampling probe or other interface at a measurement location relative to each affected process unit such that the measurement is representative of control of the exhaust emissions (e.g., on or downstream of the last control device). See § 63.10010(a) for further details. For PM CPMS installations, follow the procedures in § 63.10010(h).

* * * * *

(iv) Performance evaluation procedures and acceptance criteria (e.g., calibrations), including the quality control program in accordance with the general requirements of § 63.8(d).

* * * * *

(f) You are subject to the requirements of this subpart for at least 6 months following the last date you met the definition of an EGU subject to this subpart (e.g., 6 months after a cogeneration unit provided more than one third of its potential electrical output capacity and more than 25 megawatts electrical output to any power distribution system for sale). You may opt to remain subject to the provisions of this subpart beyond 6 months after the last date you met the definition of an EGU subject to this subpart, unless you are a solid waste incineration unit subject to standards under CAA section 129 (e.g., 40 CFR Part 60, Subpart CCCC (New Source Performance Standards (NSPS) for Commercial and Industrial Solid Waste Incineration Units, or Subpart DDDD (Emissions Guidelines (EG) for Existing Commercial and Industrial Solid Waste Incineration Units). Notwithstanding the provisions of this subpart, an EGU that starts combusting solid waste is immediately subject to standards under

CAA section 129 and the EGU remains subject to those standards until the EGU no longer meets the definition of a solid waste incineration unit consistent with the provisions of the applicable CAA section 129 standards.

* * * * *

■ 9. Revise § 63.10005(b)(2), (d)(1), (d)(4)(ii), and (h)(3)(iii)(C)(1) and (2) to read as follows:

§ 63.10005 What are my initial compliance requirements and by what date must I conduct them?

* * * * *

(b) * * *

(2) For a performance test based on data from a certified CEMS or sorbent trap monitoring system, the test consists of all valid CMS data recorded in the 30 boiler operating days immediately preceding that date;

* * * * *

(d) * * *

(1) For an affected coal-fired, solid oil-derived fuel-fired, or liquid oil-fired EGU, you may demonstrate initial compliance with the applicable SO₂, HCl, or HF emissions limit in Table 1 or 2 to this subpart through use of an SO₂, HCl, or HF CEMS installed and operated in accordance with Part 75 of this chapter or Appendix B to this subpart, as applicable. You may also demonstrate compliance with a filterable PM emission limit in Table 1 or 2 to this subpart through use of a PM CEMS installed, certified, and operated in accordance with § 63.10010(i). Initial compliance is achieved if the arithmetic average of 30-boiler operating days of quality-assured CEMS data, expressed in units of the standard (see § 63.10007(e)), meets the applicable SO₂, PM, HCl, or HF emissions limit in Table 1 or 2 to this subpart. Use Equation 19–19 of Method 19 in appendix A–7 to Part 60 of this chapter to calculate the 30-boiler operating day average emissions rate. (**Note:** For this calculation, the term E_{hj} in Equation 19–19 must be in the same units of measure as the applicable HCl or HF emission limit in Table 1 or 2 to this subpart).

* * * * *

(4) * * *

(i) * * *

(ii) You must demonstrate continuous compliance with the CMS site-specific operating limit that corresponds to the results of the performance test demonstrating compliance with the HCl or HF emissions limit.

* * * * *

(h) * * *

(3) * * *

(iii) * * *

(C) * * *

(1) Multiply the average lb/TBtu Hg emission rate (determined according to paragraph (h)(3)(iii)(A) of this section) by the maximum potential annual heat input to the unit (TBtu), which is equal to the maximum rated unit heat input (TBtu/hr) times 8,760 hours. If the maximum rated heat input value is expressed in units of MMBtu/hr, multiply it by 10⁻⁶ to convert it to TBtu/hr; or

(2) Multiply the average lb/GWh Hg emission rate (determined according to paragraph (h)(3)(iii)(B) of this section) by the maximum potential annual electricity generation (GWh), which is equal to the maximum rated electrical output of the unit (GW) times 8,760 hours. If the maximum rated electrical output value is expressed in units of MW, multiply it by 10⁻³ to convert it to GW; or

* * * * *

■ 10. Revise § 63.10006(a) to read as follows:

§ 63.10006 When must I conduct subsequent performance tests or tune-ups?

(a) For liquid oil-fired, solid oil-derived fuel-fired and coal-fired EGUs and IGCC units using PM CPMS to monitor continuous performance with an applicable emission limit as provided for under § 63.10000(c), you must conduct all applicable performance tests according to Table 5 to this subpart and § 63.10007 at least every year.

* * * * *

■ 11. Revise § 63.10007(c) to read as follows:

§ 63.10007 What methods and other procedures must I use for the performance tests?

* * * * *

(c) If you choose to comply with the filterable PM emission limit and demonstrate continuous performance using a PM CPMS for an applicable emission limit as provided for in § 63.10000(c), you must also establish an operating limit according to § 63.10011(b) and Tables 4 and 6 to this subpart. Should you desire to have operating limits that correspond to loads other than maximum normal operating load, you must conduct testing at those other loads to determine the additional operating limits.

* * * * *

■ 12. In § 63.10009, revise paragraphs (g) introductory text and (j)(2)(i)(A) to read as follows:

§ 63.10009 May I use emissions averaging to comply with this subpart?

* * * * *

(g) You must determine the weighted average emissions rate in units of the applicable emissions limit on a 30 day rolling average (90 day rolling average for Hg) basis according to paragraphs (g)(1) through (2) of this section. The first averaging period begins on 30 (or 90 for Hg) days after February 16, 2015 or the date that you begin emissions averaging, whichever is earlier.

* * * * *

(j) * * *

(2) * * *

(i) * * *

(A) Whether the content of the plan includes all of the information specified in paragraph (j)(1) of this section; and

* * * * *

■ 13. In § 63.10010, revise paragraphs (a)(6)(iii), (a)(6)(iv) and (g) to read as follows:

§ 63.10010 What are my monitoring, installation, operation, and maintenance requirements?

(a) * * *

(6) * * *

(iii) Sum the products determined under paragraph (a)(6)(ii) of this section; and

(iv) Divide the result obtained in paragraph (a)(6)(iii) of this section by the total hourly stack gas flow rate for the unit, summed across all of the stacks or ducts.

* * * * *

(g) If you use a Hg CEMS or a sorbent trap monitoring system, you must install, certify, operate, maintain and quality-assure the data from the monitoring system in accordance with appendix A to this subpart. You must calculate and record a 30- (or, if alternate emissions averaging is used, 90-) boiler operating day rolling average Hg emission rate, in units of the

standard, updated after each new boiler operating day. Each 30- (or, if alternate emissions averaging is used, 90-) boiler operating day rolling average emission rate, calculated according to section 6.2 of appendix A to the subpart, is the average of all of the valid hourly Hg emission rates in the preceding 30- (or, if alternate emissions averaging is used, a 90-) boiler operating days. Section 7.1.4.3 of appendix A to this subpart explains how to reduce sorbent trap monitoring system data to an hourly basis.

* * * * *

■ 14. Revise § 63.10011(c)(1) to read as follows:

§ 63.10011 How do I demonstrate initial compliance with the emissions limits and work practice standards?

* * * * *

(c)(1) If you use CEMS or sorbent trap monitoring systems to measure a HAP (e.g., Hg or HCl) directly, the first 30-boiler operating day (or, if alternate emissions averaging is used for Hg, the 90-boiler operating day) rolling average emission rate obtained with certified CEMS after the applicable date in § 63.9984 (or, if applicable, prior to that date, as described in § 63.10005(b)(2)), expressed in units of the standard, is the initial performance test. Initial compliance is demonstrated if the results of the performance test meet the applicable emission limit in Table 1 or 2 to this subpart.

* * * * *

■ 15. Revise § 63.10020(d) to read as follows:

§ 63.10020 How do I monitor and collect data to demonstrate continuous compliance?

* * * * *

(d) Except for periods of monitoring system malfunctions or monitoring system out-of-control periods, repairs associated with monitoring system malfunctions or monitoring system out-of-control periods, and required monitoring system quality assurance or quality control activities including, as applicable, calibration checks and required zero and span adjustments), failure to collect required data is a deviation from the monitoring requirements.

* * * * *

■ 16. Revise § 63.10021(b) to read as follows:

§ 63.10021 How do I demonstrate continuous compliance with the emission limitations, operating limits, and work practice standards?

* * * * *

(b) Except as otherwise provided in § 63.10020(c), if you use a CEMS to measure SO₂, PM, HCl, HF, or Hg emissions, or using a sorbent trap monitoring system to measure Hg emissions, you must demonstrate continuous compliance by using all quality-assured hourly data recorded by the CEMS (or sorbent trap monitoring system) and the other required monitoring systems (e.g., flow rate, CO₂, O₂, or moisture systems) to calculate the arithmetic average emissions rate in units of the standard on a continuous 30-boiler operating day (or, if alternate emissions averaging is used for Hg, 90-boiler operating day) rolling average basis, updated at the end of each new boiler operating day. Use Equation 8 to determine the 30- (or, if applicable, 90-) boiler operating day rolling average.

$$\text{Boiler operating day average} = \frac{\sum_{i=1}^n Her_i}{n} \text{ (Eq. 8)}$$

Where:

Her_i is the hourly emissions rate for hour i and n is the number of hourly emissions rate values collected over 30- (or, if applicable, 90-) boiler operating days.

* * * * *

■ 17. Revise § 63.10022(a)(1) to read as follows:

§ 63.10022 How do I demonstrate continuous compliance under the emissions averaging provision?

(a) * * *

(1) For each 30- (or 90-) day rolling average period, demonstrate compliance with the average weighted emissions limit for the existing units participating

in the emissions averaging option as determined in § 63.10009(f) and (g);

* * * * *

■ 18. Revise § 63.10030(e)(7)(i) to read as follows:

§ 63.10030 What notifications must I submit and when?

* * * * *

(e) * * *

(7) * * *

(i) A summary of the results of the annual performance tests and documentation of any operating limits that were reestablished during this test, if applicable. If you are conducting stack

tests once every 3 years consistent with § 63.10006(b), the date of the last three stack tests, a comparison of the emission level you achieved in the last three stack tests to the 50 percent emission limit threshold required in § 63.10006(i), and a statement as to whether there have been any operational changes since the last stack test that could increase emissions.

* * * * *

■ 19. Revise § 63.10031(c)(4) to read as follows:

§ 63.10031 What reports must I submit and when?

* * * * *

(c) * * *

(4) Include the date of the most recent tune-up for each unit subject to the requirement to conduct a performance tune-up according to § 63.10021(e). Include the date of the most recent burner inspection if it was not done every 36 (or 48) months and was delayed until the next scheduled unit shutdown.

* * * * *

■ 20. In § 63.10042, revise the definition “Non-mercury (Hg) HAP metals” and add the definition “Oil” to read as follows:

§ 63.10042 What definitions apply to this subpart?

* * * * *

Non-mercury (Hg) HAP metals means Antimony (Sb), Arsenic (As), Beryllium (Be), Cadmium (Cd), Chromium (Cr), Cobalt (Co), Lead (Pb), Manganese (Mn), Nickel (Ni), and Selenium (Se).

Oil means crude oil or petroleum or a fuel derived from crude oil or petroleum, including distillate and residual oil, solid oil-derived fuel (e.g., petroleum coke) and gases derived from solid oil-derived fuels (not meeting the definition of natural gas).

* * * * *

■ 22. Revise table 2 and table 7 to Subpart UUUUU of Part 63 to read as follows:

Tables to Subpart UUUUU of Part 63

* * * * *

TABLE 2 TO SUBPART UUUUU OF PART 63—EMISSION LIMITS FOR EXISTING EGUS

[As stated in § 63.9991, you must comply with the following applicable emission limits]¹

If your EGU is in this subcategory . . .	For the following pollutants . . .	You must meet the following emission limits and work practice standards . . .	Using these requirements, as appropriate (e.g., specified sampling volume or test run duration) and limitations with the test methods in Table 5 . . .
1. Coal-fired unit not low rank virgin coal.	a. Filterable particulate matter (PM). OR Total non-Hg HAP metals OR Individual HAP metals: Antimony (Sb) Arsenic (As) Beryllium (Be) Cadmium (Cd) Chromium (Cr) Cobalt (Co) Lead (Pb) Manganese (Mn) Nickel (Ni) Selenium (Se) b. Hydrogen chloride (HCl) OR Sulfur dioxide (SO ₂) ⁴ c. Mercury (Hg)	3.0E–2 lb/MMBtu or 3.0E–1 lb/MWh. ² OR 5.0E–5 lb/MMBtu or 5.0E–1 lb/GWh. OR 8.0E–1 lb/TBtu or 8.0E–3 lb/GWh. 1.1E0 lb/TBtu or 2.0E–2 lb/GWh. 2.0E–1 lb/TBtu or 2.0E–3 lb/GWh. 3.0E–1 lb/TBtu or 3.0E–3 lb/GWh. 2.8E0 lb/TBtu or 3.0E–2 lb/GWh. 8.0E–1 lb/TBtu or 8.0E–3 lb/GWh. 1.2E0 lb/TBtu or 2.0E–2 lb/GWh. 4.0E0 lb/TBtu or 5.0E–2 lb/GWh. 3.5E0 lb/TBtu or 4.0E–2 lb/GWh. 5.0E0 lb/TBtu or 6.0E–2 lb/GWh. 2.0E–3 lb/MMBtu or 2.0E–2 lb/MWh. 2.0E–1 lb/MMBtu or 1.5E0 lb/MWh. 1.2E0 lb/TBtu or 1.3E–2 lb/GWh ..	Collect a minimum of 1 dscm per run. Collect a minimum of 1 dscm per run. Collect a minimum of 3 dscm per run. For Method 26A, collect a minimum of 0.75 dscm per run; for Method 26, collect a minimum of 120 liters per run. For ASTM D6348–03 ³ or Method 320, sample for a minimum of 1 hour. SO ₂ CEMS. LEE Testing for 30 days with 10 days maximum per Method 30B run or Hg CEMS or sorbent trap monitoring system only.
2. Coal-fired unit low rank virgin coal.	a. Filterable particulate matter (PM). OR Total non-Hg HAP metals OR Individual HAP metals: Antimony (Sb) Arsenic (As) Beryllium (Be) Cadmium (Cd) Chromium (Cr) Cobalt (Co) Lead (Pb) Manganese (Mn) Nickel (Ni) Selenium (Se)	3.0E–2 lb/MMBtu or 3.0E–1 lb/MWh. ² OR 5.0E–5 lb/MMBtu or 5.0E–1 lb/GWh. OR 8.0E–1 lb/TBtu or 8.0E–3 lb/GWh. 1.1E0 lb/TBtu or 2.0E–2 lb/GWh. 2.0E–1 lb/TBtu or 2.0E–3 lb/GWh. 3.0E–1 lb/TBtu or 3.0E–3 lb/GWh. 2.8E0 lb/TBtu or 3.0E–2 lb/GWh. 8.0E–1 lb/TBtu or 8.0E–3 lb/GWh. 1.2E0 lb/TBtu or 2.0E–2 lb/GWh. 4.0E0 lb/TBtu or 5.0E–2 lb/GWh. 3.5E0 lb/TBtu or 4.0E–2 lb/GWh. 5.0E0 lb/TBtu or 6.0E–2 lb/GWh.	Collect a minimum of 1 dscm per run. Collect a minimum of 1 dscm per run. Collect a minimum of 3 dscm per run.

TABLE 2 TO SUBPART UUUUU OF PART 63—EMISSION LIMITS FOR EXISTING EGUS—Continued
 [As stated in §63.9991, you must comply with the following applicable emission limits]¹

If your EGU is in this subcategory . . .	For the following pollutants . . .	You must meet the following emission limits and work practice standards . . .	Using these requirements, as appropriate (e.g., specified sampling volume or test run duration) and limitations with the test methods in Table 5 . . .
5. Liquid oil-fired unit—non-continental (excluding limited-use liquid oil-fired subcategory units).	b. Hydrogen chloride (HCl)	2.0E–3 lb/MMBtu or 1.0E–2 lb/MWh.	For Method 26A, collect a minimum of 1 dscm per Run; for Method 26, collect a minimum of 120 liters per run.
	c. Hydrogen fluoride (HF)	4.0E–4 lb/MMBtu or 4.0E–3 lb/MWh.	For Method 26A, collect a minimum of 1 dscm per run; for Method 26, collect a minimum of 120 liters per run.
	a. Filterable particulate matter (PM). OR Total HAP metals OR Individual HAP metals: Antimony (Sb) Arsenic (As) Beryllium (Be) Cadmium (Cd) Chromium (Cr) Cobalt (Co) Lead (Pb) Manganese (Mn) Nickel (Ni) Selenium (Se) Mercury (Hg)	3.0E–2 lb/MMBtu or 3.0E–1 lb/MWh. ² OR 6.0E–4 lb/MMBtu or 7.0E–3 lb/MWh. OR 2.2E0 lb/TBtu or 2.0E–2 lb/GWh. 4.3E0 lb/TBtu or 8.0E–2 lb/GWh. 6.0E–1 lb/TBtu or 3.0E–3 lb/GWh. 3.0E–1 lb/TBtu or 3.0E–3 lb/GWh. 3.1E+1 lb/TBtu or 3.0E–1 lb/GWh. 1.1E+2 lb/TBtu or 1.4E0 lb/GWh. 4.9E0 lb/TBtu or 8.0E–2 lb/GWh. 2.0E+1 lb/TBtu or 3.0E–1 lb/GWh. 4.7E+2 lb/TBtu or 4.1E0 lb/GWh. 9.8E0 lb/TBtu or 2.0E–1 lb/GWh. 4.0E–2 lb/TBtu or 4.0E–4 lb/GWh.	Collect a minimum of 1 dscm per run. Collect a minimum of 1 dscm per run. Collect a minimum of 2 dscm per run. For Method 30B sample volume determination (Section 8.2.4), the estimated Hg concentration should nominally be <1/2; the standard.
6. Solid oil-derived fuel-fired unit ...	b. Hydrogen chloride (HCl)	2.0E–4 lb/MMBtu or 2.0E–3 lb/MWh.	For Method 26A, collect a minimum of 1 dscm per run; for Method 26, collect a minimum of 120 liters per run.
	c. Hydrogen fluoride (HF)	6.0E–5 lb/MMBtu or 5.0E–4 lb/MWh.	For Method 26A, collect a minimum of 3 dscm per run. For ASTM D6348–03 ³ or Method 320, sample for a minimum of 2 hours.
	a. Filterable particulate matter (PM). OR Total non-Hg HAP metals OR Individual HAP metals Antimony (Sb) Arsenic (As) Beryllium (Be) Cadmium (Cd) Chromium (Cr) Cobalt (Co) Lead (Pb) Manganese (Mn) Nickel (Ni)	8.0E–3 lb/MMBtu or 9.0E–2 lb/MWh. ² OR 4.0E–5 lb/MMBtu or 6.0E–1 lb/GWh. OR Collect a minimum of 3 dscm per run. 8.0E–1 lb/TBtu or 7.0E–3 lb/GWh. 3.0E–1 lb/TBtu or 5.0E–3 lb/GWh. 6.0E–2 lb/TBtu or 5.0E–4 lb/GWh. 3.0E–1 lb/TBtu or 4.0E–3 lb/GWh. 8.0E–1 lb/TBtu or 2.0E–2 lb/GWh. 1.1E0 lb/TBtu or 2.0E–2 lb/GWh. 8.0E–1 lb/TBtu or 2.0E–2 lb/GWh. 2.3E0 lb/TBtu or 4.0E–2 lb/GWh. 9.0E0 lb/TBtu or 2.0E–1 lb/GWh.	Collect a minimum of 1 dscm per run. Collect a minimum of 1 dscm per run.

TABLE 2 TO SUBPART UUUUU OF PART 63—EMISSION LIMITS FOR EXISTING EGUs—Continued

[As stated in § 63.9991, you must comply with the following applicable emission limits]¹

If your EGU is in this subcategory . . .	For the following pollutants . . .	You must meet the following emission limits and work practice standards . . .	Using these requirements, as appropriate (e.g., specified sampling volume or test run duration) and limitations with the test methods in Table 5 . . .
	Selenium (Se) b. Hydrogen chloride (HCl)	1.2E0 lb/TBtu or 2.0E–2 lb/GWh. 5.0E–3 lb/MMBtu or 8.0E–2 lb/MWh.	For Method 26A, collect a minimum of 0.75 dscm per run; for Method 26, collect a minimum of 120 liters per run. For ASTM D6348–03 ³ or Method 320, sample for a minimum of 1 hour.
	OR Sulfur dioxide (SO ₂) ⁴ c. Mercury (Hg)	3.0E–1 lb/MMBtu or 2.0E0 lb/MWh. 2.0E–1 lb/TBtu or 2.0E–3 lb/GWh.	SO ₂ CEMS. LEE Testing for 30 days with 10 days maximum per Method 30B run or Hg CEMS or Sorbent trap monitoring system only.

¹ For LEE emissions testing for total PM, total HAP metals, individual HAP metals, HCl, and HF, the required minimum sampling volume must be increased nominally by a factor of two.

² Gross electric output.

³ Incorporated by reference, see § 63.14.

⁴ You may not use the alternate SO₂ limit if your EGU does not have some form of FGD system and SO₂ CEMS installed.

* * * * *

TABLE 7 TO SUBPART UUUUU OF PART 63—DEMONSTRATING CONTINUOUS COMPLIANCE

[As stated in § 63.10021, you must show continuous compliance with the emission limitations for affected sources according to the following]

If you use one of the following to meet applicable emissions limits, operating limits, or work practice standards . . .	You demonstrate continuous compliance by . . .
1. CEMS to measure filterable PM, SO ₂ , HCl, HF, or Hg emissions, or using a sorbent trap monitoring system to measure Hg.	Calculating the 30- (or 90-) boiler operating day rolling arithmetic average emissions rate in units of the applicable emissions standard basis at the end of each boiler operating day using all of the quality assured hourly average CEMS or sorbent trap data for the previous 30-boiler operating days, excluding data recorded during periods of startup or shutdown.
2. PM CPMS to measure compliance with a parametric operating limit	Calculating the arithmetic 30-boiler operating day rolling average of all of the quality assured hourly average PM CPMS output data (e.g., milliamps, PM concentration, raw data signal) collected for all operating hours for the previous 30 boiler operating days, excluding data recorded during periods of startup or shutdown.
3. Site-specific monitoring for liquid oil-fired units for HCl and HF emission limit monitoring.	If applicable, by conducting the monitoring in accordance with an approved site-specific monitoring plan.
4. Quarterly performance testing for coal-fired, solid oil derived fired, or liquid oil-fired units to measure compliance with one or more applicable emissions limit in Table 1 or 2.	Calculating the results of the testing in units of the applicable emissions standard.
5. Conducting periodic performance tune-ups of your EGU(s)	Conducting periodic performance tune-ups of your EGU(s), as specified in § 63.10021(e).
6. Work practice standards for coal-fired, liquid oil-fired, or solid oil-derived fuel-fired EGUs during startup.	Operating in accordance with Table 3.
7. Work practice standards for coal-fired, liquid oil-fired, or solid oil-derived fuel-fired EGUs during shutdown.	Operating in accordance with Table 3.

* * * * *

■ 23. In Appendix A to Subpart UUUUU of Part 63, revise paragraphs 6.2.1.4, 6.2.2.3, 7.2.4, 7.2.5.3.4, to read as follows:

Appendix A to Subpart UUUUU—Hg Monitoring Provisions

* * * * *

6.2.1.4 The heat input-based Hg emission rate limit in Table 2 to this subpart must be met on a 30 boiler operating day rolling average basis, except as otherwise provided in § 63.10009(a)(2). Use Equation 19–19 in EPA Method 19 to calculate the Hg emission rate for each averaging period. The term E_{ij} in Equation 19–19 must be in the units of the applicable emission limit. Do not include

non-operating hours with zero emissions in the average.

* * * * *

6.2.2.3 The applicable electrical output-based Hg emission rate limit in Table 1 or 2 to this subpart must be met on a 30-boiler operating day rolling average basis, except as otherwise provided in § 63.10009(a)(2). Use Equation A–5 of this section to calculate the Hg emission rate for each averaging period.

$$\bar{E}_o = \frac{\sum_{h=1}^n E_{ho}}{n} \quad (\text{Equation A-5})$$

Where:

\bar{E}_o = Hg emission rate for the averaging period (lb/GWh).

E_{cho} = Electrical output-based hourly Hg emission rate for unit or stack operating hour "h" in the averaging period, from Equation A-4 of this section (lb/GWh).

n = Number of unit or stack operating hours in the averaging period in which valid data were obtained for all parameters.

(Note: Do not include non-operating hours with zero emission rates in the average).

* * * * *

7.2.4 Certification, Recertification, and Quality-Assurance Test Reporting. Except for daily QA tests of the required monitoring systems (i.e., calibration error tests and flow monitor interference checks), the results of all required certification, recertification, and quality-assurance tests described in paragraphs 7.1.9.1 through 7.1.9.7 of this section (except for test results previously submitted, e.g., under the ARP) shall be submitted electronically, using the ECMPs Client Tool, either prior to or concurrent with the relevant quarterly electronic emissions report.

* * * * *

7.2.5.3.4 The results of all daily calibration error tests of the Hg CEMS, as described in paragraph 7.1.9.1 of this section and (if applicable) the results of all daily flow monitor interference checks.

* * * * *

[FR Doc. 2012-8703 Filed 4-18-12; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[EPA-HQ-OEI-2011-0196; FRL-9660-9]

RIN 2025-AA31

Toxics Release Inventory (TRI) Reporting for Facilities Located in Indian Country and Clarification of Additional Opportunities Available to Tribal Governments Under the TRI Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is announcing new opportunities for tribal participation and engagement in the TRI Program. Under this final rule, TRI reporting facilities located in Indian country are required to report to the appropriate tribal government of their relevant area instead of the State. This rule also improves and clarifies certain opportunities allowing tribal governments to participate more fully in the TRI Program. Further, because tribal governmental structures may vary, EPA is updating its terminology to refer to the principal elected official of the Tribe as the "Tribal Chairperson or equivalent elected official." EPA is also amending its definition of "State" for purposes of 40 CFR part 372 to no longer include Indian country, so as to avoid any confusing overlap in terminology for facilities located in Indian country. With regard to the procedures for EPA to modify the list of covered chemicals and TRI reporting facilities, today's rule clarifies the opportunities available to tribal governments. In particular, EPA is including within the relevant provision an opportunity for the Tribal Chairperson or equivalent elected official to request that EPA apply the TRI reporting requirements to a specific facility located within the Tribe's Indian country. Secondly, EPA is clarifying in this rule that the Tribal Chairperson or equivalent elected official may petition EPA to add or delete a particular chemical respectively to or from the list of chemicals covered by TRI. In finalizing the actions described, EPA is helping to increase awareness of toxic releases within tribal communities, thereby increasing the understanding of potential human health and ecological impacts from these hazardous chemicals.

DATES: This final rule is effective April 19, 2012. The requirement of facilities located in Indian country to report to tribal governments is applicable beginning with TRI reporting year 2012 (TRI reports due by July 1, 2013).

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-HQ-OEI-2011-0196. All documents in the docket are listed on the www.regulations.gov Web site. Although listed in the index, some

information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, 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 www.regulations.gov or in hard copy at the OEI Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the EPA Docket Center is (202) 566-1752.

FOR FURTHER INFORMATION CONTACT:

Louise Camalier, Environmental Analysis Division, Office of Environmental Information (2842T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 566-0503; fax number: (202) 566-0677; email address: Camalier.louise@epa.gov, for specific information on this notice. For general information on EPCRA Section 313, contact the Superfund, TRI, EPCRA, RMP & Oil Information Center toll free at (800) 424-9346, (703) 412-9810 in the Washington, DC metropolitan area, toll free TDD at (800) 553-7672, or visit the Web site at <http://www.epa.gov/superfund/contacts/infocenter>.

SUPPLEMENTARY INFORMATION:

I. General Information

Does this action apply to me?

You may be affected by this action if you own or operate a facility located in Indian country (see 40 CFR 372.3 for a definition of Indian country) with a toxic chemical(s) known by the owner or operator to be manufactured (including imported), processed, or otherwise used in excess of an applicable threshold quantity, as referenced in 40 CFR 372.25, 372.27, or 372.28, at its covered facility described in § 372.22. Potentially affected categories and entities may include, but are not limited to:

Category	Examples of potentially affected entities
Industry	<p>Facilities included in the following NAICS manufacturing codes (corresponding to SIC codes 20 through 39): 311*, 312*, 313*, 314*, 315*, 316, 321, 322, 323*, 324, 325*, 326*, 327, 331, 332, 333, 334*, 335*, 336, 337*, 339*, 111998*, 211112*, 212324*, 212325*, 212393*, 212399*, 488390*, 511110, 511120, 511130, 511140*, 511191, 511199, 512220, 512230*, 519130*, 541712*, or 811490*.</p> <p>*Exceptions and/or limitations exist for these NAICS codes.</p> <p>Facilities included in the following NAICS codes (corresponding to SIC codes other than SIC codes 20 through 39): 212111, 212112, 212113 (correspond to SIC 12, Coal Mining (except 1241)); or 212221, 212222, 212231, 212234, 212299 (correspond to SIC 10, Metal Mining (except 1011, 1081, and 1094)); or 221111, 221112, 221113, 221119, 221121, 221122, 221330 (Limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce) (correspond to SIC 4911, 4931, and 4939, Electric Utilities); or 424690, 425110, 425120 (Limited to facilities previously classified in SIC 5169, Chemicals and Allied Products, Not Elsewhere Classified); or 424710 (corresponds to SIC 5171, Petroleum Bulk Terminals and Plants); or 562112 (Limited to facilities primarily engaged in solvent recovery services on a contract or fee basis (previously classified under SIC 7389, Business Services, NEC)); or 562211, 562212, 562213, 562219, 562920 (Limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. 6921 et seq.) (correspond to SIC 4953, Refuse Systems).</p>
Federal Government	Federal facilities.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Some of the entities listed in the table have exemptions and/or limitations regarding coverage, and other types of entities not listed in the table could also be affected. To determine whether your facility would be affected by this action, you should carefully examine the applicability criteria in part 372 subpart B of Title 40 of the Code of Federal Regulations.

Facilities in Indian country are no longer required to report to the relevant States, although States may still receive this information once it is available to the public. Tribes with facilities located in their Indian country will receive the facility reports under this final rule. This represents a change for affected facilities, States, and Tribes.

If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. Introduction

Since the beginning of the TRI Program in 1986, facilities that meet TRI reporting requirements have been required to submit annual TRI reports to EPA and the State in which they are located. In 1990, EPA finalized regulations in the **Federal Register** (FR) requiring facilities in Indian country to submit annual TRI reports to EPA and the appropriate tribal government (55 FR 30632; July 26, 1990). EPA's rationale supporting those regulations was fully explained in the relevant preambles to the proposed and final rules. *Id.*; 54 FR 12992 (March 29, 1989). These amendments, however, were inadvertently overwritten by a subsequent rule and left out of the CFR. To correct this inadvertent omission,

EPA is including provisions in the CFR, in 40 CFR 372.30(a), to require each facility located in Indian country to submit its annual TRI reports to the appropriate Tribe, rather than to the State in which the facility is geographically located. The requirement for the facility to report to EPA will remain the same.

To further encourage tribal engagement and participation in the TRI program, EPA is also making explicitly clear in the regulations certain additional opportunities for governments of federally-recognized Tribes. The first opportunity allows the Tribal Chairperson or equivalent elected official to request that EPA apply the TRI reporting requirements to a specific facility located within the Tribe's Indian country, under the authority of EPCRA Section 313(b)(2). The second opportunity allows the Tribal Chairperson or equivalent elected official to petition EPA to add or delete a particular chemical respectively to or from the list of chemicals covered by TRI, under the authority of EPCRA Section 313(e)(2). Under this rule, EPA will treat these request and petitioning opportunities as EPA currently treats those for Governors of States under EPCRA Sections 313(b)(2) and (e)(2). After EPA has received a formal request from a Tribe, EPA will make its final decision on the facility addition based on the criteria outlined in EPCRA Section 313(b)(2). Under existing authorities, EPA may also act on its own motion to add a facility without anyone requesting action. Opportunities for the public to participate in the TRI program consist of the right to petition the EPA to add or delete a particular chemical or chemicals to the TRI list of hazardous chemicals for toxics release reporting. Such public participation opportunities are not changed by this final rule.

III. Background Information and Summary of Final Rule

A. What does this document do and what action does this document affect?

This document is primarily intended to fulfill the goals of the July 26, 1990, action (55 FR 30632), which required facilities located in Indian country to report to the appropriate tribal government and the EPA, instead of to the State and EPA. This amendment, however, was inadvertently omitted from the CFR when it was overwritten by a subsequent rule. Therefore, EPA is updating 40 CFR 372.30(a) to reflect the purpose of the 1990 amendment. Secondly, to supplement this action, this document also clarifies existing TRI reporting regulations and provides guidance to further enable tribal governments to participate more fully in the TRI Program.

Under today's final rule, an owner or operator of a TRI facility in Indian country will have to submit (to the extent applicable) EPA's Form R, Form A, and Form R Schedule 1 to the official designated by the Tribal Chairperson or equivalent elected official of the relevant Tribe, as well as to EPA. The form(s) will no longer have to be submitted to the State in which the facility is geographically located. Under this final rule, facilities will select/ provide the name of the relevant federally-recognized Tribe in the *State* data field in the *Address* block on the TRI forms. To accommodate this, EPA is changing the description of this data field on the TRI form. In addition, EPA is modifying the instructions that accompany the forms in the annual TRI Reporting Forms & Instructions document accessible from the TRI Web site (<http://www.epa.gov/tri>).

Also under today's final rule, EPA is clarifying the request and petitioning rights available to tribal governments. A

Tribe now has the opportunity to request EPA to require TRI reporting by a facility in the Indian country of that Tribe. Tribes also now have the opportunity to petition for the addition or deletion of a chemical in the same manner as a State, which would apply to all facilities that manufacture (including import), process, or otherwise use the particular chemical. The statute—at sections 313(b)(2) and 313(d)—expressly authorizes the Administrator to apply TRI reporting requirements to particular facilities and to add or delete chemicals to or from the list of chemicals subject to TRI reporting. The statute provides opportunities for Governors of States to request that particular facilities be subject to TRI reporting or that specific chemicals be added to or deleted from the TRI reporting list (EPCRA Section 313(b)(2), (e)(2)). After EPA receives a formal request from a State Governor or Tribal Chairperson to add a facility, EPA will make its final decision on the facility addition based on the criteria outlined in EPCRA Section 313(b)(2). EPA may also act on its own motion to add a facility without anyone requesting action. EPA believes that these same opportunities are appropriately available to tribal governments under the statute and EPA interprets these provisions so that the Tribal Chairperson or equivalent elected official may similarly petition EPA. Ultimately, it is EPA that determines whether TRI reporting requirements will apply to a particular facility or whether a specific chemical will be added to, or deleted from, the TRI chemical list.

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

EPA is finalizing this rule under sections 313, 328, and 329 of EPCRA, 42 U.S.C. 11023, 11048 and 11049.

EPCRA Section 313(a) requires that the TRI reporting form be submitted to EPA and the official(s) of the State designated by the Governor. Section 329 defines "State" to mean "any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, and any other territory or possession over which the United States has jurisdiction." The statute has no separate definition of, or explicit reference to, Indian Tribes or Indian country. As EPA has explained previously, however, Congress clearly intended the statute's protections to apply to all persons nationwide, including in Indian country. See, e.g., 55 FR 30632 (July 26, 1990); 54 FR 12992 (March 29, 1989). In the context

of a facility located in Indian country, EPA interprets section 313(a) as requiring reporting to EPA and the official designated by the Tribal Chairperson or equivalent elected official for the relevant area of Indian country. As discussed in EPA's prior notices, the statutory language, the legislative history, and principles of federal law relating to Indian Tribes and Indian country support the application of EPCRA in Indian country and EPA's reasonable interpretation of section 313(a) requirements. *Id.*

This reasonable interpretation of the statute is reinforced by the broad grant of rulemaking authority from Congress to EPA under EPCRA. Section 328 provides that the "Administrator may prescribe such regulations as may be necessary to carry out this chapter." 42 U.S.C. 11048.

For purposes of regulatory clarity, EPA is expressly including the reporting requirements for a facility in Indian country in part 372. Part 372 already contains a definition of Indian country at 40 CFR 372.3. To avoid any confusing overlap, EPA will remove Indian country from the definition of "State" as that term is used in part 372.

EPA also expressly interprets section 313(b)(2) and (e)(2) in the context of Indian Tribes. In the case of a facility located in Indian country, EPA interprets section 313(b)(2) as allowing requests by a Tribal Chairperson or equivalent elected official that EPA apply TRI reporting requirements to a facility located in the requesting Tribe's Indian country. EPA also interprets section 313(e)(2) as allowing petitions by a Tribal Chairperson or equivalent elected official requesting that EPA add or delete a chemical to or from the list of chemicals subject to TRI reporting. EPA's interpretation of each of these provisions flows from the same reasoning and authority as discussed above for section 313(a). EPA also notes that in all cases it is EPA, not a Tribe or State, that makes the final determination whether a facility or chemical should be subject to the TRI program.

EPA believes that each of these tribal roles will enhance tribal participation in the TRI program and the availability of relevant information to communities within Indian country consistent with statutory authorities and requirements. EPA notes that pursuant to EPA's 1990 rulemaking cited above, federally-recognized Indian Tribes already participate in other important elements of implementation of EPCRA in Indian country. Today's final rulemaking, among other things, rectifies the

inadvertent omission from the CFR of certain tribal roles in the TRI program.

C. What is an Indian Tribe, and what kind of land is Indian country?

As defined at 40 CFR 372.3, "Indian Tribe" refers to those Tribes that are "federally-recognized by the Secretary of the Interior." The Secretary of the Interior maintains a list of federally-recognized Indian Tribes, which is published periodically in the **Federal Register**. As also set forth at 40 CFR 372.3, "Indian country" means Indian country as defined in 18 U.S.C. 1151, which defines Indian country as follows: All land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State; and all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

D. What is a Tribe's responsibility under this rule?

Under this final rule and per the intent of the 1990 regulation, a Tribe's only responsibility will be to receive any TRI reports submitted by facilities located within its Indian country.

E. How will Tribes receive reports from facilities?

Under this final rule, Tribes may define how they would like to receive reports from TRI facilities. If a Tribe provides no specific guidance as to receipt, owners and operators of TRI facilities would mail TRI reports to the appropriate tribal government representative. Tribes will be requested by EPA to provide a mailing address and contact name to be published on the TRI Web site, so that facilities in Indian country know where to send their TRI reports. If no specific contact is provided, EPA will use the Tribal Council or Tribal Environmental Department as the default contact. As described further below, tribal governments can also choose to provide electronic options for report submittal.

F. How does the final rule affect TRI reporting facilities and the States or Tribes to which they will report?

1. Submission of TRI Reports to Tribal Governments

As described above, under the rule the owner or operator of a facility located in Indian country will have to submit the facility's TRI reports to the relevant tribal government in lieu of the State government. The requirement to submit the report to EPA will remain unchanged. In many cases, this means the owner or operator will mail a copy of the TRI report to the specific tribal government representative. As noted, tribal governments may also choose to allow for electronic submittal of TRI reports. If a tribal government becomes a member of the internet-based TRI Data Exchange, then the owner or operator of a facility can meet its dual EPA/Tribal reporting requirements by submitting its TRI report to EPA via TRI Made Easy (TRI-ME) web, a web-based application that allows facilities to submit a paperless report. EPA would then automatically transmit the report to the appropriate Tribe (instead of the State) via the TRI Data Exchange.

If the facility is located in the Indian country of a Tribe that does not become a member of the TRI Data Exchange, then the facility will be required to submit a TRI report to EPA and also separately to the appropriate Tribe. The approach described above is the same as for EPA and States for those facilities not located in Indian country.

2. Requests by Tribal Governments for EPA To Add Specific Facilities to TRI

Under this final rule, a Tribe has the opportunity to request that EPA require that a currently non-covered facility located in its Indian country report the facility's releases and other waste management to TRI. Under the statute, it is EPA that applies TRI reporting requirements to particular facilities (EPCRA Section 313(b)(2)). Section 313(b)(2) provides an opportunity for Governors of States to request that EPA apply TRI requirements to facilities in their areas. The addition of certain facilities that would otherwise not be covered by TRI helps to aid communities and leaders to comprehensively assess chemical releases to their local environment. EPA interprets this provision to provide a similar opportunity for the Tribal Chairperson or equivalent elected official to request that EPA apply TRI reporting requirements to particular facilities located in the Tribe's Indian country. This opportunity for Tribes to request that EPA add a facility located

in their Indian country can address situations where a tribal government becomes aware of a facility that manufactures (including imports), processes, or otherwise uses a TRI chemical yet does not meet the full criteria to trigger reporting. This opportunity to add the facility may help the Tribe better understand chemical risks within their Indian country.

This is an opportunity and not a requirement, which means that the Tribal Chairperson or equivalent elected official is not required to request the addition of a facility; however, he or she may do so, for instance, if there is a concern about toxic releases coming from that facility. After EPA receives a formal request from a Tribe, EPA will make its final decision on the facility addition based on the criteria outlined in EPCRA Section 313(b)(2). Under existing authorities, EPA may also act on its own motion to add a facility without anyone requesting action.

EPA's consultation with Tribes consisted of two consultation calls (February 7 and 28 of 2011), and during these calls EPA facilitated discussion and received views and comments from Tribes in relation to the actions described in this rule. Furthermore, EPA officiated two additional webinars for representatives from the National Tribal Air Association (NTAA) on March 17 and 30 of 2011, and hosted an electronic discussion forum (or "blog") to collect electronic feedback from interested parties. Material summarizing these meetings and the blog can be accessed from the docket for the rule (Docket ID No. EPA-HQ-OEI-2011-0196).

During the Agency's consultation with Tribes, EPA received several positive comments about the proposed clarification to the request rights for Tribes to add a facility to the TRI. As EPA has heard in consultation, however, Tribes may also be concerned about facilities that are not in Indian country but are located nearby, where releases of chemicals may reach and affect Indian country lands and communities. Although the opportunity expressly provided by the statute to request the addition of a facility under EPCRA 313 only extends to a facility located in the relevant State and, for Tribes under this rule, in the relevant Indian country, EPA will consider any concerns and information about facilities outside of the State or Indian country in the exercise of EPA's discretionary authority, including concerns and information brought to EPA's attention by a Tribal Chairperson or equivalent elected official, and/or similarly, by Governors of States. This possibility is especially relevant in

situations where a facility releases chemicals into or near a State or Indian country boundary or cross-boundary community, yet it is not located within that Governor's State or Tribal Chairperson or equivalent elected official's Indian country. While there is no 180-day time limit as there is for chemical petitions, and while this final rule does not address these general request opportunities which are already in existence, EPA, as a matter of administrative policy, would give such requests from tribal governments (as well as Governors of States) appropriate priority and consideration.

The impact on owners and operators of facilities that EPA includes within the TRI reporting program pursuant to the authority of EPCRA Section 313(b)(2) is that they will be required to report to EPA and the relevant Tribe (for facilities located in Indian country) or State (for facilities outside of Indian country) under TRI. The impact from this opportunity on citizens around the requested facility will be access to additional information on chemicals being managed at the facility if EPA adds the facility.

3. Petitions by Tribal Governments for EPA To Add Specific Chemicals to the TRI List or To Delete Specific Chemicals From the TRI List

Under this final rule, Tribes have the same opportunity as Governors of States to petition EPA to require that a chemical be added to or removed from the TRI list of toxic chemicals. Ultimately, it is EPA that determines whether the chemical will be added to, or deleted from, the TRI list. If EPA adds a chemical to the list, such action would affect all facilities releasing the particular substance, regardless of a facility's location inside or outside of the petitioning Tribe's Indian country. This type of provision already applies in the context of petitions by Governors of States (EPCRA Section 313(e)(2)). EPA interprets the statute to provide similar opportunities to the Tribal Chairperson or equivalent elected official. This is an opportunity and not a requirement. In other words, the Tribal Chairperson or equivalent elected official will not be required to petition EPA to modify the list of substances managed by TRI; however, he or she may do so, for instance, if there is a concern about toxic releases of that substance.

If EPA receives a petition from a Tribe that requests the addition of a particular chemical, EPA has 180 days to respond with either the initiation of a rulemaking to add the chemical to the list or an explanation of why the petition does not meet the requirements

to add a chemical to the list. The petition would need to be based on the criteria provided in subparagraph (A), (B), or (C) of EPCRA Section 313(d)(2). As a matter of administrative policy, EPA would place a high priority on petitions from Tribes to add a chemical. However, if EPA does not respond within 180 days of receipt of a Tribe's petition to add a chemical, the chemical would be added to the list pursuant to EPCRA Section 313(e)(2).

Within 180 days of receipt of a Tribe's petition to delete a chemical based on the criteria provided in subparagraph (A), (B), or (C) of EPCRA Section 313(d)(2), EPA will either initiate a rulemaking to delete the chemical or explain why EPA denied the petition. Unlike the analogous process for petitions to add a chemical, however, the chemical would not be deleted within 180 days if EPA failed to respond.

Further, any person may petition EPA to add or delete a chemical based on certain grounds specified under EPCRA Section 313(e)(1). However, if EPA receives a petition by a private citizen to add a chemical and EPA fails to respond within 180 days, the chemical would not necessarily be added. This result distinguishes citizen petitions to add a chemical from petitions to add a chemical by a Governor of a State or, as clarified under this final rule, the Tribal Chairperson or equivalent elected official (compare EPCRA Section 313(e)(1) with EPCRA Section 313(e)(2)).

During the Agency's consultation with Tribes, EPA received several positive comments about this clarification to the petition rights for Tribes to add a chemical to the TRI reporting list. For more information, the materials summarizing these meetings and the blog can be accessed from the docket for this rule (Docket ID No. EPA-HQ-OEI-2011-0196).

If EPA adds a chemical(s) to the TRI list (through its own initiative under Section 313(d) or in response to a petition), the impact on owners and operators of facilities with the toxic chemical(s) in question will be that they would be required to evaluate the TRI reporting requirements with the new chemical and, if appropriate, based on those requirements, report under TRI to EPA and the relevant State or, if located in Indian country, the relevant Tribe. The impact from this action by EPA on Tribes, States, and the general public will be that they would have access to information on new toxic chemicals being managed at facilities across the nation. The potential impact from this action on industry consists of the cost

of compliance for facilities that will have to report for a particular chemical that EPA added.

IV. What comments did EPA receive on this rule for TRI reporting for facilities in Indian country and what are EPA's responses to those comments?

EPA received 10 comments on the **Federal Register** document "TRI Reporting for Facilities Located in Indian Country and Clarification of Additional Opportunities Available to Tribal Governments under the TRI Program" (September 30, 2011; 76 FR 60781). The commenters included two individuals, two tribal environmental groups, one state agency, four organizations, and one industry group. The comments from individuals and tribal environmental groups were supportive of EPA's intent to clarify opportunities for Tribes regarding participation in the TRI Program. These commenters supported this rule as it promotes tribal sovereignty and will better enable Tribes to understand toxic releases within Indian country. Some of these commenters, while supporting EPA's action, requested additional actions such as: Clarifying the procedures for tribal executive officials to submit requests or petitions; and extending the rule to include ceded territories used for hunting, fishing, and gathering. Other commenters expressed concerns regarding EPA's authority to implement this rule, possible complications in State emergency response activities, and EPA's assessment of compliance burdens on reporting facilities or receipt burdens on responsible tribal officials. Many of the comments and EPA's responses are summarized below. The complete set of comments and EPA's complete responses can be found in the response to comment document in the docket for this action.

1. Comments Asserted That EPA Lacks Congressional Authority To Implement This Rulemaking

Several commenters stated that section 313(a) of EPCRA requires a facility owner or operator to submit the reporting form to two governmental authorities: The EPA Administrator and the appropriate State official or officials, as designated by the Governor. These commenters assert that EPA can neither relieve the facility of the statutory obligation to submit the form to State officials nor require the facility to submit the form to any authority other than the EPA or the State. The commenters further assert that section 329(9) of EPCRA, the definition of "State," does not include Indian Tribes.

The commenters assert that when Congress intends to include Tribes within the definition of "State," it does so clearly, and the commenters point to the Clean Air Act, the Safe Drinking Water Act, and the Clean Water Act as examples of such clear intentions. One commenter also notes that Congress expressly included a provision that Tribes should be afforded substantially the same treatment as States for purposes of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980. This commenter argues that the use of this language in CERCLA and its corresponding absence in EPCRA indicates an intent to preclude Tribes from being treated similar to States for the purposes of EPCRA. The commenters argue that EPA does not have the authority to construe "an official or officials of the State designated by the Governor" to mean "an official or officials of the Indian Tribe designated by the Tribal Chairperson or equivalent elected official of the relevant Indian Tribe."

EPA disagrees with the comments and believes that EPCRA provides EPA ample authority to fill gaps in implementing the statute's requirements in Indian country by reasonably exercising the Agency's discretion to establish appropriate tribal roles to receive TRI reports in Indian country. EPCRA does not explicitly address the role of Tribes in implementing Title III programs. EPA notes that relevant authorities in Indian country generally lie with Tribes and the federal government, and not with States. *See, e.g., Alaska v. Native Village of Venetie Tribal Government*, 522 U.S. 520, 527 n.1 (1998). EPA does not interpret the statute's silence regarding Tribes and Indian country as demonstrating the requisite clear Congressional intent to extend State roles into such areas. Further, EPA does not agree with the commenters' premise that when a statute is silent as to the role of Tribes, EPA is precluded from exercising its discretion to designate Indian Tribes as the appropriate implementing entities in Indian country. Rather, EPA views the statute's silence as reserving to EPA's discretion the appropriate means to fill implementation gaps in Indian country. In view of the critical importance of local leadership in Title III implementation, EPA has exercised its discretion to treat Tribes as the appropriate entities to receive TRI reports from facilities in their Indian country. EPA notes that this approach is consistent with existing tribal roles under EPA's Emergency Planning and

Notification regulations at 40 CFR part 355.

2. Comments Asserted That Tribes Lack Congressional Authority To Implement the TRI Program

EPA received comments stating that Tribes do not have the legal authority to implement EPCRA. The commenters argue that because this rule involves the regulation of non-members, *i.e.*, non-Indians, that own land in fee within Indian reservations and the regulation of facilities adjacent to, but not within, Indian country, express authorization by Congress is required for Tribes to exercise this legal authority. One of the comments cites *Montana v. United States*, 450 U.S. 544 (1981), for the proposition that tribal jurisdiction over non-members is limited.

EPA disagrees with the commenters' premise that Tribes are unable to implement the EPCRA roles included in this rulemaking in Indian country and notes that this rulemaking does not change the reporting requirements for facilities adjacent to, but not within, Indian country. EPA notes that in the prior rulemaking establishing tribal roles in implementing Title III, the Agency concluded that Tribes are generally able to exercise sufficient authority to carry out Title III emergency planning and response activities in Indian country. 55 FR 30632, 306041 (July 26, 1990). *See also* "Summary and Response to Comments Received on Notice of Proposed Rulemaking Under Sections 311 and 312 of the Superfund Amendments and Reauthorization Act of 1986—March 29, 1989" (June 20, 1990). EPA continues to believe that Tribes are the appropriate entities for such functions in Indian country. This is especially true with regard to the functions at issue in this rulemaking, which do not include any separate regulatory program approval or other exercise of regulatory authority by Tribes. Tribes will simply need to accept the reports filed by covered facilities pursuant to statutory requirements. EPA is not approving any separate regulatory or enforcement functions for Tribes, as such functions are not necessary elements of this program. With regard to the opportunities for Tribes to petition EPA to add chemicals or facilities to the TRI program, we note that it is EPA, not Tribes or States, who ultimately decides which chemicals and facilities will be covered. The exercise of this federal function by EPA does not entail any exercise of regulatory authority by Tribes (or States).

3. Comments Requested That Rule Extend to Ceded Territories Used by Tribes

Two commenters sought an extension of the rule to include lands ceded by treaties that may be used by Tribes for hunting, fishing, and gathering. These commenters also asked that EPA extend this action to lands ten miles away from any reservation due to the migration of air emissions.

EPA recognizes that the problem presented by releases from facilities in cross-border areas is present in any emergency response scheme that relies on reporting to local officials. EPCRA recognizes this issue and encourages cross-boundary cooperation; section 304(b)(1) requires that emergency notification be given to "the State emergency planning commission of any State likely to be affected by the release." With regard to Indian country, EPA understands Indian Tribes to be within the scope of "State" for the purposes of section 304(b)(1) notification. EPA encourages Tribes, State Emergency Response Commissions (SERCs), and Local Emergency Planning Committees (LEPCs) to participate in joint planning and cooperative efforts to prepare for potential emergencies.

EPA declines to extend the rule as requested by the commenters because of the local nature of emergency planning. It is important that one entity be responsible for emergency planning in an area to enable effective emergency response. EPA encourages joint planning and cooperative efforts between LEPCs, SERCs, and Tribes to address these entities' interests in emergency response planning in lands outside their borders.

4. Comments Asserted That the Rule Could Complicate Emergency Response Activities in Areas Where Indian Country Status May Be Hard To Identify

EPA received comments that this action will make TRI data more difficult to obtain, particularly in Oklahoma, where the status of lands is often uncertain. The commenters argue that the public and first responders will need to take steps to evaluate the status of the land before knowing where to seek relevant reporting information. One commenter adds that this rule could endanger first responders, LEPCs, and local residents because they will not be able to easily determine which hazardous materials are within their communities, or how to respond to a chemical release because these facilities would only be required to report to a tribal government, not the Department of Environmental Quality (DEQ).

Additionally, these commenters note that they find EPA's database unreliable, because the information is no longer current by the time it becomes public.

EPA recognizes the need to publish current TRI data and released the preliminary 2010 data on July 28, 2011, less than one month after the July 1st reporting deadline. EPA believes that this approach of releasing the most recent TRI data soon after the reporting deadline and before the TRI National Analysis has been developed helps communities to have access to the most recent data as quickly as possible.

In addition, EPA believes that in most cases, determining whether reporting facilities are located within Indian country will be straightforward, and there should be little or no confusion regarding such locations. This is especially true for facilities that are covered by regulatory programs under other federal environmental statutes, *e.g.*, the Clean Water Act, the Clean Air Act, and the Resource Conservation and Recovery Act, as the land status of their locations may already have been considered in determining the applicable regulatory agency. The EPA recognizes that certain rarer situations may raise more complex factual scenarios. In such cases, EPA intends to work with the relevant Tribe, State, and facility to assess the Indian country status of the particular facility's location. EPA believes that sufficient information will be available for first responders to determine the appropriate source for reporting information. EPA does not believe that this rule will increase risk to first responders and emergency response personnel. While States and Tribes will be one resource for TRI data, EPA houses all of the reported toxic release information from facilities in one comprehensive database which provides a complete account of facilities and information on their chemicals. EPA makes TRI release data available to the public less than one month after the July 1st reporting deadline. During the three-week period between new report submission and public availability, EPA encourages emergency response personnel to work with States, Tribes and EPA to assist in filling any alleged temporary gaps in data availability. In anticipation of an emergency, EPA also encourages such collaboration so that emergency response personnel can preemptively clarify the land status of any facilities of interest that may be in Indian country.

5. Comments Asserted That EPA's Interpretation of EPCRA To Remove State's Responsibility To Receive TRI Reports Is Unreasonable

Two commenters stated that EPA's interpretation of EPCRA is unreasonable because it removes the state's responsibility for accepting TRI reports and making them publicly available.

EPA does not believe that EPCRA designates States as the responsible entity for accepting TRI reports for facilities in Indian country. EPA notes that, consistent with applicable principles of federal Indian law, it is the federal government and Tribes, not the States, that generally implement programs in Indian country. *See, e.g., Alaska v. Native Village of Venetie Tribal Government*, 522 U.S. 520, 527 n.1. EPA does not interpret the language or legislative history of Title III as expressing any Congressional intent to extend State programs into Indian country.

6. Comments Expressed Concerns Regarding Identification of Facilities' Indian Country Status and Requested a Delay of the Rule's Effective Date

One commenter stated that if the proposed rule is finalized, implementation should be delayed, because EPA and Tribes need time to develop a way for reporters to determine Indian country in Oklahoma.

EPA does not believe there is any programmatic benefit to delaying implementation of this rule or establishing new deadlines. The risks from chemical accidents are real and current, and EPA encourages the communities in which these risks exist to move quickly and expeditiously to begin addressing those risks. In addition, as noted above, EPA believes that in most cases, determining whether reporting facilities are located within Indian country will be straightforward. This is especially true for facilities that are covered by regulatory programs under other federal environmental statutes, *e.g.*, the Clean Water Act, the Clean Air Act, and the Resource Conservation and Recovery Act, as the land status of their locations may already have been considered in determining the applicable regulatory agency. EPA also notes that assessments of whether a reporting facility is located in Indian country can generally be easily verified through consultation with the Department of the Interior or through reference to readily available materials. As stated above, EPA recognizes that certain rarer situations may raise more complex factual scenarios. In such cases, EPA intends to

work with the relevant State, Tribe, and facility to assess the Indian country status of the particular facility's location. The EPA notes that it is ultimately a facility's responsibility to ascertain whether it is required to report to the Tribe or State, in addition to EPA.

7. Comments Expressed Concern for Potential Gaps in States' TRI Databases

One commenter stated that States will not have access to TRI information in Indian country and will thus have potential data gaps.

EPA generally makes TRI data available to the public less than one month after the reporting deadline, thus making any alleged data availability gaps temporary and short-term in nature. We note that this concern would also apply to cross-border situations as between States, which is an issue that exists irrespective of this rulemaking. Similarly, Tribes have expressed interest in release data for areas near, but outside of, their Indian country. During the approximate three-week period between report submission and public availability, EPA encourages States and Tribes to work together to share TRI data on facilities of mutual interest.

8. Comments Expressed Concern That Potential Delays in States' Receipt of TRI Reports for Facilities in Indian Country May Have Adverse Effects in State Compliance Monitoring

Two commenters expressed concerns that this action may have adverse effects on compliance monitoring. One of these commenters stated that it uses TRI data to compare reported quantities of releases to media-permitted releases, which has revealed several releases in excess of permitted releases in the past. This commenter alleged that a delay in getting updated TRI information would delay this comparison and prolong potential noncompliance.

EPA recognizes the need to publish current TRI data, and released the preliminary 2010 data on July 28, 2011, less than one month after the July 1st reporting deadline. With regard to compliance monitoring under federal environmental laws, EPA also notes that it is generally EPA or the relevant Indian Tribe that implements environmental programs in Indian country. State programs are generally not approved by EPA for such areas.

9. Comments Questioned Whether the Economic Analysis Included Indian Allotments in EPA's Assessment of Burden

One commenter requested that EPA further consider the impact on regulated

entities and specifically asks whether EPA's Economic Analysis included TRI facilities on Indian allotments. The commenter asserted that there will be a cost in determining whether or not a facility is on an allotment.

EPA has developed an economic analysis to assess the impact on facilities located in Indian country. The economic analysis estimates incremental economic burden for facilities that are required to report releases to TRI. The term Indian country, as defined in 40 C.F.R. 372.3, includes Indian allotments, so EPA therefore accounted for such facilities in the universe of those affected by this rule. The Agency's estimation of burden to a facility included coordination with EPA and other offices regarding Indian country land status issues. Originally, EPA estimated the time it would take for a facility to make this determination would be, on average, about 10 minutes. This 10-minute assumption considered the fact that most facility reporters are already aware of their facilities' geographic status relating to Indian country. In light of this commenter's concern, EPA increased the average time (over the full universe of facilities) for a facility reporter to make this determination, including consulting with EPA as appropriate, to 30 minutes. This increase in reporter burden for compliance determination is reflected in the final economic analysis and raises the total first year incremental cost from \$377,695 to \$388,161, based on an updated total of 6,985 burden hours. EPA recognizes that certain rarer situations may raise more complex factual scenarios. In such cases, EPA intends to work with the relevant State, Tribe, and facility to assess the Indian country status of the particular facility's location.

10. Comments Asserted That Implementation of This Rule May Result in Additional Burden on Tribes Who Receive TRI Reports

EPA received comment on potential economic impact and implementation issues for Tribes. This commenter expressed concern for the increased workload for Tribes and asked that EPA share the rationale of the cost analysis or conduct a benefits analysis. The commenter requested that EPA work with Tribes to assist Tribes in easily managing the data and using the data to educate the community. The commenter also requested assistance with upgrades to paper or electronic reporting systems.

EPA disagrees that the implementation of this rule will result in additional burden to the Tribes responsible for receiving TRI reports in

their Indian country. As described by the rule, a Tribe's only responsibility will be to receive the submitted TRI report(s). Per the rule, Tribes are not required to manage data, i.e., analyze or disseminate data, or educate their community, although we do encourage the use of the TRI data for community right-to-know purposes. Separate from this rule, EPA already works with tribal communities to help them better understand the TRI data as well as the software tools with which individuals can access and analyze the releases on or near their location. EPA will continue to work with Tribes in this manner, and our intent through this rule is to increase tribal participation in the TRI program. Therefore, as Tribes and States now have similar responsibilities and rights pertaining to TRI report receipt and chemical petitioning, we expect that Tribes may choose to increase their focus on the TRI. EPA is prepared to work with interested Tribes to increase understanding and awareness of the TRI Program.

V. References

EPA has established an official public docket for this action under Docket ID No. EPA-HQ-OEI-2011-0196. The public docket includes information considered by EPA in developing this action, which is electronically or physically located in the docket. For assistance in locating any of these documents, please consult the person listed in the above **FOR FURTHER INFORMATION CONTACT** section.

VI. Statutory and Executive Order Reviews Associated With This Action

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a "significant regulatory action" under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under EOs 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This final rule does not contain any new information collection requirements that require additional approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.* Currently, the facilities subject to the reporting requirements under EPCRA 313 and the Pollution Prevention Act (PPA) 6607 may use (to the extent applicable) the EPA Toxic Chemical Release Inventory Form R

(EPA Form 9350-1), the EPA Toxic Chemical Release Inventory Form A (EPA Form 9350-2), and the EPA Toxic Chemical Release Inventory Form R Schedule 1 (EPA Form 9350-3) for dioxin and dioxin-like compounds. The Form R must be completed if a facility manufactures, processes, or otherwise uses any listed chemical above threshold quantities and meets certain other criteria. For the Form A, EPA established an alternative threshold for facilities with low annual reportable amounts of a listed toxic chemical. A facility that meets the appropriate reporting thresholds, but estimates that the total annual reportable amount of the chemical does not exceed 500 pounds per year, can take advantage of an alternative manufacture, process, or otherwise use threshold of 1 million pounds per year of the chemical, provided that certain conditions are met, and submit the Form A instead of the Form R. In addition, respondents may designate the specific chemical identity of a substance as a trade secret pursuant to EPCRA section 322 (42 U.S.C. 11042: 40 CFR part 350).

OMB has approved the reporting burden associated with the EPCRA Section 313 reporting requirements under OMB Control number 2025-0009 (EPA Information Collection Request (ICR) No. 1363.21). As provided in 5 CFR 1320.5(b) and 1320.6(a), an Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers relevant to EPA's regulations are listed in 40 CFR part 9, 48 CFR chapter 15, and displayed on the information collection instruments (e.g., forms, instructions).

EPA estimates the incremental burden for facilities located in Indian country to send their reports to the Tribe instead of the State to average, in the first year, approximately \$44.64 per facility for the 47 facilities located in Indian country. EPA estimates an incremental burden of \$18.51 for the remaining 20,857 TRI reporters. Thus, the total first year incremental cost associated with the rule is estimated at \$388,161 based on 6,985 total burden hours. In subsequent years, there is no incremental reporting burden, given that the burden created by the rule is limited to rule familiarization and compliance determination in which facilities will only engage in the first year. These estimates include the time needed to become familiar with the new requirement (rule familiarization) and to determine whether the facility is located in Indian country (compliance determination). The actual burden on

any facility may be different from this estimate depending on how much time it takes individual facilities to complete these activities.

C. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A business that is classified as a "small business" by the Small Business Administration at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. All of the 3,210 potentially affected small entities have cost impacts of less than 1% in the first year of the rulemaking. Note that facilities do not incur an increase in reporting burden or costs in subsequent years of the rulemaking. No small entities are projected to have a cost impact of 1% or greater. Of the 3,210 estimated cost impacts, there is a maximum impact of approximately 0.713% and a median impact of approximately 0.003%. A more detailed analysis of the impacts on small entities is located in EPA's economic analysis support document, *Economic Analysis of the Toxics Release Inventory (TRI) Reporting for Facilities Located in Indian Country Final Rule*, located in the docket.

After considering the economic impacts of this rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act (UMRA)

This rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. EPA's economic analysis indicates that the total cost of this rule is estimated to

be \$388,161 in the first year of reporting, and \$0 in subsequent years. Thus, this rule is not subject to the requirements of sections 202 or 205 of UMRA.

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. Small governments are not subject to the EPCRA section 313 reporting requirements.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action relates to toxic chemical reporting under EPCRA section 313, which primarily affects private sector facilities. Thus, Executive Order 13132 does not apply to this action.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA has specifically solicited comment on this action from State and local officials prior to promulgating this final rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13175 (65 FR 67249, November 9, 2000), EPA may not issue a regulation that has tribal implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by tribal governments, or EPA consults with tribal officials early in the process of developing the proposed regulation and develops a tribal summary impact statement.

EPA has concluded that this action may have tribal implications, as specified in Executive Order 13175. However, it will neither impose substantial direct compliance costs on tribal governments, nor preempt Tribal law. This action relates to toxic chemical reporting under EPCRA section 313, which primarily affects private sector facilities; however, it may have tribal implications due to how the Agency is changing the current way toxic chemical reporting information is transmitted and received. EPA consulted with tribal officials early in the process of developing this regulation

to permit them to have meaningful and timely input into its development. EPA organized and provided a formal consultation with Tribes to discuss the actions that may have the potential to affect one or more Tribes or areas of interest to Tribes. Two consultation calls occurred on February 7 and 28 of 2011, and during these calls EPA facilitated discussion and received views and comments from Tribes in relation to the actions proposed, and eventually finalized in this rule. During the Agency's consultation with Tribes, EPA received several positive comments about the clarification to the request rights for Tribes to add a facility to the TRI, as well as the petitioning rights to add or delete a chemical. Furthermore, EPA officiated two additional webinars for representatives from the National Tribal Air Association (NTAA) on March 17 and 30 of 2011, and hosted a blog to collect electronic feedback from Tribes and other interested parties. Additionally, in the spirit of EO 13175, and consistent with EPA policy to promote communications between EPA and Indian tribal governments, EPA specifically solicited additional comment on the proposed action from tribal officials. EPA is finalizing this regulation in order to better clarify tribal opportunities for participation in the TRI Program and to enable Tribes to take a more active role by receiving the facility reports documenting releases within their Indian country. Through this final rule, EPA is also providing certain opportunities for Tribal Chairpersons or equivalent elected officials that are already in place for Governors of States. EPA has addressed all feedback from its consultation with Tribes in this rulemaking.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104-113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This final rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

EO 12898 (59 FR 7629, Feb. 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This final rule provides opportunities to request the addition of chemicals and facilities to the EPCRA section 313 reporting requirements. By adding chemicals to the list of toxic chemicals subject to reporting under section 313 of EPCRA, EPA would be providing communities across the United States (including minority populations and low-income populations) with access to data which they may use to seek lower exposures and consequently, reductions in chemical risks for themselves and their children. This information can also be used by government agencies and others to identify potential problems, set priorities, and take appropriate steps to

reduce any potential risks to human health and the environment. Therefore, the informational benefits of this final rule will have a positive effect on the human health and environmental impacts of minority populations, low-income populations, and children.

K. Congressional Review Act

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 rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This final rule is effective April 19, 2012. The requirement of facilities located in Indian country to report to tribal governments is effective beginning with reporting year 2012 (reports due by July 1, 2013).

List of Subjects in 40 CFR Part 372

Environmental protection, Community right-to-know, Reporting and recordkeeping requirements, Tribes, and Indian country.

Dated: April 11, 2012.

Lisa P. Jackson,
Administrator.

Therefore, 40 CFR part 372 is amended as follows:

PART 372—TOXIC CHEMICAL RELEASE REPORTING: COMMUNITY RIGHT-TO-KNOW

■ 1. The authority citation for part 372 continues to read as follows:

Authority: 42 U.S.C. 11023 and 11048.

■ 2. In § 372.3, the definition of "Chief Executive Officer of the tribe" is removed, the definition of "State" is revised, and the definition "Tribal Chairperson or equivalent elected official" is added in alphabetical order to read as follows:

§ 372.3 Definitions.

* * * * *

State means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States

Virgin Islands, the Commonwealth of the Northern Mariana Islands, and any other territory or possession over which the United States has jurisdiction.

* * * * *

Tribal Chairperson or equivalent elected official means the person who is recognized by the Bureau of Indian Affairs as the chief elected administrative officer of the Tribe.

* * * * *

■ 3. Add § 372.20 to subpart B to read as follows:

§ 372.20 Process for modifying covered chemicals and facilities.

(a) Request to add a facility to the TRI list of covered facilities.

(b) The Administrator, on his own motion or at the request of a Governor of a State (with regard to facilities located in that State) or a Tribal Chairperson or equivalent elected official (with regard to facilities located in the Indian country of that Tribe), may apply the requirements of section 313 of Title III to the owners and operators of any particular facility that manufactures, processes, or otherwise uses a toxic chemical listed under subsection (c) of section 313 of Title III if the Administrator determines that such action is warranted on the basis of toxicity of the toxic chemical, proximity to other facilities that release the toxic chemical or to population centers, the history of releases of such chemical at such facility, or such other factors as the Administrator deems appropriate.

(c) Petition to add or delete a chemical from TRI list of covered chemicals.

(d) *In general.* (1) Any person may petition the Administrator to add or delete a chemical to or from the list described in subsection (c) of section 313 of Title III on the basis of the criteria in subparagraph (A) or (B) of subsection (d)(2) and (d)(3) of section 313 of Title III. Within 180 days after receipt of a petition, the Administrator shall take one of the following actions:

(i) Initiate a rulemaking to add or delete the chemical to or from the list, in accordance with subsection (d)(2) or (d)(3) of section 313 of Title III.

(ii) Publish an explanation of why the petition is denied.

(2) *State and Tribal petitions.* A State Governor, or a Tribal Chairperson or equivalent elected official, may petition the Administrator to add or delete a chemical to or from the list described in subsection (c) of section 313 of Title III on the basis of the criteria in subparagraph (A), (B), or (C) of subsection (d)(2) of section 313 of Title III. In the case of such a petition from

a State Governor, or a Tribal Chairperson or equivalent elected official, to delete a chemical, the petition shall be treated in the same manner as a petition received under paragraph (d)(1) of this section. In the case of such a petition from a State Governor, or a Tribal Chairperson or equivalent elected official, to add a chemical, the chemical will be added to the list within 180 days after receipt of the petition, unless the Administrator:

(i) Initiates a rulemaking to add the chemical to the list, in accordance with subsection (d)(2) of section 313 of Title III, or

(ii) Publishes an explanation of why the Administrator believes the petition does not meet the requirement of subsection (d)(2) of section 313 of Title III for adding a chemical to the list.

■ 4. In § 372.27, paragraph (d) is revised to read as follows:

§ 372.27 Alternate threshold and certification.

* * * * *

(d) Each certification statement under this section for activities involving a toxic chemical that occurred during a calendar year at a facility must be submitted to EPA and to the State in which the facility is located on or before July 1 of the next year. If the covered facility is located in Indian country, the facility shall submit the certification statement as described above to EPA and to the official designated by the Tribal Chairperson or equivalent elected official of the relevant Indian Tribe, instead of to the State.

* * * * *

■ 5. In § 372.30, paragraph (a) is revised to read as follows:

§ 372.30 Reporting requirements and schedule for reporting.

(a) For each toxic chemical known by the owner or operator to be manufactured (including imported), processed, or otherwise used in excess of an applicable threshold quantity in § 372.25, § 372.27, or § 372.28 at its covered facility described in § 372.22 for a calendar year, the owner or operator must submit to EPA and to the State in which the facility is located a completed EPA Form R (EPA Form 9350-1), EPA Form A (EPA Form 9350-2), and, for the dioxin and dioxin-like compounds category, EPA Form R Schedule 1 (EPA Form 9350-3) in accordance with the instructions referred to in subpart E of this part. If the covered facility is located in Indian country, the facility shall submit (to the extent applicable) a completed EPA Form R, Form A, and Form R Schedule 1 as described above to EPA and to the official designated by

the Tribal Chairperson or equivalent
elected official of the relevant Indian
Tribe, instead of to the State.

* * * * *

[FR Doc. 2012-9442 Filed 4-18-12; 8:45 am]

BILLING CODE 6560-50-P

Proposed Rules

Federal Register

Vol. 77, No. 76

Thursday, April 19, 2012

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 810

RIN 0580-AB12

United States Standards for Wheat

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Proposed rule; corrections.

SUMMARY: This document corrects the preamble and the regulatory text to a proposed rule published by the Grain Inspection, Packers and Stockyards

Administration (GIPSA) in the **Federal Register** of April 11, 2012, regarding a proposal to revise the U.S. Standards for Wheat under the U.S. Grain Standards Act. The proposed rule would change the definition of Contrasting classes in Hard White wheat and change the grade limits for shrunken and broken kernels. GIPSA believes that these proposed changes will help to facilitate the marketing of wheat.

DATES: The comment period closing date for the proposed rule published April 11, 2012, at 77 FR 21685 remains June 11, 2012.

FOR FURTHER INFORMATION CONTACT: Patrick McCluskey, (816) 872-1258.

SUPPLEMENTARY INFORMATION: In FR Doc. 2012-21685, published April 11, 2012, at 77 FR 21690, make the following corrections:

Preamble Correction

1. On page 21685, in the third column, in the **ADDRESSES** section, revise the mail entry to read:

- Irene Omade, GIPSA, USDA, STOP 3642, 1400 Independence Avenue SW., Room 2530-B, Washington, DC 20250-3604

2. On page 21687, in the second column, 16th line, the phrase “GIPSA does assume however, that there would be no functional downside” is revised to read “GIPSA does not assume however, that there would be no function downside”.

Regulatory Text Correction

3. On page 21690, the “Maximum percent limits of” section of the table in § 810.2240(a) is correctly revised to read as follows:

§ 810.2240 Grades and grade requirements for wheat.

(a) * * *

Grades and Grade Requirements

* * * * *

Maximum percent limits of:

Defects:					
Damaged kernels					
Heat (part of total)	0.2	0.2	0.5	1.0	3.0
Total	2.0	4.0	7.0	10.0	15.0
Foreign material	0.4	0.7	1.3	3.0	5.0
Shrunken and broken kernels	2.0	4.0	8.0	12.0	20.0
Total ¹ .					
Wheat of other classes: ²					
Contrasting classes	1.0	2.0	3.0	10.0	10.0
Total ³	3.0	5.0	10.0	10.0	10.0
Stones	0.1	0.1	0.1	0.1	0.1

Dated: April 11, 2012.

Alan R. Christian,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 2012-9182 Filed 4-18-12; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2012-0420; Directorate Identifier 2011-NM-284-AD]

RIN 2120-AA64

Airworthiness Directives; Bombardier, Inc. 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 certain Bombardier, Inc. Model CL-600-2B19 (Regional Jet

Series 100 & 440) airplanes. The existing AD currently requires revising certain sections of a certain airplane flight manual, deactivating certain hydraulic accumulators, removing certain hydraulic accumulators, ultrasonic inspections for cracks on accumulators and screw caps and replacement if necessary, and replacing certain accumulators. Since we issued that AD, we have determined that, for certain airplanes, reducing the compliance time for a certain replacement is necessary to ensure that the identified unsafe condition is addressed. This proposed AD would continue to require the existing actions from the existing AD. We are proposing this AD to detect and correct hydraulic accumulator screw cap/end cap failure, which could result in the loss of the associated hydraulic

system and high-energy impact damage to adjacent systems and structure, and consequent loss of control of the airplane.

DATES: We must receive comments on this proposed AD by June 4, 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 Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514-855-5000; fax 514-855-7401; email thd.crj@aero.bombardier.com; Internet <http://www.bombardier.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:

Cesar Gomez, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE-171, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue Suite 410, Westbury, New York 11590; telephone (516) 228-7318; fax (516) 794-5531.

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-2012-0420; Directorate Identifier 2011-NM-284-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 October 20, 2011, we issued AD 2011-23-08, Amendment 39-16859 (76 FR 71241, November 17, 2011). That AD required actions intended to address an unsafe condition on certain Bombardier, Inc. Model CL-600-2B19 (Regional Jet Series 100 & 440) Airplanes.

Since we issued AD 2011-23-08, Amendment 39-16859 (76 FR 71241, November 17, 2011), we have determined that the compliance time specified in paragraph (n) of this proposed AD (referred to as paragraph (q) in AD 2011-23-08) must be clarified. We are including the phrase, “whichever occurs first,” in paragraph (n)(1) of this AD, which requires operators to perform the action at the earlier of the times. We have determined that the proposed reduced compliance time is necessary to address the identified unsafe condition in a timely manner. This compliance time also matches the compliance time given in Canadian Airworthiness Directive CF-2010-24, dated August 3, 2010.

We have also determined that certain phrases need to be added and certain phrases need to be removed from certain credit paragraphs of this AD. We have revised paragraphs (o)(4) and (o)(5) of this proposed AD to specify “before December 22, 2011 (the effective date of AD 2011-23-08, Amendment 39-16859 (76 FR 71241, November 17, 2011)),” instead of “before November 4, 2010.”

We have revised paragraph (o)(2) of this AD by removing “hydraulic system No. 1” because the service information in paragraph (o)(2) does not specify to remove the hydraulic system No. 1 accumulator. We have also revised paragraph (o)(2) of this proposed AD by removing Bombardier Service Bulletin 601R-32-107, Revision A, dated June 17, 2010, because credit for that service bulletin is already given in paragraph (m) of this proposed AD. You may obtain further information by examining the MCAI in the AD docket.

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.

Changes to Existing AD

This proposed AD would retain all requirements of AD 2011-23-08, Amendment 39-16859 (76 FR 71241, November 17, 2011). Since AD 2011-23-08 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 2011-23-08, Amendment 39-16859 (76 FR 71241, November 17, 2011)	Corresponding requirement in this proposed AD
paragraph (l)	paragraph (p)(1)
paragraph (m)	paragraph (p)(2)
paragraph (n)	paragraph (p)(3)
paragraph (o)	paragraph (l)
paragraph (p)	paragraph (m)
paragraph (q)	paragraph (n)
paragraph (r)	paragraph (o)(4)
paragraph (s)	paragraph (o)(5)

We have also revised paragraph (j) (paragraph (j) of AD 2011-23-08, Amendment 39-16859 (76 FR 71241, November 17, 2011)) of this proposed AD to refer to paragraph (k) of this AD instead of paragraph (l)(1) (paragraph (l) of AD 2011-23-08) for the applicable compliance times.

Differences Between This AD and the MCAI or Service Information

The actions specified in Canadian Airworthiness Directive CF-2010-24, dated August 3, 2010, apply only to Tactair accumulators. The actions required by paragraphs (h), (i), and (m) of this proposed AD apply to all accumulators in the positions specified in paragraphs (h), (i), and (l) of this proposed AD.

While Canadian Airworthiness Directive CF-2010-24, dated August 3, 2010, does not require replacement of the reducer of the hydraulic system No.

1 with a new reducer, paragraph (n) of this proposed AD does.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 605 products of U.S. registry.

The actions that are required by AD 2011–23–08, Amendment 39–16859 (76 FR 71241, November 17, 2011), and retained in this proposed AD take about 33 work-hours per product, at an average labor rate of \$85 per work hour. Required parts cost about \$3,054 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, the estimated cost of the currently required actions is \$5,859 per product.

The new requirements of this proposed AD add no additional economic burden.

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.

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 airworthiness directive (AD) 2011–23–08, Amendment 39–16859 (76 FR 71241, November 17, 2011), and adding the following new AD:

Bombardier, Inc.: Docket No. FAA–2012–0420; Directorate Identifier 2011–NM–284–AD.

(a) Comments Due Date

We must receive comments by June 4, 2012.

(b) Affected ADs

This AD supersedes AD 2011–23–08, Amendment 39–16859 (76 FR 71241, November 17, 2011).

(c) Applicability

This AD applies to Bombardier, Inc. Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, certificated in any category, serial numbers 7003 and subsequent.

(d) Subject

Air Transport Association (ATA) of America Code 29, Hydraulic Power; 32, Landing Gear.

(e) Reason

This AD was prompted by reports of on-ground hydraulic accumulator screw cap/end cap failure. We are issuing this AD to detect and correct hydraulic accumulator screw cap/end cap failure, which could result in the loss of the associated hydraulic system and high-energy impact damage to adjacent

systems and structure, and consequent loss of control 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) Retained Airplane Flight Manual (AFM) Revision, With Revised Service Information

This paragraph restates the revision required by paragraph (g) of AD 2010–22–02, Amendment 39–16481 (75 FR 64636, October 20, 2010), with revised service information. Within 30 days after November 4, 2010 (the effective date of AD 2010–22–02, Amendment 39–16481 (75 FR 64636, October 20, 2010)), revise the Limitations section, Normal Procedures section, and Abnormal Procedures section of the Canadair Regional Jet AFM, CSP A–012, by incorporating Canadair Regional Jet Temporary Revision (TR) RJ/186–1, dated August 24, 2010, into the applicable section of Canadair Regional Jet AFM, CSP A–012. Thereafter, except as provided by paragraph (p) of this AD, no alternative actions specified in Canadair Regional Jet TR RJ/186–1, dated August 24, 2010, may be approved.

Note 1 to paragraph (g) of this AD: The actions required by paragraph (g) of this AD may be done by inserting a copy of Canadair Regional Jet TR RJ/186–1, dated August 24, 2010, into the applicable section of the Canadair Regional Jet AFM, CSP A–012. When this TR has been included in the general revisions of this AFM, the general revisions may be inserted into this AFM, and this TR removed, provided that the relevant information in the general revision is identical to that in Canadair Regional Jet TR RJ/186–1, dated August 24, 2010.

(h) Retained Deactivation of the Hydraulic System No. 3 Accumulator, With Revised Service Information

This paragraph restates the deactivation required by paragraph (h) of AD 2010–22–02, Amendment 39–16481 (75 FR 64636, October 20, 2010), with revised service information. Within 250 flight cycles after November 4, 2010 (the effective date of AD 2010–22–02), deactivate the hydraulic system No. 3 accumulator, in accordance with Part A of the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–29–031, Revision A, dated March 26, 2009. Doing the removal of the hydraulic system No. 3 accumulator in paragraph (l) of this AD terminates the requirements of this paragraph. The actions in this paragraph apply to all accumulators in hydraulic system No. 3.

(i) Retained Removal of the Hydraulic System No. 2 Accumulator, With Revised Service Information

This paragraph restates the removal required by paragraph (i) of AD 2010–22–02, Amendment 39–16481 (75 FR 64636, October 20, 2010), with revised service information. Within 500 flight cycles after November 4, 2010 (the effective date of AD 2010–22–02), remove the hydraulic system No. 2 accumulator, in accordance with the

Accomplishment Instructions of Bombardier Service Bulletin 601R-29-032, Revision A, dated January 26, 2010. The actions in this paragraph apply to all accumulators in hydraulic system No. 2.

(j) Retained Initial and Repetitive Ultrasonic Inspections of Hydraulic System No. 1, Inboard Brake and Outboard Brake Accumulators, With Revised Service Information

This paragraph restates the initial and repetitive ultrasonic inspections required by paragraph (k) of AD 2010-22-02, Amendment 39-16481 (75 FR 64636, October

20, 2010), with revised service information. For hydraulic system No. 1, inboard brake and outboard brake accumulators having part number (P/N) 601R75138-1 (08-60163-001 or 08-60163-002): At the applicable compliance times specified in paragraph (k) of this AD, do the inspections required by paragraphs (j)(1) and (j)(2) of this AD. Repeat the inspections for each accumulator having P/N 601R75138-1 (08-60163-001 or 08-60163-002) thereafter at intervals not to exceed 500 flight cycles until the replacement specified in this paragraph is done or the replacement specified in paragraph (m) of this AD is done. If any crack

is found, before further flight, replace the accumulator with a new accumulator having P/N 601R75138-1 (08-60163-001 or 08-60163-002) and having the letter "T" after the serial number on the identification plate, in accordance with the Accomplishment Instructions of the applicable service bulletin identified in table 1 or table 2 of this AD.

(1) Do an ultrasonic inspection for cracks on each accumulator, in accordance with Part B of the Accomplishment Instructions of the applicable service bulletin identified in table 1 of this AD.

TABLE 1—BOMBARDIER SERVICE INFORMATION FOR ACCUMULATOR INSPECTION

Accumulator	Document	Revision	Date
Hydraulic System No. 1	Bombardier Alert Service Bulletin A601R-29-029, including Appendix A, dated October 18, 2007.	B	May 11, 2010.
Inboard and Outboard Brake	Bombardier Alert Service Bulletin A601R-32-103, including Appendix A, Revision A, dated October 18, 2007.	D	May 11, 2010.

(2) Do an ultrasonic inspection for cracks on the screw cap, in accordance with the Accomplishment Instructions of the

applicable service bulletin identified in table 2 of this AD.

TABLE 2—BOMBARDIER SERVICE INFORMATION FOR SCREW CAP INSPECTION

Accumulator	Document	Revision	Date
Hydraulic System No. 1	Bombardier Service Bulletin 601R-29-033, including Appendix A, dated May 5, 2009.	A	May 11, 2010.
Inboard and Outboard Brake	Bombardier Service Bulletin 601R-32-106, including Appendix A.	A	May 11, 2010.

(k) Retained Initial and Repetitive Ultrasonic Inspections of Hydraulic System No. 1, Inboard Brake and Outboard Brake Accumulators, With Revised Service Information

This paragraph restates the initial and repetitive ultrasonic inspections required by paragraph (l) of AD 2010-22-02, Amendment 39-16481 (75 FR 64636, October 20, 2010), with revised service information. For hydraulic system No. 1 inboard brake, and outboard brake accumulators having P/N 601R75138-1 (08-60163-001 or 08-60163-002): Do the inspections specified in paragraph (j) of this AD at the applicable time in paragraph (k)(1), (k)(2), and (k)(3) of this AD.

(1) For any accumulator not having the letter "T" after the serial number on the identification plate and with more than 4,500 flight cycles on the accumulator as of November 4, 2010 (the effective date of AD 2010-22-02, Amendment 39-16481 (75 FR 64636, October 20, 2010)): Inspect within 500 flight cycles after November 4, 2010 (the effective date of AD 2010-22-02).

(2) For any accumulator not having the letter "T" after the serial number on the identification plate and with 4,500 flight cycles or less on the accumulator as of November 4, 2010 (the effective date of AD 2010-22-02, Amendment 39-16481 (75 FR 64636, October 20, 2010)): Inspect prior to the accumulation of 5,000 flight cycles on the accumulator.

(3) If it is not possible to determine the flight cycles accumulated for any accumulator not having the letter "T" after the serial number on the identification plate: Inspect within 500 flight cycles after November 4, 2010 (the effective date of AD 2010-22-02, Amendment 39-16481 (75 FR 64636, October 20, 2010)).

Note 2 to paragraph (j) of this AD: For any accumulator having P/N 601R75138-1 (08-60163-001 or 08-60163-002) and the letter "T" after the serial number on the identification plate, or if the accumulator part number is not listed in paragraph (j) of this AD, the inspection specified in paragraph (j) of this AD is not required.

TABLE 3—BOMBARDIER CREDIT SERVICE INFORMATION FOR ACCUMULATOR INSPECTION

Document	Revision	Date
Bombardier Alert Service Bulletin A601R-29-029 .....	.....	October 18, 2007.
Bombardier Alert Service Bulletin A601R-29-029	A	November 12, 2009.
Bombardier Alert Service Bulletin A601R-32-103 .....	.....	November 21, 2006.
Bombardier Alert Service Bulletin A601R-32-103	A	March 7, 2007.
Bombardier Alert Service Bulletin A601R-32-103	B	October 18, 2007.
Bombardier Alert Service Bulletin A601R-32-103	C	February 26, 2009.

TABLE 4—BOMBARDIER CREDIT SERVICE INFORMATION FOR SCREW CAP INSPECTION

Document	Date
Bombardier Service Bulletin 601R-29-033	May 5, 2009.
Bombardier Service Bulletin 601R-32-106	May 5, 2009.

(l) Retained Removal of the Hydraulic System No. 3 Accumulator, With No New Service Information

This paragraph restates the removal required by paragraph (o) of AD 2011-23-08, Amendment 39-16859 (76 FR 71241, November 17, 2011), with reduced compliance time for paragraph (n) of this AD, and no new service information. Within 1,000 flight cycles after December 22, 2011 (the effective date of AD 2011-23-08), remove the hydraulic system No. 3 accumulator, in accordance with Part B of the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R-29-031, Revision A, dated March 26, 2009. Doing the

action in this paragraph terminates the requirements of paragraph (h) of this AD.

(m) Retained Replacement of the Hydraulic System No. 1, Inboard Brake and Outboard Brake Accumulators, With No New Service Information

This paragraph restates the replacement required by paragraph (p) of AD 2011-23-08, Amendment 39-16859 (76 FR 71241, November 17, 2011), with reduced compliance time for paragraph (o) of this AD, and no new service information. Within 4,000 flight cycles or 24 months after December 22, 2011 (the effective date of AD 2011-23-08), whichever occurs first, replace any hydraulic system No. 1, inboard brake or

outboard brake accumulator having P/N 601R75138-1 (08-60163-001 or 08-60163-002), with a new accumulator having P/N 601R75139-1 (11093-4), in accordance with the Accomplishment Instructions of the applicable service bulletin identified in table 5 of this AD. Doing the action in this paragraph terminates the requirement for the inspections in paragraph (j) of this AD for that accumulator. As of December 22, 2011 (the effective date of AD 2011-23-08), use only Bombardier Service Bulletin 601R-29-035, Revision A, dated December 8, 2010; or Bombardier Service Bulletin 601R-32-107, Revision B, dated December 8, 2010; as applicable.

TABLE 5—BOMBARDIER SERVICE INFORMATION FOR ACCUMULATOR REPLACEMENT

Accumulator	Document	Revision	Date
Hydraulic System No. 1	Bombardier Service Bulletin 601R-29-035 .....	.....	May 11, 2010.
Hydraulic System No. 1	Bombardier Service Bulletin 601R-29-035	A	December 8, 2010.
Inboard and Outboard Brake	Bombardier Service Bulletin 601R-32-107	A	June 17, 2010.
Inboard and Outboard Brake	Bombardier Service Bulletin 601R-32-107	B	December 8, 2010.

(n) Retained Action for Airplanes on Which Bombardier Service Bulletin 601R-29-035, Dated May 11, 2010, Is Done and Reducer Having P/N MS21916D8-6 is Installed, With No New Service Information

This paragraph restates the action required by paragraph (q) of AD 2011-23-08, Amendment 39-16859 (76 FR 71241, November 17, 2011), with reduced compliance time for paragraph (n) of this AD, and no new service information. For airplanes on which Bombardier Service Bulletin 601R-29-035, dated May 11, 2010, is done, and reducer having P/N MS21916D8-6 is installed: At the later of the times specified in paragraph (n)(1) or (n)(2) of this AD: Replace the reducer of the hydraulic system No. 1 with a new reducer, in accordance with Part B of Bombardier Service Bulletin 601R-29-035, Revision A, dated December 8, 2010.

(1) Within 1,200 flight cycles or 8 months after December 22, 2011 (the effective date of AD 2011-23-08, Amendment 39-16859 (76 FR 71241, November 17, 2011)), whichever occurs first.

(2) Within 60 days after the effective date of this AD.

(o) Credit for Previous Actions

(1) This paragraph provides credit for deactivating the hydraulic system No. 3 accumulator, as required by paragraph (h) of this AD, if the deactivation was performed before November 4, 2010 (the effective date of AD 2010-22-02, Amendment 39-16481 (75 FR 64636, October 20, 2010)) using Bombardier Alert Service Bulletin A601R-29-031, dated December 23, 2008.

(2) This paragraph provides credit for removing the hydraulic system No. 2 accumulator as required by paragraph (i) of this AD, if the removal was performed before November 4, 2010 (the effective date of AD 2010-22-02, Amendment 39-16481 (75 FR 64636, October 20, 2010)) using Bombardier Service Bulletin 601R-29-032, dated November 12, 2009.

(3) This paragraph provides credit for an ultrasonic inspection for cracks as required by paragraph (j) of this AD, if the ultrasonic inspection was performed before November 4, 2010 (the effective date of AD 2010-22-02, Amendment 39-16481 (75 FR 64636, October 20, 2010)), using the applicable service bulletin identified in table 3 of this AD, or the applicable service bulletin identified in table 4 of this AD.

(4) This paragraph provides credit for removing the hydraulic system No. 3 accumulator as required by paragraph (l) of this AD, if the removal was performed before December 22, 2011 (the effective date of AD 2011-23-08, Amendment 39-16859 (76 FR 71241, November 17, 2011)), using Bombardier Alert Service Bulletin A601R-29-031, dated December 23, 2008.

(5) This paragraph provides credit for replacing any inboard brake or outboard brake accumulator as required by paragraph (m) of this AD, if the replacement was performed before December 22, 2011 (the effective date of AD 2011-23-08, Amendment 39-16859 (76 FR 71241, November 17, 2011)), using Bombardier Service Bulletin 601R-32-107, dated May 11, 2010.

(p) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, New York Aircraft Certification Office, (ACO), ANE-170, 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 NYACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone 516-228-7300; fax 516-794-5531. 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. AMOCs approved previously in accordance with AD 2010-22-02, Amendment 39-16481 (75 FR 64636, October 20, 2010), are approved as AMOCs for the corresponding provisions of this AD. AMOCs approved previously in accordance with AD 2011-23-08, Amendment 39-16859 (76 FR 71241, November 17, 2011), are approved as AMOCs for the corresponding provisions of 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.

(q) Related Information

Refer to MCAI Canadian Airworthiness Directive CF-2010-24, dated August 3, 2010; and the service bulletins specified in paragraphs (q)(1), (q)(2), (q)(3), (q)(4), (q)(5), (q)(6), (q)(7), (q)(8), and (q)(9) of this AD; for related information.

(1) Canadair Regional Jet Temporary Revision RJ/186-1, dated August 24, 2010, to the Canadair Regional Jet Airplane Flight Manual, CSP A-012.

(2) Bombardier Alert Service Bulletin A601R-29-029, Revision B, dated May 11, 2010, including Appendix A, dated October 18, 2007.

(3) Bombardier Alert Service Bulletin A601R-29-031, Revision A, dated March 26, 2009.

(4) Bombardier Alert Service Bulletin A601R-32-103, Revision D, dated May 11, 2010, including Appendix A, Revision A, dated October 18, 2007.

(5) Bombardier Service Bulletin 601R-29-032, Revision A, dated January 26, 2010.

(6) Bombardier Service Bulletin 601R-29-033, Revision A, dated May 11, 2010, including Appendix A, dated May 5, 2009.

(7) Bombardier Service Bulletin 601R-29-035, Revision A, dated December 8, 2010.

(8) Bombardier Service Bulletin 601R-32-106, Revision A, including Appendix A, dated May 11, 2010.

(9) Bombardier Service Bulletin 601R-32-107, Revision B, dated December 8, 2010.

Issued in Renton, Washington, on April 11, 2012.

John P. Piccola,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012-9477 Filed 4-18-12; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 1

Revisions of Boundaries, Regulations and Zoning Scheme for Florida Keys National Marine Sanctuary; Revisions of Fish and Wildlife Service and State of Florida Management Agreement for Submerged Lands Within Boundaries of the Key West and Great White Heron National Wildlife Refuges and Regulations; Intent To Prepare a Draft Environmental Assessment or Environmental Impact Statement; Notice of Scoping Meetings

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC) and National Wildlife Refuge System, Fish and Wildlife Service (FWS), U.S. Department of the Interior (DOI).

ACTION: Notice of Intent to Conduct Scoping Meetings for the Revision of Boundaries, Regulations and Zoning Scheme for Florida Keys National Marine Sanctuary and Key West and Great White Heron National Wildlife Refuges; and to Prepare an Environmental Assessment or Draft Environmental Impact Statement.

SUMMARY: In accordance with the National Marine Sanctuaries Act, as amended, (NMSA) and the National Wildlife Refuge System Administration Act of 1966 as amended by the National Wildlife Refuge System Improvement Act of 1997, the Office of National Marine Sanctuaries (ONMS) of the National Oceanic and Atmospheric Administration (NOAA) and the National Wildlife Refuge System of the Fish and Wildlife Service (FWS) have initiated a review of Florida Keys National Marine Sanctuary (FKNMS or sanctuary) boundaries, regulations and zoning scheme. This review of existing regulations and marine zoning may result in changes to regulations, marine zoning, such as altering boundaries of current zones, creating new zones, or amending the regulations that apply to individual zones, and possibly sanctuary boundaries. The review will also include the FWS's Backcountry Management Plan and associated

regulations, as authorized by the FWS and State of Florida Management Agreement for Submerged Lands within Boundaries of the Key West and Great White Heron National Wildlife Refuges, to evaluate substantive progress toward implementing the backcountry management goals for the refuges.

DATES: All comments on issues related to the boundaries, regulations and zoning scheme of Florida Keys National Marine Sanctuary and the agreement for submerged lands within boundaries of the Key West and Great White Heron National Wildlife Refuges and associated regulations will be considered if received on or before June 29, 2012. See **SUPPLEMENTARY INFORMATION** section below for the dates, times, and locations of the public scoping meetings.

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

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Submit electronic comments via the Federal eRulemaking Portal, FDMS Docket Number NOAA-NOS-2012-0061.

- *Mail:* Sean Morton, Sanctuary Superintendent, Florida Keys National Marine Sanctuary, 33 East Quay Road Key West, Florida 33040 and Anne Morkill, Refuge Manager, U.S. Fish and Wildlife Service, 28950 Watson Blvd., Big Pine Key, FL 33043.

- *Instructions:* All comments received are a part of the public record and will be generally 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. NOAA will accept anonymous comments (enter N/A in the required fields to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT:

Sean Morton, Sanctuary Superintendent, FKNMS, Telephone: (305) 809-4700 x233 or Anne Morkill, Refuge Manager, USFWS, Telephone: (305) 872-2239 x209.

SUPPLEMENTARY INFORMATION: In accordance with the National Marine Sanctuaries Act, as amended, (NMSA) (16 U.S.C. 1431 *et seq.*) and the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd-668ee) as amended by the National Wildlife Refuge System Improvement Act of 1997, the Office of National Marine

Sanctuaries (ONMS) of the National Oceanic and Atmospheric Administration (NOAA) and the National Wildlife Refuge System of the Fish and Wildlife Service (FWS) have initiated a review of Florida Keys National Marine Sanctuary (FKNMS or sanctuary) boundaries, regulations and zoning scheme. Collectively, NOAA and FWS will make revisions to the sanctuary boundaries, regulations and zoning scheme and backcountry management agreement as necessary to fulfill the purposes and policies of the NMSA, the Florida Keys National Marine Sanctuary and Protection Act (FKNMSPA; Pub. L. 101-605), and the National Wildlife Refuge System Improvement Act of 1997 (NWRISA; Pub. L. 105-57). The review is being undertaken in response to several factors, including community interest in examining management and conservation strategies, the need to adapt sanctuary and refuge management to changing conditions such as emerging threats to resources, recent scientific findings showing degraded habitat and how resources may be improved with various long-term management efforts, and legal requirements. More information about this process can be found at <http://floridakeys.noaa.gov/review/welcome.html>.

Florida Keys National Marine Sanctuary

The NMSA (16 U.S.C. 1431 *et seq.*) authorizes the Secretary of Commerce to designate and protect areas of the marine environment with special national significance due to their conservation, recreational, ecological, historical, scientific, cultural, archeological, educational, or esthetic qualities as national marine sanctuaries. Management of national marine sanctuaries has been delegated by the Secretary of Commerce to NOAA's Office of National Marine Sanctuaries (ONMS). Florida Keys National Marine Sanctuary (FKNMS) was designated by Congress in 1990 through the Florida Keys National Marine Sanctuary Protection Act (FKNMSPA, Pub. L. 101-605). FKNMS extends approximately 250 statute miles southwest from the southern tip of the Florida peninsula, and is composed of both state and Federal waters. The sanctuary's marine ecosystem supports over 6,000 species of plants, fishes, and invertebrates, including the Nation's only living coral reef that lies adjacent to the continent. The area includes one of the largest seagrass communities in this hemisphere. The primary goal of the sanctuary is to protect the marine resources of the Florida Keys. Other

goals of the sanctuary include facilitating human uses that are consistent with the primary objective of resource protection as well as educating the public about the Florida Keys marine environment.

The National Oceanic and Atmospheric Administration (NOAA), a federal agency within the Department of Commerce, administers FKNMS. With 60 percent of its protected area located in Florida state waters, the sanctuary is jointly managed by NOAA and the State of Florida under a co-trustee agreement. Under this agreement, NOAA's primary management partner is the Florida Department of Environmental Protection (DEP). Any amendments to the management plan will be submitted and reviewed pursuant to the State of Florida's clearinghouse process. Any amendments to sanctuary regulations require the approval of the Governor on behalf of and with the approval of the Florida Trustees (the Governor and Cabinet of the State of Florida act as the Board of Trustees of the Internal Improvement Trust Fund) in order to be effective in State waters and submerged lands, except for merely editorial amendments, technical corrections, and emergency regulations.

In FKNMS, NOAA regulates the following: Injuring coral; fishing; discharges and deposits; impacts to the seafloor, including from dredging and dumping; discharges of sewage from vessels; vessel operations, including personal watercraft and airboats, that cause injuries to resources, humans or property; anchoring on coral; wakes near residential shorelines; vessel operations near diving/use of dive flags; releasing exotic species; damage to markers, buoys and scientific equipment; injuring historical resources; use of explosives and electric charges; harvest of marine life species except as allowed by the Florida Fish and Wildlife Conservation Commission; and activities in specified zones. Information on sanctuary regulations can be found online at <http://floridakeys.noaa.gov/regs/welcome.html?s=management>.

The types of zones currently in place in the sanctuary are: ecological reserves, sanctuary preservation areas, wildlife management areas, existing management areas, and special-use areas. A more detailed description of sanctuary zones can be found online at <http://floridakeys.noaa.gov/zones/types.html>. In addition, the FKNMS revised management plan is available for download at <http://floridakeys.noaa.gov/mgmtplans/2007.html>.

Key West and Great White Heron National Wildlife Refuges

In the Key West and Great White Heron National Wildlife Refuges, the Fish and Wildlife Service (FWS) may implement restrictions to minimize wildlife disturbance and habitat destruction in state waters from non-wildlife-dependent activities under a joint management agreement with the State of Florida for submerged lands. The FWS protects backcountry resources in state waters with limits on access/operation of vessels, jet skis, and air boats; buffer zones; water skiing; and aircraft water landings. The FWS backcountry management plan is available for download at <http://www.fws.gov/nationalkeydeer/backcountry.html>. Additional information about the management goals and objectives for the Key West and Great White Heron National Wildlife Refuges is described in the Lower Florida Keys National Wildlife Refuges Comprehensive Conservation Plan, available for download at <http://www.fws.gov/southeast/planning/CCP/LowerFLkeysFinalPg.html>.

NOAA and the FWS anticipate that completion of the revised boundaries, regulations, zoning scheme, backcountry management plan and concomitant documents will require approximately forty-eight months from the date of publication of this notice of intent. This joint review process will occur concurrently with a public process under the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*). This notice confirms that NOAA and FWS will coordinate their responsibilities under section 106 of the National Historic Preservation Act (NHPA, 16 U.S.C. 470) with the ongoing NEPA process, pursuant to 36 CFR 800.8(a). Therefore, the NEPA documents and public and stakeholder meetings associated with this process are also intended to meet the section 106 requirements.

Sanctuary Advisory Council

Sanctuary advisory councils are community-based advisory groups established to provide advice and recommendations to the superintendents of the national marine sanctuaries. Councils also serve as liaisons between their constituents in the community and sanctuaries. Sanctuary advisory councils provide advice about sanctuary operations and projects, including education and outreach, research and science, regulations and enforcement, and management planning. They are particularly critical in helping a

sanctuary during reviews of regulatory actions such as this zoning review. Council members provide expertise on both the local community and sanctuary resources, strengthen connections with the community, and help build increased stewardship for sanctuary resources.

The advisory council for Florida Keys National Marine Sanctuary has recommended the following goals and objectives to the sanctuary superintendent for this review:

A. To improve the diversity of natural biological communities in the Florida Keys to protect, and, where appropriate restore and enhance natural habitats, populations and ecological processes overall and in each of these subregions Tortugas, Marquesas, Lower, Middle, and Upper Keys.

1. Reduce stresses from human activities by establishing areas that restrict access to sensitive wildlife populations and habitats.

2. Protect large, contiguous, diverse and interconnected habitats that provide natural spawning, nursery, and permanent residence areas for the replenishment and genetic protection of marine life and protect and preserve all habitats and species.

3. Improve/maintain the condition of the biologically structured habitats including:

- a. Coral Reef
 - i. Inshore Patch Reef
 - ii. Mid-Channel Patch Reef
 - iii. Offshore Patch Reef
 - iv. Reef Margin/Fore Reef
 - v. Deep Reef
- b. Seagrass Bed
- c. Hardbottom
- d. Coastal Mangrove

4. Increase abundance and condition of selected key species including corals, queen conch, long spined sea urchin, apex predatory fish, birds and sea turtles.

B. To facilitate to the extent compatible with the primary objective of resource protection, all public and private uses of the resources of these marine areas not prohibited pursuant to other authorities.

1. Minimize conflicts among uses compatible with the National Marine Sanctuary.

2. Prevent heavy concentrations of uses that degrade Sanctuary resources.

3. Provide undisturbed monitoring sites for research and control sites to help determine the effects of human activities.

4. Achieve a vibrant ecologically sustainable ecosystem and economy.

a. Apply the best available science and balanced, conservation based management.

The sanctuary advisory council has also recommended the following guiding principles to the sanctuary superintendent for this review:

1. The regulation/zoning review of Florida Keys National Marine Sanctuary should be conducted with the recognition that there are bordering and overlapping marine management regimes in place, and that these regimes must be considered when contemplating changes to the regulation/marine zoning structure for Florida Keys National Marine Sanctuary.

2. All areas of Florida Keys National Marine Sanctuary should be classified as part of a specific zone, therefore the current "unzoned" area should be classified as a recognized zone type such as "general use area" or "multiple use area".

3. Each habitat type should be represented in a non-extractive marine zone in each of the biogeographically distinct sub regions of Florida Keys National Marine Sanctuary to achieve replication. The subregions identified were the Tortugas, Marquesas, and Lower, Middle, and Upper Keys.

4. Information on resilient reef areas that can serve as refugia should be taken into account in zoning changes.

5. Temporal zoning should be considered as a tool for protecting spawning aggregations and nesting seasons.

6. The size of individual non-extractive zoned areas, the cumulative total area included in non-extractive zones, and their spatial relationship with one another matter greatly in achieving the resource protection purposes of Florida Keys National Marine Sanctuary.

Members of the public are encouraged to contact the current council members who represent their areas of interest, as one of the roles of the members is to serve as a liaison between the sanctuary and members of the community. Contact information for advisory council members can be found at: <http://floridakeys.noaa.gov/sac/members.html>.

Review Process

In accordance with Section 304(e) of the NMSA, 16 U.S.C. 1431 *et seq.*, the NOAA ONMS is initiating a review of the sanctuary boundaries, regulations and zoning scheme to evaluate the substantive progress made toward implementing the management plan and goals for the sanctuary. In accordance with Section 4 of National Wildlife Refuge System Administration Act of 1966 (NWRSA; 16 U.S.C. 668dd *et seq.*), the ONMS and the FWS are also jointly initiating a review of the FWS backcountry management plan for the

Key West and Great White Heron National Wildlife Refuges to evaluate the substantive progress made toward implementing the goals and objectives. ONMS and the FWS anticipate drafting revised boundaries, regulations, zoning scheme, backcountry management agreement and concomitant documents as a result of this review. The current management plan for FKNMS was completed by NOAA in 2007. Contained within it is the FKNMS marine zoning action plan. It describes the five types of zones in the sanctuary, goals and objectives for marine zoning, and implementation strategies and actions. This review implements the marine zoning and regulatory action plans and strategies of the current management plan. The current FWS backcountry management plan and associated agreement for the Key West and Great White Heron National Wildlife Refuges was signed in 1992; it may be reviewed and revised every 5 years, although no prior reviews have occurred since the original plan was completed and the associated management agreement with the State of Florida is due to expire in 2017. The FWS, FKNMS and the State of Florida are reviewing the backcountry management agreement for potential revision and renewal.

There are several reasons for undertaking this review:

- Community and sanctuary advisory council interest in reexamining sanctuary management and conservation strategies, expressed during and subsequent to management plan reviews;

- Periodic evaluation of regulations and sanctuary zones ensures they continue to function best for dynamic natural resources and evolving human uses;

- The Florida Keys National Marine Sanctuary Condition Report 2011 shows human actions continue to degrade the habitat and living resources of the sanctuary, but habitat and resources may be improved with long-term management efforts, regulatory compliance, and community involvement;

- Emerging threats to the resources were largely unanticipated when the regulations were first issued and need to be addressed; and

- Reviews of the sanctuary and refuge backcountry management plans are required by law.

The review process is composed of five primary stages:

(1) Information collection and characterization, including public scoping meetings;

(2) Recommendation of the advisory council of Florida Keys National Marine

Sanctuary on revised boundaries, a revised zoning scheme and associated regulations, with possible working groups and public workshops;

(3) Preparation and release of draft revised boundaries, zoning scheme, backcountry management agreement, environmental evaluation, and, if appropriate, regulations or amendments to current regulations;

(4) Public review and comment on the draft boundaries and zoning scheme, proposed regulatory amendments, and other documents mentioned above; and

(5) Preparation and release of final revised boundaries, zoning scheme, backcountry management agreement, environmental evaluation, and, if appropriate, regulations.

NOAA and the FWS anticipate that the completion of the boundaries, zoning scheme, backcountry management agreement and concomitant documents will require approximately forty-eight months.

At this time, NOAA and FWS are opening a public scoping period to:

1. Solicit public comments on the boundaries, regulations and zoning scheme of Florida Keys National Marine Sanctuary; and the submerged lands within the boundaries of the Key West and Great White Heron National Wildlife Refuges and associated regulations; and

2. Help determine the scope of issues to be addressed in the preparation of boundaries, a zoning scheme, a backcountry management agreement, and an environmental assessment or environmental impact statement (EIS), pursuant to the National Environmental Policy Act (NEPA).

To that end, NOAA and FWS will conduct a series of scoping meetings in the Florida Keys and south Florida to collect public comment. These scoping meetings will also help determine the scope of issues to be addressed in the preparation of an environmental assessment or EIS pursuant to the NEPA, 43 U.S.C. 4321 *et seq.* The public scoping meeting schedule is presented below.

Public Scoping Meetings

The public scoping meetings will be held on the following dates and at the following locations beginning at 4 p.m. unless otherwise noted:

1. Marathon, Florida

Tuesday, June 19, 2012

Monroe County Government Center, Emergency Operations Center/Board of County Commissioners Meeting Room, 2798 Overseas Highway, Marathon, FL 33050.

2. Key Largo, Florida

Wednesday, June 20, 2012

Key Largo Library, 101485 Overseas Hwy., Tradewinds Shopping Center, Key Largo, FL 33037.

3. Key West, Florida

Thursday, June 21, 2012

Doubletree by Hilton Hotel Grand Key Resort—Key West Tortuga Ballroom, 3990 S. Roosevelt Blvd., Key West, FL 33040.

4. Miami, Florida

Tuesday, June 26, 2012

Florida International University, Modesto A. Monique Campus Graham University Center, Room GC 243, 11200 SW. 8th St., Miami, FL 33199.

5. Fort Myers, Florida

Wednesday, June 27, 2012

Joseph P. Alessandro Office Complex, Rooms 165 C and D, 2295 Victoria Ave., Fort Myers, FL 33901.

Consultation Under National Historic Preservation Act

This notice confirms that NOAA and the FWS will coordinate their responsibilities under section 106 of the National Historic Preservation Act (NHPA, 16 U.S.C. 470) with the ongoing NEPA process, pursuant to 36 CFR 800.8(a) including the use of NEPA documents and public and stakeholder meetings to also meet the section 106 requirements. The NHPA specifically applies to any agency undertaking that may affect historic properties. Pursuant to 36 CFR 800.16(1)(1), historic properties includes: “any prehistoric or historic district, site, building, structure or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. The term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria.”

In coordinating its responsibilities under the NHPA and NEPA, NOAA and the FWS intend to identify consulting parties; identify historic properties and assess the effects of the undertaking on such properties; initiate formal consultation with the State Historic Preservation Officer, the Advisory Council of Historic Preservation, and other consulting parties; involve the public in accordance with NOAA’s NEPA procedures, and develop in consultation with identified consulting

parties alternatives and proposed measures that might avoid, minimize or mitigate any adverse effects on historic properties and describe them in any environmental assessment or draft environmental impact statement.

Condition Report

In preparation for this review, NOAA has produced a Florida Keys National Marine Sanctuary Condition Report 2011. The Condition Report provides a summary of resources and their conditions; pressures on those resources; the current condition and trends of water, habitat, living resources; maritime archeological resources; human activities that affect those resources; and management responses to pressures that threaten the integrity of the marine environment. The report serves as a supporting document for the review process, to inform constituents of the current status of sanctuary resources.

An electronic copy of the Florida Keys National Marine Sanctuary Condition Report 2011 is available to the public on the Internet at: <http://sanctuaries.noaa.gov/science/condition/fknms/welcome.html>.

Scoping Comments

Scoping meetings provide an opportunity to make direct comments to, and share information with, NOAA and the FWS on the boundaries, zones, and regulations of the entire sanctuary, and the management of and regulations for resources associated with the submerged lands of the Key West and Great White Heron National Wildlife Refuges. We encourage the public to participate and welcome any comments on the scope, types, and significance of issues related to the sanctuary’s boundaries and zoning scheme, the FWS’s backcountry management plan, and associated regulations. In particular, we are interested in hearing about the public’s view on the potential management within specified zones in the sanctuary/submerged lands with the two refuges for the next ten to fifteen years.

Authority: This notice is published under the authority of the National Marine Sanctuaries Act, as amended (16 U.S.C. 1431 *et seq.*; 16 U.S.C. 470), the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd *et seq.*); and National Historic Preservation Act (16 U.S.C. 470).

Dated: April 6, 2012.

Daniel J. Basta,

Director for the Office of National Marine Sanctuaries.

Dated: April 3, 2012.

Cynthia K. Dohner,

Regional Director, Fish and Wildlife Service.

[FR Doc. 2012-9345 Filed 4-18-12; 8:45 am]

BILLING CODE 3510-NK-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 53

[REG-144267-11]

RIN 1545-BK76

Examples of Program-Related Investments

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that provide guidance to private foundations on program-related investments. These proposed regulations provide a series of new examples illustrating investments that qualify as program-related investments. In addition to private foundations, these proposed regulations affect foundation managers who participate in the making of program-related investments.

DATES: Comments and requests for a public hearing must be received by July 18, 2012.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-144267-11), room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-144267-11), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at <http://www.regulations.gov/> (IRS REG-144267-11).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Courtney D. Jones at (202) 622-6070; concerning submissions of comments and requests for a public hearing, Oluwafunmilayo Taylor, (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Section 4944(a) of the Internal Revenue Code (Code) imposes an excise

tax on a private foundation that makes an investment that jeopardizes the carrying out of any of the private foundation's exempt purposes (a "jeopardizing investment"). Section 4944(a) also imposes an excise tax on foundation managers who knowingly participate in the making of a jeopardizing investment. Section 4944(b) imposes additional excise taxes on private foundations and foundation managers when investments are not timely removed from jeopardy.

Generally, under § 53.4944-1(a)(2), a jeopardizing investment occurs when, based on the facts and circumstances at the time the investment is made, foundation managers fail to exercise ordinary business care and prudence in providing for the long- and short-term financial needs of the foundation. The determination of whether an investment is a jeopardizing investment is made on an investment-by-investment basis, taking into account the private foundation's entire portfolio. In exercising the requisite standard of care and prudence, foundation managers may take into account the expected investment return, price volatility, and the need for portfolio diversification.

Section 4944(c) excepts program-related investments ("PRIs") from treatment as jeopardizing investments. The regulations under section 4944(c) define a PRI as an investment: (1) The primary purpose of which is to accomplish one or more of the purposes described in section 170(c)(2)(B); (2) no significant purpose of which is the production of income or the appreciation of property; and (3) no purpose of which is to accomplish one or more of the purposes described in section 170(c)(2)(D) (attempting to influence legislation or participating in or intervening in any political campaign).

An investment is made primarily to accomplish one or more of the purposes described in section 170(c)(2)(B) (referred to as "charitable purposes") if it significantly furthers the accomplishment of the private foundation's exempt activities and would not have been made but for the relationship between the investment and the accomplishment of those exempt activities. In determining whether a significant purpose of an investment is the production of income or the appreciation of property, § 53.4944-3(a)(2)(iii) provides that it shall be relevant whether investors who are engaged in the investment solely for the production of income would be likely to make the investment on the same terms as the private foundation.

The regulations under other Code sections in Chapter 42 accord special tax treatment to PRIs. For example, § 53.4942(a)-2(c)(3)(ii)(d) excludes PRIs from the assets a private foundation takes into account when determining how much it must distribute under section 4942 as a "distributable amount" for the taxable year. In addition, § 53.4942(a)-3(a)(2)(i) generally includes distributions that qualify as PRIs as "qualifying distributions" for purposes of meeting the distribution requirements under section 4942. Section 53.4943-10(b) excludes PRIs from being treated as business holdings for the purpose of calculating excess business holdings subject to excise tax under section 4943. Sections 53.4945-5(b)(4) and 53.4945-6(c)(1)(i) also make clear that PRIs will not constitute taxable expenditures under section 4945, provided the private foundation exercises "expenditure responsibility" in circumstances in which it is required to do so. Among other expenditure responsibility requirements, a private foundation must require a written commitment from the recipient of the PRI that the funds received will be used only for the purposes of the program-related investment. As noted, the primary purpose of a program-related investment must be the accomplishment of a charitable purpose.

Section 53.4944-3(b) contains nine examples illustrating investments that qualify as PRIs and one example of an investment that does not qualify as a PRI. The existing examples focus on domestic situations principally involving economically disadvantaged individuals and deteriorated urban areas.

The Treasury Department and the IRS are aware that the private foundation community would find it helpful if the regulations could include additional PRI examples that reflect current investment practices and illustrate certain principles, including that: (1) An activity conducted in a foreign country furthers a charitable purpose if the same activity would further a charitable purpose if conducted in the United States; (2) the charitable purposes served by a PRI are not limited to situations involving economically disadvantaged individuals and deteriorated urban areas; (3) the recipients of PRIs need not be within a charitable class if they are the instruments for furthering a charitable purpose; (4) a potentially high rate of return does not automatically prevent an investment from qualifying as program-related; (5) PRIs can be achieved through a variety of

investments, including loans to individuals, tax-exempt organizations and for-profit organizations, and equity investments in for-profit organizations; (6) a credit enhancement arrangement may qualify as a PRI; and (7) a private foundation's acceptance of an equity position in conjunction with making a loan does not necessarily prevent the investment from qualifying as a PRI.

Explanation of Provisions

The proposed regulations add nine new examples that illustrate that a wider range of investments qualify as PRIs than the range currently presented in § 53.4944-3(b). The proposed regulations do not modify the existing regulations; rather, they provide additional examples that illustrate the application of the existing regulations. Generally, the charitable activities illustrated in the new examples are based on published guidance and on financial structures described in private letter rulings.

The new examples demonstrate that a PRI may accomplish a variety of charitable purposes, such as advancing science, combating environmental deterioration, and promoting the arts. Several examples also demonstrate that an investment that funds activities in one or more foreign countries, including investments that alleviate the impact of a natural disaster or that fund educational programs for poor individuals, may further the accomplishment of charitable purposes and qualify as a PRI. One example illustrates that the existence of a high potential rate of return on an investment does not, by itself, prevent the investment from qualifying as a PRI. Another example illustrates that a private foundation's acceptance of an equity position in conjunction with making a loan does not necessarily prevent the investment from qualifying as a PRI, and two examples illustrate that a private foundation's provision of credit enhancement can qualify as a PRI.

The last example demonstrates that a guarantee arrangement may qualify as a PRI. The proposed regulations address solely the impact of section 4944 on the facts described and do not address whether there is a qualifying distribution under section 4942.

However, the Treasury Department and the IRS conclude that, based on the facts described in the last example, there would be no qualifying distribution under section 4942 at the time the foundation enters into the guarantee arrangement. Under certain circumstances, a private foundation may treat payments made under a guarantee arrangement as qualifying distributions.

Finally, the proposed regulations include examples illustrating that loans and capital may be provided to individuals or entities that are not within a charitable class themselves, if the recipients are the instruments through which the private foundation accomplishes its exempt activities.

Proposed Effective/Applicability Date

Paragraph (b), *Examples 11 through 19* of this section will be effective on the date of publication of the Treasury decision adopting these examples as final regulations in the **Federal Register**. Taxpayers may rely on paragraph (b), *Examples 11 through 19* of this section before these proposed regulations are finalized.

Special Analyses

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

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the **ADDRESSES** heading. The IRS and the Treasury Department request comments on all aspects of the proposed rules. All comments will be available at www.regulations.gov or upon request. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Courtney D. Jones, Office of the Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the

Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 53

Excise taxes, Foundations, Investments, Lobbying, Reporting and recordkeeping requirements, Trusts and trustees.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 53 is proposed to be amended as follows:

PART 53—FOUNDATION AND SIMILAR EXCISE TAXES

Paragraph. 1. The authority citation for part 53 continues to read in part as follows:

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

Par. 2. Section 53.4944-3 is amended by adding *Examples 11, 12, 13, 14, 15, 16, 17, 18, and 19* to paragraph (b) and adding paragraph (c) to read as follows:

§ 53.4944-3 Exception for program-related investments.

* * * * *

(b) * * *

Example 11. X is a business enterprise that researches and develops new drugs. X's research demonstrates that a vaccine can be developed within ten years to prevent a disease that predominantly affects poor individuals in developing countries. However, neither X nor other commercial enterprises like X will devote their resources to develop the vaccine because the potential return on investment is significantly less than required by X or other commercial enterprises to undertake a project to develop new drugs. Y, a private foundation, enters into an investment agreement with X in order to induce X to develop the vaccine. Pursuant to the investment agreement, Y purchases shares of the common stock of S, a subsidiary corporation that X establishes to research and develop the vaccine. The agreement requires S to distribute the vaccine to poor individuals in developing countries at a price that is affordable to the affected population. The agreement also requires S to publish the research results, disclosing substantially all information about the results that would be useful to the interested public. S agrees that the publication of its research results will be made as promptly after the completion of the research as is reasonably possible without jeopardizing S's right to secure patents necessary to protect its ownership or control of the results of the research. The expected rate of return on Y's investment in S is less than the expected market rate of return for an investment of similar risk. Y's primary purpose in making the investment is to advance science. No significant purpose of the investment involves the production of income or the appreciation of property. The investment significantly furthers the accomplishment of Y's exempt activities and would not have been made but for such relationship between the investment and Y's

exempt activities. Accordingly, the purchase of the common stock of S is a program-related investment.

Example 12. Q, a developing country, produces a substantial amount of recyclable solid waste materials that are currently disposed of in landfills and by incineration, contributing significantly to environmental deterioration in Q. X is a new business enterprise located in Q. X's only activity will be collecting recyclable solid waste materials in Q and delivering those materials to recycling centers that are inaccessible to a majority of the population. If successful, the recycling collection business would prevent pollution in Q caused by the usual disposition of solid waste materials. X has obtained funding from only a few commercial investors who are concerned about the environmental impact of solid waste disposal. Although X made substantial efforts to procure additional funding, X has not been able to obtain sufficient funding because the expected rate of return is significantly less than the acceptable rate of return on an investment of this type. Because X has been unable to attract additional investors on the same terms as the initial investors, Y, a private foundation, enters into an investment agreement with X to purchase shares of X's common stock on the same terms as X's initial investors. Although there is a high risk associated with the investment in X, there is also the potential for a high rate of return if X is successful in the recycling business in Q. Y's primary purpose in making the investment is to combat environmental deterioration. No significant purpose of the investment involves the production of income or the appreciation of property. The investment significantly furthers the accomplishment of Y's exempt activities and would not have been made but for such relationship between the investment and Y's exempt activities. Accordingly, the purchase of the common stock is a program-related investment.

Example 13. Assume the facts as stated in *Example 12*, except that X offers Y shares of X's common stock in order to induce Y to make a below-market rate loan to X. X previously made the same offer to a number of commercial investors. These investors were unwilling to provide loans to X on such terms because the expected return on the combined package of stock and debt was below the expected market return for such an investment based on the level of risk involved, and they were also unwilling to provide loans on other terms X considers economically feasible. Y accepts the stock and makes the loan on the same terms that X offered to the commercial investors. Y plans to liquidate its stock in X as soon as the recycling collection business in Q is profitable or it is established that the business will never become profitable. Y's primary purpose in making the investment is to combat environmental deterioration. No significant purpose of the investment involves the production of income or the appreciation of property. The investment significantly furthers the accomplishment of Y's exempt activities and would not have been made but for such relationship between the investment and Y's exempt activities.

Accordingly, the loan accompanied by the acceptance of common stock is a program-related investment.

Example 14. X is a business enterprise located in V, a rural area in State Z. X employs a large number of poor individuals in V. A natural disaster occurs in V, causing significant damage to the area. The business operations of X are harmed because of damage to X's equipment and buildings. X has insufficient funds to continue its business operations and conventional sources of funds are unwilling or unable to provide loans to X on terms it considers economically feasible. In order to enable X to continue its business operations, Y, a private foundation, makes a loan to X bearing interest below the market rate for commercial loans of comparable risk. Y's primary purpose in making the loan is to provide relief to the poor and distressed. No significant purpose of the loan involves the production of income or the appreciation of property. The loan significantly furthers the accomplishment of Y's exempt activities and would not have been made but for such relationship between the loan and Y's exempt activities. Accordingly, the loan is a program-related investment.

Example 15. A natural disaster occurs in W, a developing country, causing significant damage to W's infrastructure. Y, a private foundation, makes loans bearing interest below the market rate for commercial loans of comparable risk to H and K, poor individuals who live in W, to enable each of them to start a small business. H will open a roadside fruit stand. K will start a weaving business. Conventional sources of funds were unwilling or unable to provide loans to H or K on terms they consider economically feasible. Y's primary purpose in making the loans is to provide relief to the poor and distressed. No significant purpose of the loans involves the production of income or the appreciation of property. The loans significantly further the accomplishment of Y's exempt activities and would not have been made but for such relationship between the loans and Y's exempt activities. Accordingly, the loans to H and K are program-related investments.

Example 16. X is a limited liability company treated as a partnership for federal income tax purposes. X purchases coffee from poor farmers residing in a developing country, either directly or through farmer-owned cooperatives. To fund the provision of efficient water management, crop cultivation, pest management, and farm management training to the poor farmers by X, Y, a private foundation, makes a loan to X bearing interest below the market rate for commercial loans of comparable risk. The loan agreement requires X to use the proceeds from the loan to provide the training to the poor farmers. X would not provide such training to the poor farmers absent the loan. Y's primary purpose in making the loan is to educate poor farmers about advanced agricultural methods. No significant purpose of the loan involves the production of income or the appreciation of property. The loan significantly furthers the accomplishment of Y's exempt activities and would not have been made but for such relationship between

the loan and Y's exempt activities. Accordingly, the loan is a program-related investment.

Example 17. X is a social welfare organization that is recognized as an organization described in section 501(c)(4). X was formed to develop and encourage interest in painting, sculpture and other art forms by, among other things, conducting weekly community art exhibits. X needs to purchase a large exhibition space to accommodate the demand for exhibition space within the community. Conventional sources of funds are unwilling or unable to provide funds to X on terms it considers economically feasible. Y, a private foundation, makes a loan to X at an interest rate below the market rate for commercial loans of comparable risk to fund the purchase of the new space. Y's primary purpose in making the loan is to promote the arts. No significant purpose of the loan involves the production of income or the appreciation of property. The loan significantly furthers the accomplishment of Y's exempt activities and would not have been made but for such relationship between the loan and Y's exempt activities. Accordingly, the loan is a program-related investment.

Example 18. X is a non-profit corporation that provides child care services in a low-income neighborhood, enabling many residents of the neighborhood to be gainfully employed. X meets the requirements of section 501(k) and is recognized as an organization described in section 501(c)(3). X's current child care facility has reached capacity and has a long waiting list. X has determined that the demand for its services warrants the construction of a new child care facility in the same neighborhood. X is unable to obtain a loan from conventional sources of funds including B, a commercial bank, because X lacks sufficient credit to support the financing of a new facility. Pursuant to a deposit agreement, Y, a private foundation, deposits \$h in B, and B lends an identical amount to X to construct the new child care facility. The deposit agreement requires Y to keep \$h on deposit with B during the term of X's loan and provides that if X defaults on the loan, B may deduct the amount of the default from the deposit. To facilitate B's access to the funds in the event of default, the agreement requires that the funds be invested in instruments that allow B to access them readily. The deposit agreement also provides that Y will earn interest at a rate of t% on the deposit. The t% rate is substantially less than Y could otherwise earn on this sum of money, if Y invested it elsewhere. The loan agreement between B and X requires X to use the proceeds from the loan to construct the new child care facility. Y's primary purpose in making the deposit is to further its educational purposes by enabling X to provide child care services within the meaning of section 501(k). No significant purpose of the deposit involves the production of income or the appreciation of property. The deposit significantly furthers the accomplishment of Y's exempt activities and would not have been made but for such relationship between the deposit and Y's exempt activities. Accordingly, the deposit is a program-related investment.

Example 19. Assume the same facts as stated in *Example 18*, except that instead of making a deposit of \$h into B, Y enters into a guarantee agreement with B. The guarantee agreement provides that if X defaults on the loan, Y will repay the balance due on the loan to B. B was unwilling to make the loan to X in the absence of Y's guarantee. X must use the proceeds from the loan to construct the new child care facility. At the same time, X and Y enter into a reimbursement agreement whereby X agrees to reimburse Y for any and all amounts paid to B under the guarantee agreement. The signed guarantee and reimbursement agreements together constitute a "guarantee and reimbursement arrangement." Y's primary purpose in entering into the guarantee and reimbursement arrangement is to further Y's educational purposes. No significant purpose of the guarantee and reimbursement arrangement involves the production of income or the appreciation of property. The guarantee and reimbursement arrangement significantly furthers the accomplishment of Y's exempt activities and would not have been made but for such relationship between the guarantee and reimbursement arrangement and Y's exempt activities. Accordingly, the guarantee and reimbursement arrangement is a program-related investment.

(c) *Effective/applicability date.*

Paragraph (b), *Examples 11* through *19* of this section will be effective on the date of publication of the Treasury decision adopting these examples as final regulations in the **Federal Register**. Taxpayers may rely on paragraph (b), *Examples 11* through *19* of this section before these proposed regulations are finalized.

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2012-9468 Filed 4-18-12; 8:45 am]

BILLING CODE 4830-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 08-150; RM-11390; DA 12-512]

Radio Broadcasting Services; Asbury and Maquoketa, IA, and Mineral Point, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: The Audio Division dismisses the petition for rule making filed by KM Radio of Independence, LLC, proposing the allotment of Channel 238A at Mineral Point, Wisconsin, and the substitution of reserved Channel *254A for reserved vacant Channel *238A at

Asbury, Iowa, 73 FR 50,297, and terminates the proceeding.

FOR FURTHER INFORMATION CONTACT: Deborah Dupont, Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MB Docket No. 08-150, adopted April 2, 2012, and released April 2, 2012. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Information Center, Portals II, 445 12th Street SW., Room CY-A257, Washington, DC 20554. The complete text of this decision also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY-B402, Washington, DC 20554, (800) 378-3160, or via the company's Web site, www.bcpweb.com. The *Report and Order* is not subject to the Congressional Review Act, and therefore the Commission will not send a copy of it in a report to be sent to Congress and the Government Accountability Office, see U.S.C. 801(a)(1)(A).

Federal Communications Commission.

Nazifa Sawez,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 2012-9401 Filed 4-18-12; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R7-ES-2012-0009; 4500030113]

RIN 1018-AY40

Endangered and Threatened Wildlife and Plants; Special Rule for the Polar Bear

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; availability of draft environmental assessment.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to amend the regulations at 50 CFR part 17, which implement the Endangered Species Act of 1973, as amended (ESA), to create a special rule under authority of section 4(d) of the ESA that provides measures that are necessary and advisable to provide for the conservation of the polar bear (*Ursus maritimus*). The Secretary has the discretion to prohibit by regulation with

respect to the polar bear any act prohibited by section 9(a)(1) of the ESA.

DATES: We will consider comments we receive on or before June 18, 2012. We must receive requests for public hearings, in writing, at the address shown in the **FOR FURTHER INFORMATION CONTACT** section by June 4, 2012.

ADDRESSES:

Document availability: You can view this proposed rule and the associated draft environmental assessment on <http://www.regulations.gov> under Docket No. FWS-R7-ES-2012-0009.

Written comments: You may submit comments on the proposed rule and associated draft environmental assessment by one of the following methods:

- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: Docket No. FWS-R7-ES-2012-0009; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042-PDM; Arlington, VA 22203; or

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments to Docket No. FWS-R7-ES-2012-0009.

Please indicate to which document, the proposed rule or the draft environmental assessment, your comments apply. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the *Public Comments* section below for more information).

FOR FURTHER INFORMATION CONTACT: Charles Hamilton, Marine Mammals Management Office, U.S. Fish and Wildlife Service, Region 7, 1011 East Tudor Road, Anchorage, AK 99503; telephone 907-786-3309. 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, 7 days a week.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why We Need To Publish a Proposed Rule

In response to litigation against the Service challenging our December 16, 2008 final 4(d) special rule for the polar bear, the District Court for the District of Columbia (Court) found that although the final 4(d) special rule for the polar bear was consistent with the ESA, the Service violated the National Environmental Policy Act (NEPA) and the Administrative Procedure Act by failing to conduct a NEPA analysis when it promulgated the final 4(d)

special rule. The Court vacated the final 4(d) special rule and ordered that the May 15, 2008 interim 4(d) special rule take effect until superseded by a new final 4(d) special rule. The Service is in the process of promulgating a new final 4(d) special rule with appropriate NEPA analysis. Through the NEPA process, the Service will fully consider each of the alternatives.

What is the effect of this proposed rule?

Neither the 2008 listing of polar bear as a threatened species under the ESA nor the 2011 designation of critical habitat would be affected if this proposed rule is finalized. On the ground conservation management of the polar bear under both the May 15, 2008 interim 4(d) and the December 16, 2008 final 4(d), are substantively similar; this proposed 4(d) special rule would reinstate the regulatory parameters afforded the polar bear from December 16, 2008 until November 18, 2011. Therefore, management of the species, as well as requirements placed on individuals, local communities, and industry, within the range of the polar bear, would not change if this proposed 4(d) special rule is finalized.

The Basis for Our Action

Under section 4(d) of the ESA, the Secretary of the Interior has discretion to issue such regulations as he deems necessary and advisable to provide for the conservation of the species. The Secretary also has the discretion to prohibit by regulation with respect to a threatened species any act prohibited by section 9(a)(1) of the ESA.

Exercising this discretion, the Service has developed general prohibitions for threatened species in 50 CFR 17.31 and exceptions to those prohibitions in 50 CFR 17.32. The proposed 4(d) special rule in most instances adopts the existing conservation regulatory requirements under the Marine Mammal Protection Act of 1972, as amended (MMPA), and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) as the appropriate regulatory provisions for this threatened species. If an activity is not authorized or exempted under the MMPA or CITES, and that activity would result in an act otherwise prohibited under the general prohibitions of the ESA for threatened species, then the general prohibitions at 50 CFR 17.31 would apply. We would require a permit for such an activity as specified in our regulations. In addition, this proposed 4(d) special rule would provide that any incidental take of polar bears that results from activities that occur outside of the current range of the

species is not a prohibited act under the ESA. This proposed 4(d) special rule would not affect any existing requirements under the MMPA, including incidental take restrictions, or CITES, regardless of whether the activity occurs inside or outside the current range of the polar bear. Further, nothing in this proposed 4(d) special rule affects the consultation requirements under section 7 of the ESA.

Public Comments

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we request comments or suggestions on this proposed rule. We particularly seek comments concerning:

(1) Suitability of the proposed rule for the conservation, recovery, and management of the polar bear.

(2) Additional provisions the Service may wish to consider to conserve, recover, and manage the polar bear.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We will not consider comments sent by email or fax, or to an address not listed in the **ADDRESSES** section.

If you submit a comment via <http://www.regulations.gov>, your entire comment—including any personal identifying information—will be posted on the Web site. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy comments on <http://www.regulations.gov>.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on <http://www.regulations.gov>, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Marine Mammals Management Office (see **FOR FURTHER INFORMATION CONTACT**).

Previous Federal Actions

On May 15, 2008, the Service published a final rule listing the polar bear (*Ursus maritimus*) as a threatened species throughout its range under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (ESA) (73 FR 28212). At the same time, the Service also published an interim special rule for the polar bear under authority of section 4(d) of the ESA that provided measures necessary and

advisable for the conservation of the polar bear and prohibited by regulation with respect to the polar bear certain acts prohibited in section 9(a)(1) of the ESA (73 FR 28306); this interim 4(d) special rule was later finalized on December 16, 2008 (73 FR 76249). Lawsuits challenging both the May 15, 2008 listing of the polar bear and the December 16, 2008 final 4(d) special rule for the polar bear were filed in various federal district courts. These lawsuits were consolidated before the U.S. District Court for the District of Columbia (D.C. District Court). On June 30, 2011, the D.C. District Court upheld the Service's decision to list the polar bear as a threatened species under the ESA.

On October 17, 2011, the D.C. District Court found that although the final 4(d) special rule was consistent with the ESA, the Service violated the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) and the Administrative Procedure Act (5 U.S.C. Subchapter II) by failing to conduct a NEPA analysis for its December 16, 2008 final 4(d) special rule for the polar bear. The Court ordered the final 4(d) special rule vacated and set aside pending resolution of a timetable for NEPA review. On November 18, 2011, the Court resolved the schedule for NEPA review and vacated the December 16, 2008 final 4(d) special rule (*Ctr. for Biological Diversity, et al. v. Salazar, et al.*, No. 08–2113; *Defenders of Wildlife v. U.S. Dep't of the Interior, et al.*, No. 09–153, Misc. No. 08–764 (EGS) MDL Docket No. 1993). In vacating and remanding to the Service the December 16, 2008 final 4(d) special rule for the polar bear (73 FR 76249), the Court further ordered that, in its place, the interim 4(d) special rule for the polar bear published on May 15, 2008 (73 FR 28306), shall remain in effect until superseded by the new final 4(d) special rule for the polar bear to be published in the **Federal Register**. On January 30, 2012, the Service published in the **Federal Register** (77 FR 4492) a document revising the Code of Federal Regulations to reflect the November 18, 2011 court order.

Current Service Process

The Service is conducting a NEPA analysis and has prepared a draft environmental assessment (EA) to address the determinations made by the Court. The NEPA analysis accomplishes three goals: (1) Determine if any action, or the absence of action, will have significant environmental impacts; (2) address any unresolved environmental issues; and (3) provide a basis for a decision on a proposal. The draft EA

and this proposed 4(d) special rule are being published concurrently; both are available for a 60-day period for public review and comment (see the **DATES** section, above).

The Service will analyze and respond to all substantive comments received on both the draft EA and proposed 4(d) special rule before issuing a final 4(d) special rule. Public participation is an important part of the NEPA process. Thus, while we now propose a particular version of the 4(d) special rule, we retain flexibility to select among the four alternatives analyzed in the EA when issuing the final 4(d) special rule.

Applicable Laws

In the United States, the polar bear is protected and managed under three laws: the ESA; the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*); and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES; 27 U.S.T. 1087). A brief description of these laws, as they apply to polar bear conservation, is provided below.

The purposes of the ESA are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, to provide a program for the conservation of such endangered species and threatened species, and to take such steps as may be appropriate to achieve the purposes of the treaties and conventions set forth in the ESA. The ESA is implemented through regulations found in the Code of Federal Regulations (CFR). When a species is listed as endangered, certain actions are prohibited under section 9 of the ESA, as specified in § 17.21 of title 50 of the CFR (50 CFR). These include, among others, take within the United States, within the territorial seas of the United States, or upon the high seas; import; export; and shipment in interstate or foreign commerce in the course of a commercial activity. Additionally, the consultation process under section 7 of the ESA requires that Federal agencies ensure actions they authorize, fund, permit, or carry out are not likely to jeopardize the continued existence of any endangered or threatened species.

The ESA does not specify particular prohibitions and exceptions to those prohibitions for threatened species. Instead, under section 4(d) of the ESA, the Secretary of the Interior (Secretary) was given the discretion to issue such regulations as he deems necessary and advisable to provide for the conservation of such species. The Secretary also has the discretion to

prohibit by regulation with respect to any threatened species any act prohibited under section 9(a)(1) of the ESA. Exercising this discretion, the Service has developed general prohibitions (50 CFR 17.31) and exceptions to those prohibitions (50 CFR 17.32) under the ESA that apply to most threatened species. Under § 17.32, permits may be issued to allow persons to engage in otherwise prohibited acts.

Alternately, for other threatened species, the Service develops specific prohibitions and exceptions that are tailored to the specific conservation needs of the species. In such cases, some of the prohibitions and authorizations under 50 CFR 17.31 and 17.32 may be appropriate for the species and incorporated into a special rule under section 4(d) of the ESA, but the 4(d) special rule will also include provisions that are tailored to the specific conservation needs of the threatened species and which may be more or less restrictive than the general provisions at 50 CFR 17.31.

The MMPA was enacted to protect and conserve marine mammal species, or population stocks of those species, so that they continue to be significant functioning elements in the ecosystem of which they are a part. Consistent with this objective, management should have a goal to maintain or return marine mammals to their optimum sustainable population. The MMPA provides a moratorium on importation and the issuance of permits for the taking of marine mammals and their products, unless exempted or authorized under the MMPA. Prohibitions also restrict:

- Take of marine mammals on the high seas;
- Take of any marine mammal in waters or on lands under the jurisdiction of the United States;
- Use of any port, harbor, or other place under the jurisdiction of the United States to take or import a marine mammal;
- Possession of any marine mammal or product taken in violation of the MMPA;
- Transport, purchase, sale, export, or offer to purchase, sell, or export any marine mammal or product taken in violation of the MMPA or for any purpose other than public display, scientific research, or enhancing the survival of the species or stock; and
- Import.

Authorizations and exemptions from these prohibitions are available for certain specified purposes. Any marine mammal listed as endangered or threatened under the ESA automatically has depleted status under the MMPA, which adds further restrictions.

Signed in 1973, CITES protects species at risk from international trade and is implemented by more than 170 countries, including the United States. The CITES regulates commercial and noncommercial international trade in selected animals and plants, including parts and products made from the species, through a system of permits. Under CITES, a species is listed at one of three levels of protection, each of which have different document requirements. Appendix I species are threatened with extinction and are or may be affected by trade; CITES directs its most stringent controls at activities involving these species. Appendix II species are not necessarily threatened with extinction now, but may become so if not regulated. Appendix III species are listed by a range country to obtain international cooperation in regulating and monitoring international trade. Polar bears were listed in Appendix II of CITES on July 7, 1975. Trade in CITES species is prohibited unless exempted or accompanied by the required CITES documents, and CITES documents cannot be issued until specific biological and legal findings have been made. The CITES does not itself regulate take or domestic trade of polar bears; however, it contributes to the conservation of the species by regulating international trade in polar bears and polar bear parts or products.

Provisions of the Proposed Special Rule Under Section 4(d) of the ESA for the Polar Bear

We assessed the conservation needs of the polar bear in light of the extensive protections already provided to the species under the MMPA and CITES. This proposed 4(d) special rule, in most instances, synchronizes the management of the polar bear under the ESA with management provisions under the MMPA and CITES. Because a special rule under section 4(d) of the ESA can only specify ESA prohibitions and available authorizations for this species, all other applicable provisions of the ESA and other statutes, such as the MMPA and CITES, would be unaffected by a proposed 4(d) special rule.

Under this proposed 4(d) special rule, if an activity is authorized or exempted under the MMPA or CITES, we would not require any additional authorization under the ESA regulations for that activity. However, if the activity is not authorized or exempted under the MMPA or CITES and the activity would result in an act that would be otherwise prohibited under the ESA regulations at 50 CFR 17.31, the prohibitions of § 17.31 would apply, and permits would

be required under 50 CFR 17.32 of our ESA regulations. The proposed 4(d) special rule would further provide that any incidental take of polar bears resulting from activities that occur outside of the current range of the species would not be a prohibited act under the ESA.

Neither the proposed 4(d) special rule nor any of the identified alternatives would remove or alter in any way the consultation requirements under section 7 of the ESA.

Alternative Special Rules Considered in the Course of This Rulemaking

In our draft EA analyzing options for a possible special rule under section 4(d) of the ESA for the polar bear, we considered four alternatives. These were:

Alternative 1. “No Action”—No 4(d) Rule. Under the no action alternative, no 4(d) special rule would be promulgated for polar bear conservation under the ESA. Thus, all prohibitions and protections for threatened wildlife stipulated under 50 CFR 17.31 and 17.32, which incorporate in large part the provisions of § 17.21 would apply to the polar bear due to its “threatened” ESA listing status.

*Alternative 2. (Proposed Alternative)—Final 4(d) Special Rule published in the **Federal Register** on December 16, 2008.* This 4(d) special rule, in most instances, adopts the existing conservation regulatory requirements under the MMPA and CITES as the appropriate regulatory provisions for the polar bear. Nonetheless, if an activity is not authorized or exempted under the MMPA or CITES and would result in an act that would be otherwise prohibited under the general prohibitions under the ESA for threatened species (50 CFR 17.31), then the prohibitions at 50 CFR 17.31 would apply, and we would require authorization under 50 CFR 17.32.

In addition, this 4(d) special rule provides that any incidental take of polar bears resulting from an activity that occurs *outside the current range of the polar bear* is not a prohibited act under the ESA. This 4(d) special rule does not affect any existing requirements under the MMPA, including incidental take restrictions, or CITES, regardless of whether the activity occurs inside or outside the range of the polar bear. Further, nothing in this 4(d) special rule affects the consultation requirements under section 7 of the ESA.

*Alternative 3. Interim 4(d) Special Rule published in the **Federal Register** on May 15, 2008.* This alternative is

similar to this proposed 4(d) special rule, in that both versions of the 4(d) special rule adopt the existing conservation regulatory requirements under the MMPA and CITES as the appropriate regulatory provisions for the polar bear.

There is only one substantive difference between this proposed 4(d) special rule and the interim 4(d) special rule published on May 15, 2008. The interim 4(d) special rule provides that any incidental take of polar bears resulting from activities that occur *outside Alaska* is not a prohibited act under the ESA. Thus, the geographic range of incidental take exemption under the ESA differs between “outside Alaska” (the interim 4(d) special rule) and “outside the current range of the polar bear” (this proposed 4(d) special rule).

This interim 4(d) special rule has been in effect since the Court ruled to vacate the Service’s final 4(d) special rule on November 18, 2011.

Alternative 4. Final 4(d) Special Rule, but without the provisions of paragraph 4. This alternative is similar to the proposed and interim 4(d) special rules, in that all three versions of the 4(d) special rule adopt the existing conservation regulatory requirements under the MMPA and CITES as the appropriate regulatory provisions for the polar bear.

However, unlike the proposed and interim 4(d) special rules, this alternative does not contain a provision to expressly exempt any geographic areas from the prohibitions in § 17.31 of the ESA implementing regulations regarding incidental taking of polar bears.

Necessary and Advisable Finding and Rational Basis Finding

Promulgation of Alternatives 1, 2, and 4, would revise, while Alternative 3 would uphold our January 30, 2012 final 4(d) special rule at 50 CFR 17.40 (q) by adopting, in most instances, the conservation provisions of the MMPA and CITES as the appropriate regulatory provisions for this threatened species. These MMPA and CITES provisions regulate incidental take, intentional take (including take for self-defense or welfare of the animal), import, export, transport, purchase and sale or offer for sale or purchase, pre-Act specimens, and subsistence handicraft trade and cultural exchanges.

Two of the alternatives, Alternative 2 (this proposed 4(d) special rule) and Alternative 3, would further provide that any incidental take of polar bears resulting from activities that occur outside a certain prescribed geographic

area is not a prohibited act under the ESA, although those activities would remain subject to the incidental take provisions in the MMPA and the consultation requirements under section 7 of the ESA.

In the following sections, we provide explanation of how the various provisions of the ESA, MMPA, and CITES interrelate and how the regulatory provisions of a 4(d) special rule are necessary and advisable to provide for the conservation of the polar bear. We also explain our discretionary decision to prohibit by regulation with respect to the polar bear certain acts prohibited in section 9(a)(1) of the ESA.

Definitions of Take

Take of protected species is prohibited under both the ESA and MMPA; however, the definition of “take” differs somewhat between the two Acts. “Take” is defined in the ESA as meaning to “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or attempt to engage in any such conduct.” 16 U.S.C. 1532(19). The MMPA defines “take” as meaning to “harass, hunt, capture, or kill, or to attempt to harass, hunt, capture, or kill any marine mammal.” 16 U.S.C. 1362(13). A number of terms appear in both definitions; however, the terms “harm”, “pursue”, “shoot”, “wound”, “trap”, and “collect” are included in the ESA definition but not in the MMPA definition. Nonetheless, the ESA prohibitions on “pursue”, “shoot”, “wound”, “trap”, and “collect” are within the scope of the MMPA “take” definition. As further discussed below, a person who pursues, shoots, wounds, traps, or collects an animal, or attempts to do any of these acts, has harassed (which includes injury), hunted, captured, or killed—or attempted to harass, hunt, capture, or kill—the animal in violation of the MMPA.

The term “harm” is also included in the ESA definition of “take”, but is less obviously related to “take” under the MMPA definition. Under our ESA regulations, “harm” is defined at 50 CFR 17.3 as “an act which actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering.” While the term “harm” in the ESA “take” definition encompasses negative effects through habitat modifications, it requires evidence that the habitat modification or degradation will result in specific effects on identifiable wildlife: actual death or injury. As noted by Supreme Court

Justice O'Connor in her concurring opinion in *Babbitt v. Sweet Home Chapter of Communities for a Great Oregon*, 515 U.S. 687, 708–14 (1995), application of the definition of “harm” requires actual, as opposed to hypothetical or speculative, death or injury to identifiable animals. Thus, the definition of “harm” under the ESA requires demonstrable effect (i.e., actual injury or death) on actual, individual members of the species.

The term “harass” is also defined in the MMPA and our ESA regulations. Under our ESA regulations, “harass” refers to an “intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering.” 50 CFR 17.3. With the exception of the activities mentioned below, “harassment” under the MMPA means “any act of pursuit, torment, or annoyance” that “has the potential to injure a marine mammal or marine mammal stock in the wild” (Level A harassment), or “has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering” (Level B harassment). 16 U.S.C. 1362(18)(A).

Section 319 of the National Defense Authorization Act for Fiscal Year 2004 (NDAA; Pub. L. 108–136) revised the definition of “harassment” under section 3(18) of the MMPA as it applies to military readiness or scientific research conducted by or on behalf of the Federal Government. Section 319 defined harassment for these purposes as “(i) any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild; or (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered.” 16 U.S.C. 1362(B).

In most cases, the definitions of “harassment” under the MMPA encompass more activities than does the term “harass” under the Service’s ESA regulations. For example, while the statutory definition of “harassment” under the MMPA that applies to all activities other than military readiness and scientific research conducted by or on behalf of the Federal Government

includes any act of pursuit, torment, or annoyance that has the “potential to injure” or the “potential to disturb” marine mammals in the wild by causing disruption of key behavioral patterns, the Service’s ESA definition of “harass” applies only to an act or omission that creates the “likelihood of injury” by annoying the wildlife to such an extent as to significantly disrupt key behavioral patterns. Furthermore, even the more narrow definition of “harassment” for military readiness activities or research by or on behalf of the Federal Government includes an act that injures or has “the significant potential to injure” or an act that disturbs or is “likely to disturb,” which is a stricter standard than the “likelihood of injury” standard under the ESA definition of “harass”. The one area where the ESA definition of “harass” is broader than the MMPA definition of “harassment” is that the ESA definition of “harass” includes acts or omissions whereas the MMPA definition of “harassment” includes only acts. However, we cannot foresee circumstances under which the management of polar bears would differ due to this difference in the two definitions.

In addition, although the ESA “take” definition includes “harm” and the MMPA “take” definition does not, this difference should not result in a difference in management of polar bears. As discussed earlier, application of the ESA “harm” definition requires evidence of demonstrable injury or death to actual, individual polar bears. The breadth of the MMPA “harassment” definition requires only potential injury or potential disturbance, or, in the case of military readiness activities, likely disturbance causing disruption of key behavioral patterns. Thus, the evidence required to establish “harm” under the ESA would provide the evidence of potential injury or potential or likely disturbance that causes disruption of key behavioral patterns needed to establish “harassment” under the MMPA.

In summary, the definitions of “take” under the MMPA and ESA differ in terminology; however, they are similar in application. We find the definitions of “take” under the Acts to be comparable and where they differ, we find that, due to the breadth of the MMPA’s definition of “harassment”, the MMPA’s definition of “take” is, overall, more protective. Therefore, we find that managing polar bears under the MMPA adequately provides for the conservation of polar bears. Where a person or entity does not have authorization for an activity that causes

“take” under the MMPA, or is not in compliance with their MMPA take authorization, the definition of “take” under the ESA will be applied.

Incidental Take

The take restrictions under the MMPA and those typically provided for threatened species under the ESA through our regulations at 50 CFR 17.31 or a special rule under section 4(d) of the ESA apply regardless of whether the action causing take is purposefully directed at a marine mammal or not (i.e., is incidental). Incidental take refers to the take of a protected species that is incidental to, but not the purpose of, an otherwise lawful activity. Under Alternative 2 (this proposed 4(d) special rule), Alternative 3, and Alternative 4, incidental take provisions of the MMPA and its implementing regulations would be in effect. If a person or entity lacked authorization for MMPA incidental take, then ESA take prohibitions would also apply, except that the geographic scope of incidental take prohibitions under the ESA would be limited as detailed in paragraph 4 of the special rules constituting Alternatives 2 or 3. This arrangement is necessary and advisable to provide for the conservation of the species. The Secretary has the discretion to prohibit by regulation with respect to the polar bear any act prohibited under section 9(a)(1) of the ESA.

Section 7(a)(2) of the ESA requires Federal agencies to ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of designated critical habitat. Regulations that implement section 7(a)(2) of the ESA (50 CFR part 402) define “jeopardize the continued existence of” as to “engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species.” 50 CFR 402.02.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (known as the “action agency”) must enter into consultation with the Service, subject to the exceptions set out in 50 CFR 402.14(b) and the provisions of § 402.03. It is through the consultation process under section 7 of the ESA that incidental take is identified and, if necessary, Federal agencies receive authorization for incidental take. The section 7 consultation requirements also apply to the Service and require that we consult internally to ensure actions we

authorize, fund, or carry out are not likely to result in jeopardy to the species or adverse modification to its habitat. This type of consultation, known as intra-Service consultation, would, for example, be applied to the Service's issuance of authorizations under the MMPA and ESA, e.g., a Service-issued scientific research permit. These ESA requirements are not altered by Alternatives 2, 3, and 4 regardless of the geographic area where the action occurs.

As a result of consultation, we document compliance with the requirements of section 7(a)(2) of the ESA through our issuance of a concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat, or issuance of a biological opinion for Federal actions that may adversely affect listed species or critical habitat. In those cases where the Service determines an action that is likely to adversely affect polar bears will not likely result in jeopardy but is anticipated to result in incidental take, the biological opinion will describe the amount and extent of incidental take that is reasonably certain to occur. Under section 7(b)(4) of the ESA, incidental take of a marine mammal such as the polar bear cannot be authorized under the ESA until the applicant has received incidental take authorization under the MMPA. If such authorization is in place, the Service will also issue a statement that specifies the amount or extent of such take; any reasonable and prudent measures considered appropriate to minimize such effects; terms and conditions to implement the measures necessary to minimize effects; and procedures for handling any animals actually taken. Nothing in Alternatives 2, 3, and 4 would affect the issuance or contents of the biological opinions for polar bears or the issuance of an incidental take statement, although incidental take resulting from activities that occur outside of the geographic range specified in paragraph 4, as provided in Alternatives 2 and 3, would not be subject to the taking prohibition of the ESA.

The regulations at 50 CFR 17.32(b) provide a mechanism for non-Federal parties to obtain authorization for the incidental take of threatened wildlife. This process requires that an applicant specify effects to the species and steps to minimize and mitigate such effects. If the Service determines that the mitigation measures will minimize effects of any potential incidental take, and that take will not appreciably reduce the likelihood of survival and recovery of the species, we may grant

incidental take authorization. This authorization would include terms and conditions deemed necessary or appropriate to insure minimization of take, as well as monitoring and reporting requirements. Incidental take restrictions both inside and outside the current range of the polar bear that would apply under Alternative 2 are described below.

Activities Within Current Range

Under Alternative 2 (this proposed 4(d) special rule), if incidental take has been authorized under section 101(a)(5) of the MMPA for take of a polar bear by commercial fisheries, or by the issuance of an incidental harassment authorization (IHA) or through incidental take regulations for all other activities, we would not require an additional incidental take permit under the ESA issued in accordance with 50 CFR 17.32(b) for non-Federal parties because we have determined that the MMPA restrictions are more protective or as protective as permits issued under 50 CFR 17.32(b). In addition, while an incidental take statement under section 7 of the ESA would be issued, any take would be covered through the MMPA authorization. However, any incidental take that does occur from activities within the current range of the polar bear that has not been authorized under the MMPA, or is not in compliance with the MMPA authorization, would remain prohibited under 50 CFR 17.31 and subject to full penalties under both the ESA and MMPA. Further, the ESA's citizen suit provision would be unaffected by this proposed special rule anywhere within the current range of the species to address alleged unlawful incidental take. Any person or entity that is allegedly causing the incidental take of polar bears as a result of activities within the range of the species without appropriate MMPA authorization could be challenged through this provision as that would be a violation of 50 CFR 17.31. The ESA citizen suit provision would also remain available for alleged failure to consult under section 7 of the ESA, regardless of whether the agency action occurs inside or outside the current range of the polar bear. Prohibitions on direct take and commercial activities are also applicable without regard to the location of the direct take or commercial activity.

Sections 101(a)(5)(A) and (D) of the MMPA give the Service the authority to allow the incidental, but not intentional, taking of small numbers of marine mammals, in response to requests by U.S. citizens (as defined in 50 CFR 18.27(c)) engaged in a specified activity

(other than commercial fishing) in a specified geographic region. Incidental take cannot be authorized under the MMPA unless the Service finds that the total of such taking will have no more than a negligible impact on the species or stock, and that such taking will not have an unmitigable adverse impact on the availability of the species or stock for take for subsistence uses of Alaska Natives.

If any take that is likely to occur will be limited to nonlethal harassment of the species, the Service may issue an incidental harassment authorization (IHA) under section 101(a)(5)(D) of the MMPA. The IHAs cannot be issued for a period longer than 1 year. If the taking may result in more than harassment, regulations under section 101(a)(5)(A) of the MMPA must be issued, which may be in place for no longer than 5 years. Once regulations making the required findings are in place, we issue letters of authorization (LOAs) that authorize the incidental take for specific projects that fall under the provisions covered in the regulations. The LOAs expire after 1 year and contain activity-specific monitoring and mitigation measures that ensure that any take remains at the negligible level. In either case, the IHA or the regulations must set forth: (1) Permissible methods of taking; (2) means of effecting the least practicable adverse impact on the species and their habitat and on the availability of the species for subsistence uses; and (3) requirements for monitoring and reporting.

While a determination of negligible impact is made at the time the regulations are issued based on the best information available, each request for an LOA is also evaluated to ensure it is consistent with the negligible impact determination. The evaluation consists of the type and scope of the individual project and an analysis of all current species information, including the required monitoring reports from previously issued LOAs, and considers the effects of the individual project when added to all current LOAs in the geographic area. Through these means, the type and level of take of polar bears is continuously evaluated throughout the life of the regulations to ensure that any take remains at the level of negligible impact.

Negligible impact under the MMPA, as defined at 50 CFR 18.27(c), is "an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival". This is a more protective standard than standards for

authorizing incidental take under the ESA, which are: (1) For non-Federal actions, that the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and (2) for Federal actions, that the activity is not likely to jeopardize the continued existence of the species (50 CFR 17.32).

The length of the authorizations under the MMPA are limited to 1 year for IHAs, and 5 years for incidental take regulations, thus ensuring that activities likely to cause incidental take of polar bears are periodically reviewed and mitigation measures updated if necessary to ensure that take remains at a negligible level. Incidental take permits and statements under the ESA have no such statutory time limits. Incidental take statements under the ESA remain in effect for the life of the Federal action, unless re-initiation of consultation is triggered. Incidental take permits under the ESA for non-Federal activities can be for various durations (see 50 CFR 17.32(b)(4)), with some permits valid for up to 50 years. Therefore, the incidental take standards under the MMPA, because of their stricter standards and mandatory periodic re-evaluation, provide a greater level of protection for the polar bear than adoption of the standards under the ESA at 50 CFR 17.31 and 17.32. As such, Alternatives 2, 3, and 4 would adopt the MMPA standards for authorizing Federal and non-Federal incidental take as necessary and advisable to provide for the conservation of the polar bear and would by regulation prohibit with respect to polar bears certain acts prohibited in section 9(a)(1) of the ESA. Without a 4(d) special rule, the MMPA standards would continue to apply, as nothing in a 4(d) special rule affects MMPA protections in any way, but an additional ESA process to authorize the incidental take would need to be undertaken as well.

As stated above, when the Service issues authorizations for otherwise prohibited incidental take under the MMPA, we must determine that those activities will result in no more than a negligible impact on the species or stock, and that such taking will not have an unmitigable adverse impact on the availability of the species or stock for subsistence use take. The distinction of conducting the analysis at the species or stock level may be an important one in some cases. Under the ESA, the “jeopardy” standard, for Federal incidental take, and the “appreciably reduce the likelihood of survival and recovery” standard, for non-Federal take, are always applied to the listed

entity (i.e., the listed species, subspecies, or distinct population segment). The Service is not given the discretion under the ESA to assess “jeopardy” and “appreciably reduce the likelihood of survival and recovery” at a smaller scale (e.g., stock) unless the listed entity is in fact smaller than the entire species or subspecies (e.g., a distinct population segment). Therefore, because avoiding greater than negligible impact to a stock is tighter than avoiding greater than negligible impact to an entire species, the MMPA may be much more protective than the ESA for activities that occur only within one stock of a listed species. In the case of the polar bear, the species is listed as threatened throughout its range under the ESA, while multiple stocks are recognized under the MMPA. Therefore, a variety of activities that may impact polar bears will be assessed at a finer scale under the MMPA than they would have been otherwise under the ESA.

In addition, during the process of authorizing any MMPA incidental take under section 101(a)(5), we must conduct an intra-Service consultation under section 7(a)(2) of the ESA to ensure that providing an MMPA incidental take authorization to an applicant is an act that is not likely to jeopardize the continued existence of the polar bear, nor adversely modify critical habitat. As the standard for approval under MMPA section 101(a)(5) is no more than “negligible impact” to the affected marine mammal species or stock, we believe that any MMPA-compliant authorization or regulation would ordinarily meet the ESA section 7(a)(2) standards of avoiding jeopardy to the species. Under any of the three considered alternatives of a proposed special rule, any incidental take that could not be authorized under section 101(a)(5) of the MMPA would remain subject to the ESA prohibitions of 50 CFR 17.31.

To the extent that any Federal actions are found to comport with the standards for MMPA incidental take authorization, we fully anticipate that any such section 7 consultation under the ESA would result in a finding that the proposed action is not likely to jeopardize the continued existence of the polar bear. In addition, we anticipate that any such proposed actions would augment protection and enhance Service management of the polar bear through the application of site-specific mitigation measures contained in an authorization issued under the MMPA. Therefore, we do not anticipate at this time, in light of the ESA jeopardy standard and the maximum duration of these MMPA authorizations, that there

could be a conservation basis for requiring any entity holding incidental take authorization under the MMPA and in compliance with all measures under that authorization (e.g., mitigation) to implement further measures under the ESA as long as the action does not go beyond the scope and duration of the MMPA take authorization.

For example, affiliates of the oil and gas industry have requested, and we have issued regulations since 1991 for, incidental take authorization for activities in occupied polar bear habitat. This includes regulations issued for incidental take in the Beaufort Sea from 1993 to the present, and regulations issued for incidental take in the Chukchi Sea for the period 1991–1996 and, more recently, regulations for similar activities and potential incidental take in the Chukchi Sea for the period 2008–2013. A detailed history of our past regulations for the Beaufort and Chukchi Sea regions can be found in the final regulations published on August 3, 2011 (76 FR 47010), and June 11, 2008 (73 FR 33212), respectively.

The mitigation measures that we have required for all oil and gas exploration and development projects include a site-specific plan of operation and a site-specific polar bear interaction plan. Site-specific plans outline the steps the applicant will take to minimize effects on polar bears, such as garbage disposal and snow management procedures to reduce the attraction of polar bears, an outlined chain-of-command for responding to any polar bear sighting, and polar bear awareness training for employees. The training program is designed to educate field personnel about the dangers of bear encounters and to implement safety procedures in the event of a bear sighting. Most often, the appropriate response involves merely monitoring the animal’s activities until they move out of the area. However, personnel may be instructed to leave an area where bears are seen.

Additional mitigation measures are also required on a case-by-case basis depending on the location, timing, and specific activity. For example, we may require trained marine mammal observers for offshore activities; pre-activity surveys (e.g., aerial surveys, infra-red thermal aerial surveys, or polar bear scent-trained dogs) to determine the presence or absence of dens or denning activity; measures to protect pregnant polar bears during denning activities (den selection, birthing, and maturation of cubs), including incorporation of a 1-mile (1.6-kilometer) buffer surrounding known dens; and

enhanced monitoring or flight restrictions. These mitigation measures are implemented to limit human-bear interactions and disturbances to bears, and have ensured that industry effects on polar bears have remained at the negligible level. Data provided by the required monitoring and reporting programs in the Beaufort Sea and in the Chukchi Sea show that mitigation measures successfully minimized effects on polar bears.

The Service also issues intentional take authorizations under sections 101(a)(4)(A), 109(h), and 112(c) of the MMPA, which can authorize citizens to take polar bears by harassment (nonlethal deterrence activities) for the protection of both human life and polar bears while conducting activities in polar bear habitat. The intent of the interaction plan and training activities is to allow for the early detection and appropriate response to polar bears that may be encountered during operations, which minimizes the potential for injury or lethal take of bears in defense of human life. The Service provides guidance and training regarding the appropriate harassment response necessary for polar bears. Deterrent strategies may include use of tools such as vehicles, vehicle horns, vehicle sirens, vehicle lights, spot lights, or, if necessary, pyrotechnics (e.g., cracker shells). Intentional take authorizations have been issued to the oil and gas industry, the mining industry, local North Slope communities, scientific researchers, and the military. These MMPA-specific authorizations have been successful at protecting both communities and polar bears for many years.

Activities Outside Identified Geographic Area

Alternative 2 (this proposed 4(d) special rule) and Alternative 3 include a separate provision (paragraph (4)) that addresses take under the ESA that is incidental to an otherwise lawful activity that occurs outside a particular geographic range. Under paragraph (4) of Alternative 2, incidental take of polar bears that results from activities that occur outside of the current range of the species would not be subject to the prohibitions found at 50 CFR 17.31. In contrast, paragraph (4) of Alternative 3 refers to the State of Alaska.

Under paragraph (4) of Alternative 2, any incidental take that results from activities within the current range of the polar bear would be subject to the prohibitions found at 50 CFR 17.31, although, as explained in the previous section, any such incidental take that has already been authorized under the

MMPA would not require additional ESA authorization.

Prohibiting incidental take of polar bears from activities that occur within the current range of the species, under 50 CFR 17.31, would contribute to conservation of the polar bear. The areas within the current range of the polar bear include land or water that is subject to the jurisdiction or sovereign rights of the United States (including portions of lands and inland waters of the United States, the territorial waters of the United States, and the United States' Exclusive Economic Zone or the limits of the continental shelf) and the high seas. Thus, Alternative 2 more adequately provides for the protection and conservation of the polar bear than does Alternative 3, because it more clearly includes all areas within the range of the polar bear that should be subject to the ESA, rather than just the "State of Alaska," which is more limited geographically and is not biologically based.

Any incidental take of a polar bear caused by an activity that occurs outside of the geographic range specified in paragraph (4) of Alternative 2 would not be a prohibited act under the ESA. However, nothing in paragraph (4) modifies the prohibitions against taking, including incidental taking, under the MMPA, which continue to apply regardless of where the activity occurs.

Any incidental take caused by an activity outside the geographic range specified in paragraph (4) of Alternative 2, and covered by the MMPA would be a violation of that law and subject to the full array of the statute's civil and criminal penalties unless it was authorized. Any person, which includes businesses, States, and Federal agencies, as well as individuals, who violates the MMPA's takings prohibition or any regulation may be assessed a civil penalty of up to \$10,000 for each violation. A person or entity that knowingly violates the MMPA's takings prohibition or any regulation will, upon conviction, be fined for each violation, imprisoned for up to 1 year, or both.

Any individual, business, State government, or Federal entity subject to the jurisdiction of the United States that is likely to cause the incidental taking of a polar bear under the MMPA, regardless of the location of their activity, must therefore seek incidental take authorization under the MMPA or risk such civil or criminal penalties. As explained earlier, while the Service will work with any person or entity that seeks incidental take authorization, such authorization can only be granted if any take that is likely to occur will have no more than a negligible impact

on the species and will not have an unmitigable adverse impact on the availability of the species for subsistence use take. If the negligible impact standard cannot be met, the person or entity will have to modify their activities to meet the standard, modify their activities to avoid the taking altogether, or risk civil or criminal penalties.

In addition, nothing in paragraph (4) of Alternative 2 affects section 7 consultation requirements outside the geographic range specified in the special rule. Any Federal agency that intends to engage in an agency action within the United States, its territorial waters, or on the high seas that "may affect" polar bears, or their habitat, must comply with 50 CFR part 402, regardless of whether the agency action is to take place within the current range of the polar bear. This includes, but is not limited to, intra-Service consultation on any MMPA incidental take authorization proposed for activities located outside the geographic range specified in paragraph (4) of this proposed special rule. Paragraph (4) would not affect in any way the standards for issuing a biological opinion at the end of that consultation or the contents of the biological opinion, including an assessment of the amount or extent of take that is likely to occur. An incidental take statement would also be issued under any opinion where the Service finds that the agency action and the incidental taking are not likely to jeopardize the continued existence of the species or result in the destruction or adverse modification of any polar bear critical habitat, provided that the incidental taking has already been authorized under the MMPA, as required under section 7(b)(4) of the ESA. The Service would, however, inform the Federal agency and any applicants in the biological opinion and any incidental take statement that the take identified in the biological opinion and the statement is not a prohibited act under the ESA, although any incidental take that actually occurs and that has not been authorized under the MMPA would remain a violation of the MMPA.

One difference between the MMPA and the ESA is the applicability of the ESA citizen suit provision. Under section 11 of the ESA, any person may commence a civil suit against a person, business entity, State government, or Federal agency that is allegedly in violation of the ESA subject to the 60-day notice requirement. Such lawsuits have been brought by private citizens and citizen groups where it is alleged that a person or entity is taking a listed species in violation of the ESA. The

MMPA does not have a similar provision. So while any unauthorized incidental take caused by an activity outside the geographic range specified in paragraph (4) of Alternative 2 would be a violation of the MMPA, if the proposed rule is finalized, legal action against the person or entity causing the take could only be brought by the United States and not by a private citizen or citizen group unless other statutory bases for jurisdiction, such as the Administrative Procedure Act, are available. The Service finds the provisions of paragraph (4) to be consistent with the conservation of the polar bear because: (1) The potential for citizen suits alleging take resulting from activities outside of the range of the polar bear is significant; (2) the likelihood of such suits prevailing in establishing take of polar bears is remote, and (3) defending against such suits will divert available staff and funding away from productive polar bear conservation efforts.

Operation of the citizen suit provision remains unaffected for any restricted act other than incidental take, such as direct take, import, export, sale, and transport, regardless of whether the activity occurs outside the current range of the polar bear. Further, the ESA's citizen suit provision would be unaffected by Alternative 2, when the activity causing incidental take is anywhere within the geographic range specified in paragraph (4). Any person or entity that is allegedly causing the incidental take of polar bears as a result of activities within the geographic range specified in paragraph (4) of Alternative 2 without appropriate MMPA authorization could be challenged through the citizen suit provision, as that would be a violation of the ESA implementing regulations at 50 CFR 17.31. The ESA citizen suit provision would also remain available for alleged failure to consult under section 7 of the ESA regardless of where the agency action occurs within the United States, its territorial waters, or on the high seas. Further, any incidental taking caused by an activity outside the geographic range specified in paragraph (4) of Alternative 2 that is connected, either directly or in certain instances indirectly, to an action by a Federal agency could be pursued under the Administrative Procedure Act of 1946 (5 U.S.C. Subchapter II), which allows challenges to final agency actions.

Import, Export, Direct Take, Transport, Purchase, and Sale or Offer for Sale or Purchase

When setting restrictions for threatened species, the Service has

generally adopted prohibitions on their import; export; take; transport in interstate or foreign commerce in the course of a commercial activity; sale or offer for sale in interstate or foreign commerce; and possession, sale, delivery, carrying, transportation, or shipping of unlawfully taken species, either through a special rule or through the provisions of 50 CFR 17.31. For the polar bear, these same activities are already strictly regulated under the MMPA. Section 101 of the MMPA provides a moratorium on the taking and importation of marine mammals and their products. Section 102 of the MMPA further prohibits activities unless exempted or authorized under subsequent sections.

Prohibitions in section 102(a) include take of any marine mammal on the high seas; take of any marine mammal in waters or on lands under the jurisdiction of the United States; use of any port, harbor, or other place under the jurisdiction of the United States to take or import a marine mammal; possession of any marine mammal or product taken in violation of the MMPA; and transport, purchase, sale, export, or offer to purchase, sell, or export any marine mammal or product taken in violation of the MMPA or for any purpose other than public display, scientific research, or enhancing the survival of the species or stock. Under sections 102(b) and (c) of the MMPA, it is generally unlawful to import a pregnant or nursing marine mammal; an individual taken from a depleted species or population stock; an individual taken in a manner deemed inhumane; any marine mammal taken in violation of the MMPA or in violation of the law of another country; or any marine mammal product if it was made from any marine mammal taken in violation of the MMPA or in violation of the law of another country, or if it was illegal to sell in the country of origin. As a general matter, unauthorized import of a marine mammal is prohibited subject to penalties under Sections 101(a) and 105(a)(1) of the MMPA.

The MMPA then provides specific exceptions to these prohibitions under which certain acts are allowed only if all statutory requirements are met. Under section 104 of the MMPA, these otherwise prohibited activities may be authorized for purposes of public display (section 104(c)(2)), scientific research (section 104(c)(3)), enhancing the survival or recovery of a species (section 104(c)(4)), or photography (where there is level B harassment only; section 104(c)(6)). In addition, section 104(c)(8) specifically addresses the

possession, sale, purchase, transport, export, or offer for sale of the progeny of any marine mammal taken or imported under section 104, and section 104(c)(9) sets strict standards for the export of any marine mammal from the United States. In all of these sections of the MMPA, strict criteria have been established to ensure that the impact of an authorized activity, if a permit were to be issued, would successfully meet Congress's finding in the MMPA that species, "should not be permitted to diminish beyond the point at which they cease to be a significant functioning element in the ecosystem of which they are a part."

Under the general threatened species regulations at 50 CFR 17.31 and 17.32, authorizations are available for a wider range of activities than under the MMPA, including permits for any special purpose consistent with the ESA. In addition, for those activities that are available under both the MMPA and the general threatened species regulations, the MMPA issuance criteria are often more strict. For example, in order to issue a permit under the general threatened species regulations at 50 CFR 17.32, the Service must consider, among other things:

(1) Whether the purpose for which the permit is required is adequate to justify removing from the wild or otherwise changing the status of the wildlife sought to be covered by the permit;

(2) The probable direct and indirect effect which issuing the permit would have on the wild populations of the wildlife;

(3) Whether the permit would in any way directly or indirectly conflict with any known program intended to enhance the survival probabilities of the population; and

(4) Whether the activities would be likely to reduce the threat of extinction facing the species of wildlife.

These are all "considerations" during the process of evaluating an application, but none sets a standard that requires denial of the permit under any particular set of facts. However, in order to obtain an enhancement permit under the MMPA, the Service must find that any taking or importation: (1) Is likely to contribute significantly to maintaining or increasing distribution or numbers necessary to ensure the survival or recovery of the species or stock, and (2) is consistent with any conservation plan or ESA recovery plan for the species or stock or, if no conservation or ESA recovery plan is in place, with the Service's evaluation of actions required to enhance the survival or recovery of the species or stock in light of factors that would be addressed

in a conservation plan or ESA recovery plan. In order to issue a scientific research permit under the MMPA, in addition to meeting the requirements that the taking is required to further a bona fide scientific purpose, any lethal taking cannot be authorized unless a nonlethal method of conducting the research is not feasible. In addition, for depleted species such as the polar bear, permits will not be issued for any lethal taking unless the results of the research will directly benefit the species, or fulfill a critically important research need. Furthermore, section 117 of the MMPA requires that stock assessments be conducted for each marine mammal stock which occurs in waters under U.S. jurisdiction. Each stock assessment will describe population estimates and trends, describe annual human-caused mortality of the stock by source, and describe the potential biological removal level for the stock which is derived using a recovery factor.

Further, all permits issued under the MMPA must be consistent with the purposes and policies of the Act, which includes maintaining or returning marine mammals to their optimum sustainable population. Also, now that polar bears have depleted status under the MMPA, no MMPA permit may be issued for taking or importation for the purpose of public display, whereas § 17.32 allows issuance of permits for zoological exhibition and educational purposes. As the MMPA does not contain a provision similar to a special rule under section 4(d) of the ESA, the more restrictive requirements of the MMPA apply (16 U.S.C. 1543).

Thus, the existing statutory provisions of the MMPA allow fewer types of activities than does 50 CFR 17.32 for threatened species, and the MMPA's standards are generally stricter for those activities that are allowed than standards for comparable activities under 50 CFR 17.32. Because, for polar bears, an applicant must obtain authorization under the MMPA to engage in an act that would otherwise be prohibited, and because both the allowable types of activities and standards for those activities are generally stricter under the MMPA than the general standards under 50 CFR 17.32, we find that the MMPA provisions are necessary and advisable to provide for the conservation of the species and adopt these provisions as appropriate conservation protections under the ESA. We also prohibit by regulation with respect to polar bears certain acts prohibited in section 9(a)(1) of the ESA. Therefore, under Alternative 2 (this proposed 4(d) special rule), Alternative 3, and Alternative 4, as long

as an activity is authorized or exempted under the MMPA, and the appropriate requirements of the MMPA are met, then the activity would not require any additional authorization under the ESA. All authorizations issued under section 104 of the MMPA would continue to be subject to section 7 consultation requirements of the ESA.

CITES

In addition to the MMPA restrictions on import and export discussed above, CITES provisions that apply to the polar bear also ensure that import into or export from the United States is carefully regulated. Under CITES and the U.S. regulations that implement CITES at 50 CFR part 23, the United States is required to regulate and monitor the trade in legally possessed CITES specimens over an international border. Thus, for example, CITES would apply to tourists driving from Alaska through Canada with polar bear handicrafts to a destination elsewhere in the United States. As an Appendix II species, the export of any polar bear, either live or dead, and any polar bear parts or products requires an export permit supported by a finding that the specimen was legally acquired under international and domestic laws. Prior to issuance of the permit, the exporting country must also find that export will not be detrimental to the survival of the species. A valid export document issued by the exporting country must be presented to the officials of the importing country before the polar bear specimen will be cleared for importation.

Some limited exceptions to this permit requirement exist. For example, consistent with CITES, the United States provides an exemption from the permitting requirements for personal and household effects made of dead specimens. Personal and household effects must be personally owned for noncommercial purposes, and the quantity must be necessary or appropriate for the nature of the trip or stay or for household use. Not all CITES countries have adopted this exemption, so persons who may cross an international border with a polar bear specimen should check with the Service and the country of transit or destination in advance as to applicable requirements. Because, for polar bears, any person importing or exporting any live or dead animal, part, or product into or from the United States must comply with the strict provisions of CITES as well as the strict import and export provisions under the MMPA, we find that additional authorizations under the ESA to engage in these

activities would not be necessary and advisable to provide for the conservation of the species. The Secretary has the discretion to prohibit by regulation with respect to polar bears any act prohibited in Section 9(a)(1) of the ESA. Thus, under Alternative 2 (this proposed 4(d) special rule, Alternative 3, and Alternative 4), if an import or export activity is authorized or exempted under the MMPA and the appropriate requirements under CITES have been met, no additional authorization under the ESA would be required. All export authorizations issued by the Service under CITES will continue to be subject to the consultation requirements under section 7 of the ESA, regardless of whether a 4(d) special rule is in place for the polar bear.

Take for Self-Defense or Welfare of the Animal

Both the MMPA and the ESA prohibit take of protected species. However, both statutes provide exceptions when the take is either exempted or can be authorized for self-defense or welfare of the animal.

In the interest of public safety, both the MMPA and the ESA include provisions to allow for take, including lethal take, when this take is necessary for self-defense or to protect another person. Section 101(c) of the MMPA states that it shall not be a violation to take a marine mammal if such taking is imminently necessary for self-defense or to save the life of another person who is in immediate danger. Any such incident must be reported to the Service within 48 hours of occurrence. Section 11(a)(3) of the ESA similarly provides that no civil penalty shall be imposed if it can be shown by a preponderance of the evidence that the defendant committed an otherwise prohibited act based on a good faith belief that he or she was protecting himself or herself, a member of his or her family, or any other individual from bodily harm. Section 11(b)(3) of the ESA provides that it shall be a defense to criminal prosecution if the defendant committed an offense based on a good faith belief that he or she was protecting himself or herself, a member of his or her family, or any other individual from bodily harm. The ESA regulations in 50 CFR 17.21(c)(2), which reiterate that any person may take listed wildlife in defense of life, clarify this exemption. Reporting of the incident is required under 50 CFR 17.21(c)(4). Thus, the self-defense provisions of the ESA and MMPA are comparable. However, under any of the three considered versions of a special rule, where unforeseen

differences between these provisions may arise in the future, any activity that is authorized or exempted under the MMPA does not require additional authorization under the ESA.

Concerning take for defense of property and for the welfare of the animal, the provisions in the ESA and MMPA are not clearly comparable. The provisions provided under the ESA regulations at 50 CFR 17.21(c)(3) authorize any employee or agent of the Service, any other Federal land management agency, the National Marine Fisheries Service (NMFS), or a State conservation agency, who is designated by the agency for such purposes, to take listed wildlife when acting in the course of official duties if the action is necessary to: (i) Aid a sick, injured, or orphaned specimen; (ii) dispose of a dead specimen; (iii) salvage a dead specimen for scientific study; or (iv) remove a specimen that may constitute a threat to human safety, provided that the taking is humane or, if lethal take or injury is necessary, that there is no other reasonable possibility to eliminate the threat. Further, the ESA regulations at 50 CFR 17.31(b) allow any employee or agent of the Service, of NMFS, or of a State conservation agency which is operating a conservation program under the terms of a cooperative agreement with the Service in accord with section 6 of the ESA, when acting in the course of official duty, to take those species of threatened wildlife which are covered by an approved cooperative agreement to carry out conservation programs.

Provisions for similar activities are found under sections 101(a), 101(d), and 109(h) of the MMPA. Section 101(a)(4)(A) of the MMPA provides that a marine mammal may be deterred from damaging fishing gear or catch (by the owner or an agent or employee of the owner of that gear or catch), other private property (by the owner or an agent or employee of the owner of that property), and, if done by a government employee, public property, so long as the deterrence measures do not result in death or serious injury of the marine mammal. This section also allows for any person to deter a marine mammal from endangering personal safety. Section 101(a)(4)(D) clarifies that this authority to deter marine mammals applies to depleted stocks, which would include the polar bear. Further, the Service incorporated subparagraph 101(a)(4)(B) of this section into its polar bear management when it finalized "deterrence guidelines" on October 6, 2010 (75 FR 61631), effective November 5, 2010. The deterrence guidelines set forth best practices for safely and

nonlethally deterring polar bears from damaging private and public property and endangering the public. The nonlethal deterrence of a polar bear from fishing gear or other property is not a provision that is included under the ESA. The Service feels the voluntary deterrence guidelines would not result in injury to a polar bear or removal of the bear from the population and could, instead, prevent serious injury or death to the bear by preventing escalation of an incident to the point where the bear is killed in self-defense. Thus, we find it necessary and advisable to continue to manage polar bears under this provision of the MMPA and, as such, an activity conducted pursuant to this provision under the MMPA would not require additional authorization under the ESA under Alternative 2 (this proposed 4(d) special rule), Alternative 3, and Alternative 4. The Secretary has the discretion to prohibit by regulation with respect to polar bears any act prohibited in section 9(a)(1) of the ESA.

Section 101(d) of the MMPA provides that it is not a violation of the MMPA for any person to take a marine mammal if the taking is necessary to avoid serious injury, additional injury, or death to a marine mammal entangled in fishing gear or debris, and care is taken to prevent further injury and ensure safe release. The incident must be reported to the Service within 48 hours of occurrence. If entangled, the safe release of a polar bear from fishing gear or other debris could prevent further injury or death of the animal. Therefore, by adopting this provision of the MMPA, Alternatives 2, 3, and 4 would provide for the conservation of polar bears in the event of entanglement with fishing gear or other debris and could prevent further injury or death of the bear. The provisions under the ESA at 50 CFR 17.31 provide for similar activities; however, the ESA provision only applies to an employee or agent of the Service, any other Federal land management agency, NMFS, or a State conservation agency, who is designated by the agency for such purposes. The provisions under section 101(d) apply to any individual, including private individuals. While we do not believe private citizens should attempt to free a large polar bear from entanglement for obvious safety reasons, there may be certain rare instances when an abandoned young cub may need aid. Although the provisions under the MMPA are broader in this case, we find them necessary and advisable to provide for the conservation of the polar bear; therefore, an activity conducted pursuant to this provision of the MMPA

would not require additional authorization under the ESA under Alternatives 2, 3, and 4. The Secretary has the discretion to prohibit by regulation with respect to polar bears any act prohibited in section 9(a)(1) of the ESA.

Further, section 109(h) of the MMPA allows the humane taking of a marine mammal by specific categories of people (i.e., Federal, State, or local government officials or employees or a person designated under section 112(c) of the MMPA) in the course of their official duties provided that one of three criteria is met—the taking is for: (1) The protection or welfare of the mammal; (2) the protection of the public health and welfare; or (3) the nonlethal removal of nuisance animals. The MMPA regulations at 50 CFR 18.22 provide the specific requirements of the exception. Section 112(c) of the MMPA allows the Service to enter into cooperative agreements with other Federal or State agencies and public or private institutions or other persons to carry out the purposes of section 109(h) of the MMPA. The ability to designate non-Federal, non-State "cooperators," as allowed under sections 112(c) and 109(h) of the MMPA but not provided for under the ESA, has allowed the Service to work with private groups to retrieve carcasses, respond to injured animals, and provide care and maintenance for stranded or orphaned animals. This has provided benefits by drawing on the expertise of, and allowing the use of facilities of, non-Federal and non-State scientists, aquaria, veterinarians, and other private entities. Additionally, the Service has provided authorization under section 101(a)(5)(A) of the MMPA to certain trained non-Federal, non-State cooperators to nonlethally take polar bears through harassment/hazing of individual animals. These incidental take authorizations have been a crucial component of reducing bear-human confrontations in both Alaska Native villages and the oil and gas development areas on the North Slope of Alaska. This provision has provided for the conservation of the polar bear by allowing nonlethal techniques to deter polar bears from property and away from people before situations escalate, thereby preventing unnecessary injury or death of a polar bear. Therefore, the adoption of these MMPA provisions is necessary and advisable to provide for the conservation of the polar bear. The Secretary has the discretion to prohibit by regulation with respect to polar bears any act prohibited in section 9(a)(1) of the ESA.

Pre-Act Specimens

The ESA, MMPA, and CITES all have provisions for the regulation of specimens, both live and dead, that were acquired or removed from the wild prior to application of the law or the listing of the species, but the laws treat these specimens somewhat differently. Section 9(b)(1) of the ESA states that the prohibitions on import and export do not apply to any fish or wildlife which were held in captivity prior to the enactment of the ESA or to the date of publication of listing as long as the holding of such specimens and their subsequent import and export is non-commercial. Section 9(b)(1) also states that fish and wildlife which were held in captivity for non-commercial purposes prior to enactment of the ESA or to the date of publication of listing are also exempt from regulations the Secretary may issue to conserve those species under the authority of the ESA. Additionally, section 10(h) of the ESA provides an exemption for certain antique articles. Polar bears held in captivity prior to the listing of the polar bear as a threatened species under the ESA and not used or subsequently held or used in the course of a commercial activity, and all items containing polar bear parts that qualify as antiques under the ESA, would qualify for these exemptions.

Section 102(e) of the MMPA contains a pre-MMPA exemption that provides that none of the restrictions shall apply to any marine mammal or marine mammal product composed from an animal taken prior to December 21, 1972. In addition, Article VII(2) of CITES provides a pre-Convention exception that exempts a pre-Convention specimen from standard permitting requirements in Articles III, IV, and V of CITES when the exporting or re-exporting country is satisfied that the specimen was acquired before the provisions of CITES applied to it and issues a CITES document to that effect (see 50 CFR 23.45). Alternative 2 (this proposed 4(d) special rule) would not affect requirements under CITES; therefore, these specimens continue to require this pre-Convention certificate for any international trade. Pre-Convention certificates required by CITES and pre-MMPA affidavits and supporting documentation required under the Service's regulations at 50 CFR 18.14 ensure that trade in pre-MMPA and pre-Convention specimens meet the requirements of the exemptions.

Alternatives 2, 3, and 4 would adopt the pre-Act provisions of the MMPA and CITES. The MMPA has been in

force since 1972 and CITES since 1975. In that time, there has never been a conservation problem identified regarding pre-Act polar bear specimens. While, under a special rule, polar bear specimens that were obtained prior to the date that the MMPA went into effect (December 21, 1972) would not be subject to the same restrictions as other threatened species under the general regulations at §§ 17.31 and 17.32, the number of specimens and the nature of the activities to which these restrictions would apply is limited. There are very few live polar bears, either in a controlled environment within the United States or elsewhere, that would qualify as "pre-Act" under the MMPA. Therefore, the standard MMPA restrictions apply to virtually all live polar bears. Of the dead specimens that would qualify as "pre-Act" under the MMPA, very few of these specimens would likely be subject to activities due to the age and probable poor physical quality of these specimens. Furthermore, under CITES, these specimens would continue to require documentation for any international trade, which would verify that the specimen was acquired before CITES went into effect in 1975 for polar bears. While the general ESA regulations would provide some additional restrictions, such activities have not been identified as a threat in any way to the polar bear. Thus, CITES and the MMPA provide appropriate protections that are necessary and advisable to provide for the conservation of the polar bear in this regard, and additional restrictions under the ESA are not necessary under Alternatives 2, 3, and 4. The Secretary has the discretion to prohibit by regulation with respect to polar bears any act prohibited in section 9(a)(1) of the ESA.

Subsistence, Handicraft Trade, and Cultural Exchanges

Section 10(e) of the ESA provides an exemption for Alaska Natives for the taking and importation of listed species if such taking is primarily for subsistence purposes. Nonedible by-products of species taken in accordance with the exemption, when made into authentic native articles of handicraft and clothing, may be transported, exchanged, or sold in interstate commerce. The ESA defines authentic native articles of handicraft and clothing as items composed wholly or in some significant respect of natural materials, and which are produced, decorated, or fashioned in the exercise of traditional native handicrafts without the use of pantographs, multiple carvers, or other mass copying devices (section

10(e)(3)(ii)). That definition also provides that traditional native handicrafts include, but are not limited to, weaving, carving, stitching, sewing, lacing, beading, drawing, and painting. Further details on what qualifies as authentic native articles of handicrafts and clothing are provided at 50 CFR 17.3. This exemption is similar to one in section 101(b) of the MMPA, which provides an exemption from the moratorium on take for subsistence harvest and the creation and sale of authentic native articles of handicrafts or clothing by Alaska Natives. The definition of authentic native articles of handicrafts and clothing in the MMPA is identical to the ESA definition, and our MMPA definition in our regulations at 50 CFR 18.3 is identical to the ESA definition at 50 CFR 17.3. Both statutes require that the taking may not be accomplished in a wasteful manner.

Under Alternative 2 (this proposed 4(d) special rule), Alternative 3, and Alternative 4, any exempt activities under the MMPA associated with handicrafts or clothing or cultural exchange using subsistence-taken polar bears would not require additional authorization under the ESA, including the limited, noncommercial import and export of authentic native articles of handicrafts and clothing that are created from polar bears taken by Alaska Natives. Under Alternatives 2, 3, and 4, all such imports and exports involving polar bear parts and products would need to conform to what is currently allowed under the MMPA, comply with our import and export regulations found at 50 CFR parts 14 and 23, and be noncommercial in nature. The ESA regulations at 50 CFR 14.4 define commercial as related to the offering for sale or resale, purchase, trade, barter, or the actual or intended transfer in the pursuit of gain or profit, of any item of wildlife and includes the use of any wildlife article as an exhibit for the purpose of soliciting sales, without regard to the quantity or weight.

Another activity covered by Alternatives 2, 3, and 4 is cultural exchange between Alaska Natives and Native inhabitants of Russia, Canada, and Greenland with whom Alaska Natives share a common heritage. The MMPA allows the import and export of marine mammal parts and products that are components of a cultural exchange, which is defined under the MMPA as the sharing or exchange of ideas, information, gifts, clothing, or handicrafts. While the ESA has similar language allowing the import of items, there is no comparable language that would allow Natives to travel to Canada, Russia, or Greenland with cultural

exchange items. Cultural exchange has been an important exemption for Alaska Natives under the MMPA, and any of the three special rules ensure that such exchanges would not be interrupted.

Alternatives 2, 3, and 4 would also adopt the registered agent and tannery process from the current MMPA regulations. In order to assist Alaska Natives in the creation of authentic native articles of handicrafts and clothing, the Service's MMPA implementing regulations at 50 CFR 18.23(b) and (d) allow persons who are not Alaska Natives to register as an agent or tannery. Once registered, agents are authorized to receive or acquire marine mammal parts or products from Alaskan Natives or other registered agents. They are also authorized to transfer (not sell) hides to registered tanners for further processing. A registered tannery may receive untanned hides from Alaska Natives or registered agents for tanning and return. The tanned skins may then be made into authentic articles of clothing or handicrafts. Registered agents and tanneries must maintain strict inventory control and accounting methods for any marine mammal part, including skins; they provide accountings of such activities and inventories to the Service. These restrictions and requirements for agents and tanners allow the Service to monitor the processing of such items while ensuring that Alaska Natives can exercise their rights under the exemption. Adopting the registered agent and tannery process would align ESA provisions relating to the creation of handicrafts and clothing by Alaska Natives with the current process under the MMPA, and allows Alaska Natives to engage in the subsistence practices provided under the ESA's section 10(e) exemptions.

Nonetheless, the provisions in Alternatives 2, 3, and 4 regarding creation, shipment, and sale of authentic native articles of handicrafts and clothing would apply only to items to which the subsistence harvest exemption applies under the MMPA. The exemption in section 10(e)(1) of the ESA applies to "any Indian, Aleut, or Eskimo who is an Alaskan Native who resides in Alaska" but also applies to "any non-native permanent resident of an Alaskan native village." However, the exemption under section 101 of the MMPA is limited to only an "Indian, Aleut, or Eskimo who resides in Alaska and who dwells on the coast of the North Pacific Ocean or the Arctic Ocean." Because the MMPA is more restrictive, only a person who qualifies under the MMPA Alaska Native exemption may legally take polar bears

for subsistence purposes, as a take by nonnative permanent residents of Alaska native villages under the broader ESA exemption is not allowed under the MMPA. Therefore, all persons, including those who qualify under the Alaska Native exemption of the ESA, should consult the MMPA and our regulations at 50 CFR part 18 before engaging in any activity that may result in a prohibited act to ensure that their activities will be consistent with both laws.

Although a few of these provisions of the MMPA may be less strict than the ESA provisions, we have determined that these provisions would be the appropriate regulatory mechanisms for the conservation of the polar bear. Both the ESA and the MMPA recognize the intrinsic role that marine mammals have played and continue to play in the subsistence, cultural, and economic lives of Alaska Natives. The Service, in turn, recognizes the important role that Alaska Natives play in the conservation of marine mammals. Amendments to the MMPA in 1994 acknowledged this role by authorizing the Service to enter into cooperative agreements with Alaska Natives for the conservation and co-management of subsistence use of marine mammals (section 119 of the MMPA). Through these cooperative agreements, the Service has worked with Alaska Native organizations to better understand the status and trends of polar bears throughout Alaska. For example, Alaska Natives collect and contribute biological specimens from subsistence-harvested animals for biological analysis. Analysis of these samples allows the Service to monitor the health and status of polar bear stocks.

Further, as discussed in our proposed and final rules to list the polar bear as a threatened species (72 FR 1064; January 9, 2007, and 73 FR 28212; May 15, 2008), the Service cooperates with the Alaska Nanuq Commission, an Alaska Native organization that represents interests of Alaska Native villages whose members engage in the subsistence hunting of polar bears, to address polar bear subsistence harvest issues. In addition, for the Southern Beaufort Sea population, hunting is regulated voluntarily and effectively through an agreement between the Inuvialuit of Canada and the Inupiat of Alaska (implemented by the North Slope Borough) as well as being monitored by the Service's marking, tagging, and reporting program. In the Chukchi Sea, the Service is working with Alaska Natives through the recently implemented Agreement between the United States of America

and the Russian Federation on the Conservation and Management of the Alaska-Chukotka Polar Bear Population (Bilateral Agreement), under which one of two commissioners representing the United States represents the Native people of Alaska and, in particular, the Native people for whom polar bears are an integral part of their culture. The Bilateral Agreement allows for unified, on-the-ground conservation programs for the shared population of polar bears, including binding sustainable harvest limits. The Bilateral Agreement establishes the U.S.-Russia Polar Bear Commission (Commission), which functions as the bilateral managing authority to make scientific determinations, establish take limits, and carry out other responsibilities important to the conservation and management of the polar bear. At a meeting of the Commission on June 7–10, 2010, in Anchorage, Alaska, the Commission determined that no more than 58 polar bears per year may be taken from the Alaska-Chukotka polar bear population, of which no more than 19 animals may be females. Further, the Commission determined that the two countries will work together to identify legal requirements and documents needed to implement the determined subsistence harvest limit, and that further discussion regarding implementation of harvest management plans would take place at the next Commission meeting in 2011. At the Commission meeting in July 2011, the Commission, based on recommendations from its Scientific Working Group, reaffirmed the total allowable harvest of 58 polar bears from the Alaska-Chukotka population and approved a recommendation that a multi-year quota system be introduced for an initial period of 5 years, consistent with the terms of the Bilateral Agreement. The next Commission meeting in June 2012 will include discussion of the seasonal aspects of annual take limits. This cooperative management regime for the subsistence harvest of polar bears is key to both providing for the long-term viability of the population as well as addressing the social, cultural, and subsistence interests of Alaska Natives and the native people of Chukotka. Thus, we recognize the unique contributions Alaska Natives provide to the Service's understanding of polar bears, and their interest in ensuring that polar bear stocks are conserved and managed to achieve and maintain healthy populations.

The Service recognizes the significant conservation benefits that Alaska

Natives have already made to polar bears through the measures that they have voluntarily taken to self-regulate harvest that is otherwise exempt under the MMPA and the ESA, and through their support of measures for regulation of harvest. This contribution has provided significant benefit to polar bears throughout Alaska, and will continue by maintaining and encouraging the involvement of the Alaska Native community in the conservation of the species. Alternatives 2, 3, and 4 would provide for the conservation of polar bears, while at the same time accommodating the subsistence, cultural, and economic interests of Alaska Natives, which are interests recognized by both the ESA and MMPA. Therefore, in proposing a 4(d) special rule, the Service finds that aligning provisions under the ESA relating to the creation, shipment, and sale of authentic native handicrafts and clothing by Alaska Natives with what is already allowed under the MMPA contributes to a regulation that is necessary and advisable to provide for the conservation of polar bears. The Secretary has the discretion to prohibit by regulation with respect to polar bears any act prohibited in section 9(a)(1) of the ESA.

This aspect of a 4(d) special rule is limited to activities that are not already exempted under the ESA. The ESA itself provides a statutory exemption to Alaska Natives under section 10(e) of the ESA for the harvesting of polar bears from the wild as long as the taking is for primarily subsistence purposes. The ESA then specifies that polar bears taken under this provision can be used to create handicrafts and clothing and that these items can be sold in interstate commerce. Thus, any of the three considered alternatives of a proposed special rule would not regulate the taking or importation of polar bears or the sale in interstate commerce of authentic native articles of handicrafts and clothing by qualifying Alaska Natives; these have already been exempted by statute. A special rule would address only activities relating to cultural exchange and limited types of travel, and to the creation and shipment of authentic native handicrafts and clothing that are currently allowed under section 101 of the MMPA that are not already clearly exempted under section 10(e) of the ESA.

In addition, in our final rule to list the polar bear as threatened (73 FR 28212; May 15, 2008), while we found that polar bear mortality from harvest and negative bear-human interactions may be approaching unsustainable levels for some populations, especially those

experiencing nutritional stress or declining population numbers as a consequence of habitat change, subsistence take by Alaska Natives does not currently threaten the polar bear throughout all or any significant portion of its range. Rangewide, continued harvest and increased mortality from bear-human encounters or other reasons are likely to become more significant threats in the future. The Polar Bear Specialist Group (Aars et al. 2006, p. 57), through resolution, urged that a precautionary approach be instituted when setting harvest limits in a warming Arctic environment, and that continued efforts are necessary to ensure that harvest or other forms of removal do not exceed sustainable levels. However, the Service has found that standards for subsistence harvest in the United States under the MMPA and the voluntary measures taken by Alaska Natives to manage subsistence harvest in the United States have been effective, and that, rangewide, the lawful subsistence harvest of polar bears and the associated creation, sale, and shipment of authentic handicrafts and clothing currently do not threaten the polar bear throughout all or a significant portion of its range, and are not affected by the provisions of Alternatives 2, 3, and 4.

National Defense Activities

Section 319 of the National Defense Appropriations Act of 2004 (Pub. L. 108–136 November 24, 2003) amended section 101 of the MMPA to provide a mechanism for the Department of Defense (DOD) to exempt actions or a category of actions necessary for national defense from requirements of the MMPA provided that DOD has conferred, for polar bears, with the Service. Such an exemption may be issued for no more than 2 years. Alternative 2 (this proposed 4(d) special rule) would provide that an exemption invoked as necessary for national defense under the MMPA would require no separate authorization under the ESA. The MMPA exemption requires DOD to confer with the Service, the exemptions are of limited duration and scope (only those actions “necessary for national defense”), and no actions by the DOD have been identified as a threat to the polar bear throughout all or any significant portion of its range.

Penalties

As discussed earlier, the MMPA provides substantial civil and criminal penalties for violations of the law. These penalties remain in place and would not be affected by Alternative 2 (this proposed 4(d) special rule), Alternative

3, and Alternative 4. Under Alternative 2, these penalties are not affected by whether a violation occurs inside or outside the geographic range specified in paragraph (4). Because CITES is implemented through the ESA, any trade of polar bears or polar bear parts or products contrary to CITES and possession of any polar bear specimen that was traded contrary to the requirements of CITES is a violation of the ESA and remains subject to its penalties.

Under Alternatives 2, 3, and 4, certain acts not related to CITES violations also remain subject to the penalties of the ESA. Under paragraph (2) of Alternatives 2, 3, and 4, any act prohibited under the MMPA that would also be prohibited under the ESA regulations at 50 CFR 17.31 and that has not been authorized or exempted under the MMPA would be a violation of the ESA as well as the MMPA. In addition, even if an act is authorized or exempt under the MMPA, failure to comply with all applicable terms and conditions of the statute, the MMPA implementing regulations, or an MMPA permit or authorization issued by the Service would likewise constitute a violation of the ESA. Under Alternative 2, the ESA penalties would also remain applicable to any incidental take of polar bears that is caused by activities within the geographic area specified in paragraph (4), if that incidental take has not been authorized under the MMPA consistent with paragraph (2). Under Alternative 2, while ESA penalties would not apply to any incidental take caused by activities outside the geographic area specified in paragraph (4), as explained above, all MMPA penalties remain in place in these areas. A civil penalty of \$12,000 to \$25,000 is available for a knowing violation (or any violation by a person engaged in business as an importer or exporter) of certain provisions of the ESA, the regulations, or permits, while civil penalties of up to \$500 are available for any other violation. Criminal penalties and imprisonment for up to 1 year, or both, are also available for certain violations of the ESA. In addition, all fish and wildlife taken, possessed, sold, purchased, offered for sale or purchase, transported, delivered, received, carried, shipped, exported, or imported contrary to the provisions of the ESA or any ESA regulation or permit or certificate issued under the ESA are subject to forfeiture to the United States. There are also provisions for the forfeiture of vessels, vehicles, and other equipment used in committing unlawful acts under the

ESA upon conviction of a criminal violation.

As discussed earlier, even where MMPA penalties provide the sole deterrence against unlawful activities under Alternatives 2 and 3, these penalties are substantial. A civil penalty of up to \$10,000 for each violation may be assessed against any person, which includes businesses, States, and Federal agencies as well as private individuals, who violates the MMPA or any MMPA permit, authorization, or regulation. Any person or entity that knowingly violates any provision of the statute or any MMPA permit, authorization, or regulation will, upon conviction, be fined for each violation, be imprisoned for up to 1 year, or both. The MMPA also provides for the seizure and forfeiture of the cargo (or monetary value of the cargo) from any vessel that is employed in the unlawful taking of a polar bear, and additional penalties of up to \$25,000 can be assessed against a vessel causing the unlawful taking of a polar bear. Finally, any polar bear or polar bear parts and products themselves can be seized and forfeited upon assessment of a civil penalty or a criminal conviction.

While there are differences between the penalty amounts in the ESA and the MMPA, the penalty amounts are comparable or stricter under the MMPA. The Alternative Fines Act (18 U.S.C. 3571) has removed the differences between the ESA and the MMPA for criminal penalties. Under this Act, unless a Federal statute has been exempted, any individual found guilty of a Class A misdemeanor may be fined up to \$100,000. Any organization found guilty of a Class A misdemeanor may be fined up to \$200,000. The criminal provisions of the ESA and the MMPA are both Class A misdemeanors, and neither the ESA nor the MMPA are exempted from the Alternative Fines Act. Therefore, the maximum penalty amounts for a criminal violation under both statutes is the same: \$100,000 for an individual and \$200,000 for an organization.

While the maximum civil penalty amounts under the ESA are for the most part higher than the maximum civil penalty amounts under the MMPA, other elements in the penalty provisions mean that, on its face, the MMPA provides greater deterrence. Other than for a commercial importer or exporter of wildlife or plants, the highest civil penalty amounts under the ESA require a showing that the person “knowingly” violated the law. The penalty for other than a knowing violation is limited to \$500. The MMPA civil penalty provision does not contain this

requirement. Under section 105(a) of the MMPA, any person “who violates” any provision of the MMPA or any permit or regulation issued thereunder, with one exception for commercial fisheries, may be assessed a civil penalty of up to \$10,000 for each violation.

Determination

Section 4(d) of the ESA states that the “Secretary shall issue such regulations as he deems necessary and advisable to provide for the conservation” of species listed as threatened. Conservation is defined in the ESA to mean “to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to [the ESA] are no longer necessary.” In *Webster v. Doe*, 486 U.S. 592 (1988), the U.S. Supreme Court noted that similar language “fairly exudes deference” to the agency when the court interpreted the authority to terminate an employee when the Director of the Central Intelligence Agency “shall deem such termination necessary or advisable in the interests of the United States.” Additionally, section 4(d) states that the Secretary “may by regulation prohibit with respect to any threatened species any act prohibited under section 9(a)(1).”

Thus, the regulations promulgated under section 4(d) of the ESA provide the Secretary with a wide latitude of discretion to select appropriate prohibitions and exemptions. In such cases, some of the prohibitions and authorizations of the ESA implementing regulations at 50 CFR 17.31 and 17.32 may be appropriate for the species and incorporated into a special rule, but the special rule may also include provisions tailored to the specific conservation needs of the listed species, which may be more or less restrictive than the general provisions.

The courts have recognized the extent of the Secretary’s discretion under this standard to develop rules that are appropriate for the conservation of a species. For example, the Secretary may find that it is necessary and advisable not to include a taking prohibition, or to include a limited taking prohibition. See *Alesea Valley Alliance v. Lautenbacher*, 2007 U.S. Dist. Lexis 60203 (D. Or. 2007); *Washington Environmental Council v. National Marine Fisheries Service*, and 2002 U.S. Dist. Lexis 5432 (W.D. Wash. 2002). In addition, as affirmed in *State of Louisiana v. Verity*, 853 F.2d 322 (5th Cir. 1988), the rule need not address all the threats to the species. As noted by Congress when the ESA was initially enacted, “once an

animal is on the threatened list, the Secretary has an almost infinite number of options available to him with regard to the permitted activities for those species. He may, for example, permit taking, but not importation of such species, or he may choose to forbid both taking and importation but allow the transportation of such species,” as long as the measures will “serve to conserve, protect, or restore the species concerned in accordance with the purposes of the Act” (H.R. Rep. No. 412, 93rd Cong., 1st Sess. 1973).

Alternative 2 (this proposed 4(d) special rule) provides the appropriate prohibitions, and exceptions to those prohibitions, to provide for the conservation of the species. Many provisions provided under the MMPA and CITES are comparable to or stricter than similar provisions under the ESA, including the definitions of take, penalties for violations, and use of marine mammals. As an example, concerning the definitions of harm under the ESA and harassment under the MMPA, while the terminology of the definitions is not identical, we cannot foresee circumstances under which the management for polar bears under the two definitions would differ. In addition, the existing statutory exceptions that allow use of marine mammals under the MMPA (e.g., research, public display) allow fewer types of activities than does the ESA regulation at 50 CFR 17.32 for threatened species, and the MMPA’s standards are generally stricter for those activities that are allowed than those standards for comparable activities under the ESA regulations at 50 CFR 17.32. Additionally, the process for authorization of incidental take under the MMPA via a finding of “negligible impact” is more restrictive than the process under the ESA.

Where the provisions of the MMPA and CITES are comparable to, or even more strict than, the provisions under the ESA, we find that it provides for the conservation of the polar bear to continue to manage the species under the provisions of the MMPA and CITES. As such, these mechanisms have a demonstrated record as being appropriate management provisions. Further, it would not contribute to the conservation of the polar bear and would be inappropriate for the Service to require people to obtain an ESA authorization (including paying application fees) for activities authorized under the MMPA or CITES, where protective measures for polar bears under the ESA authorization would be equivalent or less restrictive than the MMPA or CITES requirements.

There are a few activities for which the prohibitions under the MMPA are less restrictive than the prohibitions for the same activities under the ESA, including use of pre-Act specimens, subsistence use, military readiness activities, and take for defense of property and welfare of the animal. Concerning use of pre-Act specimens and military readiness activities, the general ESA regulations would provide some additional restrictions beyond those provided by the MMPA; however, such activities have not been identified as a threat in any way to the polar bear or its conservation. Therefore, the additional restrictions under the ESA would not contribute to the conservation of the species. Concerning subsistence use and take for defense of property and welfare of the animal, the MMPA allows a greater breadth of activities than would be allowed under the general ESA regulations; however, these additional activities clearly provide for the conservation of the polar bear by fostering cooperative relationships with Alaska Natives who participate with us in conservation programs for the benefit of the species, limiting lethal bear-human interactions, and providing immediate benefits for the welfare of individual animals.

Our 39-year history of implementation of the MMPA, 36-year history of implementation of CITES, and our analysis in the ESA final listing rule for the species, demonstrate that these laws provide appropriate regulatory protection to polar bears for activities that are regulated under these laws. In addition, the threat that has been identified in the final ESA listing rule—loss of habitat and related effects—would not be alleviated by the additional overlay of provisions in the general threatened species regulations at 50 CFR 17.31 and 17.32, or even the full application of the provisions in sections 9 and 10 of the ESA. Based on the current state of the science, nothing within our authority under the ESA, above and beyond what we would require under Alternative 2, would provide the means to resolve this threat.

Paragraphs 1 through 3 of Alternatives 2, 3, and 4 would adopt existing conservation regulatory requirements under the MMPA and CITES as the appropriate regulatory provisions for this threatened species. Because of these provisions, under any of the three considered alternatives of the proposed special rule, if an activity is authorized or exempted under the MMPA or CITES, no additional authorization would be required. But if an activity is not authorized or exempted under the MMPA or CITES and the activity would

result in an act that would be otherwise prohibited under 50 CFR 17.31, the protections provided by the general threatened species regulations would apply. In such circumstances, the prohibitions of 50 CFR 17.31 would be in effect, and authorization under 50 CFR 17.32 would be required. In addition, any action authorized, funded, or carried out by the Service that may affect polar bears, including the Service's issuance of any permit or authorization described above, and would require consultation under section 7 of the ESA to ensure that the action is not likely to jeopardize the continued existence of the species.

We find that a 4(d) special rule containing paragraphs 1 through 3, which are identical in Alternatives 2, 3, and 4, is necessary and advisable to provide for the conservation of the polar bear because the MMPA and CITES have proven effective in managing polar bears for more than 30 years. The comparable or stricter provisions of the MMPA and CITES, along with the application of the ESA regulations at 50 CFR 17.31 and 17.32 for any activity that has not been authorized or exempted under the MMPA and CITES or for which a person or entity is not in compliance with the terms and conditions of any MMPA or CITES authorization or exemption, address those negative effects on polar bears that can foreseeably be addressed under sections 9 and 10 of the ESA. It would not contribute to the conservation of the polar bear to require an unnecessary overlay of redundant authorization processes that would otherwise be required under the general ESA threatened species regulations at 50 CFR 17.31 and 17.32. In any case, the Secretary has the discretion to prohibit by regulation with respect to polar bears any act prohibited in section 9(a)(1) of the ESA.

With regard to paragraph 4 of Alternatives 2, 3, and 4, we find that for activities within the current range of the polar bear, overlay of the incidental take prohibitions under 50 CFR 17.31 is a valuable component of polar bear management because of the timing and proximity of potential take of polar bears. Within the range of the polar bear, there are currently ongoing, lawful activities that result in the incidental take of the species, such as those associated with oil and gas exploration and development. Any incidental take from these activities is currently authorized under the MMPA. However, we recognize that there may be future development or activities that may cause incidental take of the species. Because of this, we find that it is

valuable to have the overlay of ESA incidental take prohibitions in place for several reasons. In the event that a person or entity causing the incidental take of polar bears has not been authorized under the MMPA, or is out of compliance with the terms and conditions of their MMPA incidental take authorization, the overlay would provide that the person or entity is in violation of the ESA as well as the MMPA. In such circumstances, the person can alter his or her activities to eliminate the possibility of incidental take, seek or come into compliance with their MMPA authorization, or be subject to the penalties of the ESA as well as the MMPA. In this situation, the citizen suit provision of section 11 of the ESA would allow any citizen or citizen group to pursue legal action based on incidental take that has not been authorized under the MMPA. As such, we have determined that the overlay of the ESA incidental take prohibitions at 50 CFR 17.31 in the current range of the polar bear is valuable for the conservation of the species. Again, the Secretary has the discretion to prohibit by regulation with respect to polar bears any act prohibited in section 9(a)(1) of the ESA.

However, we find that for activities outside the current range of the polar bear (including vast areas within the State of Alaska that do not coincide with the polar bear's range), overlay of the incidental take prohibitions under 50 CFR 17.31 is not necessary and advisable for polar bear management and conservation. The Service finds the provisions of paragraph (4) to be consistent with the conservation of the polar bear because: (1) The potential for citizen suits alleging take resulting from activities outside of the range of the polar bear is significant; (2) the likelihood of such suits prevailing in establishing take of polar bears is remote, and (3) defending against such suits will divert available staff and funding away from productive polar bear conservation efforts. Even though incidental take of polar bears from activities outside the current range of the species would not be prohibited under this proposed special rule, the consultation requirements under section 7 of the ESA would remain fully in effect. Any biological opinion associated with a consultation will identify any incidental take that is reasonably certain to occur. Any incidental take, identified through a biological opinion or otherwise, remains a violation of the MMPA unless appropriately authorized. In addition, the citizen suit provision under section 11 of the ESA would be

unaffected by Alternative 2 for challenges to Federal agencies that are alleged to be in violation of the consultation requirement under section 7 of the ESA. Further, the Service will pursue any violation under the MMPA for incidental take that has not been authorized, and all MMPA penalties would apply. As such, we have determined that not having the additional overlay of incidental take prohibitions under 50 CFR 17.31 resulting from activities outside the current range of the polar bear (including some areas within the State of Alaska) would be consistent with the conservation of the species. The Secretary has the discretion to prohibit by regulation with respect to polar bears any act prohibited in section 9(a)(1) of the ESA.

Nothing in Alternatives 2, 3, and 4 changes in any way the recovery planning provisions of section 4(f) and consultation requirements under section 7 of the ESA, including consideration of adverse modification to any critical habitat, or the ability of the Service to enter into domestic and international partnerships for the management and protection of the polar bear.

Required Determinations

Regulatory Planning and Review

Executive Order 12866 requires Federal agencies to submit proposed and final significant rules to the Office of Management and Budget (OMB) prior to publication in the **Federal Register**. The Executive Order defines a rule as significant if it meets one of the following four criteria:

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

(b) The rule will create inconsistencies with other Federal agencies' actions;

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

(d) The rule raises novel legal or policy issues.

If the rule meets criteria (a) above it is called an "economically significant" rule and additional requirements apply.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996)), whenever an agency must publish a notice of rulemaking for any proposed or final rule, it must prepare

and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the RFA to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

Based on the information that is available to us at this time, we are certifying that this proposed special rule will not have a significant economic impact on a substantial number of small entities. The following discussion explains our rationale.

According to the Small Business Administration (SBA), small entities include small organizations, including any independent nonprofit organization that is not dominant in its field, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses. The SBA defines small businesses categorically and has provided standards for determining what constitutes a small business at 13 CFR 121.201 (also found at <http://www.sba.gov/size/>), which the RFA requires all Federal agencies to follow. To determine if potential economic impacts to these small entities would be significant, we considered the types of activities that might trigger regulatory impacts. However, this proposed special rule for the polar bear would, with limited exceptions, allow for maintenance of the status quo regarding activities that had previously been authorized or exempted under the MMPA. Therefore, we anticipate no significant economic impact on a substantial number of small entities from this rule. Therefore, a Regulatory Flexibility Analysis is not required.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(a) This proposed rule would not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C.

658(5)–(7). "Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local, or [T]ribal governments" with two exceptions. It excludes "a condition of Federal assistance." It also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which \$500,000,000 or more is provided annually to State, local, and [T]ribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding," and the State, local, or Tribal governments "lack authority" to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program."

(b) Because this proposed special rule for the polar bear would allow, with limited exceptions, for the maintenance of the status quo regarding activities that had previously been authorized or exempted under the MMPA, we do not believe that this rule would significantly or uniquely affect small governments. Therefore, a Small Government Agency Plan is not required.

Takings

In accordance with Executive Order 12630, this proposed rule would not have significant takings implications. We have determined that the rule has no potential takings of private property implications as defined by this Executive Order because this proposed special rule would, with limited exceptions, maintain the status quo regarding activities currently allowed under the MMPA. A takings implication assessment is not required.

Federalism

In accordance with Executive Order 13132, this proposed rule does not have significant Federalism effects. A federalism summary impact statement is not required. This proposed rule would not have substantial direct effects on the State, on the relationship between the

Federal Government and the State, or on the distribution of power and responsibilities among the various levels of government.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this proposed rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This proposed special rule does not contain any new collections of information that require approval by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.* The rule does not impose new recordkeeping or reporting requirements on State or local governments, individuals, and businesses, or organizations. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (NEPA)

We have prepared a draft environmental assessment in conjunction with this proposed 4(d) special rule. Subsequent to closure of the comment period, we will decide whether this proposed rule constitutes a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the NEPA of 1969. For a copy of the draft environmental assessment, go to <http://www.regulations.gov> and search for Docket No. FWS-R7-ES-2012-0009 or contact the individual identified above in the section **FOR FURTHER INFORMATION CONTACT**.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, Government-to-Government Relations with Native American Tribal Governments (59 FR 22951), E.O. 13175, and the Department of the Interior's manual at 512 DM 2, we acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3225 of January 19, 2001 [Endangered Species Act and Subsistence Uses in Alaska (Supplement to Secretarial Order 3206)], Department of the Interior Memorandum of January 18, 2001 (Alaska Government-to-Government Policy), Department of the Interior

Secretarial Order 3317 of December 1, 2011 (Tribal Consultation and Policy), and the Native American Policy of the U.S. Fish and Wildlife Service, June 28, 1994, we acknowledge our responsibilities to work directly with Alaska Natives in developing programs for healthy ecosystems, to seek their full and meaningful participation in evaluating and addressing conservation concerns for listed species, to remain sensitive to Alaska native culture, and to make information available to Tribes.

For this proposed rule, on January 18, 2012, we contacted the 52 Alaska Native Tribes (ANTs) and Alaska Native Corporations (ANCs) which are, or may be, affected by the listing of the polar bear as well as the development of any special rule under section 4(d) of the ESA. Our January 18, 2012, correspondence explained the nature of the Federal Court's remand and the Service's intent to consult with affected ANTs and ANCs. Our correspondence further informed the ANTs and ANCs that we intended to hold two initial consultation opportunities: One on January 30, 2012, and one on February 6, 2012, during which we would answer any questions about our intention to propose a special rule for the polar bear, as well as take any comments, suggestions, or recommendations participants may wish to offer. Subsequently, during the week of January 23, 2012, we contacted ANTs and ANCs by telephone to further inform them of the upcoming opportunities for consultation.

During the consultation opportunities held on January 30, 2012, and February 6, 2012, the Service received one recommendation from ANTs and ANCs regarding the development of a proposed 4(d) special rule for the polar bear; that recommendation urged the Service to continue to provide information on the development of any proposed rule to the affected public. The Service intends to meet this recommendation throughout the process of finalizing this proposed rule for the polar bear, and will continue to seek input from ANTs and ANCs. Any comments, recommendations, or suggestions received from ANTs and ANCs will be considered.

Energy Supply, Distribution or Use (Executive Order 13211)

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. For reasons discussed within this proposed rule, we

believe that the rule would not have any effect on energy supplies, distribution, and use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.40 by revising paragraph (q) to read as follows:

§ 17.40 Special rules—mammals.

* * * * *

(q) Polar bear (*Ursus maritimus*).

(1) Except as noted in paragraphs (q)(2) and (q)(4) of this section, all prohibitions and provisions of §§ 17.31 and 17.32 of this part apply to the polar bear.

(2) None of the prohibitions in § 17.31 of this part apply to any activity that is authorized or exempted under the Marine Mammal Protection Act (MMPA), 16 U.S.C. 1361 *et seq.*, the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), or both, provided that the person carrying out the activity has complied with all terms and conditions that apply to that activity under the provisions of the MMPA and CITES and their implementing regulations.

(3) All applicable provisions of 50 CFR parts 14, 18, and 23 must be met.

(4) None of the prohibitions in § 17.31 of this part apply to any taking of polar bears that is incidental to, but not the purpose of, carrying out an otherwise lawful activity within the United States, except for any incidental taking caused by activities in areas subject to the jurisdiction or sovereign rights of the United States within the current range of the polar bear.

Dated: April 13, 2012.

Eileen Sobeck,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2012–9403 Filed 4–18–12; 8:45 am]

BILLING CODE 4310–55–P

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

Office of the Secretary

USDA Increases and Reassigns Fiscal Year 2012 Overall Allotment Quantity and Increases Fiscal Year 2012 Raw Sugar Tariff-Rate Quota

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture (USDA) today announced a 51,000 short tons raw value (STRV) increase in the fiscal year (FY) 2012 Overall Allotment Quantity (OAQ), a reassignment of projected surplus beet sugar marketing allocations between beet processors, and a reassignment of surplus cane sugar marketing allotment from domestic sugarcane processors to a 420,000 STRV increase in the FY 2012 raw sugar tariff-rate quota (TRQ).

DATES: *Effective Date:* April 19, 2012.

FOR FURTHER INFORMATION CONTACT:

Angel F. Gonzalez, Import Policies and Export Reporting Division, Foreign Agricultural Service, AgStop 1021, U.S. Department of Agriculture, Washington, DC 20250-1021; or by telephone (202) 720-2916; or by fax to (202) 720-0876; or by email to angel.f.gonzalez@fas.usda.gov.

SUPPLEMENTARY INFORMATION: USDA today announced an increase in the FY 2012 OAQ to 9,507,250 STRV, which represents 85 percent of the demand estimate published in the April 2012 World Agricultural Supply and Demand Estimates (WASDE) report. The increase is split in accordance with the Sugar

Marketing Allotment program, 54.35/45.65 percent between the beet and cane sectors, or 27,719 and 23,281 STRV, respectively. USDA evaluated each sugar beet processor's ability to market its full allocation, and decided not to reassign beet sugar allotment to imports at this time due to uncertainties that still exist in forecasting FY 2012 sugar production. However, beet sugar marketing allocations are transferred from beet sugar processors with surplus allocation to those with deficit allocation (see Table).

In addition, USDA determined that all sugarcane processors have surplus allocations of the FY 2012 cane sugar marketing allotment. Therefore, the 420,000 STRV reassignment to the raw sugar TRQ increase reduced all sugarcane states' sugar marketing allotments. The total cane sector allotment decreased in net from 4,316,778 to 3,920,060 STRV. The new cane state allotments are Florida, 1,926,658 STRV; Louisiana, 1,554,521 STRV; Texas, 170,745 STRV; and Hawaii, 268,135 STRV. The FY 2012 sugar marketing allotment program will not prevent any domestic sugarcane processors from marketing all of their FY 2012 sugar supply. Due to uncertainties that still exist in forecasting each company's and sector's FY 2012 sugar production, further reassignments are likely.

On July 30, 2011, USDA established the FY 2012 TRQ for raw cane sugar at 1,231,497 STRV (1,117,195 metric tons raw value, MTRV*), the minimum to which the United States is committed under the World Trade Organization (WTO) Uruguay Round Agreements. Pursuant to Additional U.S. Note 5 to Chapter 17 of the U.S. Harmonized Tariff Schedule (HTS) and Section 359k of the Agricultural Adjustment Act of 1938, as amended, the Secretary of Agriculture today increased the quantity of raw cane sugar eligible for the lower

* Conversion factor: 1 metric ton = 1.10231125 short tons.

tier of duties of the HTS during FY 2012 by 420,000 STRV (381,018 MTRV). With this increase, the overall FY 2012 raw sugar TRQ is now 1,651,497 STRV (1,498,213 MTRV). Raw cane sugar under this quota must be accompanied by a certificate for quota eligibility and may be entered until September 30, 2012. The Office of the U.S. Trade Representative will allocate this increase among supplying countries and customs areas.

The 420,000 STRV raw sugar TRQ increase, when combined with an estimated reallocation of 70,000 STRV, is expected to yield a net increase in raw sugar imports of 450,000 STRV, after normal TRQ slippage because not all supplying countries will fill their import quota allocations. This TRQ increase is not currently expected to increase FY 2012 domestic sugar supplies sufficiently to attain a level USDA considers adequate. USDA used an ending stocks-to-use level of 14.5 percent in estimating the "reasonable ending stocks" parameter for the most recent FY 2012 sugar market quarterly review mandated by statute. Significant uncertainties about FY 2012 Mexican imports, domestic refined and raw sugar demand, the early sugar beet crop, and other market factors make it prudent for USDA to not increase imported supplies further at this time. USDA will re-evaluate market conditions in June, as required by statute, and increase, as determined appropriate, the TRQ to bring the expected FY 2012 ending-stocks-use to within the traditional range that USDA considers adequate, i.e., 13.5 to 15.5 percent.

Dated: April 13, 2012.

Michael T. Scuse,

Acting Under Secretary, Farm and Foreign Agricultural Services.

The revised FY 2012 cane and beet sugar marketing allotments and processor allocations table is shown below.

BILLING CODE 3410-10-P

The revised FY 2012 cane and beet sugar marketing allotments and processor allocations table is shown below.

FY 2012 OVERALL BEET/CANE ALLOTMENTS AND ALLOCATIONS				
Distribution	Initial FY 12 Allocations	Change in OAQ due to change in Food Use	Reassignments	Adjusted Allocations
Beet Sugar	5,139,472	27,719	-	5,167,190
Cane Sugar	4,316,778	23,281	(420,000)	3,920,060
Reassignment to Import Increase	0	0	420,000	420,000
TOTAL OAQ	9,456,250	51,000	-	9,507,250
BEET PROCESSORS' MARKETING ALLOCATIONS:				
Amalgamated Sugar Co.	1,100,400	5,935	19,518	1,125,852
American Crystal Sugar Co.	1,889,666	10,219	(96,532)	1,803,354
Michigan Sugar Co.	530,782	2,863	149,012	682,656
Minn-Dak Farmers Co-op.	356,931	1,925	(15,737)	343,119
So. Minn Beet Sugar Co-op.	693,665	3,741	(132,521)	564,885
Western Sugar Co.	524,994	2,804	77,167	604,965
Wyoming Sugar Growers, LLC	43,034	232	(906)	42,360
TOTAL BEET SUGAR	5,139,472	27,719	0	5,167,190
STATE CANE SUGAR ALLOTMENTS:				
Florida	2,148,906	12,513	(234,761)	1,926,658
Louisiana	1,662,420	9,680	(117,579)	1,554,521
Texas	186,808	1,088	(17,151)	170,745
Hawaii	318,644	0	(50,508)	268,135
TOTAL CANE SUGAR	4,316,778	23,281	(420,000)	3,920,060
CANE PROCESSORS' MARKETING ALLOCATIONS:				
Florida				
Florida Crystals	884,761	5,152	(142,762)	747,151
Growers Co-op. of FL	386,557	2,251	(10,034)	378,773
U.S. Sugar Corp.	877,588	5,110	(81,964)	800,734
TOTAL	2,148,906	12,513	(234,761)	1,926,658
Louisiana				
Louisiana Sugar Cane Products, Inc.	1,154,105	6,720	(89,924)	1,070,902
M.A. Patout & Sons	508,315	2,960	(27,656)	483,620
TOTAL	1,662,420	9,680	(117,579)	1,554,521
Texas				
Rio Grande Valley	186,808	1,088	(17,151)	170,745
Hawaii				
Gay & Robinson, Inc.	73,145	0	(50,508)	22,637
Hawaiian Commercial & Sugar Company	245,499	0	(0)	245,499
TOTAL	318,644	0	(50,508)	268,135

[FR Doc. 2012-9400 Filed 4-18-12; 8:45 am]

BILLING CODE 3410-10-C

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Funding Opportunity Title; Risk Management Education and Outreach Partnerships Program

Announcement Type: Announcement of Availability of Funds and Request for Application for Competitive Cooperative Partnership Agreements. Catalog of Federal Domestic Assistance Number (CFDAs): 10.459.

DATES: All applications, which must be submitted electronically through Grants.gov, must be received by close of business (COB) at 11:59 p.m. EST, on

June 4, 2012. Hard copy applications will NOT be accepted.

SUMMARY: The following paragraph has been added to the beginning of the Summary portion of **Federal Register** Notice 77 FR 21067, April 9, 2012:

The Risk Management Agency (RMA) is changing the Catalog of Federal Domestic Assistance (CFDA) Number from 10.460 to 10.459. The CFDA number is needed in order to process an application through Grants.gov. The original CFDA number 10.460 published in the **Federal Register** on April 9, 2012, is not valid. If you tried to process your application using 10.460, please login to Grants.gov and use CFDA Number 10.459.

All other portions and sections of the full text Notice remain unchanged.

The Federal Crop Insurance Corporation (FCIC), operating through the Risk Management Agency (RMA), announces its intent to award approximately \$3,000,000 (subject to availability of funds) to fund the Risk Management Education and Outreach Partnerships Program.

Purpose: The purpose of this competitive cooperative partnership agreement program is to deliver crop insurance education and risk management training to U.S. agricultural producers to assist them in identifying and managing production, marketing, legal, financial and human risk. The program gives priority to: (1) Educating producers of crops currently not insured under Federal crop insurance, specialty crops, and underserved commodities, including

livestock and forage; and (2) providing collaborative outreach and assistance programs for limited resource, socially disadvantaged and other traditionally under-served farmers and ranchers. Education activities developed under the Risk Management Education and Outreach Partnerships Program shall provide U.S. farmers and ranchers with training and information opportunities to be able to understand:

1. The kinds of risks addressed by existing and emerging risk management tools;

2. The features and appropriate use of existing and emerging risk management tools; and

3. How to make sound risk management decisions.

The minimum award for any cooperative partnership agreement is \$20,000. The maximum award for any cooperative partnership agreement is \$99,999. The cooperative partnership agreements will be awarded on a competitive basis up to one year from the date of the award. Awardees must demonstrate non-financial benefits from a cooperative partnership agreement and must agree to the substantial involvement of RMA in the project. Funding availability for this program may be announced at approximately the same time as funding availability for similar but separate programs—CFDA No. 10.458 (Crop Insurance Education in Targeted States). Prospective applicants should carefully examine and compare the notices of each announcement.

The collections of information in this Announcement have been approved by OMB under control numbers 0563-0066 and 0563-0067.

This Announcement Consists of Eight Sections

Section I—Funding Opportunity Description

- A. Legislative Authority
- B. Background
- C. Definition of Priority Commodities
- D. Project Goal

Section II—Award Information

- A. Type of Application
- B. Funding Availability
- C. Location and Target Audience
- D. Minimum and Maximum Award
- E. Project Period
- F. Description of Agreement Award—Awardee Tasks
- G. RMA Activities
- H. Other Tasks

Section III—Eligibility Information

- A. Eligible Applicants
- B. Cost Sharing or Matching Funding
- C. Other—Non-Financial Benefits

Section IV—Application and Submission Information

- A. Electronic Application Package
- B. Content and Form of Application Submission

- C. Funding Restrictions
- D. Limitation on Use of Project Funds for Salaries and Benefits
- E. Indirect Cost Rates
- F. Other Submission Requirements
- G. Acknowledgement of Applications

Section V—Application Review Information

- A. Criteria
 - B. Review and Selection Process
- #### Section VI—Award Administration Information
- A. Award Notices
 - B. Administrative and National Policy Requirements
 1. Requirement To Use USDA Logo
 2. Requirement To Provide Project Information to an RMA-selected Representative
 3. Access to Panel Review Information
 4. Confidential Aspects of Applications and Awards
 5. Audit Requirements
 6. Prohibitions and Requirements Regarding Lobbying
 7. Applicable OMB Circulars
 8. Requirement To Assure Compliance with Federal Civil Rights Laws
 9. Requirement To Participate in a Post Award Teleconference
 10. Requirement To Participate in a Post Award Civil Rights Training Teleconference
 11. Requirement To Submit Educational Materials to the National AgRisk Education Library
 12. Requirement To Submit a Project Plan of Operation in the Event of a Human Pandemic Outbreak

C. Reporting Requirements

Section VII—Agency Contact

Section VIII—Additional Information

- A. The Restriction of the Expenditure of Funds To Enter Into Financial Transactions
- B. Required Registration With the Central Contract Registry (CCR) for Submission of Proposals

Full Text of Announcement

I. Funding Opportunity Description

A. Legislative Authority

The Risk Management Education and Outreach Partnership Program is authorized under section 522(d)(3)(F) of the Federal Crop Insurance Act (Act) (7 U.S.C. 1522(d)(3)(F)).

B. Background

RMA promotes and regulates sound risk management solutions to improve the economic stability of American agriculture. On behalf of FCIC, RMA does this by offering Federal crop insurance products through a network of private-sector partners, overseeing the creation of new risk management products, seeking enhancements in existing products, ensuring the integrity of crop insurance programs, offering programs aimed at equal access and participation of underserved

communities, and providing risk management education and information.

One of RMA's strategic goals is to ensure that its customers are well informed as to the risk management solutions available. This educational goal is supported by section 522(d)(3)(F) of the Federal Crop Insurance Act (FCIA) (7 U.S.C. 1522(d)(3)(F)), which authorizes FCIC funding for risk management training and informational efforts for agricultural producers through the formation of partnerships with public and private organizations. With respect to such partnerships, priority is to be given to reaching producers of Priority Commodities, as defined below. A project is considered as giving priority to Priority Commodities if 75 percent of the educational and training activities of the project are directed to producers of any one of the three classes of commodities listed in the definition of Priority Commodities or any combination of the three classes.

C. Definition of Priority Commodities

For purposes of this program, Priority Commodities are defined as:

1. *Agricultural commodities covered by (7 U.S.C. 7333)*. Commodities in this group are commercial crops that are not covered by catastrophic risk protection crop insurance, are used for food or fiber (except livestock), and specifically include, but are not limited to, floricultural, ornamental nursery, Christmas trees, turf grass sod, aquaculture (including ornamental fish), and industrial crops.

2. *Specialty crops*. Commodities in this group may or may not be covered under a Federal crop insurance plan and include, but are not limited to, fruits, vegetables, tree nuts, syrups, honey, roots, herbs, and highly specialized varieties of traditional crops.

3. *Underserved commodities*. This group includes: (a) Commodities, including livestock and forage, that are covered by a Federal crop insurance plan but for which participation in an area is below the national average; and (b) commodities, including livestock and forage, with inadequate crop insurance coverage.

D. Project Goal

The goal of this program is to ensure that “* * * producers will be better able to use financial management, crop insurance, marketing contracts, and other existing and emerging risk management tools.”

For the 2012 fiscal year, the FCIC Board of Directors and the FCIC Manager are seeking projects that address one or more of the Priority

Commodities. In addition, the application must clearly designate that education or training shall be provided on at least one (1) of the Special Emphasis Topics listed below. Applications that do not include at least one (1) Special Emphasis Topic will not be considered for funding.

Special Emphasis Topics:

Production: AGR and AGR-Lite; Livestock Gross Margin Dairy; Pasture, Rangeland, Forage Rainfall and/or Vegetative Index; Common Crop Insurance Policy Basic Provisions ("COMBO"); Enterprise Units; Specialty Crops; Prevented Planting; or Other Existing Crop Insurance Programs; Irrigation; Erosion Control Measures; Good Farming Practices; Wildfire Management; Forest Management; and Range Management or other similar topics.

Legal: Legal and Succession Planning or other similar topics;

Marketing: Marketing Strategies; Farm Products Branding; Farmers Markets or other similar topics;

Financial: Financial Tools and Planning; Farm Management Strategies; Farm Financial Benchmarking or other similar topics; or

Human: Farm Labor; Farm Safety; Food Safety, Risk Management Education to Students; or other similar topics.

In addition, the application must clearly demonstrate that the education or training shall be provided to at least one (1) of the Producer Types listed below. Applications that do not include at least one (1) of the Producer Types will not be considered for funding.

Producer Types:

Producers and Ranchers;
New and Beginning Farmers;
Women Producers and Ranchers;
Hispanic Producers and Ranchers;
African American Producers and Ranchers;
Native American Producers and Ranchers;
Limited Resource Producers and Ranchers;
Asian American and Pacific Islander Producers and Ranchers;
Transitional Farmers and Ranchers;
Senior Farmers and Ranchers;
Small Acreage Producers;
Specialty Crop Producers; or
Military Veteran Producers and Ranchers.

II. Award Information

A. Type of Application

Only electronic applications will be accepted and they must be submitted

through Grants.gov. Hard copy applications will NOT be accepted. Applications submitted to the Risk Management Education and Outreach Partnerships Program are new applications: There are no renewals. All applications will be reviewed competitively using the selection process and evaluation criteria described in Section V—Application Review Process. Each award will be designated as a Cooperative Partnership Agreement, which will require substantial involvement by RMA.

B. Funding Availability

There is no commitment by USDA to fund any particular application. Approximately \$3,000,000 is expected to be available in fiscal year 2012 but it is possible that this amount may be reduced or not funded. In the event that all funds available for this program are not obligated after the maximum number of agreements are awarded or if additional funds become available, these funds may, at the discretion of the Manager of FCIC, be used to award additional applications that score highly by the technical review panel or allocated pro-rata to awardees for use in broadening the size or scope of awarded projects, if agreed to by the awardee. In the event that the Manager of FCIC determines that available RMA resources cannot support the administrative and substantial involvement requirements of all agreements recommended for funding, the Manager may elect to fund fewer agreements than the available funding might otherwise allow. All awards will be made and agreements finalized no later than September 30, 2012.

C. Location and Target Audience

RMA Regional Offices and the States serviced within each RMA Region are listed below. Staff from the respective RMA Regional Offices will provide substantial involvement for projects conducted within the Region.

Billings, Montana Regional Office: (MT, ND, SD, and WY). Davis, California Regional Office: (AZ, CA, HI, NV, and UT). Jackson, Mississippi Regional Office: (AR, KY, LA, MS, and TN). Oklahoma City, Oklahoma Regional Office: (NM, OK, and TX). Raleigh, North Carolina Regional Office: (CT, DE, ME, MD, MA, NH, NJ, NY, NC, PA, RI, VT, VA, and WV).

Spokane, Washington Regional Office: (AK, ID, OR, and WA). Springfield, Illinois Regional Office: (IL, IN, MI, and OH). St. Paul, Minnesota Regional Office: (IA, MN, and WI). Topeka, Kansas Regional Office: (CO, KS, MO, and NE). Valdosta, Georgia Regional Office: (AL, FL, GA, PR, and SC).

Each application must clearly designate the RMA Region where

educational activities will be conducted in the application narrative in block 12 of the SF-424 form. Applications without this designation will be rejected. Applications may designate more than one state but cannot designate more than one RMA Region. Applications with proposed activities in more than one state all serviced by the same RMA Region are acceptable. Single applications proposing to conduct educational activities in states served by more than one RMA Region will be rejected. Applications serving Tribal Nations will be accepted and managed from the RMA Regional office serving the designated Tribal Office.

D. Minimum and Maximum Award

Any application that requests Federal funding of less than \$20,000 or more than \$99,999 for a project will be rejected. RMA also reserves the right to fund successful applications at an amount less than requested if it is judged that the application can be implemented at a lower funding level.

E. Project Period

Projects will be funded for a period of up to one year from the project starting date.

F. Description of Agreement Award—Awardee Tasks

In conducting activities to achieve the purpose and goal of this program in a designated RMA Region, the awardee shall be responsible for performing the following tasks:

1. Develop and conduct a promotional program in English or a non-English language to producers as appropriate to the audience. This program shall include activities using media, newsletters, publications, or other appropriate informational dissemination techniques that are designed to: (a) Raise awareness for crop insurance and risk management; (b) inform producers of the availability of crop insurance and risk management tools; and (c) inform producers and agribusiness leaders in the designated RMA Region of training and informational opportunities.

2. Deliver crop insurance and risk management training in English or non-English language as appropriate to the audience as well as informational opportunities to agricultural producers and agribusiness professionals in the designated RMA Region. This will include organizing and delivering educational activities using the instructional materials assembled by the awardee to meet the local needs of agricultural producers. Activities should be directed primarily to agricultural producers, but may include those

agribusiness professionals that have frequent opportunities to advise producers on risk management tools and decisions.

3. Document all educational activities conducted under the cooperative partnership agreement and the results of such activities, including criteria and indicators used to evaluate the success of the program. The awardee shall also be required to provide information to RMA as requested for evaluation purposes.

G. RMA Activities

FCIC, working through RMA, will be substantially involved during the performance of the funded project through RMA's ten (10) Regional Offices. Potential types of substantial involvement may include, but are not limited to, the following activities.

1. Collaborate with the awardee in assembling, reviewing, and approving crop insurance and risk management materials for producers in the designated RMA Region.

2. Collaborate with the awardee in reviewing and approving a promotional program for raising awareness for crop insurance and risk management and for informing producers of training and informational opportunities in the RMA Region.

3. Collaborate with the awardee on the delivery of education to producers and agribusiness leaders in the RMA Region. This will include: (a) Reviewing and approving in advance all producer and agribusiness leader educational activities; (b) advising the project leader on technical issues related to crop insurance education and information; and (c) assisting the project leader in informing crop insurance professionals about educational activity plans and scheduled meetings.

4. Conduct an evaluation of the performance of the awardee in meeting the tasks and subtasks of the project.

Applications that do not address substantial involvement by RMA will be rejected.

H. Other Tasks

In addition to the specific, required tasks listed above, the applicant may propose additional tasks that would contribute directly to the purpose of this program. For any proposed additional task, the applicant must identify the objective of the task, the specific subtasks required to meet the objective, specific time lines for performing the subtasks, and the specific responsibilities of the applicant and any entities working with the applicant in the development or delivery of the project. The applicant must also identify

specific ways in which RMA would have substantial involvement in the proposed project task.

III. Eligibility Information

A. Eligible Applicants

Eligible applicants include: State Departments of Agriculture, State Cooperative Extension Services; Federal, State, or tribal agencies; groups representing producers, community based organizations or a coalition of community-based organization that has demonstrated experience in providing agricultural or other agricultural-related services to producers; nongovernmental organizations; junior and four-year colleges or universities or foundations maintained by a college or university; private for-profit organizations; faith-based organizations and other appropriate partners with the capacity to lead a local program of crop insurance and risk management education for producers in an RMA Region.

1. Individuals are not eligible applicants.

2. Although an applicant may be eligible to compete for an award based on its status as an eligible entity, other factors may exclude an applicant from receiving Federal assistance under this program governed by Federal law and regulations (e.g. debarment and suspension; a determination of non-performance on a prior contract, cooperative partnership agreement, or grant; or a determination of a violation of applicable ethical standards.) Applications in which the applicant or any of the partners are ineligible or excluded persons will be rejected in their entirety.

3. Private organizations that are involved in the sale of Federal crop insurance, or that have financial ties to such organizations, are eligible to apply for funding under this Announcement. However, such entities and their partners, affiliates, and collaborators for this Announcement will not receive funding to conduct activities that are already required under a Standard Reinsurance Agreement or any other agreement in effect between FCIC/RMA and the entity, or between FCIC/RMA and any of the partners, affiliates, or collaborators for awards under this Announcement. In addition, such entities and their partners, affiliates, and collaborators for this Announcement will not be allowed to receive funding to conduct activities that could be perceived by producers as promoting the services or products of one company over the services or products of another company that provides the same or

similar services or products. If applying for funding, such organizations must be aware of potential conflicts of interest and must describe in their application the specific actions they shall take to avoid actual and perceived conflicts of interest.

B. Cost Sharing or Matching Funding

Although RMA prefers cost sharing by the applicant, this program has neither a cost sharing nor a matching requirement.

C. Other—Non-Financial Benefits

To be eligible, applicants must also be able to demonstrate that they will receive a non-financial benefit as a result of a cooperative partnership agreement. Non-financial benefits must accrue to the applicant and must include more than the ability to provide employment income to the applicant or for the applicant's employees or the community. The applicant must demonstrate that performance under the cooperative partnership agreement shall further the specific mission of the applicant (such as providing research or activities necessary for graduate or other students to complete their educational program). Applications that do not demonstrate a non-financial benefit will be rejected.

IV. Application and Submission Information

A. Electronic Application Package

Only electronic applications will be accepted and they must be submitted via Grants.gov to the Risk Management Agency in response to this Announcement. Prior to preparing an application, it is suggested that the Project Director (PD) first contact an Authorized Representative (AR) (also referred to as Authorized Organizational Representative or AOR) to determine if the organization is prepared to submit electronic applications through Grants.gov. If the organization is not prepared, the AR should see, http://www.grants.gov/applicants/get_registered.jsp, for steps for preparing to submit applications through Grants.gov.

Grants.gov assistance is available as follows:

- Grants.gov customer support Toll Free: 1-800-518-4726
- Business Hours: 24 Hours a day
- Email: support@grants.gov

B. Content and Form of Application Submission

The title of the application must include the (1) RMA Region, (2) the State or States within the RMA Region where the educational activities will be

conducted, (3) the Special Emphasis Topic(s); and (4) the Producer Type 2 (For example only: Billings RO, Montana, Crop Insurance for Military Veterans).

A complete and valid application must include the following:

1. A completed OMB Standard Form 424, "Application for Federal Assistance."

2. A completed OMB Standard Form 424-A, "Budget Information—Non-construction Programs." Federal funding requested (the total of direct and indirect costs) must not exceed \$99,999.

3. A completed OMB Standard Form 424-B, "Assurances, Non-constructive Programs."

4. An Executive Summary (One page) of the Project.

5. A Proposal Narrative (Not to Exceed 15 single-sided pages in Microsoft Word), which shall also include a Statement of Work. The Statement of Work (SOW) must include each task and subtask associated with the work, the objective of each task and subtask, specific time lines for performing the tasks and subtasks, and the responsible party for completing the activities listed under each task and subtask including the specific responsibilities of partners and/or RMA. The SOW must be very clear on who does what, where, and when, as well as, the objective for each task and subtask. Letters of support for the applicant should be an appendix to the application and should not be included as part of the Proposal Narrative.

6. Budget Narrative (in Microsoft Excel) describing how the categorical costs listed on the SF 424-A are derived. The budget narrative must provide enough detail for reviewers to easily understand how costs were determined and how they relate to the goals and objectives of the project.

7. Partnering Plan that includes how each partner of the applicant (who will be working on this project) shall aid in carrying out the specific tasks and subtasks. The Partnering Plan must also include "Letters of Commitment" from each partner who shall do the specific task or subtask as identified in the SOW. The Letters must (1) be dated within 45 days of the submission and (2) list the specific tasks or subtasks the committed partner has agreed to do with the applicant on this project.

8. Project Plan of Operation in the Event of a Human Pandemic Outbreak (Pandemic Plan). RMA requires that project leaders submit a project plan of operation in case of a human pandemic event. The plan must address the concept of continuing operations as they

relate to the project. This plan must include the roles, responsibilities, and contact information for the project team and individuals serving as back-ups in case of a pandemic outbreak.

9. Current and Pending Report. The application package from Grants.gov contains a document called the Current and Pending Report. On the Current and Pending Report you must state for this fiscal year if this application is a duplicate application or overlaps substantially with another application already submitted to or funded by another USDA Agency, including RMA, or other private organization. The percentage of each person's time associated with the work to be done under this project must be identified in the application. The total percentage of time for both "Current" and "Pending" projects must not exceed 100% of each person's time. Applicants must list all current public or private employment arrangements or financial support associated with the project or any of the personnel that are part of the project, regardless of whether such arrangements or funding constitute part of the project under this Announcement (supporting agency, amount of award, effective date, expiration date, expiration date of award, etc.). If the applicant has no projects to list, "N/A" should be shown on the form. An application submitted under this RFA that duplicates or overlaps substantially with any application already reviewed and funded (or to be funded) by any other organization or agency, including but not limited to other RMA, USDA, and Federal government programs, will not be funded under this program. RMA reserves the right to reject your application based on the review of this information.

10. A completed and signed OMB Standard Form LLL, Disclosure of Lobbying Activities.

11. A completed and signed AD-1049, Certification Regarding Drug-Free Workplace. Applications that do not include the items listed above will be considered incomplete, will not receive further consideration, and will be rejected.

C. Funding Restrictions

Cooperative partnership agreement funds may not be used to:

a. Plan, repair, rehabilitate, acquire, or construct a building or facility including a processing facility;

b. Purchase, rent, or install fixed equipment;

c. Purchase portable equipment (such as laptops, projectors, etc.)

d. Repair or maintain privately owned vehicles;

e. Pay for the preparation of the cooperative agreement application;

f. Fund political activities;

g. Purchase alcohol, food, beverage, give-away promotional items, or entertainment;

h. Lend money to support farming or agricultural business operation or expansion;

i. Pay costs incurred prior to receiving a cooperative agreement;

j. Provide scholarships to meetings, seminars or similar events;

k. Pay entrance fees or other expenses to conferences or similar activities;

l. Pay costs associated 501(c) applications;

m. Purchase electronic devices (such as I-pads, cell phones, computers or similar items) for consultants or Board Members; or

n. Fund any activities prohibited in 7 CFR Parts 3015 and 3019, as applicable.

D. Limitation on Use of Project Funds for Salaries and Benefits

Total costs for salary and benefits allowed for projects under this Announcement will be limited to not more than 70 percent reimbursement of the funds awarded under the cooperative partnership agreement. The reasonableness of the total costs for salary and benefits allowed for projects under this Announcement will be reviewed and considered by RMA as part of the application review process. Applications for which RMA does not consider the salary and benefits reasonable for the proposed application will be rejected, or will only be offered a cooperative agreement upon the condition of changing the salary and benefits structure to one deemed appropriate by RMA for that. The goal of the Risk Management Education and Outreach Partnerships Program is to maximize the use of the limited funding available for crop insurance risk management education for producers of Priority Commodities and Special Emphasis Topics.

E. Indirect Cost Rates

1. Indirect costs allowed for projects submitted under this Announcement will be limited to ten (10) percent of the total direct cost of the cooperative partnership agreement. Therefore, when preparing budgets, applicants should limit their requests for recovery of indirect costs to the lesser of their institution's official negotiated indirect cost rate or 10 percent of the total direct costs.

2. RMA reserves the right to negotiate final budgets with successful applicants.

F. Other Submission Requirements

Applicants are entirely responsible for ensuring that RMA receives a complete application package by the closing date and time. RMA strongly encourages applicants to submit applications well before the deadline to allow time for correction of technical errors identified by Grants.gov. Application packages submitted after the deadline will be rejected.

G. Acknowledgement of Applications

Receipt of applications may be acknowledged by email, whenever possible; however it is the responsibility of the applicant to check Grants.gov for successful submission. Therefore, applicants are encouraged to provide email addresses in their applications. There will be no notification of incomplete, unqualified or unfunded applications until the award decisions have been made. When received by RMA, applications will be assigned an identification number. This number will be communicated to applicants in the acknowledgement of receipt of applications. An application's identification number must be referenced in all correspondence submitted by any party regarding the application. If the applicant does not receive an acknowledgement of application receipt by 15 days following the submission deadline, the applicant must notify RMA's point of contact indicated in Section VII, Agency Contact.

V. Application Review Information

A. Criteria

Applications submitted under the Risk Management Education and Outreach Partnerships Program will be evaluated within each RMA Region according to the following criteria:

Project Impacts—Maximum 20 Points Available

Each application must demonstrate that the project benefits to producers warrant the funding requested. Applications will be scored according to the extent they can: (a) Identify the specific actions producers will likely be able to take as a result of the educational activities described in the Proposal Narrative's Statement of Work (SOW); (b) identify the specific measures for evaluating results that will be employed in the project; (c) reasonably estimate the total number of producers that will be reached through the various methods and educational activities described in the Statement of Work; (d) identify the number of meetings that will be held; (e) provide an estimate of the number of

training hours that will be held; (f) provide an estimated cost per producer, and (e) justify such estimates with specific information. Estimates for reaching agribusiness professionals may also be provided but such estimates must be provided separately from the estimates of producers. Reviewers' scoring will be based on the scope and reasonableness of the application's clear descriptions of specific expected actions producers will accomplish, and well-designed methods for measuring the project's results and effectiveness. Applications using direct contact methods with producers will be scored higher.

Applications must identify the type and number of producer actions expected as a result of the projects, and how results will be measured, in the following categories:

- Understanding risk management tools;
- Evaluating the feasibility of implementing various risk management options;
- Developing risk management plans and strategies;
- Deciding on and implementing a specific course of action (e.g., participation in crop insurance programs or implementation of other risk management actions).

Statement of Work (SOW)—Maximum 20 Points Available

Each application must include a clear and specific Statement of Work for the project as part of the Proposal Narrative. For each of the tasks contained in the Description of Agreement Award (see Section II, Award Information), the application must identify and describe specific subtasks, responsible entities including partners, expected completion dates, RMA substantial involvement, and deliverables that shall further the purpose of this program. Applications will obtain a higher score to the extent that the Statement of Work is specific, measurable and reasonable, has specific deadlines for the completion of tasks and subtasks, and relates directly to the required activities and the program purpose described in this Announcement.

Partnering—Maximum 20 Points Available

Each application must demonstrate experience and capacity to partner with and gain the support of producer organizations, agribusiness professionals, subject matter experts, and agricultural leaders to carry out a local program of education and information in a designated State. Each application must establish a written

Partnering Plan that describes how each partner shall aid in carrying out the project goal and purpose stated in this announcement and should include letters of commitment dated no more than 45 days prior to submission of the relevant application stating that the partner has agreed to do this work. Each application must ensure this Plan includes a list of all partners working on the project, their titles, and how they will be contribute to the deliverables listed in the application. The Partnering Plan will not count towards the maximum length of the application narrative. Applications will receive higher scores to the extent that the application demonstrates: (a) That partnership commitments are in place for the express purpose of delivering the program in this announcement; (b) that a broad group of producers will be reached within the State; (c) that partners are contributing to the project and involved in recruiting producers to attend the training; (d) that a substantial effort has been made to partner with organizations that can meet the needs of producers in the designated State; and (e) statements from each partner regarding the number of producers that partner is committed to recruit for the project that would support the estimates specified under the Project Impacts criterion.

Project Management—Maximum 20 Points Available

Each application must demonstrate an ability to implement sound and effective project management practices. Higher scores in this category will be awarded to applications that demonstrate organizational skills, leadership, and experience in delivering services or programs that assist agricultural producers in the designated State. Each application must demonstrate that the Project Director has the capability to accomplish the project goal and purpose stated in this announcement by (a) having a previous or existing working relationship with the agricultural community in the designated State of the application, including being able to recruit approximately the number of producers to be reached in the application and/or (b) having established the capacity to partner with and gain the support of producer organizations, agribusiness professionals, and agribusiness leaders locally to aid in carrying out a program of education and information, including being able to recruit approximately the number of producers to be reached in this application. Applications must designate an alternate individual to assume responsibility as Project Director

in the event the original Project Director is unable to finish the project. Applications that will employ, or have access to, personnel who have experience in directing local educational programs that benefit agricultural producers in the respective State will receive higher rankings in this category.

Budget Appropriateness and Efficiency—Maximum 20 Points Available

Applications must provide a detailed budget summary, both in narrative and in Microsoft Excel, that clearly explains and justifies costs associated with the project's tasks and subtasks. Applications will receive higher scores in this category to the extent that they can demonstrate a fair and reasonable use of funds appropriate for the project and a budget that contains the *estimated cost of reaching each individual producer*.

Bonus Points for Minority Partnering—Maximum 20 Bonus Points Available

RMA is focused on adding diversity to this program. RMA may add up to an additional 20 points to the final paneled score of any submission demonstrating a *partnership with another producer group or community based group that represent minority producers*. The application must state in the Partnering Plan that a Minority Partnership is in place as validated by a current Letter of Commitment that identifies the producer group or community based group partner that will represent minority producers.

"Minority" producers are defined as:

- African American producers
- Asian American, Pacific Islander producers
- Hispanic producers
- Native American producers

Bonus Points for StrikeForce Partnering—Maximum Bonus 20 Points Available

RMA is focused on providing crop insurance education and other risk management training and outreach to the States and counties identified in the USDA StrikeForce initiative (www.fsa.usda.gov/Internet/FSA_File/coaha_strike_force.pdf).

RMA may add up to an additional 20 points to the final paneled score of any submission demonstrating that the activities describe in the proposal will be directed to the producers in the StrikeForce areas. The application must state in the Partnering Plan that a StrikeForce Partnership is in place as validated by a current Letter of Commitment that identifies the

producer group or community based group that represent producers farming in the areas identified in the StrikeForce areas noted below:

Arkansas

StrikeForce Counties: Arkansas, Bradley, Chicot, Clark, Columbia, Dallas, Desha, Drew, Hempstead, Howard, Jackson, Lafayette, Lawrence, Lee, Mississippi, Monroe, Nevada, Newton, Ouachita, Phillips, Randolph, Searcy, Sevier, St. Francis, and Woodruff

Colorado

StrikeForce Counties: Adams, Alamosa, Arapahoe, Baca, Bent, Cheyenne, Costilla, Conejos, Crowley, Denver, Elbert, El Paso, Huerfano, Jefferson, Kiowa, Lake, Las Animas, Lincoln, Logan, Morgan, Montezuma, Otero, Pueblo, Prowers, Rio Grande, San Juan, Saquache, Sedgwick, and Weld

Georgia

StrikeForce Counties: Appling, Atkinson, Baker, Baldwin, Ben Hill, Berrien, Bulloch, Calhoun, Candler, Charlton, Clay, Clinch, Coffee, Colquitt, Cook, Crisp, Decatur, Dodge, Dooley, Early, Emanuel, Evans, Grady, Hancock, Irwin, Jefferson, Jenkins, Johnson, Laurens, Macon, Miller, Mitchell, Montgomery, Peach, Pulaski, Quitman, Randolph, Screven, Seminole, Stewart, Sumter, Talbot, Taliaferro, Tattnall, Taylor, Telfair, Terrell, Thomas, Tift, Toombs, Treutlen, Turner, Ware, Warren, Washington, Wayne, Webster, Wheeler, Wilcox, and Wilkes

Mississippi

StrikeForce Counties: Adams, Amite, Attala, Benton, Bolivar, Calhoun, Chickasaw, Choctaw, Claiborne, Clarke, Clay, Coahoma, Covington, Franklin, Greene, Grenada, Holmes, Humphreys, Issaquena, Jasper, Jefferson, Jefferson Davis, Jones, Kemper, Lafayette, Lauderdale, Lawrence, Leake, Leflore, Lincoln, Lowndes, Marion, Monroe, Montgomery, Noxubee, Oktibbeha, Panola, Pike, Quitman, Scott, Sharkey, Sunflower, Tallahatchie, Walthall, Warren, Washington, Wayne, Webster, Wilkinson, Winston, Yalobusha, and Yazoo

Nevada

StrikeForce Counties: Carson City, Clark, Churchill, Douglas, Elko, Esmeralda, Eureka, Humboldt, Lander, Lincoln, Lyon, Mineral, Nye, Pershing, Storey, Washoe, and White Pine

New Mexico

StrikeForce Counties: Lincoln, Rio Arriba, San Juan, San Miguel, Santa Fe and Taos

B. Review and Selection Process

Applications will be evaluated using a two-part process. First, each application will be screened by USDA and RMA personnel to ensure that it meets the requirements in this Announcement. Applications that do not meet the requirements of this Announcement or that are incomplete will not receive further consideration

during the next process. Applications that meet Announcement requirements will be sorted into the RMA Region in which the applicant proposes to conduct the project and will be presented to a review panel for consideration. Second, the review panel will meet to consider and discuss the merits of each application. The panel will consist of not less than three independent reviewers. Reviewers will be drawn from USDA, other Federal agencies, and public and private organizations, as needed. After considering the merits of all applications within an RMA Region, panel members will score each application according to the criteria and point values listed above. The panel will then rank each application against others within the RMA Region according to the scores received. The review panel will report the results of the evaluation to the Manager of FCIC. The panel's report will include the recommended applicants to receive cooperative partnership agreements for each RMA Region. Funding will not be provided for an application receiving a score less than 60. Funding will not be provided for an application that is "highly similar" to a higher-scoring application in the same RMA Region. "Highly similar" is defined as one that proposes to reach the same producers, farmers and ranchers who are likely to be reached by another applicant that scored higher by the panel and provides the same general educational material. An organization, or group of organizations in partnership, may apply for funding under other FCIC or RMA programs, in addition to the program described in this Announcement. However, if the Manager of FCIC determines that an application recommended for funding is sufficiently similar to a project that has been funded or has been recommended to be funded under another RMA or FCIC program, then the Manager may elect not to fund that application in whole or in part. The Manager of FCIC will make the final determination on those applications that will be awarded funding.

VI. Award Administration Information

A. Award Notices

The award document will provide pertinent instructions and information including, at a minimum, the following:

- (1) Legal name and address of performing organization or institution to which the Manager of FCIC has issued an award under the terms of this request for applications;
- (2) Title of project;

(3) Name(s) and employing institution(s) of Project Directors chosen to direct and control approved activities;

(4) Identifying award number assigned by RMA;

(5) Project period, specifying the amount of time RMA intends to support the project without requiring re-competing for funds;

(6) Total amount of RMA financial assistance approved by the Manager of FCIC during the project period;

(7) Legal authority(ies) under which the award is issued;

(8) Appropriate Catalog of Federal Domestic Assistance (CFDA) numbers;

(9) Applicable award terms and conditions (see <http://www.rma.usda.gov/business/awards/awardterms.html> to view RMA award terms and conditions);

(10) Approved budget plan for categorizing allocable project funds to accomplish the stated purpose of the award; and

(11) Other information or provisions deemed necessary by RMA to carry out its respective awarding activities or to accomplish the purpose of a particular award.

Following approval by the Manager of FCIC of the applications to be selected for funding, project leaders whose applications have been selected for funding will be notified. Within the limit of funds available for such a purpose, the Manager of FCIC will enter into cooperative partnership agreements with those selected applicants.

After a cooperative partnership agreement has been signed, RMA will extend to awardees, in writing, the authority to draw down funds for the purpose of conducting the activities listed in the agreement. All funds provided to the applicant by FCIC must be expended solely for the purpose for which the funds are obligated in accordance with the approved cooperative partnership agreement and budget, the regulations, the terms and conditions of the award, and the applicability of Federal cost principles. No commitment of Federal assistance beyond the project period is made or implied for any award resulting from this notice.

Notification of denial of funding will be sent to applicants after final funding decisions have been made and the awardees announced publicly. Unsuccessful applicants will be provided a debriefing upon request to the Director, Risk Management Education.

B. Administrative and National Policy Requirements

1. Requirement To Use USDA Logo

Applicants awarded cooperative partnership agreements will be required to use a USDA logo provided by RMA for all instructional and promotional materials, when deemed appropriate.

2. Requirement To Provide Project Information to an RMA-Selected Representative

Applicants awarded cooperative partnership agreements may be required to assist RMA in evaluating the effectiveness of its educational programs by notifying RMA of upcoming training meeting and by providing documentation of educational activities, materials, and related information to any representative selected by RMA for program evaluation purposes.

3. Access to Panel Review Information

Upon written request from the applicant, scores from the evaluation panel, not including the identity of reviewers, will be sent to the applicant after the review and awards process has been completed.

4. Confidential Aspects of Applications and Awards

The names of applicants, the names of individuals identified in the applications, the content of applications, and the panel evaluations of applications will all be kept confidential, except to those involved in the review process, to the extent permitted by law. In addition, the identities of review panel members will remain confidential throughout the entire review process and will not be released to applicants. At the end of the fiscal year, names of panel members will be made available. However, panelists will not be identified with the review of any particular application. When an application results in a cooperative partnership agreement, that agreement becomes a part of the official record of RMA transactions, available to the public upon specific request. Information that the Secretary of Agriculture determines to be of a confidential, privileged, or proprietary nature will be held in confidence to the extent permitted by law. Therefore, any information that the applicant wishes to be considered confidential, privileged, or proprietary should be clearly marked within an application, including the basis for such designation. The original copy of an application that does not result in an award will be retained by RMA for a period of one year. Other copies will be destroyed. Copies of

applications not receiving awards will be released only with the express written consent of the applicant or to the extent required by law. An application may be withdrawn at any time prior to award.

5. Audit Requirements

Applicants awarded cooperative partnership agreements are subject to audit.

6. Prohibitions and Requirements Regarding Lobbying

All cooperative agreements will be subject to the requirements of 7 CFR part 3015, "Uniform Federal Assistance Regulations." A signed copy of the certification and disclosure forms must be submitted with the application and are available at the address and telephone number listed in Section VII, Agency Contact.

Departmental regulations published at 7 CFR part 3018 imposes prohibitions and requirements for disclosure and certification related to lobbying on awardees of Federal contracts, grants, cooperative partnership agreements and loans. It provides exemptions for Indian Tribes and tribal organizations. Current and prospective awardees, and any subcontractors, are prohibited from using Federal funds, other than profits from a Federal contract, for lobbying Congress or any Federal agency in connection with the award of a contract, grant, cooperative partnership agreement or loan. In addition, for each award action in excess of \$100,000 (\$150,000 for loans) the law requires awardees and any subcontractors to complete a certification in accordance with Appendix A to Part 3018 and a disclosure of lobbying activities in accordance with Appendix B to Part 3018. The law establishes civil penalties for non-compliance.

7. Applicable OMB Circulars

All cooperative partnership agreements funded as a result of this notice will be subject to the requirements contained in all applicable OMB circulars at http://www.whitehouse.gov/omb/grants_circulars.

8. Requirement To Assure Compliance With Federal Civil Rights Laws

Awardees and all partners/ collaborators of all cooperative agreements funded as a result of this notice are required to know and abide by Federal civil rights laws, which include, but are not limited to, Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), and 7 CFR part 15. RMA requires that awardees submit an Assurance Agreement (Civil Rights),

assuring RMA of this compliance prior to the beginning of the project period.

9. Requirement To Participate in a Post Award Teleconference

RMA requires that project leaders participate in a post award teleconference, if conducted, to become fully aware of agreement requirements and for delineating the roles of RMA personnel and the procedures that will be followed in administering the agreement and will afford an opportunity for the orderly transition of agreement duties and obligations if different personnel are to assume post-award responsibility.

10. Requirement To Participate in a Post Award Civil Rights Training Teleconference

RMA requires that project leaders participate in a post award Civil Rights and EEO training teleconference to become fully aware of Civil Rights and EEO law and requirements.

11. Requirement To Submit Educational Materials to the National AgRisk Education Library

RMA requires that project leaders upload digital copies of all risk management educational materials developed because of the project to the National AgRisk Education Library at <http://www.agrisk.umn.edu/> for posting. RMA will be clearly identified as having provided funding for the materials.

12. Requirement To Submit a Project Plan of Operation in the Event of a Human Pandemic Outbreak

RMA requires that project leaders submit a project plan of operation in case of a human pandemic event. The plan should address the concept of continuing operations as they relate to the project. This should include the roles, responsibilities, and contact information for the project team and individuals serving as back-ups in case of a pandemic outbreak.

C. Reporting Requirements

Awardees will be required to submit quarterly progress reports using the Performance Progress Report (SF-PPR) as the cover sheet, and quarterly financial reports (OMB Standard Form 425) throughout the project period, as well as a final program and financial report not later than 90 days after the end of the project period. The quarterly progress reports and final program reports MUST be submitted through the Results Verification System. The Web site address is www.agrisk.umn.edu/RMA/Reporting

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT:

Applicants and other interested parties are encouraged to contact: USDA—RMA—RME, phone: 202–720–0779, email: RMA.Risk-Ed@rma.usda.gov. You may also obtain information regarding this announcement from the RMA Web site at: <http://www.rma.usda.gov/aboutrma/agreements>.

VIII. Additional Information

A. The Restriction of the Expenditure of Funds To Enter Into Financial Transactions

The Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2012 (Pub. L. 112–55) contains the restriction of the expenditure of funds to enter into financial transactions Corporations that have been convicted of felonies within the past 24 months or that have federal tax delinquencies where the agency is aware of the felonies and/or tax delinquencies.

Section 738 (Felony Provision)

None of the funds made available by this Act may be used to enter into a contract, memorandum of understanding, or cooperative agreement with, make a grant to, or provide a loan or loan guarantee to any corporation that was convicted (or had an officer or agency of such corporation acting on behalf of the corporation convicted) of a felony criminal violation under any Federal or State law within the preceding 24 months, where the awarding agency is aware of the conviction, unless the agency has considered suspension or debarment of the corporation, or such officer or agent, and made a determination that this further action is not necessary to protect the interest of the Government.

Section 739 (Tax Delinquency Provision)

None of the funds made available by this Act may be used to enter into a contract, memorandum of understanding, or cooperative agreement with, make a grant to, or provide a loan or loan guarantee to, any corporation that [has] any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding agency is aware of the unpaid tax liability, unless the agency has considered suspension or debarment of the

corporation and made a determination that this further action is not necessary to protect the interests of the Government.

B. Required Registration With the Central Contract Registry (CCR) for Submission of Proposals

Under the Federal Funding Accountability and Transparency Act of 2006, the applicant must comply with the additional requirements set forth in Attachment A regarding the Dun and Bradstreet Universal Numbering System (DUNS) Requirements and the CCR Requirements found at 2 CFR part 25. For the purposes of this RFA, the term “you” in Attachment A will mean “applicant”. The applicant shall comply with the additional requirements set forth in Attachment B regarding Subawards and Executive Compensation. For the purpose of this RFA, the term “you” in Attachment B will mean “applicant”. The Central Contract Registry CCR is a database that serves as the primary Government repository for contractor information required for the conduct of business with the Government. This database will also be used as a central location for maintaining organizational information for organizations seeking and receiving grants from the Government. Such organizations must register in the CCR prior to the submission of applications. A DUNS number is needed for CCR registration. For information about how to register in the CCR, visit “Get Registered” at the Web site, <http://www.grants.gov>. Allow a minimum of 5 business days to complete the CCR registration.

C. Related Programs

Funding availability for this program may be announced at approximately the same time as funding availability for similar but separate programs—and CFDA No. 10.458 (Crop Insurance Education in Targeted States). These programs have some similarities, but also key differences. The differences stem from important features of each program’s authorizing legislation and different RMA objectives. Prospective applicants should carefully examine and compare the notices for each program.

Attachment A

I. Central Contractor Registration and Universal Identifier Requirements

A. Requirement for Central Contractor Registration (CCR)

Unless you are exempted from this requirement under 2 CFR 25.110, you as the recipient must maintain the currency of your information in the CCR until you submit the

final financial report required under this award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another award term.

B. Requirement for Data Universal Numbering System (DUNS) Numbers

If you are authorized to make subawards under this award, you:

1. Must notify potential sub recipients that no entity (see definition in paragraph C of this award) may receive a subaward from you unless the entity has provided its DUNS number to you.

2. May not make a subaward to an entity unless the entity has provided its DUNS number to you.

C. Definitions for Purposes of This Award Term

1. Central Contractor Registration (CCR) means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the CCR Internet site (currently at <http://www.ccr.gov>).

2. Data Universal Numbering System (DUNS) number means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D & B) to uniquely identify business entities. A DUNS number may be obtained from D & B by telephone (currently 866-705-5711) or the Internet (currently at <http://fedgov.dnb.com/webform>).

3. Entity, as it is used in this award term, means all of the following, as defined at 2 CFR part 25, subpart C:

- a. A Governmental organization, which is a State, local government, or Indian Tribe;
- b. A foreign public entity;
- c. A domestic or foreign nonprofit organization;
- d. A domestic or foreign for-profit organization; and
- e. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

4. Subaward:

a. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.

b. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. 10 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").

c. A subaward may be provided through any legal agreement, including an agreement that you consider a contract.

5. Subrecipient means an entity that:

- a. Receives a subaward from you under this award; and
- b. Is accountable to you for the use of the Federal funds provided by the subaward.

Attachment B

I. Reporting Sub Awards and Executive Compensation

a. Reporting of First-Tier Subawards

1. Applicability. Unless you are exempt as provided in paragraph d. of this award term, you must report each action that obligates \$25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) for a subaward to an entity (see definitions in paragraph e. of this award term).

2. Where and when to report.

i. You must report each obligating action described in paragraph a.I. of this award term to <http://www.fsr.gov>.

ii. For sub award information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2012, the obligation must be reported by no later than December 31, 2012.)

3. What to report. You must report the information about each obligating action that the submission instructions posted at <http://www.fsr.gov> specify.

b. Reporting Total Compensation of Recipient Executives

1. Applicability and what to report. You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if—

i. The total Federal funding authorized to date under this award is \$25,000 or more;

ii. In the preceding fiscal year, you received—

(A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 780(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

2. Where and when to report. You must report executive total compensation described in paragraph b.1. of this award term:

i. As part of your registration profile at <http://www.ccr.gov>.

ii. By the end of the month following the month in which this award is made, and annually thereafter.

c. Reporting of Total Compensation of Sub Recipient Executives

1. Applicability and what to report. Unless you are exempt as provided in paragraph d. of this award term, for each first-tier sub recipient under this award, you shall report the names and total compensation of each of the sub recipient's five most highly compensated executives for the sub recipient's preceding completed fiscal year, if—

i. in the subrecipient's preceding fiscal year, the subrecipient received—

(A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at ~ CFR 170.320 (and subawards); and

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 780(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

2. Where and when to report. You must report subrecipient executive total compensation described in paragraph c.1. of this award term:

i. To the recipient.

ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. Exemptions

If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:

i. Subawards, and

ii. The total compensation of the five most highly compensated executives of any sub recipient.

e. Definitions. For purposes of This Award Term

1. Entity means all of the following, as defined in 2 CFR part 25:

- i. A Governmental organization, which is a State, local government, or Indian tribe;
- ii. A foreign public entity;
- iii. A domestic or foreign nonprofit organization;
- iv. A domestic or foreign for-profit organization;
- v. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

2. Executive means officers, managing partners, or any other employees in management positions.

3. Subaward:

i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.

ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. 210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").

iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.

4. Subrecipient means an entity that:

i. Receives a sub award from you (the recipient) under this award; and

ii. Is accountable to you for the use of the Federal funds provided by the subaward.

5. Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):

i. Salary and bonus.

ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.

iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.

iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.

v. Above-market earnings on deferred compensation which is not tax-qualified.

vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

Dated: Signed in Washington, DC, on April 12, 2012.

William J. Murphy,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 2012-9320 Filed 4-18-12; 8:45 am]

BILLING CODE 3410-08-P

DEPARTMENT OF AGRICULTURE**National Institute of Food and Agriculture****Notice of Request for Applications for the Veterinary Medicine Loan Repayment Program**

AGENCY: National Institute of Food and Agriculture, USDA.

ACTION: Notice.

SUMMARY: The National Institute of Food and Agriculture (NIFA) is announcing the release of the Veterinary Medicine Loan Repayment Program (VMLRP) Request for Applications (RFA) at www.nifa.usda.gov/vmlrp.

DATES: The FY 2012 Veterinary Medicine Loan Repayment Program (VMLRP) application package will be available at www.nifa.usda.gov/vmlrp on Monday, April 16, 2012 and applications are due by Friday, June 15, 2012.

FOR FURTHER INFORMATION CONTACT: Gary Sherman; National Program Leader, Veterinary Science; National Institute of Food and Agriculture; U.S. Department of Agriculture; STOP 2240; 1400 Independence Avenue SW.; Washington, DC 20250-2240; Voice: 202-401-4952; Fax: 202-401-6156; Email: gsherman@nifa.usda.gov.

SUPPLEMENTARY INFORMATION: On October 1, 2009, the Cooperative State Research, Education, and Extension Service (CSREES) became the National Institute of Food and Agriculture (NIFA) as mandated by the Food, Conservation, and Energy Act of 2008, section 7511(f) [Pub. L. 110-246]. Accordingly, the authority to administer the VMLRP transferred from CSREES to NIFA.

Background and Purpose

In January 2003, the National Veterinary Medical Service Act (NVMSA) was passed into law adding section 1415A to the National Agricultural Research, Extension, and Teaching Policy Act of 1997 (NARETPA). This law established a new Veterinary Medicine Loan Repayment Program (7 U.S.C. 3151a) authorizing the Secretary of Agriculture to carry out a program of entering into agreements with veterinarians under which they agree to provide veterinary services in veterinarian shortage situations. In November 2005, the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2006 (Pub. L. 109-97) appropriated \$495,000 for CSREES to implement the VMLRP and represented the first time funds had been appropriated for this program.

In February 2007, the Revised Continuing Appropriations Resolution, 2007 (Pub. L. 110-5) appropriated an additional \$495,000 to CSREES for support of the program, in December 2007, the Consolidated Appropriations Act, 2008 appropriated an additional \$868,875 to CSREES for support of this program, in March 2009, the Omnibus Appropriations Act, 2009 (Pub. L. 111-

8) was enacted, providing an additional \$2,950,000 for the VMLRP, in October 2009, the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act of 2010 (Pub. L. 111-80) appropriated an additional \$4,800,000 for the VMLRP, and in April 2011, the President signed into law, Public Law 112-10, Department of Defense and Full-Year Continuing Appropriations Act, 2011, which, after the .2% rescission, appropriated an additional \$4,790,400 for the VMLRP. On November 18, 2011, the President signed into law the Consolidated and Further Continuing Appropriations Act, 2012 (Pub. L. 112-55), which appropriated \$4,790,000 for the VMLRP. Section 7105 of the Food,

Conservation, and Energy Act of 2008, Public Law 110-246, (FCEA) amended section 1415A to revise the determination of veterinarian shortage situations to consider (1) geographical areas that the Secretary determines have a shortage of veterinarians; and (2) areas of veterinary practice that the Secretary determines have a shortage of veterinarians, such as food animal medicine, public health, epidemiology, and food safety. This section also added that priority should be given to agreements with veterinarians for the practice of food animal medicine in veterinarian shortage situations.

NARETPA section 1415A requires the Secretary, when determining the amount of repayment for a year of service by a veterinarian to consider the ability of USDA to maximize the number of agreements from the amounts appropriated and to provide an incentive to serve in veterinary service shortage areas with the greatest need. This section also provides that loan repayments may consist of payments of the principal and interest on government and commercial loans received by the individual for the attendance of the individual at an accredited college of veterinary medicine resulting in a degree of Doctor of Veterinary Medicine or the equivalent. This program is not authorized to provide repayments for any government or commercial loans incurred during the pursuit of another degree, such as an associate or bachelor degree. Loans eligible for repayment include educational loans made for one or more of the following: Loans for tuition expenses; other reasonable educational expenses, including fees, books, and laboratory expenses, incurred by the individual; and reasonable living expenses as determined by the Secretary. In addition, the Secretary is directed to

make such additional payments to participants as the Secretary determines appropriate for the purpose of providing reimbursements to participants for individual tax liability resulting from participation in this program. Finally, this section requires USDA to promulgate regulations within 270 days of the enactment of FCEA (*i.e.*, June 18, 2008). The Secretary delegated the authority to carry out this program to NIFA.

The final rule was published in the **Federal Register** on April 19, 2010 [75 FR 20239–20248]. Based on comments received during the 60-day comment period upon publication of the interim rule [74 FR 32788–32798, July 9, 2009], NIFA reconsidered the policy regarding individuals who consolidated their veterinary school loans with other educational loans (e.g. undergraduate) and their eligibility to apply for the VMLRP. NIFA will allow these individuals to apply for and receive a VMLRP award; however, only the eligible portion of the consolidation will be repaid by the VMLRP. Furthermore, applicants with consolidated loans will be asked to provide a complete history of their student loans from the National Student Loan Database System (NSLDS), a central database for student aid operated by the U.S. Department of Education. The NSLDS Web site can be found at www.nsls.ed.gov. Individuals who consolidated their DVM loans with non-educational loans or loans belonging to an individual other than the applicant, such as a spouse or child, will continue to be ineligible for the VMLRP.

In FY 2010, VMLRP announced its first funding opportunity and received 260 applications from which NIFA issued 53 VMLRP awards totaling \$5,186,000. In FY 2011, VMLRP announced its second funding opportunity and received 159 applications from which NIFA issued 78 VMLRP awards totaling \$7,506,000. Consequently, up to \$4,300,000 is available to support this program in FY 2012. Funding for future years will be based on annual appropriations and balances, if any, remaining from prior years.

The eligibility criteria for applicants and the application forms and associated instructions needed to apply for a VMLRP award can be viewed and downloaded from the VMLRP Web site at <http://www.nifa.usda.gov/vmlrp>.

Done in Washington, DC, this 7th day of March, 2012.

Chavonda Jacobs-Young,

Acting Director, National Institute of Food and Agriculture.

[FR Doc. 2012–9376 Filed 4–18–12; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Aleutian Islands Pollock Fishery Requirements.

OMB Control Number: 0648–0513.

Form Number(s): NA.

Type of Request: Regular submission (revision and extension of a current information collection).

Number of Respondents: 2.

Average Hours per Response: Annual letter to NMFS, 16 hours; appeal, 20 hours.

Burden Hours: 36.

Needs and Uses: This request is for revision and extension of a current information collection.

The Consolidated Appropriations Act of 2004 (Public Law (Pub. L.) 108–199) was signed into law on January 23, 2004. Section 803 of this law allocates the Aleutian Islands (AI) directed pollock fishery to the Aleut Corporation for economic development of Adak, Alaska. The statute permits the Aleut Corporation to authorize one or more agents for activities necessary for conducting the AI directed pollock fishery. Management provisions for the AI directed pollock fishery include: restrictions on the harvest specifications for the AI directed pollock fishery; provisions for fishery monitoring; reporting requirements; and an AI Chinook salmon prohibited species catch limit that, when reached, would close the existing Chinook salmon savings areas in the AI.

Affected Public: Business or other for-profit organizations.

Frequency: Annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer:

OIRA_Submission@omb.eop.gov.

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance

Officer, (202) 482–0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at Jjessup@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to OIRA_Submission@omb.eop.gov.

Dated: April 16, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–9445 Filed 4–18–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Proposed Information Collection; Comment Request; Manufacturing Extension Partnership (MEP) Management Information Reporting

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

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 June 18, 2012.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at jjessup@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Deirdre McMahan, National Institute of Standards and Technology—Manufacturing Extension Partnership, 100 Bureau Drive, Stop 4800, 301–975–8328 (phone). In addition, written comments may be sent via email to Deirdre.mcmahan@nist.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

Sponsored by NIST, the Manufacturing Extension Partnership (MEP) is a national network of locally-

based manufacturing extension centers working with small manufacturers to assist them improve their productivity, improve profitability and enhance their economic competitiveness. The information collected will provide the MEP with information regarding MEP Center performance regarding the delivery of technology, and business solutions to U.S.-based manufacturers. The collected information will assist in determining the performance of the MEP Centers at both local and national levels, provide information critical to monitoring and reporting on MEP programmatic performance, and assist management in policy decisions. Responses to the collection of information are mandatory per the regulations governing the operation of the MEP Program (15 CFR parts 290, 291, 292, and H.R. 1274—section 2). The information collected will include center inputs and activities including services delivered, clients served, center staff, quarterly expenses and revenues, partners, strategic plan, operation plans, and client success stories. No confidentiality for information submitted is promised or provided.

In order to reflect new initiatives and new data needs, NIST MEP has identified a need to revise its existing reporting processes by modifying existing reporting elements and adding additional elements that will enable NIST MEP to better monitor and assess the extent to which the Centers are meeting program goals and milestones.

II. Method of Collection

The information will be collected from the MEP Centers through the MEP Enterprise Information System (MEIS), <http://meis.nist.gov>.

III. Data

OMB Control Number: 0693-0032.

Form Number: None.

Type of Review: Regular submission (revision of a currently approved information collection).

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 60.

Estimated Time per Response: 160 hours.

Estimated Total Annual Burden Hours: 9,600.

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: April 16, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012-9444 Filed 4-18-12; 8:45 am]

BILLING CODE 3510-13-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XB167

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Notice of availability.

SUMMARY: NMFS has completed a Draft Environmental Assessment (EA) for 10(a)(1)(A), Enhancement of the Species Permit Application for the collection and transport of Spring-Run Chinook for the San Joaquin River Restoration Program.

DATES: Written comments on the draft EA must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific Standard Time on May 21, 2012.

ADDRESSES: Written comments on the draft EA should be submitted to the Protected Resources Division, NMFS, 650 Capitol Mall, Suite 5-100, Sacramento, CA 95814. Comments may also be submitted via fax to (916) 930-6329 or by email to SJRSpring.Salmon@noaa.gov.

FOR FURTHER INFORMATION CONTACT: Elif Fehm-Sullivan, Sacramento, CA (ph: 916-930-3723, email: elif.fehm-sullivan@noaa.gov).

SUPPLEMENTARY INFORMATION: The EA is available for review upon written

request or by appointment in the following office: the Protected Resources Division, NMFS, 650 Capitol Mall, Suite 5-100, Sacramento, CA 95814.; or on the Web site <http://swr.nmfs.noaa.gov/sjrrestorationprogram/salmonreintroduction.htm> or <http://swr.nmfs.noaa.gov/nepa.htm>.

This EA is for issuance of an Endangered Species Act section 10(a)(1)(A) permit to US Fish and Wildlife Service to collect Central Valley spring-run Chinook salmon eggs and juveniles from the Feather River Fish Hatchery to place into the San Joaquin Conservation Facility and enclosed net pens and egg boxes placed within the San Joaquin River, as an initial step to further the process of re-establishing this species in the San Joaquin River below Friant Dam.

Meetings

Three public meetings are to be held at which the public can make comments on the Draft EA. The first meeting will be held in Chico, CA on May 1 at the Chico Area Recreation and Park District, 545 Vallombrosa Avenue from 5:30 p.m. to 7:30 p.m. The second meeting will be in Fresno, CA on May 3 at the Fresno Metropolitan Flood Control District Board Meeting Room, 5469 E. Olive from 5:30 p.m. to 7:30 p.m. (The public should park in the front parking area (rear parking area closes at 5:30 p.m. with no exit after that time) and enter the door located on the west side of the front building); and the third meeting will be in Los Banos, CA on May 4 at the Los Banos Community Center, 645 7th Street from 2 p.m. to 4 p.m.

Dated: April 13, 2012.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012-9479 Filed 4-18-12; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XA216

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Space Vehicle and Missile Launch Operations at Kodiak Launch Complex, Alaska

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

ACTION: Notice of issuance of a Letter of Authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notification is hereby given that a Letter of Authorization (LOA) has been issued to the Alaska Aerospace Corporation (AAC) to take two species of pinnipeds incidental to space vehicle and missile launch operations at the Kodiak Launch Complex (KLC) in Kodiak, Alaska.

DATES: Effective from April 30, 2012, through April 29, 2013.

ADDRESSES: The LOA and supporting documentation are available for review by writing to Tammy C. Adams, Acting Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3225, by telephoning the contact listed under **FOR FURTHER INFORMATION CONTACT**, or on the Internet at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications>. Documents cited in this notice may also be viewed, by appointment, during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Michelle Magliocca, Office of Protected Resources, NMFS, 301-427-8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued. Under the MMPA, the term "take" means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill marine mammals.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the identified species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth in the regulations. NMFS has defined "negligible impact" in 50 CFR 216.103 as "* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not

reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Regulations governing the taking of Steller sea lions (*Eumetopias jubatus*), by harassment, and harbor seals (*Phoca vitulina*) (adults by harassment and pups by injury or mortality), incidental to space vehicle and missile launch operations at the KLC, were issued on March 22, 2011 (76 FR 16311, March 23, 2011), and remain in effect until March 21, 2016. For detailed information on the action, please refer to that document. The regulations include mitigation, monitoring, and reporting requirements for the incidental take of marine mammals during space vehicle and missile launch operations at the KLC.

Summary of Request

On February 27, 2012, NMFS received a request from the AAC for renewal of an LOA issued on April 30, 2011, authorizing the take of marine mammals incidental to a maximum of 12 space launch vehicles, long-range ballistic target missiles, and other smaller missile systems at the KLC. The AAC has complied with the measures required in 50 CFR 217.70-75, as well as the associated 2011-2012 LOA, and submitted the reports and other documentation required by the final rule and the 2011-2012 LOA.

Summary of Activity Under the 2011-2012 LOA

As described in the AAC's 2011-2012 annual report, launch activities conducted at the KLC were within the scope and amounts authorized by the 2011-2012 LOA and the levels of take remain within the scope and amounts contemplated by the final rule. Only one launch occurred at the KLC under the 2011-2012 LOA.

Planned Activities and Estimated Take for 2012-2013

In 2012-2013, the AAC expects to conduct the same type and amount of launches identified in the 2011-2012 LOA. Similarly, the authorized take will remain within the annual estimates analyzed in the final rule.

Summary of Monitoring and Reporting Under the 2011-2012 LOA

The AAC submitted their annual monitoring report within the required timeframe and the report is posted on NMFS Web site: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications>. NMFS has reviewed the report and it contains the information required by the 2011-2012 LOA. The AAC's monitoring activities included a

quarterly aerial survey on September 21, 2011, and launch-related monitoring on September 26-27, 2011, using a remote camera system. One of the planned quarterly aerial surveys was postponed twice due to stormy weather. Another aerial survey is scheduled to occur before the 2011-2012 LOA expires. The annual report for last year's LOA reported no Steller sea lions observed in the area before or after the launch and there were no sightings of injury or mortality to Pacific harbor seals. Last year, no launches occurred during harbor seal pupping season (May 15-June 30).

Authorization

The AAC complied with the requirements of the 2011-2012 LOA. Based on our review of the record, NMFS has determined that the marine mammal take resulting from the 2011-2012 launch operations falls within the levels previously anticipated, analyzed, and authorized. The record supports NMFS' conclusion that the number of marine mammals taken by the 2012-2013 launch operations will have no more than a negligible impact on the affected species or stock of marine mammals and will not have an unmitigable adverse impact on the availability of these species or stocks for taking for subsistence uses. Accordingly, NMFS has issued a 1-year LOA for launch operations conducted at the KLC from April 30, 2012, through April 29, 2013.

Dated: April 11, 2012.

Helen M. Golde,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012-9480 Filed 4-18-12; 8:45 am]

BILLING CODE 3510-22-P

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Updates to List of National System of Marine Protected Areas (MPAs)

AGENCY: NOAA, Department of Commerce (DOC).

ACTION: Notice of updates to the List of National System of Marine Protected Areas (MPAs) and response to comments on nominations of existing MPAs to the national system.

SUMMARY: The National System of Marine Protected Areas (MPAs) provides a mechanism for MPAs managed by diverse government agencies to work together on common conservation priorities. In July 2011, NOAA and the Department of the Interior (DOI) invited federal, state,

commonwealth, territorial and tribal MPA programs with potentially eligible existing MPAs to nominate their sites to the National System of MPAs (national system). A total of 58 nominations were received, including three from the American Samoa Department of Marine and Wildlife Resources, 40 from the Massachusetts Board of Underwater Archaeological Resources, three from the National Park Service, one from the U.S. Fish and Wildlife Service, five from the Puerto Rico Department of Natural and Environmental Resources, two from the South Carolina Institute of Archaeology and Anthropology, one from the Virgin Islands Department Of Planning and Natural Resources and three from the Washington Department of Natural Resources. Following a 45-day public review period, two public comments were received by the National Marine Protected Areas Center (MPA Center). Both comments were supportive of the Fort Pulaski National Monument, which was nominated by the National Park Service. The managing agencies listed above were asked to make a final determination of sites to nominate to the national system. Finding them to be eligible for the national system, the MPA Center has accepted the nominations for 58 sites and placed them on the List of National System MPAs.

The national system and the nomination process are described in the Framework for the National System of Marine Protected Areas of the United States of America (Framework), developed in response to Executive Order 13158 on Marine Protected Areas. The final Framework was published on November 19, 2008, and provides guidance for collaborative efforts among federal, state, commonwealth, territorial, tribal and local governments and stakeholders to develop a national system that includes existing MPAs meeting national system criteria as well as new sites that may be established by managing agencies to fill key conservation gaps in important ocean areas.

FOR FURTHER INFORMATION CONTACT: Lauren Wenzel, NOAA, at 301-713-3100, ext. 136 or via email at mpa.comments@noaa.gov. A detailed electronic copy of the List of National System MPAs is available for download at <http://www.mpa.gov>.

SUPPLEMENTARY INFORMATION:

Background on National System

The national system of MPAs is made up of member MPA sites, networks and systems established and managed by federal, state, commonwealth,

territorial, tribal and/or local governments that collectively enhance conservation of the nation's natural and cultural marine heritage and represent its diverse ecosystems and resources. Although participating sites continue to be managed independently, national system MPAs also work together at the regional and national levels to achieve common objectives for conserving the nation's important natural and cultural resources, with emphasis on achieving the priority conservation objectives of the Framework. MPAs include sites with a wide range of protection, from multiple use areas to no take reserves where all extractive uses are prohibited. The term MPA refers only to the marine portion of a site (below the mean high tide mark) that may include both terrestrial and marine components.

The national system is a mechanism to foster greater collaboration among participating MPA sites and programs in order to enhance stewardship in the waters of the United States. The act of joining the national system does not create new MPAs, or create new restrictions for the existing MPAs that become members. In fact, a site must have existing protections of natural and/or cultural resources in place in order to be eligible to join the national system, as well as meeting other criteria described in the Framework. Joining the national system does not establish new regulatory authority or change existing regulations in any way, require changes affecting the designation process or management of member MPAs or bring state, territorial, tribal or local sites under federal authority.

Benefits of joining the national system, which are expected to increase over time as the system matures, include a facilitated means to work with other sites in the MPA's region, and nationally on issues of common conservation concern; fostering greater public and international recognition of U.S. MPAs and the resources they protect; priority in the receipt of available technical and other support for cross-cutting needs; and the opportunity to influence federal and regional ocean conservation and management initiatives (such as integrated ocean observing systems, systematic monitoring and evaluation, targeted outreach to key user groups, and helping to identify and address MPA research needs). In addition, the national system provides a forum for coordinated regional planning about place-based conservation priorities that does not otherwise exist.

Nomination Process

The Framework describes two major focal areas for building the national system of MPAs—a nomination process to allow existing MPAs that meet the entry criteria to become part of the system and a collaborative regional gap analysis process to identify areas of significance for natural or cultural resources that may merit additional protection through existing federal, state, commonwealth, territorial, tribal or local MPA authorities. A call for nominations is issued annually, and may also be issued at the request of an MPA management agency. This round of nominations began on July 6, 2011 and the deadline for nominations was October 31, 2011. A public comment period was held from December 30, 2011 through February 13, 2012.

There are three entry criteria for existing MPAs to join the national system, plus a fourth for cultural heritage. Sites that meet all pertinent criteria are eligible for the national system.

1. Meets the definition of an MPA as defined in the Framework.
2. Has a management plan (can be site-specific or part of a broader programmatic management plan; must have goals and objectives and call for monitoring or evaluation of those goals and objectives).
3. Contributes to at least one priority conservation objective as listed in the Framework (see below).
4. Cultural heritage MPAs must also conform to criteria for the National Register for Historic Places.

Additional sites not currently meeting the management plan criterion can be evaluated for eligibility to be nominated to the system on a case-by-case basis based on their ability to fill gaps in the national system coverage of the priority conservation objectives and design principles described in the Framework.

The MPA Center used existing information in the MPA Inventory to determine which MPAs meet the first and second criteria. The inventory is online at <http://www.mpa.gov/dataanalysis/mpainventory/> and potentially eligible sites are posted online at <http://www.mpa.gov/nationalsystem/nominationprocess/>. As part of the nomination process, the managing entity for each potentially eligible site is asked to provide information on the third and fourth criteria.

Updates to List of National System MPAs

The following MPAs have been nominated by the American Samoa

Department of Marine and Wildlife Resources, the Massachusetts Board of Underwater Archaeological Resources, the National Park Service, the U.S. Fish and Wildlife Service, the Puerto Rico Department of Natural and Environmental Resources, the South Carolina Institute of Archaeology and Anthropology, the Virgin Islands Department of Planning and Natural Resources and the Washington Department of Natural Resources to join the national system of MPAs. The complete List of National System MPAs, which now includes 355 members, is available at www.mpa.gov.

Response to Public Comments

On December 30, 2011, NOAA and DOI (agencies) published the Nomination of Existing Marine Protected Areas (MPAs) to the National System of Marine Protected Areas for public comment, for the nomination of fifty-eight existing MPAs. By the end of the 45-day comment period, two public comments had been received. Both comments expressed support for the nomination of the Fort Pulaski National Monument, noting that its membership in the national system provides an opportunity to raise awareness of the area, highlight opportunities for research and increase cooperation with other protected areas and marine research institutions in the region.

Federal Marine Protected Areas

Cumberland Island National Seashore (GA)
Ebey's Landing National Historical Reserve (WA)
Farallon National Wildlife Refuge (CA)
Fort Pulaski National Monument (GA)

American Samoa

Aoa Village Marine Protected Area
Sa'ilele Village Marine Protected Area
Amanave Village Marine Protected Area

Massachusetts (Shipwrecks)

Albert Gallatin Exempt Site
Alice M. Colburn Exempt Site
Alice M. Lawrence Exempt Site
Ardandhu Exempt Site
Barge and Crane Exempt Site
California Exempt Site
State Charles S. Haight Exempt Site
Chester A. Poling Exempt Site
Chelsea Exempt Site
City of Salisbury Exempt Site
Corvan Exempt Site
Dixie Sword Exempt Site
Edward Rich Exempt Site
Henry Endicott Exempt Site
Herbert Exempt Site
Herman Winter Exempt Site
Hilda Garston Exempt Site
James S. Longstreet Exempt Site

John Dwight Exempt Site
Kershaw Exempt Site
Kiowa Exempt Site
Lackawana Exempt Site
Lunet Exempt Site
Mars Exempt Site
Pemberton Exempt Site
Pendleton Exempt Site
Pinthis Exempt Site
Port Hunter Exempt Site
Pottstown Exempt Site
Romance Exempt Site
Seaconnet Exempt Site
Trojan Exempt Site
U.S.S. Grouse Exempt Site
U.S.S. New Hampshire Exempt Site
U.S.S. Triana Exempt Site
U.S.S. Yankee Exempt Site
U.S.S. YSD Exempt Site
H.M.C.S. Saint Francis Exempt Site
French Van Gilder Exempt Site
Vineyard Sound Lightship Exempt Site

Puerto Rico

Arrecifes de la Cordillera Natural Reserve
Canal Luis Pen, a Natural Reserve
Isla de Desecho Marine Reserve
Isla de Mona Natural Reserve
Tres Palmas de Rinco 'n Marine Reserve

South Carolina

Cooper River Heritage Dive Trail
Ashley River Heritage Canoe Trail

U.S. Virgin Islands

St. Thomas East End Reserve

Washington

Smith and Minor Island Aquatic Reserve
Protection Island Aquatic Reserve
Nisqually Reach Aquatic Reserve

Dated: March 28, 2012.

David M. Kennedy,

Assistant Administrator, National Ocean Service, National Oceanic Atmospheric Administration.

[FR Doc. 2012-9301 Filed 4-18-12; 8:45 am]

BILLING CODE 3510-08-M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Sunshine Act Meeting

The White House Council for Community Solutions gives notice of the following meeting:

DATE AND TIME: Wednesday, May 9, 2012, 1:15-2 p.m. Eastern Standard Time.

PLACE: The Council will meet via phone conference call. The meeting will be open to the public in Listen-Only mode and it will be recorded. To dial in, please call 866-525-0652. More details and materials will be available on the

Council's Web site (<http://www.serve.gov/communitysolutions>) by Tuesday, May 8.

PUBLIC COMMENT: The public is invited to submit publicly available comments through the Council's Web site. To send statements to the Council, please send written statements to the Council's electronic mailbox at WhiteHouseCouncil@cns.gov. The public can also follow the Council's work by visiting its Web site: <http://www.serve.gov/communitysolutions>.

STATUS: Open.

MATTERS TO BE CONSIDERED: The purpose of this meeting is to review and make decisions on the Council's recommendations that will be included in its final report to the President. The Report will be available to the public on the Council's Web site referenced above when sent to the President. The report will provide a record of the work of the Council from its establishment in December 2010.

CONTACT PERSON FOR MORE INFORMATION:

Kathy Bendheim, Executive Director, White House Council for Community Solutions, Corporation for National and Community Service, 10th Floor, Room 10911, 1201 New York Avenue NW., Washington, DC 20525. Phone: (202) 491-3809. Fax: (202) 606-3464. Email: WhiteHouseCouncil@cns.gov.

Dated: April 17, 2012.

Kathryn Bendheim,

Executive Director, White House Council for Community Solutions.

[FR Doc. 2012-9619 Filed 4-17-12; 4:15 pm]

BILLING CODE 6050--SS-P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Acquisition University Board of Visitors; Notice of Meeting

AGENCY: Defense Acquisition University, DoD.

ACTION: Meeting notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102-3.150, the Department of Defense announces that the following Federal advisory committee meeting of the Defense Acquisition University Board of Visitors will take place.

DATES: Wednesday, May 9, 2012, from 8:30 a.m.-12 p.m.

ADDRESSES: DAU Mid-Atlantic Region, 23330 Cottonwood Pkwy, California, MD 20619.

FOR FURTHER INFORMATION CONTACT:

Christen Goulding, Protocol Director, DAU, Phone: 703-805-5134, Fax: 703-805-5940, Email: christen.goulding@dau.mil.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: The purpose of this meeting is to report back to the Board of Visitors on continuing items of interest.

Agenda

8:30 a.m. Welcome and approval of minutes.

8:40 a.m. DAU Mid-Atlantic Region Highlights and update on Certification to Qualification.

9:30 a.m. College of Contract Management.

10:30 a.m. Services Acquisition.

11:15 a.m. Recognition of Service.

11:30 a.m. Open Forum Discussion.

12 p.m. Adjourn.

Public's Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b and 41 CFR 102-3.140 through 102-3.165, and the availability of space, this meeting is open to the public. However, because of space limitations, allocation of seating will be made on a first-come, first served basis. Persons desiring to attend the meeting should call Ms. Christen Goulding at 703-805-5134. Committee's Designated Federal Officer or Point of Contact: Ms. Kelley Berta, 703-805-5412.

Dated: April 13, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012-9344 Filed 4-18-12; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE**Office of the Secretary****Renewal of Department of Defense Federal Advisory Committees**

AGENCY: DoD.

ACTION: Re-establishment of Federal Advisory Committee.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C. Appendix), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), and 41 CFR 102-3.50(d), the Department of Defense gives notice that it is renewing the charter for the Board of Visitors, National Defense University (hereafter referred to as "the Board").

The Board of Visitors, National Defense University, pursuant to 41 CFR 102-3.50(d), is a discretionary Federal advisory committee that shall provide

the Secretary of Defense through the Chairman of the Joint Chiefs of Staff and the President of the National Defense University, independent advice and recommendations on organizational management, curricula, methods of instruction, facilities and other matters of interest to the National Defense University.

The Board shall report to the Secretary of Defense through the Chairman of the Joint Chiefs of Staff and the President of the National Defense University. The Chairman of the Joint Chiefs of Staff may act upon the Board's advice and recommendations.

The Board shall be comprised of no more than twenty members, who are eminent authorities in the field of national defense, academia, business, national security affairs, and the defense industry. The Under Secretary of Defense for Personnel and Readiness, the Department of Defense Chief Information Officer, and the Department of State Director General shall serve as ex-officio members of the Board (these ex-officio members have voting rights). Board members shall be appointed by the Secretary of Defense, with annual renewals.

The Board Membership shall select the Board's Chairperson and the Co-Chairperson from the total Board membership, and these individuals shall serve at the discretion of the Secretary of Defense, through the Chairman of the Joint Chiefs of Staff.

The Chairman of the Joint Chiefs of Staff may invite other distinguished Government officers to serve as non-voting observers of the Board, and appoint consultants, with special expertise, to assist the Board on an ad hoc basis. If approved by the Secretary of Defense, these experts and consultants, appointed under the authority of 5 U.S.C. 3109, shall have no voting rights on the Board or its subcommittees, shall not count toward the Board's total membership, and shall not engage in Board deliberations.

Board members appointed by the Secretary of Defense, who are not full-time or permanent part-time Federal employees, shall be appointed to serve as experts and consultants under the authority of 5 U.S.C. 3109, and to serve as special government employees.

The Secretary of Defense may approve the appointment of Board members for one to four year terms of service; however, no member, unless authorized by the Secretary of Defense, may serve more than two consecutive terms of service. This same term of service limitation also applies to any DoD authorized subcommittees.

Regardless of the individual's approved term of service, all appointments to the Board shall be renewed on an annual basis. In addition, they shall serve without compensation, except for travel and per diem for official Board-related travel.

Each Board member is appointed to provide advice on behalf of the government on the basis of his or her best judgment without representing any particular point of view and in a manner that is free from conflict of interest.

The Department, when necessary, and consistent with the Board's mission and DoD policies and procedures may, establish subcommittees, task groups, or working groups deemed necessary to support the Board. Establishment of subcommittees will be based upon a written determination, to include terms of reference, by the Secretary of Defense, the Deputy Secretary of Defense, or the advisory committee's sponsor.

These subcommittees shall not work independently of the chartered Board, and shall report all of their recommendations and advice to the Board for full deliberation and discussion. Subcommittees have no authority to make decisions on behalf of the chartered Board; nor can any subcommittees or any of its members update or report directly to the Department of Defense or any Federal officers or employees.

Such subcommittee members shall be appointed in the same manner as the Board members; that is, the Secretary of Defense shall appoint subcommittee members even if the member in question is already a Board member. Subcommittee members, with the approval of the Secretary of Defense, may serve a term of service on the subcommittee of one to four years; however, no member shall serve more than two consecutive terms of service on the subcommittee. Subcommittee members, if not full-time or permanent part-time government employees, shall be appointed in the same manner as the Board members. Such individuals, shall be appointed to serve as experts and consultants under the authority of 5 U.S.C. 3109, and serve as special government employees, whose appointments must be renewed by the Secretary of Defense on an annual basis. With the exception of travel and per diem for official travel, subcommittee members shall serve without compensation.

All subcommittees operate under the provisions of FACA, the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), governing Federal statutes and regulations, and governing DoD policies/procedures.

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Advisory Committee Management Officer for the Department of Defense, 703-692-5952.

SUPPLEMENTARY INFORMATION: The Board shall meet at the call of the Board's Designated Federal Officer, in consultation with the President of the National Defense University and the Board's Chairperson. The estimated number of Board meetings is two per year.

The Board's Designated Federal Officer is required to be in attendance at all Board and subcommittee meetings for the entire duration of each and every meeting. However, in the absence of the Board's Designated Federal Officer, an Alternate Designated Federal Officer, duly appointed to the Board according to DoD policies and procedures, shall attend the entire duration of the Board or subcommittee meetings.

The Designated Federal Officer, or the Alternate Designated Federal Officer, shall call all of the Board's and subcommittee's meetings; prepare and approve all meeting agendas; and adjourn any meeting, when the Designated Federal Officer or Alternate Designated Federal Officer, determines adjournment to be in the public's interest or required by governing regulations or DoD policies/procedures; and chair meetings when directed to do so by the official to whom the Board reports.

Pursuant to 41 CFR 102-3.105(j) and 102-3.140, the public or interested organizations may submit written statements to Board of Visitors, National Defense University's membership about the Board's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of the Board of Visitors, National Defense University.

All written statements shall be submitted to the Designated Federal Officer for the Board of Visitors, National Defense University, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Board of Visitors, National Defense University Designated Federal Officer can be obtained from the GSA's FACA Database—<https://www.fido.gov/facadatabase/public.asp>.

The Designated Federal Officer, pursuant to 41 CFR 102-3.150, will announce planned meetings of the Board of Visitors, National Defense University. The Designated Federal Officer, at that time, may provide additional guidance on the submission of written statements that are in

response to the stated agenda for the planned meeting in question.

Dated: April 16, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012-9419 Filed 4-18-12; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of Department of Defense Federal Advisory Committees

AGENCY: DoD.

ACTION: Renewal of Federal Advisory Committee.

SUMMARY: Under the provisions of 20 U.S.C. 929, the Federal Advisory Committee Act of 1972 (5 U.S.C. Appendix), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), and 41 CFR 102-3.50(a), the Department of Defense gives notice that it is renewing the charter for the Advisory Council on Dependents' Education (hereafter referred to as "the Council"). The Council shall provide independent advice and recommendations on the Department of Defense (DoD) dependents' education system.

The Council is a non-discretionary federal advisory committee that shall provide independent advice and recommendations to the Director, Department of Defense Education Activity on the following:

a. General policies for operation of the DoD dependents' education system with respect to curriculum selection, administration, and operation of the system;

b. Information from other federal agencies concerned with Primary and secondary education with respect to education programs and practices which such agencies have found to be effective and which should be considered for inclusion in the DoD dependents' education system;

c. The design of the study and the selection of the contractor referred to in 20 U.S.C. § 930(a)(2); and

d. Other tasks as may be required by the Secretary of Defense.

The Council shall report to the Director, Department of Defense Education Activity. Matters outside the legal purview of the Director, Department of Defense Education Activity shall be referred to Secretary of Defense and the Under Secretary of Defense for Personnel and Readiness as appropriate. The Director, Department of Defense Education Activity may act

upon the Council's advice and recommendations.

The Council, pursuant to 20 U.S.C. 929(a), shall be comprised of no more than 16 members who have demonstrated an interest in the field of primary or secondary education and the following individuals:

a. The Secretary of Defense and the Secretary of Education or their respective designees;

b. Twelve appointed individuals who demonstrated an interest in the field of primary or secondary education, and who shall include representatives of professional employee organization, school administrators, parents of students enrolled in the DoD dependents' education system, and one student enrolled in such system; and

c. A representative of the Secretary of Defense and of the Secretary of Education.

The twelve Council members appointed under the authority of 20 U.S.C. 929(a)(1)(B), shall be appointed jointly by the Secretary of Defense and the Secretary of Education.

The Secretary of Defense and the Secretary of Education may approve the appointment of individuals appointed pursuant to 20 U.S.C. 929(a)(1)(B) for one to four year terms of service; however, no member appointed pursuant to 20 U.S.C. 929(a)(1)(B), unless authorized by the Secretary of Defense and the Secretary of Education, may serve more than two consecutive terms of service. This same term of service limitation also applies to any DoD authorized subcommittees.

Members appointed to the Council from professional employee organizations, pursuant to 20 U.S.C. 929(a)(2), shall be individuals designated by those organizations and shall serve three year terms of service, not to exceed two full terms on the Council.

Any member appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term.

Council members, who are not full-time or permanent part-time federal officers or employees, shall be appointed to serve as experts and consultants under the authority of 5 U.S.C. 3109 and shall serve as special government employee members. Council members serving as special government employees shall have their appointments renewed on an annual basis.

Pursuant to 20 U.S.C. 929(d), members of the Council who are not full-time or permanent part-time employees of the federal government,

shall while attending meetings or conferences of the Council or otherwise engaged in the business of the Council, be entitled to compensation at the daily equivalent of the rate specified at the time of such service for level IV of the Executive Services under 5 U.S.C. 5315. All Council members, while on official travel, shall be entitled to compensation for travel and per diem.

The Secretary of Defense and the Secretary of Education, or their designated representatives, shall serve as the Council's Co-Chairs.

The Director, Department of Defense Education Activity shall be the Executive Secretary of the Council, but shall not vote on matters before the Council.

Each Council member is appointed to provide advice on behalf of the government on the basis of his or her best judgment without representing any particular point of view and in a manner that is free from conflict of interest.

The Department, when necessary, and consistent with the Council's mission and DoD policies and procedures, may establish subcommittees deemed necessary to support the Council. Establishment of subcommittees will be based upon a written determination, to include terms of reference, by the Secretary of Defense, the Deputy Secretary of Defense or the advisory council's sponsor.

Such subcommittees shall not work independently of the chartered Council, and shall report all their recommendations and advice to the Council for full deliberation and discussion. Subcommittees have no authority to make decisions on behalf of the chartered Council; nor can any subcommittee or its members update or report directly to the DoD or any Federal officers or employees. Subcommittees shall comply with FACA.

All subcommittee members shall be appointed in the same manner as the Council members; that is, the Secretary of Defense shall appoint subcommittee members even if the member in question is already a Council member. Subcommittee members, with the approval of the Secretary of Defense, may serve a term of service on the subcommittee of one to four years; however, no member shall serve more than two consecutive terms of service on the subcommittee.

Subcommittee members, if not full-time or part-time government employees, shall be appointed to serve as experts and consultants under the authority of 5 U.S.C. 3109, and shall serve as special government employees, whose appointments must be renewed

by the Secretary of Defense on an annual basis.

Subcommittee members who are not full-time or permanent part-time employees of the federal government, shall while attending meetings or conferences of the Council or otherwise engaged in the business of the Council, be entitled to compensation at the daily equivalent of the rate specified at the time of such service for level IV of the Executive Services under 5 U.S.C. 5315. All subcommittee members, while on official travel, shall be entitled to compensation for travel and per diem.

All subcommittees operate under the provisions of FACA, the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), governing Federal statutes and regulations, and governing DoD policies/procedures.

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Advisory Committee Management Officer for the Department of Defense, 703-692-5952.

SUPPLEMENTARY INFORMATION: The Council shall meet at the call of the Council's Designated Federal Officer, in consultation with the Council's Co-Chairs. Pursuant to 20 U.S.C. 929(c), the Council shall meet at least two times each year.

In addition, the Designated Federal Officer is required to be in attendance at all Council and subcommittee meetings for the entire duration of each and every meeting; however, in the absence of the Designated Federal Officer, a properly approved Alternate Designated Federal Officer shall attend the entire duration of the Council or subcommittee meeting.

The Designated Federal Officer, or the Alternate Designated Federal Officer, shall call all of the Council's and subcommittees' meetings; prepare and approve all meeting agendas; adjourn any meeting when the Designated Federal Officer, or the Alternate Designated Federal Officer, determines adjournment to be in the public interest or required by governing regulations or DoD policies/procedures; and chair meetings when directed to do so by the official to whom the Council reports.

Pursuant to 41 CFR 102-3.105(j) and 102-3.140, the public or interested organizations may submit written statements to Advisory Council on Dependents' Education membership about the Council's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of Advisory Council on Dependents' Education.

All written statements shall be submitted to the Designated Federal

Officer for the Advisory Council on Dependents' Education, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Advisory Council on Dependents' Education Designated Federal Officer can be obtained from the GSA's FACA Database—<https://www.fido.gov/facadatabase/public.asp>.

The Designated Federal Officer, pursuant to 41 CFR 102-3.150, will announce planned meetings of the Advisory Council on Dependents' Education. The Designated Federal Officer, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

Dated: April 16, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012-9424 Filed 4-18-12; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF ENERGY

Agency Information Collection Extension

AGENCY: U.S. Department of Energy.

ACTION: Submission for Office of Management and Budget (OMB) review; comment request.

SUMMARY: The Department of Energy (DOE) has submitted an information collection request to OMB for extension under the provisions of the Paperwork Reduction Act of 1995. The information collection requests a three-year extension of its Security, OMB Control Number 1910-1800. The proposed collection will cover information necessary for DOE management to exercise management oversight and control over their contractors (1) for collection of Foreign Ownership, Control or Influence data from bidders on DOE contracts requiring personnel security clearances; and (2) for individuals who are either in the process of applying for a security clearance/access authorization or who already hold one.

DATES: Comments regarding this collection must be received on or before May 21, 2012. If you anticipate that you will be submitting comments, but find it difficult to do so within that period of time allowed by this notice, please advise the OMB Desk Officer of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at 202-395-4650.

ADDRESSES: Written comments may be sent to the: DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street NW., Washington, DC 20503 and to Felecia A. Briggs, HS-83/C-412 Germantown Building, U.S. Department of Energy, 1000 Independence Ave SW., Washington, DC 20585-1290 or by fax at 301-903-5492, by email at felecia.briggs@hq.doe.gov, or information about the collection instruments may be obtained at: <http://www.hss.doe.gov/prs.html>.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed at the addressees listed above in **ADDRESSES**.

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) *OMB No.:* 1910-1800; (2) *Information Collection Request Title:* Security; (3) *Type of Review:* Renewal; (4) *Purpose:* The collections are used by DOE to exercise management oversight and control over its contractors that provide goods and services for DOE organizations and activities in accordance with the terms of their contracts and the applicable statutory, regulatory, and mission support requirements of the Department. Information collected is for (1) Foreign Ownership, Control or Influence data from bidders on DOE contracts requiring personnel security clearances; and (2) individuals in the process of applying for a security clearance/access authorization or who already holds one. The collections are: DOE F 5631.34, Data Report on Spouse/Cohabitant; Security Incident Notification Report and Report of Preliminary Security Incident/Infraction; DOE F 471.1 and DOE F 5639.3; DOE F 5631.20, Request for Visitor Access Approval; DOE Form 5631.18, Security Acknowledgement; DOE Form 5631.29, Security Termination Statement; DOE Form 5631.29, Security Termination Statement; DOE Form 5631.5, The Conduct of Personnel Security Interviews; Influence (e-FOCI) System as required by DOE Order 470.4B, Safeguards and Security Program, Section 2; and Foreign Access Central Tracking System (FACTS); (5) *Annual Estimated Number of Respondents:* 81,669; (6) *Annual Estimated Number of Total Responses:* 81,669; (7) *Annual Estimated Number of Burden Hours:* 71,206; (8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* 0

Statutory Authority: Section 641 of the Department of Energy Organization Act, codified at 42 U.S.C. 7251, and the following additional authorities:

DOE F 5631.34, Data Report on Spouse/Cohabitant; Section 145(b) of the Atomic Energy Act of 1954, as amended, codified at 42 U.S.C. 2165; Executive Order 12968 (August 2, 1995); Executive Order 10865 (February 20, 1960); Executive Order 10450 (April 27, 1953); DOE O 472.2 (July 21, 2011). Security Incident Notification Report and Report of Preliminary Security Incident/Infraction (DOE F 471.1 and DOE F 5639.3); Executive Order 13526 (December 29, 2009); 32 C.F.R. Part 2001; DOE O 470.4B (July 21, 2011).

DOE F 5631.20, Request for Visitor Access Approval; Section 145(b) of the Atomic Energy Act of 1954, as amended, codified at 42 U.S.C. 2165.

DOE Form 5631.18, Security Acknowledgement; Section 145(b) of the Atomic Energy Act of 1954, as amended, codified at 42 U.S.C. 2165; Executive Order 13526 (December 29, 2009); Executive Order 10865 (Feb. 20, 1960); Executive Order 10450 (April 27, 1953); DOE O 5631.2C (February 17, 1994).

DOE Form 5631.29, Security Termination Statement; Section 145(b) of the Atomic Energy Act of 1954, as amended, codified at 42 U.S.C. 2165; Executive Order 13526 (December 29, 2009); Executive Order 10865 (Feb. 20, 1960); Executive Order 10450 (Apr. 27, 1953); 32 C.F.R. Part 2001; DOE O 472.2 (July 21, 2011).

DOE Form 5631.5, The Conduct of Personnel Security Interviews; 10 C.F.R. Part 710; Executive Order 12968 (Aug. 2, 1995); Executive Order 10450 (April 27, 1953); DOE Order 472.2 (July 21, 2011).

Electronic Foreign Ownership, Control or Influence (e-FOCI) System; Executive Order 12829 (January 6, 1993); DOE O 470.4B (July 21, 2011).

Foreign Access Central Tracking System (FACTS); Presidential Decision Directive 61 (February 1999); DOE O 142.3A (October 14, 2010).

Issued in Washington, DC, on April 11, 2012.

Stephen A. Kirchhoff,

Director, Office of Resource Management, Office of Health, Safety and Security.

[FR Doc. 2012-9428 Filed 4-18-12; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge Reservation. The Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat.

770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, May 9, 2012, 6 p.m.

ADDRESSES: Department of Energy Information Center, 1 Science.gov Way, Oak Ridge, Tennessee 37830.

FOR FURTHER INFORMATION CONTACT: Melyssa P. Noe, Federal Coordinator, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM-90, Oak Ridge, TN 37831. Phone (865) 241-3315; Fax (865) 576-0956 or email: noemp@oro.doe.gov or check the Web site at www.oakridge.doe.gov/em/ssab.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE-EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda: The scheduled topic is an overview of the Federal Advisory Committee Act.

Public Participation: The EM SSAB, Oak Ridge, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Melyssa P. Noe at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to the agenda item should contact Melyssa P. Noe at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Melyssa P. Noe at the address and phone number listed above. Minutes will also be available at the following Web site: <http://www.oakridge.doe.gov/em/ssab/minutes.htm>.

Issued at Washington, DC, on April 13, 2012.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2012-9427 Filed 4-18-12; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Project Nos. 2758–010 and 2770–009]

The City of Holyoke Gas & Electric Department; Notice of Application Accepted for Filing, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

- a. *Type of Application*: Surrender of License.
 - b. *Project Nos.*: 2758–010 and 2770–009.
 - c. *Date Filed*: March 09, 2012.
 - d. *Applicant*: The City of Holyoke Gas & Electric Department.
 - e. *Name of Project*: Crocker Mill A/B & Crocker Mill (C Wheel).
 - f. *Location*: On the Holyoke Canal, in Hampden County, Massachusetts.
 - g. *Filed Pursuant to*: 18 CFR 6.1.
 - h. *Applicant Contact*: Mr. Paul Duchenev, Superintendent—Electric Production, Holyoke Gas & Electric Department, 99 Suffolk Street, Holyoke, MA 01040, (413) 536–9340, duchenev@hged.com; Nancy J. Skancke, Law Offices of GKRSE, 1500 K St. NW., Suite 330, Washington, DC 20005, (202) 408–5400, njskancke@gkrse-law.com.
 - i. *FERC Contact*: Ms. Krista Sakallaris, (202) 502–6302, krista.sakallaris@ferc.gov.
 - j. *Deadline for filing comments, motions to intervene, and protests*, is 30 days from the issuance date of this notice. All documents may be filed electronically via the Internet. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at <http://www.ferc.gov/docs-filing/efiling.asp>. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and seven copies should be mailed to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments.
- Please include the project numbers (P–2758–010 & P–2770–009) on any comments, motions, or protests filed.
- k. *Description of Request*: The applicant proposes to surrender the license and decommission the

generating facilities for the Crocker Mill (A/B Wheels) Project (P–2758) and the Crocker Mill (C Wheel) Project (P–2770). The applicant states that the projects are in poor condition due to deterioration and partial demolition already performed. The applicant proposes to shut off and secure the shared gated intake rack structure; secure the penstocks, tailrace, and gate; disconnect the generating equipment; and secure all other project works.

1. *Locations of the Application*: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at <http://www.ferc.gov/docs-filing/elibrary.asp>. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email FERCOnlineSupport@ferc.gov, for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*: Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*: Any filing must (1) bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE" as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR

385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to project works which are the subject of the license surrender. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: April 12, 2012.

Kimberly D. Bose,
Secretary.

[FR Doc. 2012–9366 Filed 4–18–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Project No. 2772–011]

The City of Holyoke Gas & Electric Department; Notice of Application Accepted for Filing, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

- a. *Type of Application*: Surrender of License.
- b. *Project No.*: 2772–011.
- c. *Date Filed*: March 09, 2012.
- d. *Applicant*: The City of Holyoke Gas & Electric Department (HG&E).
- e. *Name of Project*: Gill Mill (A Wheel).
- f. *Location*: On the Holyoke Canal, in Hampden County, Massachusetts.
- g. *Filed Pursuant to*: 18 CFR 6.1.
- h. *Applicant Contact*: Mr. Paul Duchenev, Superintendent—Electric Production, Holyoke Gas & Electric Department, 99 Suffolk Street, Holyoke, MA 01040, (413) 536–9340, duchenev@hged.com; Nancy J.

Skandke, Law Offices of GKRSE, 1500 K St. NW., Suite 330, Washington, DC 20005, (202) 408-5400, njskancke@gkrse-law.com.

i. *FERC Contact*: Ms. Krista Sakallaris, (202) 502-6302, krista.sakallaris@ferc.gov.

j. Deadline for filing comments, motions to intervene, and protests, is 30 days from the issuance date of this notice. All documents may be filed electronically via the Internet. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at <http://www.ferc.gov/docs-filing/efiling.asp>. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and seven copies should be mailed to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments.

Please include the project number (P-2772-011) on any comments, motions, or protests filed.

k. *Description of Request*: The applicant proposes to surrender the license and decommission the generating facilities for the Gill Mill (A Wheel) Project (P-2772). The applicant states that the projects have been shut down since 2007, to perform demolition at the project. The demolition did not take place; during the shut down the project was vandalized and copper was stolen. Other parts of the project have been removed to be used at other HG&E projects. Since the project has been disconnected and all project works have been secured or moved, the licensee states that no additional work is required to decommission the project.

l. *Locations of the Application*: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502-8371. This filing may also be viewed on the Commission's Web site at <http://www.ferc.gov/docs-filing/elibrary.asp>. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1-866-208-3676 or email FERCOnlineSupport@ferc.gov, for TTY, call (202) 502-8659. A copy is also

available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*: Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*: Any filing must (1) bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE" as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to project works which are the subject of the license surrender. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: April 12, 2012.

Kimberly D. Bose,
Secretary.

[FR Doc. 2012-9367 Filed 4-18-12; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP12-106-000]

Tennessee Gas Pipeline Company, L.L.C.; Notice of Application

Take notice that on April 4, 2012, Tennessee Gas Pipeline Company, L.L.C. (Tennessee), 1001 Louisiana Street, Houston, Texas 77002, filed an application in the above referenced docket pursuant to section 7(b) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations requesting authorization to abandon in place and by removal its Line No. 524J-200, an inactive lateral pipeline located in La Fourche Parish, Louisiana. Tennessee states that the facilities proposed to be abandoned include approximately 9.8 miles of 24-inch diameter pipeline and appurtenances. Tennessee also proposes to remove and modify piping and equipment at the northern and southern termini of the lateral, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The 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 "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at FERCOnlineSupport@ferc.gov or call toll-free, (886) 208-3676 or TTY, (202) 502-8659.

Any questions concerning this application may be directed to Thomas G. Joyce, Manager, Certificates, Tennessee Gas Pipeline Company, L.L.C., 1001 Louisiana Street, Houston, Texas 77002, by telephone at (713) 420-3299, by facsimile at (713) 420-1473, or by email at tom.joyce@elpaso.com.

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 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.

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 seven 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: May 3, 2012.

Dated: April 12, 2012.

Kimberly D. Bose,
Secretary.

[FR Doc. 2012-9369 Filed 4-18-12; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10-1519-001.

Applicants: Liberty Electric Power, LLC.

Description: Supplement to Market Power Analysis of Liberty Electric Power, LLC.

Filed Date: 4/10/12.

Accession Number: 20120410-5094.

Comments Due: 5 p.m. ET 5/1/12.

Docket Numbers: ER10-3196-001; ER10-2273-002.

Applicants: PEI Power II, LLC, PEI Power Corporation.

Description: Notice of Change in Status of PEI Power Corporation, *et al.*

Filed Date: 4/10/12.

Accession Number: 20120410-5038.

Comments Due: 5 p.m. ET 5/1/12.

Docket Numbers: ER11-3035-001.

Applicants: Midland Cogeneration Venture Limited Partnership.

Description: Compliance Filing of Rate Schedule 1 for Reactive Supply Service to be effective 6/1/2011.

Filed Date: 4/10/12.

Accession Number: 20120410-5099.

Comments Due: 5 p.m. ET 5/1/12.

Docket Numbers: ER12-30-001; ER11-47-001; ER11-46-004; ER10-2975-004; ER10-2981-001; ER11-41-001.

Applicants: BlueStar Energy Services Inc., AEP Operating Companies, AEP Energy Partners, Inc., CSW Energy Services, Inc., CSW Operating Companies, AEP Retail Energy Partners LLC.

Description: Notice of Change in Status of American Electric Power Service Corporation *et al.*

Filed Date: 4/5/12.

Accession Number: 20120405-5195.

Comments Due: 5 p.m. ET 4/26/12.

Docket Numbers: ER12-1462-000.

Applicants: Southern California Edison Company.

Description: SGIA SCE-RE Rosamond One LLC Rosamond One Project to be effective 4/11/2012.

Filed Date: 4/10/12.

Accession Number: 20120410-5002.

Comments Due: 5 p.m. ET 5/1/12.

Docket Numbers: ER12-1463-000.

Applicants: Optim Energy Marketing, LLC.

Description: Optim Energy Notice of Cancellation—CBR to be effective 4/10/2012.

Filed Date: 4/10/12.

Accession Number: 20120410-5045.

Comments Due: 5 p.m. ET 5/1/12.

Docket Numbers: ER12-1464-000.

Applicants: Optim Energy Marketing, LLC.

Description: Optim Energy Notice of Cancellation—MBR to be effective 4/10/2012.

Filed Date: 4/10/12.

Accession Number: 20120410-5048.

Comments Due: 5 p.m. ET 5/1/12.

Docket Numbers: ER12-1465-000.

Applicants: ISO New England Inc.

Description: Conforming Tariff Record Filing to be effective 4/1/2012.

Filed Date: 4/10/12.

Accession Number: 20120410-5049.

Comments Due: 5 p.m. ET 5/1/12.

Docket Numbers: ER12-1466-000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: R38 Amended LGIA (04-10-12) to be effective 4/11/2012.

Filed Date: 4/10/12.

Accession Number: 20120410-5055.

Comments Due: 5 p.m. ET 5/1/12.

Docket Numbers: ER12-1467-000.

Applicants: Midwest Independent Transmission System Operator, Inc.
Description: R41 LGIA to be effective 4/11/2012.

Filed Date: 4/10/12.

Accession Number: 20120410-5086.

Comments Due: 5 p.m. ET 5/1/12.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA07-32-013.

Applicants: Entergy Services, Inc.

Description: Informational Report of Entergy Services, Inc. re: Penalty assessments and distributions.

Filed Date: 4/9/12.

Accession Number: 20120409-5167.

Comments Due: 5 p.m. ET 4/30/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: April 10, 2012.
Nathaniel J. Davis, Sr.,
Deputy Secretary.
 [FR Doc. 2012-9383 Filed 4-18-12; 8:45 am]
BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP12-398-000.
Applicants: Iberdrola Renewables, Inc., Iberdrola Energy Services LLC.
Description: Filed Date: 4/6/12.
Accession Number: 20120406-5080.
Comments Due: 5 p.m. ET 4/18/12.
Docket Numbers: RP12-591-000.
Applicants: Colorado Interstate Gas Company LLC.
Description: Non-Conforming TSA (PSCO) to be effective 5/1/20/12.
Filed Date: 4/5/12.
Accession Number: 20120405-5169.
Comments Due: 5 p.m. ET 4/17/12.
Docket Numbers: RP12-592-000.
Applicants: Questar Pipeline Company.
Description: Minimum Pressure Guarantee to be effective 5/10/2012.
Filed Date: 4/9/12.
Accession Number: 20120409-5069.
Comments Due: 5 p.m. ET 4/23/12.
Docket Numbers: RP12-593-000.
Applicants: TransColorado Gas Transmission Company LLC.
Description: Housekeeping Filing 2012-04-09 to be effective 5/9/2012.
Filed Date: 4/9/12.
Accession Number: 20120409-5075.
Comments Due: 5 p.m. ET 4/23/12.
Docket Numbers: RP12-594-000.
Applicants: Stingray Pipeline Company, L.L.C.
Description: Settlement to be effective 5/1/2012.
Filed Date: 4/9/12.
Accession Number: 20120409-5129.
Comments Due: 5 p.m. ET 4/23/12.
Docket Numbers: RP12-595-000.
Applicants: Colorado Interstate Gas Company LLC.
Description: EBB Notice Categories Filing to be effective 5/15/2012.
Filed Date: 4/9/12.
Accession Number: 20120409-5140.
Comments Due: 5 p.m. ET 4/23/12.
Docket Numbers: RP12-596-000.
Applicants: Cheyenne Plains Gas Pipeline Company, L. L.C.

Description: EBB Notice Categories Filing to be effective 5/15/2012.
Filed Date: 4/9/12.
Accession Number: 20120409-5147.
Comments Due: 5 p.m. ET 4/23/12.
Docket Numbers: RP12-597-000.
Applicants: Young Gas Storage Company, Ltd.
Description: EBB Notice Categories to be effective 5/15/2012.
Filed Date: 4/9/12.
Accession Number: 20120409-5153.
Comments Due: 5 p.m. ET 4/23/12.
Docket Numbers: RP12-598-000.
Applicants: Ruby Pipeline, L.L.C.
Description: EBB Notice Categories Filing to be effective 5/15/2012.
Filed Date: 4/9/12.
Accession Number: 20120409-5154.
Comments Due: 5 p.m. ET 4/23/12.
Docket Numbers: RP12-599-000.
Applicants: Wyoming Interstate Company, L.L.C.
Description: EBB Notice Categories Filing to be effective 5/15/2012.
Filed Date: 4/9/12.
Accession Number: 20120409-5155.
Comments Due: 5 p.m. ET 4/23/12.
 Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.
Filings in Existing Proceedings
Docket Numbers: RP12-517-001.
Applicants: Questar Pipeline Company.
Description: Statement of Negotiated Rates Version 4.1.0 to be effective 4/2/2012.
Filed Date: 4/9/12.
Accession Number: 20120409-5065.
Comments Due: 5 p.m. ET 4/23/12.
 Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5 p.m. Eastern time on the specified comment date.
 The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.
 eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: April 10, 2012.
Nathaniel J. Davis, Sr.
Deputy Secretary
 [FR Doc. 2012-9384 Filed 4-18-12; 8:45 am]
BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC11-83-000; EC11-83-001.
Applicants: Exelon Corporation, Constellation Energy Group, Inc.
Description: Request for Waiver of Exelon Corporation.
Filed Date: 4/4/12.
Accession Number: 20120404-5225.
Comments Due: 5 p.m. ET 4/18/12.
 Take notice that the Commission received the following electric rate filings:
Docket Numbers: ER11-1858-001; ER10-3201-001.
Applicants: Montana Generation, LLC, NorthWestern Corporation
Description: Supplemental Information and Amendment to Triennial Updated Market Power Analysis Filing Letter of NorthWestern Corporation and Montana Generation, LLC.
Filed Date: 3/27/12.
Accession Number: 20120327-5245.
Comments Due: 5 p.m. ET 5/2/12.
Docket Numbers: ER12-1468-000.
Applicants: California Independent System Operator Corporation.
Description: 2012-04-10 CAISO's Transmission Reliability Margin Tariff Amendment to be effective 6/10/2012.
Filed Date: 4/10/12.
Accession Number: 20120410-5127.
Comments Due: 5 p.m. ET 5/1/12.
Docket Numbers: ER12-1469-000.
Applicants: Southwestern Electric Power Company.
Description: 20120410 NTEC Griffin Facilities Agreement to be effective 3/13/2012.
Filed Date: 4/10/12.
Accession Number: 20120410-5137.
Comments Due: 5 p.m. ET 5/1/12.
Docket Numbers: ER12-1470-000.
Applicants: Energia Sierra Juarez U.S., LLC.
Description: Energia Sierra Juarez U.S. LLC FERC Electric Tariff No.1 MBR Tariff to be effective 4/10/2012.
Filed Date: 4/10/12.
Accession Number: 20120410-5145.

Comments Due: 5 p.m. ET 5/1/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: April 11, 2012.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2012-9386 Filed 4-18-12; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER12-91-000, ER12-91-002, ER12-92-002]

PJM Interconnection, L.L.C., Duke Energy Ohio, Inc., Duke Energy Kentucky, Inc; Notice of Filing

Take notice that on April 5, 2012, Duke Energy Ohio, Inc. and Duke Energy Kentucky, Inc., tendered for filing a Settlement Agreement on behalf of themselves and the Indiana Municipal Power Agency, pursuant to 18 CFR 385.602, in the above-docketed proceeding. Pursuant to 18 CFR 385.602(f)(2) initial comments on the settlement agreement should be filed on or before April 18, 2012. Reply comments are due on or before April 20, 2012.

Dated: April 12, 2012.

Kimberly D. Bose,
Secretary.

[FR Doc. 2012-9370 Filed 4-18-12; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ12-9-000]

Buckeye Power, Inc.; Notice of Filing

Take notice that on April 4, 2012, Buckeye Power, Inc. submitted its tariff filing per 35.28(e): 2012 TRBAA Update Filing, to be effective 6/1/2012.

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 April 23, 2012.

Dated: April 12, 2012.

Kimberly D. Bose,
Secretary.

[FR Doc. 2012-9371 Filed 4-18-12; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12-1502-000]

Ironwood Windpower, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Ironwood Windpower, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is May 2, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive 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.

Dated: April 12, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012-9382 Filed 4-18-12; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12-1472-000]

Conch Energy Trading, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Conch Energy Trading, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is May 2, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the

Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive 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.

Dated: April 12, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012-9388 Filed 4-18-12; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12-1470-000]

Energia Sierra Juarez U.S., LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Energia Sierra Juarez U.S., LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is May 2, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the

eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive 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.

Dated: April 12, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012-9387 Filed 4-18-12; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12-1504-000]

Cimarron Windpower II, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Cimarron Windpower II, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of

future issuances of securities and assumptions of liability, is May 2, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the web site that enables subscribers to receive 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.

Dated: April 12, 2012.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2012-9385 Filed 4-18-12; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13135-003]

City of Watervliet; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* 13135-003.

c. *Date Filed:* February 27, 2012.

d. *Submitted By:* City of Watervliet.

e. *Name of Project:* Delta Hydroelectric Project.

f. *Location:* On the Mohawk River, in Oneida County, New York. No federal lands are occupied by the project works or located within the project boundary.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Potential Applicant Contact:* Mr. Mark Gleason, General Manager, City of Watervliet, City Hall, Watervliet, NY 12189 (518) 270-3800 x 122.

i. *FERC Contact:* Brandi Sangunett at (202) 502-8393; or email at brandi.sangunett@ferc.gov.

j. The City of Watervliet filed its request to use the Traditional Licensing Process on February 27, 2012. The City of Watervliet provided public notice of its request on February 29, 2012. In a letter dated April 12, 2012, the Director of the Division of Hydropower Licensing approved the City of Watervliet's request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with: (a) The U.S. Fish and Wildlife Service under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402; (b) NOAA Fisheries under section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920; and (c) the New York State Historic Preservation Officer, as required by section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. The City of Watervliet filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

m. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (<http://www.ferc.gov>), using the "eLibrary" link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll free at 1-866-208-3676, or for TTY, (202) 502-8659. A copy is also available for inspection and reproduction at the address in paragraph h.

n. Register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: April 12, 2012.

Kimberly D. Bose,
Secretary.

[FR Doc. 2012-9368 Filed 4-18-12; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14366-000]

City of New York; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On March 1, 2012, the City of New York filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the West of Hudson Hydroelectric Project, which comprises two development sites, Pepacton located on the East Branch of the Delaware River and Neversink located on the Neversink River. The Pepacton Development would be located in Delaware County, New York, and the Neversink Development would be located in Sullivan County, New York.

The proposed West of Hudson Hydroelectric Project would consist of the following developments:

Pepacton Development:

(1) An existing 2,450-foot-long, 204-foot-high earthen Downsview Dam; (2) an existing reservoir having a surface area of 5,560 acres and a storage capacity of 441,000 acre-feet and normal water surface elevation of 1,280 feet mean sea level; (3) a proposed powerhouse containing one new generating unit having an installed capacity of 1.7-megawatts; (4) a proposed 80-foot-long, 12.5-kilovolt transmission line; and (5) appurtenant facilities. The proposed Pepacton Development would have an average annual generation of 9.235-gigawatt-hours.

Neversink Development:

(1) An existing 2,800-foot-long, 195-foot-high earthen Neversink Dam; (2) an existing reservoir having a surface area of 1,478 acres and a storage capacity of 112,000 acre-feet and normal water surface elevation of 1,440 feet mean sea level; (3) a proposed powerhouse containing one new generating unit having an installed capacity of 0.9-megawatt; (4) a proposed 760-foot-long, 12.5-kilovolt transmission line; and (5) appurtenant facilities. The proposed Neversink Development would have an average annual generation of 5.457-gigawatt-hours.

Applicant Contact: Mr. Kevin M. Lang, Esq., Couch White, LLP, 540 Broadway, P. O. Box 22222, Albany, NY 12201-2222, phone (518) 426-4600.

FERC Contact: Timothy Looney; phone: (202) 502-6096.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll free at 1-866-208-3676, or for TTY, (202) 502-8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of the Commission's Web site at <http://www.ferc.gov/docs-filing/elibrary.asp>. Enter the docket number (P-14366) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: April 12, 2012.

Kimberly D. Bose,
Secretary.

[FR Doc. 2012-9364 Filed 4-18-12; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OECA-2012-0157; FRL-9662-5]

Agency Information Collection Activities; Proposed Collection; Comment Request; Reporting and Recordkeeping Requirements for the Enforcement Policy Regarding the Sale and Use of Aftermarket Catalytic Converters; EPA ICR No. 1292.08

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document

announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on August 31, 2012. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before June 18, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OECA-2012-0157 by one of the following methods:

- www.regulations.gov: Follow the on-line instructions for submitting comments.
- **Email:** docket.oeca@epa.gov.
- **Fax:** 202-566-9744.
- **Mail:** Enforcement and Compliance Docket and Information Center (ECDIC), Environmental Protection Agency, 1200 Pennsylvania Ave. NW. (Mailcode: 2822T), Washington, DC 20460.
- **Hand Delivery:** EPA Docket Center Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-HQ-OECA-2012-0157. 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 information that you consider to be CBI or otherwise protected through www.regulations.gov or email. 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>.

FOR FURTHER INFORMATION CONTACT: David E. Alexander, Air Enforcement Division, Office of Enforcement and Compliance Assurance (2242A), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564-2109; fax number: (202) 564-0069; email address: alexander.david@epa.gov.

SUPPLEMENTARY INFORMATION:

How can I access the docket and/or submit comments?

EPA has established a public docket for this ICR under Docket ID No. EPA-HQ-OECA-2012-0157 which is available for online viewing at www.regulations.gov, or in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566-1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566-1752.

Use www.regulations.gov to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified in this document.

What information is EPA particularly interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

- (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;
- (ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information,

including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What should I consider when I prepare my comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under DATES.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What information collection activity or ICR does this apply to?

Affected entities: Entities potentially affected by this action are the manufacturers of new aftermarket motor vehicle catalytic converters and reconditioners of used motor vehicle catalytic converters. The SIC code is 346. The other respondents are automobile exhaust repair facilities. Their SIC code is 7533.

Title: Reporting and Recordkeeping Requirements for the Enforcement Policy Regarding the Sale and Use of Aftermarket Catalytic Converters

ICR numbers: EPA ICR No. 1292.08, OMB Control No. 2060-0135.

ICR status: This ICR is currently scheduled to expire on August 31, 2012. An Agency may not conduct or sponsor, and a person is not required to respond

to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Section 203(a)(3) of the Clean Air Act (Act) prohibits removing or rendering inoperative automobile emission control devices or elements of design. If the EPA had not adopted the aftermarket catalytic converter enforcement policy (51 FR 28114-28119, 28133 (Aug. 5, 1986); 52 FR 42144 (Nov. 3, 1987)), the manufacture, sale or installation of aftermarket catalytic converters (catalysts) not equivalent to new original equipment (OE) catalysts would constitute a violation of the Act. However, because replacement OE catalysts are expensive, many consumers had elected to not replace catalysts that malfunctioned subsequent to the expiration of the emissions warranty on their vehicles. The Agency believes that allowing the installation of aftermarket catalysts on older vehicles can be environmentally beneficial if the Agency can be assured that the aftermarket catalysts meet certain standards and if installers are accountable to select the proper aftermarket catalyst for each vehicle application. Manufacturers of new aftermarket catalysts are required, on a one-time basis, for each catalyst line manufactured, to identify the catalyst physical specifications and summarize pre-production testing of the prototype.

The original policy required that, once production had begun, the manufacturer would submit to EPA on a semi-annual basis the number of each type of aftermarket catalyst manufactured and a summary of information contained on warranty cards or, at the option of the respondent, copies of warranty cards for all converters sold. This reporting regarding sales and warranty information was eliminated in March 1999, with the stipulation that records must be maintained and the information submitted to EPA upon request.

On a one-time basis, companies that recondition used catalysts (catalyst reconditioners) must report the identity of the company and a description of the test bench used for testing used catalytic converters and the intended vehicle application(s) for each converter type.

All used converters must be tested individually to ensure they are still functional. Additionally, the original policy required catalyst reconditioners to report on a semi-annual basis the names and addresses of distributors along with the number of each type of converter sold to each distributor. This reporting requirement was eliminated in March 1999, with the stipulation that records must be maintained and the information submitted to EPA upon request.

Companies that install aftermarket catalysts have no reporting requirements, but they must keep copies of installation invoices and records that show the reason an aftermarket catalyst installation was appropriate for six months. Removed catalysts must be tagged with identifying information and be kept for 15 days.

EPA allows the use of pre-printed documents or computer-generated documents. All the recordkeeping under the policy is authorized by section 114 of the Act, 42 U.S.C. 7414 and section 208 of the Act, 42 U.S.C. 7542. Parties who comply with these policies are allowed to install aftermarket catalysts instead of OE catalysts. Confidentiality provisions are found at 40 CFR part 2. These requirements have been in effect for over ten years. Startup costs have been completed. The proposed ICR utilizes assumptions that are the same as the previous ICR. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average seven hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here: Estimated total number of potential respondents: 30,014.

Frequency of response: Annual.

Estimated total average number of responses for each respondent: 1.

Estimated total annual burden hours: 212,101 hours.

Estimated total annual costs: \$676,000. This includes an estimated burden cost of \$390,000 and an estimated cost of \$286,000 for capital investment or maintenance and operational costs.

Are there changes in the estimates from the last approval?

There is anticipated to be no change in the hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. EPA anticipates adjusting for inflation the estimated costs of labor and capital used in the supporting statement prepared in 2008. The 2008 supporting statement may be reviewed in the docket.

What is the next step in the process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR § 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: April 13, 2012.

Pamela J. Mazakas,

Acting Director, Office of Civil Enforcement.

[FR Doc. 2012-9443 Filed 4-18-12; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA—New England Region I—EPA—R01—OW—2012—0200; FRL—9661—8]

Massachusetts Marine Sanitation Device Standard—Receipt of Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice—Receipt of petition.

SUMMARY: Notice is hereby given that a petition has been received from the Commonwealth of Massachusetts requesting a determination by the Regional Administrator, U. S. Environmental Protection Agency, that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the waters of Mount Hope Bay.

DATES: “Comments must be submitted by May 21, 2012.”

ADDRESSES: Submit your comments, identified by Docket ID No. EPA—R01—OW—2012—0200, by one of the following methods:

www.regulations.gov, Follow the on-line instructions for submitting comments.

- *Email:* rodney.ann@epa.gov.
- *Fax:* (617) 918-0538.

Mail and hand delivery: U.S.

Environmental Protection Agency—New England Region, Five Post Office Square, Suite 100, OEP06-1, Boston, MA 02109-3912. Deliveries are only accepted during the Regional Office's normal hours of operation (8 a.m.–5 p.m., Monday through Friday, excluding legal holidays), and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA—R01—OW—2012—0200. 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 information that you consider to be CBI or otherwise protected through *www.regulations.gov*, or email. 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.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the U.S. Environmental Protection Agency—New England Region, Five Post Office Square, Suite 100, OEP06-01, Boston, MA 02109-3912. Such deliveries are only accepted during the Regional Office's normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office is open from 8 a.m.–5 p.m., Monday through Friday, excluding legal holidays. The telephone number is (617) 918-1538.

FOR FURTHER INFORMATION CONTACT: Ann Rodney, U.S. Environmental Protection Agency—New England Region, Five Post Office Square, Suite 100, OEP06-01, Boston, MA 02109-3912. Telephone: (617) 918-1538, Fax number: (617) 918-0538; email address: rodney.ann@epa.gov.

SUPPLEMENTARY INFORMATION: Notice is hereby given that a petition has been received from the Commonwealth of Massachusetts requesting a determination by the Regional Administrator, U.S. Environmental Protection Agency, pursuant to Section 312(f)(3) of Public Law 92-500 as amended by Public Law 95-217 and Public Law 100-4, that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for Mount Hope Bay.

THE PROPOSED NO DISCHARGE AREA FOR MOUNT HOPE BAY

Waterbody/general area	Latitude	Longitude
The northern edge of the NDA boundary on the Taunton River is the Center Street/Elm Street bridge at:	41°50'5.90" N	71°6'29.34" W
The northern edge of the NDA boundary on the Lees River is the Route 6 bridge at:	41°44'24.87" N	71°11'12.72" W
The northern edge of the NDA boundary on the Cole River is the Route 6 Bridge at:	41°44'47.03" N	71°12'7.81" W
The southwestern edge of the NDA boundary is the Rhode Island/Massachusetts border at Swansea at:	41°42'43.94" N	71°13'34.27" W
The southeastern edge of the NDA boundary is the Rhode Island/Massachusetts border at Fall River at:	41°40'30.28" N	71°11'43.86" W

The Mount Hope Bay NDA will encompass the tidal waters of Dighton, Berkley, Freetown, Somerset, Swansea, and Fall River to the mean high tide line.

There are marinas, yacht clubs and public landings/piers in the proposed area with a combination of mooring fields and dock space for the recreational and commercial vessels. Mount Hope Bay is a shared waterbody between Massachusetts and Rhode Island and in 1998 Rhode Island designated all its state waters as no discharge, including its portion of Mount Hope Bay. Massachusetts has

certified that there are three pumpout facilities, within the proposed state waters, available to the boating public. A list of the facilities, locations, contact information, hours of operation, and water depth is provided at the end of this petition.

Massachusetts has provided documentation indicating that the total vessel population is estimated to be 585 in the proposed area. It is estimated that

523 of the total vessel population may have a Marine Sanitation Device (MSD) of some type. The total number of MSDs certified by the Commonwealth of Massachusetts is an overestimate, conservatively, giving the boating public a 1:175 ratio of pumpouts to boats, which is much less than the ratio suggested by EPA Region 1 guidelines (300–600 vessels for every one facility.)

PUMPOUT FACILITIES WITHIN PROPOSED NO DISCHARGE AREA

Name	Town	Contact information	Hours of operation	Depth (Ft)
Fall River Harbormaster Boat	Fall River	774-644-3609, VHF 16	On Call	N/A
Somerset Harbormaster Boat	Somerset	774-319-3126, VHF 9, 16	8:30 a.m.–8:30 p.m.	N/A
Somerset Land-based Pumpout Station at Town Boat Ramp.	Somerset	N/A Self Serve	8 a.m.–5 p.m. Week-days; 8 a.m.–6 p.m. Weekends.	3.5

Dated: April 6, 2012.

H. Curtis Spalding,

Regional Administrator, New England Region.

[FR Doc. 2012-9448 Filed 4-18-12; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-R01-OEP-12-006; FRL-9662-6]

State Program Requirements; Approval of Maine's Base National Pollutant Discharge Elimination System (NPDES) Permitting Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Since January 2001, the State of Maine has been authorized to administer the National Pollutant Discharge Elimination System (NPDES) program in the Indian territories of the Penobscot Nation and the Passamaquoddy Tribe, with the exception of authorization to issue permits to two tribally owned and operated wastewater treatment works. On August 8, 2007, the U.S. Court of Appeals for the First Circuit vacated EPA's October 31, 2003 decision to

withhold authority to administer the program under the Clean Water Act with respect to the two tribally owned and operated treatment works. EPA is responding to the court's order by approving Maine's NPDES program to include the permitting of all discharges within the Indian territories of the Penobscot Nation and the Passamaquoddy Tribe.

DATES: March 26, 2012.

FOR FURTHER INFORMATION CONTACT:

Questions or requests for additional information may be submitted to:

- Mail: Glenda Vélez, USEPA-Region 1, 5 Post Office Square—OEP06-01, Boston, MA 02109-3912.
- Telephone: (617) 918-1677.
- Email: velez.glenda@epa.gov.
- No facsimiles (faxes) will be accepted.

Copies of documents Maine has submitted in support of its program approval may be reviewed during regular business hours, Monday through Friday, excluding holidays at the address above.

SUPPLEMENTARY INFORMATION:

2001 Approval of the Program Outside Indian Territories

On December 17, 1999, EPA determined that the State of Maine had

submitted a complete application to administer the NPDES permitting program in the state under the Clean Water Act (CWA), 33 U.S.C. 1251, *et seq.*, see 64 FR 73552 (Dec. 30, 1999). Maine's application included an assertion of authority to implement the program in the territories of the federally-recognized Indian tribes within the state, based on the jurisdictional provisions of the Maine Indian Claims Settlement Act (MICSA), which ratified the Maine Implementing Act (MIA), 25 U.S.C. 1721, *et seq.* and 30 M.R.S.A. section 6201, *et seq.*, respectively.

On January 12, 2001, EPA approved the State of Maine's application to administer the NPDES program for all areas of the state other than Indian country. At that point EPA did not take any action on Maine's application to administer the program within the territories of the federally-recognized Indian tribes in Maine. EPA published notice of its action on February 28, 2001. 66 FR 12791. As described in the **Federal Register**, EPA approved the state's application to administer both the NPDES permit program covering point source dischargers and the pretreatment program covering industrial dischargers into publicly

owned treatment works (POTWs). EPA did not authorize the state to regulate cooling water intake structures under CWA section 316(b) (33 U.S.C. 1326(b)). 66 FR 12792.

2003 Partial Approval of the Program in Indian Territories

On October 31, 2003, EPA approved the State of Maine's application to administer the NPDES program in the Indian territories of the Penobscot Indian Nation and the Passamaquoddy Tribe, with the exception of any discharges that qualified as "internal tribal matters" under MICSA and MIA. 68 FR 65052 (Nov. 18, 2003). This action generally authorized the state to administer the NPDES program in the territories of the two largest Indian tribes in the state, finding that the combination of MICSA and MIA created a unique jurisdictional arrangement that granted the state authority to issue permits to dischargers. EPA did not approve the state's program to regulate two small tribally-owned and operated POTWs. EPA determined that these POTWs qualified as internal tribal matters and, therefore, fell within an enumerated exception to the grant of jurisdiction to the state in MICSA and MIA. EPA did not take action on the state's application as it applied to the territories of the two smaller federally-recognized tribes in the state, the Houlton Band of Maliseet Indians and the Aroostook Band of Micmac Indians. These two tribes are subject to jurisdictional provisions separate from those that apply to the Penobscot and Passamaquoddy tribes. EPA's 2003 action addressed all the Indian territories that included existing point source dischargers covered by the NPDES program.

Appeal and Decision in *Maine v. Johnson*

Several parties petitioned for judicial review of EPA's 2003 decision partially approving Maine's NPDES program in the Penobscot and Passamaquoddy Indian territories. The Penobscot Nation and Passamaquoddy Tribe challenged EPA's decision to generally approve the state to administer the program in their territories. The State of Maine and a coalition of public and private NPDES permit holders challenged EPA's decision to disapprove the state's program as to the two small tribal POTWs based on the finding that permitting those discharges qualified as an internal tribal matter.

On August 8, 2007, the U.S. Court of Appeals for the First Circuit issued its opinion in *Maine v. Johnson*. 498 F.3d 37. The court held that EPA had

correctly determined that MICSA and MIA granted the state sufficient authority to administer the NPDES permit program in the territories of these two tribes. The court disagreed with EPA's finding, however, that permitting the two small tribal POTWs qualified as an internal tribal matter. It found that "[d]ischarging pollutants into navigable waters is not of the same character as tribal elections, tribal membership or other exemplars [of internal tribal matters] that relate to the structure of Indian government or the distribution of tribal property." *Id.* at 46. The court affirmed EPA's approval of Maine's NPDES program, but vacated EPA's decision to withhold program approval with respect to issuing NPDES permits to the two tribal POTWs and remanded the matter back to EPA to amend the program approval consistent with its opinion. *Id.* at 48–49. The court's mandate was issued on October 2, 2007.

Program Approval To Address the Court's Remand

EPA proposed to implement the court's order by modifying its approval of Maine's NPDES program to authorize the State to issue NPDES permits for all discharges within the Indian territories of the Penobscot Nation and Passamaquoddy Tribe. 76 FR 29747 (May 23, 2011). Additionally, the notice stated that EPA does not plan to undertake a case-by-case analysis of any new discharges to determine whether they qualify as internal tribal matters under MICSA and MIA. EPA received no public comments on the record in response to the May 23, 2011 proposal. As a result, the state will assume responsibility from EPA for issuing and administering the permits for the Penobscot Nation Indian Island treatment works (EPA NPDES Permit No. ME 0101311 and MEPDES License No. 2672) and the Passamaquoddy Tribal Council treatment works (EPA NPDES Permit No. 1011773 and MEPDES License No. 2561). Neither tribe has applied to EPA to implement the NPDES permit program, so this action does not address the question of either tribe's authority to implement the program.

The finalization of this action does not modify the types of activities covered by Maine's base program as EPA approved it in 2001. Thus, the state's program does not include regulation of cooling water intake structures under CWA section 316(b). Nor is EPA taking action on Maine's application to implement the NPDES permit program in the territories of the

Houlton Band of Maliseet Indians and the Aroostook Band of Micmac Indians.

Authority: This action is taken under the authority of Section 402 of the Clean Water Act as amended, 42 U.S.C. 1342.

Dated: March 28, 2012.

H. Curtis Spalding,

Regional Administrator, Region 1.

[FR Doc. 2012–9450 Filed 4–18–12; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

DATE AND TIME: *Tuesday, April 24, 2012 at 10 a.m.*

PLACE: 999 E Street NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

Investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records.

Information the premature disclosure of which would be likely to have a considerable adverse effect on the implementation of a proposed Commission action.

* * * * *

PERSON TO CONTACT FOR INFORMATION:

Judith Ingram, Press Officer. Telephone: (202) 694–1220.

Shawn Woodhead Werth,

Secretary of the Commission.

[FR Doc. 2012–9615 Filed 4–17–12; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or

the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 14, 2012.

A. Federal Reserve Bank of Atlanta (Chapelle Davis, Assistant Vice President), 1000 Peachtree Street NE., Atlanta, Georgia 30309:

1. *IBERIABANK Corporation*, Lafayette, Louisiana; to merge with Florida Gulf Bancorp and thereby indirectly acquire Florida Gulf Bank, both in Fort Myers, Florida.

Board of Governors of the Federal Reserve System, April 16, 2012.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2012-9452 Filed 4-18-12; 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 May 4, 2012.

A. Federal Reserve Bank of San Francisco (Kenneth Binning, Vice President, Applications and Enforcement) 101 Market Street, San Francisco, California 94105-1579:

1. *Security California Bancorp*, Riverside, California; to engage *de novo* through its subsidiary, SCB Asset Management, Riverside, California, in extending credit and servicing loans, pursuant to section 225.28(b)(1).

Board of Governors of the Federal Reserve System, April 16, 2012.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2012-9453 Filed 4-18-12; 8:45 am]

BILLING CODE 6210-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: D HS/ACF/OPRE Head Start Classroom-based Approaches and Resource for Emotion and Social skill promotion (CARES) project: Impact and Implementation Studies.

OMB No. 0970-0364.

Description: The Head Start Classroom-based Approaches and

Resource for Emotion and Social skill promotion (CARES) project is evaluating social emotional program enhancements within Head Start settings serving 3- and 4-year-old children. This project focuses on identifying the central features of effective programs to provide the information federal policy makers and Head Start providers will need if they are to increase Head Start's capacity to improve the social and emotional skills and school readiness of preschool age children. The project is sponsored by the Office of Planning, Research, and Evaluation (OPRE).

the Administration for Children and Families (ACF): The Head Start CARES project uses a group-based randomized design to test the effects of three different evidence-based programs designed to improve the social and emotional development of children in Head Start classrooms.

Data to assess impacts of the program models in preschool was collected through surveys with teachers and parents, as well as direct child assessments. Data to assess implementation of the program models in preschool was collected through surveys and interviews with teachers, local coaches, trainers and center staff. Data collection for both the impact and implementation studies occurred during the Head Start Year. The study sample involved 17 Head Start grantees/ delegate agencies, 104 centers, 307 classrooms, 1,042 selected 3-year-old children and 2,885 selected 4-year-old children.

The purpose of this request is to obtain an extension to finish impact data collection in the 2012 Follow-up Year (e.g., Kindergarten for the 4-year-olds). This data to assess impacts of the program models in the kindergarten year will be collected through teacher reports (surveys) and parent surveys.

Respondents: The respondents for the activities under the extension request for Follow-Up year data collection will be parents of children and kindergarten teachers of children in the study.

The annual burden estimates for both surveys covered by the extension are detailed below.

ANNUAL BURDEN ESTIMATES—EXTENSION

Instrument	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Estimated annual burden hours
Teacher Report on Individual Children	608	1	0.33	201
Follow-up Parent Survey	608	1	0.33	201
Estimated Total Annual Burden Hours				402

Additional Information

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: OPRE Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address:

OPREinfocollection@acf.hhs.gov.

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: OIRA_SUBMISSION@OMB.EOP.GOV, Attn: Desk Officer for the Administration for Children and Families.

Dated: April 12, 2012.

Steven M. Hanmer,

OPRE Reports Clearance Officer.

[FR Doc. 2012-9303 Filed 4-18-12; 8:45 am]

BILLING CODE 4184-22-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Food and Drug Administration**

[Docket No. FDA-2012-N-0357]

Agency Information Collection Activities; Proposed Collection; Comment Request; Medical Device Decision Analysis: A Risk-Tolerance Pilot Study

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on the survey entitled "Medical Device

Decision Analysis: A Risk-Tolerance Pilot Study."

DATES: Submit either electronic or written comments on the collection of information by June 18, 2012.

ADDRESSES: Submit electronic comments on the collection of information to <http://www.regulations.gov>. Submit written comments on the collection of information to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Daniel Gittleson, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50-400B, Rockville, MD 20850, 301-796-5156, Daniel.Gittleson@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501-3520), 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 before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

I. Background

A recent study of obesity indicates that 35.5 percent of men and 35.8 percent of women in America reported being obese in 2010. This represents an increase from 27.5 percent and 33.4 percent in 2000 for men and women, respectively (Ref. 1). People who are obese are more likely to suffer from diabetes, cardiovascular disease, respiratory and metabolic disease, and sleep apnea, as well as other physical and psychological disabilities. By some estimates, as much as \$140 billion were spent in 2008 to treat obesity-related diseases (Ref. 2). Studies have shown that weight loss can significantly reduce the burden of obesity-related comorbidities (Refs. 3 and 4), and that weight lost as a result of laparoscopic banding or other weight-loss surgeries positively impacts quality of life and burden of disease (Refs. 5 through 7). However, like any surgical procedure, these surgeries are associated with substantial risks, including risks of potentially life-threatening events (Ref. 6), that patients and physicians must weigh against any potential benefits when making an informed treatment decision.

With the assistance of advisory panels, FDA determines the acceptable risk threshold of a medical intervention against its effectiveness as demonstrated in clinical evidence. In addition, individual patients and patient-advocacy groups anecdotally express their opinions about their needs and tolerance for risks to FDA through letters and public testimonies during advisory panel meetings. To evaluate the scientific validity of systematically eliciting patient perspectives on outcomes associated with weight-loss devices, the Agency requests approval of a pilot survey to quantify obesity patients' benefit-risk preferences.

The choice-format preference-elicitation survey will ask obese individuals (with a body mass index of 30 kg/m² or above) to evaluate a series of choices between pairs of hypothetical medical devices. Each hypothetical device will be defined by the amount and duration of weight loss, side effects, risks associated with hypothetical weight-loss devices, and the effect of the device on weight-related comorbidities. The survey was developed using findings from a literature review of the outcomes associated with weight-loss devices, interviews with obesity patients, and expert opinion.

An invitation to the online survey will be sent to a sample of 1,000 obese adults in the United States. Among the adults who receive the invitation, about

600 are expected to complete the consent form and about 450 are expected to qualify for the study and complete the survey in full. In addition to the choice-format questions, the survey also will collect information on respondent demographics, disease history, and weight-management

history. There is no cost to respondents other than about 25 minutes of their time.

Final results will provide an estimate of the maximum levels of various treatment-related risks that obesity patients would be willing to accept to achieve specific levels of weight loss or

improvements in weight-related diseases. These results will be used to investigate the viability of choice-format surveys as a way to quantify patients' risk tolerance for the therapeutic benefits of weight-loss devices.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN¹

Survey instrument	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Survey invitation	1,000	1	1,000	0.03	30
Consent form	700	1	700	0.03	21
Full survey	450	1	450	0.42	189
Total					240

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

II. References

The following references are on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

- Ogden, C.L., M.D. Carroll, B.K. Kit, and K.M. Flegal, "Prevalence of Obesity and Trends in Body Mass Index Among U.S. Children and Adolescents, 1999–2010," *Journal of the American Medical Association*, vol. 307, no. 5, pp. 483–490, 2012.
- Finkelstein, E.A., J.G. Trogon, J.W. Cohen, and W. Dietz, "Annual Medical Spending Attributable to Obesity: Payer- and Service-Specific Estimates," *Health Affairs*, vol. 28, no. 5, pp. w822–w831, 2009.
- Dhabuwala, A., R.J. Cannan, and R.S. Stubbs, "Improvement in Comorbidities Following Weight Loss From Gastric Bypass Surgery," *Obesity Surgery*, vol. 10, pp. 428–435, 2000.
- Sjöström, L., A. Lindroos, M. Peltonen, *et al.*, "Lifestyle, Diabetes, and Cardiovascular Risk Factors 10 Years After Bariatric Surgery," *The New England Journal of Medicine*, vol. 351, no. 26, pp. 2683–2693, 2004.
- Dixon, J.B., M.E. Dixon, and P.E. O'Brien, "Quality of Life After Lap-Band Placement: Influence of Time, Weight Loss, and Comorbidities," *Obesity Research*, vol. 9, no. 11, pp. 713–721, 2001.
- Buchwald, H., Y. Avidor, E. Braunwald *et al.*, "Bariatric Surgery: A Systematic Review and Meta-Analysis," *Journal of the American Medical Association*, vol. 292, no. 14, pp. 1724–1728, 2004.
- Dixon, J.B., M.J. Hayden, G.W. Lambert, *et al.*, "Raised CRP Levels in Obese Patients: Symptoms of Depression Have an Independent Positive Association," *Obesity*, vol. 16, no. 9, pp. 2010–2015, 2008.

Dated: April 12, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–9435 Filed 4–18–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA 2012–N–0001]

Food and Drug Administration Patient Network Annual Meeting; Input Into Food and Drug Administration Benefit-Risk Decisionmaking: Opportunities and Challenges; Hosted by the Food and Drug Administration Office of Special Health Issues; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

The Food and Drug Administration (FDA) is announcing a meeting for patients, caregivers, independent patient advocates and patient advocate groups, and health professional groups to explore ways to more effectively include patient input in regulatory decisionmaking on drug, device, and biological products. The meeting will serve as a forum for FDA's patient stakeholders and the general public, including health professionals, academia, and industry to learn about the regulatory process related to the medical product life cycle, analyze where in the process patient input may be most practical and most valuable, and explore practicable approaches to collecting and incorporating meaningful input that well represents broad patient perspectives into regulatory decisions.

DATES: Date and Time: The meeting will be held on May 18, 2012, from 9 a.m. to 4:30 p.m. Register at <http://fda.contractmeetings.com/home> on or before May 4, 2012. Please include the name and title of the person attending, the name of the organization, the role within the organization, email address, and telephone number. There is no registration fee for this conference. Early registration is suggested because space is limited. We request that organizations limit the number of representatives to two. For further registration information or problems with the Web site, call Cindy de Sales, 1–240–316–3200, ext. 207.

If you need special accommodations due to a disability, please contact Steve Morin at least 7 days in advance.

Location: The meeting will be held at the FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (Rm. 1503) Silver Spring, MD 20993.

Contact Person: Steve Morin, Office of Special Health Issues, 10903 New Hampshire Ave., Silver Spring, MD 20993, 301–796–0161, FAX: 301–847–8623, Steve.Morin@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. FDA Patient Network

This is the inaugural FDA Patient Network Annual Meeting hosted by the FDA Office of Special Health Issues, the Agency's liaison to the patient and health professional communities. This annual meeting is being hosted in conjunction with the launch of the overarching FDA Patient Network program. The FDA Patient Network is a new resource for patients, caregivers, independent patient advocates, and patient advocate groups that seek to:

- Educate and inform patient stakeholders about FDA, its regulatory

authorities and processes, its initiatives and programs, etc.; and,

- Provide a venue for advocacy for patient stakeholders within FDA and be transparent to patients about Agency actions.

In addition to an annual meeting, the FDA Patient Network consists of other activities, including the:

- FDA Patient Network Web site—A new, patient-centered Web site that contains educational modules, centralized Agency information, and multidirectional communication tools;
- Biweekly *FDA Patient Network News* email newsletter; and hosting of periodic meetings, briefings, and listening session between patient advocates and FDA staff.

II. Patient Perspectives in Regulatory Decisionmaking

Establishing a means for obtaining input from patients and patient advocate groups will allow FDA to further enhance its benefit-risk assessment in regulatory decisionmaking. Patients who live with a disease have a direct stake in the outcomes of the review process and are in a unique position to contribute to the weighing of benefit-risk considerations that can occur throughout the medical product development process. Though several programs exist that facilitate patient representation on Advisory Committees or participation in selected review meetings, there are currently few venues in which the patient perspective is discussed outside of a specific product's marketing application review. The medical product review process could benefit from a more scientific, systematic, and expansive approach to obtaining input from patients who are experiencing a particular disease condition.

As part of the proposed agreements for Prescription Drug User Fee Act (PDUFA) V, FDA plans to conduct meetings with patients and patient advocacy groups to gather broader patient input. This meeting kicks off these efforts and provides an opportunity to gain feedback on how FDA can best structure these upcoming meetings.

FDA seeks public discussion based on the following questions. These questions are intended to frame patient input at the May 18, 2012, meeting and there will be time at the meeting to discuss the following issues.

(1) How can FDA ensure gathering a broad range of representative patient input that is relevant to a specific disease area during its meetings with patients? For example, who should serve as representatives of patients?

(2) What methodological and practical issues should FDA consider as it develops its strategy for eliciting the patient perspective? For instance, FDA is interested in addressing topics including, but not limited to, the following:

(a) Are there particular advantages or disadvantages to utilizing face-to-face meetings versus web-based or other methods in obtaining the patient perspective on a particular disease condition and its treatment?

(b) How can FDA ensure that certain subpopulations, such as patients with the most severe form of the disease, are represented?

III. Center for Drug Evaluation and Research and Center for Biologics Evaluation and Research Efforts

Center for Drug Evaluation and Research and Center for Biologics Evaluation and Research plan to conduct a series of patient-focused drug development meetings to gather patient input on the clinical context of a disease and its impact on a patient's daily life. These considerations, which would include an analysis of the severity of the disease condition and the current state of the available treatment options, can be critical in regulatory decisionmaking. FDA is interested in obtaining patient input on the context of specific disease areas through the patient-focused drug development meetings. The following questions are examples of topics for which FDA believes the patient perspective could add valuable insight. They are presented in this document for general discussion at the Patient Network Conference.

A. Understanding the Disease Condition

(1) What are the clinical manifestations of the disease that have the greatest impact on patients?

(2) Are there other aspects of the disease that have a significant impact on a patient's daily life? (e.g., impaired mobility, sleep problems, etc.)

(3) How do the clinical manifestations change with disease progression?

(4) How do the other aspects of the disease change with disease progression?

B. Assessment of Treatment Options

(1) How effective are approved therapies at treating the clinical manifestations of the disease?

(2) How well do approved therapies mitigate the other aspects of the disease?

(3) How does the effectiveness of approved therapies change with progression of the disease?

(4) Does therapy effectiveness vary by patient subpopulation?

FDA is continuing to make plans for its efforts and will be able to provide more detail on the patient-focused drug development meetings at the Patient Network Conference.

IV. Center for Devices and Radiologic Health Efforts

Center for Devices and Radiologic Health is interested in a public discussion on issues related to risk associated with medical products, and on avenues for patients to provide input into regulatory decisionmaking related to the amount of risk patients may be willing to accept in exchange for a potential treatment benefit. The following questions are presented in this document for general discussion at the Patient Network Conference.

(1) How do patients perceive and weigh risks associated with medical treatment in light of the risk associated with the underlying condition being treated and the potential benefit from the treatment?

(2) Under what circumstances and in which populations would various levels of risk be appropriate/acceptable?

(3) How can medical device companies, government, academia, community physicians and patients collaborate to account for the level of risk acceptable to patients affected by serious or life threatening illnesses?

(4) What mechanisms would be appropriate for patients to provide input into regulatory decisionmaking for new therapeutic and diagnostic products—e.g., web-based survey instruments? Patient representation at advisory committee meetings? Patient input to medical device companies during clinical trial design? Who (FDA, patient advocate groups, medical device companies, etc.) could sponsor such surveys?

(5) Are patients willing to accept responsibility for the level of risk to which they may be exposed if patient input increases risk tolerance?

Dated: April 13, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012-9418 Filed 4-18-12; 8:45 am]

BILLING CODE 4160-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended (5 U.S.C. App.), notice is hereby given of meetings of the National Diabetes and Digestive and Kidney Diseases Advisory Council.

The meetings 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 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 Diabetes and Digestive and Kidney Diseases Advisory Council.

Date: May 16, 2012.

Open: 8:30 a.m. to 12 p.m.

Agenda: To present the Director's Report and other scientific presentations.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

Closed: 1:45 p.m. to 3:45 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

Contact Person: Brent B. Stanfield, Ph.D., Director, Division of Extramural Activities, National Institute of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Blvd., Room 715, MSC 5452, Bethesda, MD 20892, (301) 594-8843, stanfibr@nidDK.nih.gov.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council Kidney, Urologic and Hematologic Diseases Subcommittee.

Date: May 16, 2012.

Open: 1 p.m. to 2:30 p.m.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room F1/F2, Bethesda, MD 20892.

Closed: 2:30 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room F1/F2, Bethesda, MD 20892.

Contact Person: Brent B. Stanfield, Ph.D., Director, Division of Extramural Activities, National Institute of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Blvd.,

Room 715, MSC 5452, Bethesda, MD 20892, (301) 594-8843, stanfibr@nidDK.nih.gov.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council Diabetes, Endocrinology and Metabolic Diseases Subcommittee.

Date: May 16, 2012.

Open: 3 p.m. to 4 p.m.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

Closed: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

Contact Person: Brent B. Stanfield, Ph.D., Director, Division of Extramural Activities, National Institute of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Blvd., Room 715, MSC 5452, Bethesda, MD 20892, (301) 594-8843, stanfibr@nidDK.nih.gov.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council Digestive Diseases and Nutrition Subcommittee.

Date: May 16, 2012.

Open: 1 p.m. to 2:15 p.m.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room D, Bethesda, MD 20892.

Closed: 2:30 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room D, Bethesda, MD 20892.

Contact Person: Brent B. Stanfield, Ph.D., Director, Division of Extramural Activities, National Institute of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Blvd., Room 715, MSC 5452, Bethesda, MD 20892, (301) 594-8843, stanfibr@nidDK.nih.gov.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: www.nidDK.nih.gov/fund/divisions/DEA/Council/coundesc.htm, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes,

Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: April 13, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012-9458 Filed 4-18-12; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; 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 Child Health and Human Development Special Emphasis Panel; Neuroplasticity and the Maternal Brain.

Date: April 30, 2012.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Sherry L. Dupere, Ph.D., Director, Division of Scientific Review, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, 301-451-3415, duperes@mail.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: April 13, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012-9462 Filed 4-18-12; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Dental and Craniofacial Research Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Dental and Craniofacial Research Council.

Date: May 21, 2012.

Open: 8:30 a.m. to 12 p.m.

Agenda: Report to the Director, NIDCR.
Place: National Institutes of Health, Building 31C, 31 Center Drive, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Closed: 1 p.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health Building 31C, 31 Center Drive, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Alicia J. Dombroski, Ph.D., Director, Division of Extramural Activities, Natl Inst of Dental and Craniofacial Research, National Institutes of Health, Bethesda, MD 20892.

Information is also available on the Institute's/Center's home page: <http://www.nidcr.nih.gov/about>, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: April 13, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012-9464 Filed 4-18-12; 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; NIAID Investigator Initiated Program Project Applications.

Date: May 14, 2012.

Time: 10 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, 3121, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Paul A. Amstad, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892-7616, 301-402-7098, pamstad@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: April 13, 2012.

Anna P. Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012-9489 Filed 4-18-12; 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; NIAID Investigator Initiated Program Project Applications (P01).

Date: May 10, 2012.

Time: 10 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Louis A. Rosenthal, Ph.D., Scientific Review Officer, Scientific Review Program, DHHS/NIH/NIAID/DEA, 6700B Rockledge Drive, MSC-7616, Bethesda, MD 20892-7616, 301-496-2550, rosenthalla@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: April 13, 2012.

Anna P. Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012-9488 Filed 4-18-12; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the

provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Risk, Prevention and Health Behavior.

Date: May 7, 2012.

Time: 10 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: Martha M Faraday, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3110, MSC 7808, Bethesda, MD 20892, 301-435-3575, faradaym@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Forebrain Regulation of Pain Perception.

Date: May 9, 2012.

Time: 3:45 p.m. to 4:45 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: M Catherine Bennett, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5182, MSC 7846, Bethesda, MD 20892, 301-435-1766, bennettc3@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA Panel: Technology development for metabolomics.

Date: May 16, 2012.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Kathryn Kalasinsky, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7806, Bethesda, MD 20892, 301-402-1074, kalasinskyks@mail.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Biological Chemistry and Macromolecular Biophysics.

Date: May 17-18, 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; PAR Panel: Technologies for Healthy Independent Living.

Date: May 17, 2012.

Time: 12 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

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; Metabolomics Data Repository and Coordinating Centers Review.

Date: May 18, 2012.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mark Caprara, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7844, Bethesda, MD 20892, 301-435-1042, capraramg@mail.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: April 13, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012-9484 Filed 4-18-12; 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; Member Conflict: Risk, Prevention and Health Behavior.

Date: May 2, 2012.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Monica Basco, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3220, MSC 7808, Bethesda, MD 20892, 301-496-7010, bascoma@mail.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: April 13, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012-9482 Filed 4-18-12; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; 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 Deafness and Other Communication Disorders Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Deafness and Other Communication Disorders Advisory Council.

Date: May 31, 2012.

Closed: 8:30 a.m. to 10 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Open: 10 a.m. to 1:45 p.m.

Agenda: Staff reports on divisional, programmatic, and special activities.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Contact Person: Craig A. Jordan, Ph.D., Director, Division of Extramural Activities, NIDCD, NIH, Executive Plaza South, Room 400C, 6120 Executive Blvd., Bethesda, MD 20892-7180, 301-496-8693, jordanc@nidcd.nih.gov.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit. Information is also available on the Institute's/Center's home page: www.nidcd.nih.gov/about/groups/ndcdac/ndcdac.htm, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: April 13, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012-9478 Filed 4-18-12; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; 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 Child Health and Human Development Special Emphasis Panel; NICHD Continuing Education Training Programs.

Date: May 3, 2012.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Anne Krey, Ph.D., Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, 301-435-6908, ak41o@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: April 13, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012-9460 Filed 4-18-12; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Country of Origin Marking Requirements for Containers or Holders

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

ACTION: 30-Day notice and request for comments; Extension of an existing information collection.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security 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: Country of Origin Marking Requirements for Containers or Holders. This is a proposed extension of

an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This information collection was previously published in the **Federal Register** (77 FR 6817) on February 9, 2012, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before May 21, 2012.

ADDRESSES: Interested persons are invited to submit written comments on this information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for U.S. Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to oir_submission@omb.eop.gov or faxed to (202) 395-5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 799 9th Street NW., 5th Floor, Washington, DC 20229-1177, at 202-325-0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L. 104-13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components 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 collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information.

Title: Country of Origin Marking Requirements for Containers or Holders.

OMB Number: 1651-0057.

Form Number: None.

Abstract: Section 304 of the Tariff Act of 1930, as amended, 19 U.S.C. 1304, requires each imported article of foreign origin, or its container, to be marked in a conspicuous place as legibly, indelibly and permanently as the nature of the article or container permits, with the English name of the country of origin. The marking informs the ultimate purchaser in the United States of the name of the country in which the article was manufactured or produced. The marking requirements for containers or holders for imported merchandise are provided for by 19 CFR 134.22(b).

Current Actions: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information collected.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 250.

Estimated Number of Responses per Respondent: 40.

Estimated Time per Response: 15 seconds.

Estimated Total Annual Burden Hours: 41.

Dated: April 16, 2012.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2012-9466 Filed 4-18-12; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5603-N-28]

Notice of Submission of Proposed Information Collection to OMB; Continuum of Care Homeless Assistance Grant Application—Continuum of Care Registration

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 submission is to request a reinstatement with revisions of an expired information collection for the reporting burden associated with registration requirements that Continuum of Care Homeless Assistance (CoC) program lead agencies will be expected to complete. This submission is limited to the reporting burden under the CoC program, formerly including the Supportive Housing Program, the Shelter Plus Care program, and the Section 8 and Single Room Occupancy Program, and changed to match the new inclusive program name created through the HEARTH Act.

DATES: *Comments Due Date:* May 21, 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 (2506-0182) 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@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 affecting 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: Continuum of Care Homeless Assistance Grant Application—Continuum of Care Registration.

OMB Approval Number: 2506-0182.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use:

This submission is to request a reinstatement with revisions of an expired information collection for the reporting burden associated with registration requirements that Continuum of Care Homeless Assistance (CoC) program lead agencies will be expected to complete. This submission is limited to the reporting burden under the CoC program, formerly including the Supportive Housing Program, the Shelter Plus Care program, and the Section 8 and Single Room Occupancy Program, and changed to match the new inclusive program name created through the HEARTH Act.

Frequency of Submission: Annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	500	1		0.5		250

Total Estimated Burden Hours: 511.
Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: April 12, 2012.

Colette Pollard,

*Departmental Reports Management Officer,
Office of the Chief Information Officer.*

[FR Doc. 2012-9483 Filed 4-18-12; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5603-N-27]

Notice of Proposed Information Collection to OMB; Moving to Work Demonstration: Revision to HUD Form 50900 MTW

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of proposed information collection.

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 subject proposal.

DATES: *Comments Due Date:* May 21, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number (2577-0216) 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.

FOR FURTHER INFORMATION CONTACT: Colette Pollard., Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4178, Washington, DC 20410-5000; telephone 202.402.3400 (this is not a toll-free number) or email Colette Pollard at Colette.Pollard@hud.gov. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877-8339. (Other than the HUD USER information line and TTY numbers, telephone numbers are not toll-free.)

FOR FURTHER INFORMATION CONTACT: Arlette Mussington, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street SW., (L'Enfant Plaza, Room 2206), Washington, DC 20410; telephone (202) 402-4109, (this is not a toll-free number).

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: Moving to Work Demonstration Reporting Form.

OMB Control Number, if applicable: 2577-0216.

Description of the Need for the Information and Proposed Use

The MTW Demonstration was authorized under Section 204 of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Pub. L. 104-134, 110 Stat 1321), dated April 26, 1996. The MTW Demonstration initially permitted up to 30 PHAs to participate in the demonstration program. Nineteen PHAs were selected for participation in the MTW demonstration in response to a HUD Notice published in the **Federal Register** on December 18, 1996 and five of the 30 slots were filled through the Jobs-Plus Community Response Initiative. The 2009 and 2010 appropriations allowed HUD to add six additional PHA to participate in the MTW Demonstration. As part of HUD's 2009 budget appropriation (Section 236, title II, division I of the Omnibus Appropriations Act, 2009, enacted March 11, 2009), Congress directed HUD to add three agencies to the MTW program. As part of HUD's 2010 budget

appropriation (Section 232, title II, division A of the Consolidated Appropriations Act, 2010, enacted December 16, 2009), Congress authorized HUD to add three agencies to the MTW demonstration. All public housing authorities (PHA) are required to submit a five (5) year plan and annual plans as stated in Section 5A of the 1937 Act, as amended; however, for PHAs with specific types of Moving to Work (MTW) demonstration agreements (35 at the time of submission of this request) the MTW annual plan and annual report are submitted in lieu of the standard annual and 5 year PHA plans.

Revisions are being made to the 50900 form to streamline the Plan and Report submission process to increase the accuracy of data collection for the demonstration. Further, the form has been revised so that the respondents are not asked to provide duplicated information to the Department.

Agency form numbers, if applicable: HUD-50900.

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 number of burden hours is 4,200. The number of respondents is 35, the number of responses is 70, the frequency of response is two times a year (one for the Plan and one for the Report, and the burden hour per response is 40.5.

Status of the proposed information collection: This is a revision of an existing collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: April 12, 2012.

Colette Pollard,

*Department Reports Management Officer,
Office of the Chief Information Officer.*

[FR Doc. 2012-9485 Filed 4-18-12; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. 5636-FA-01]

Announcement of Funding Awards; Capital Fund Safety and Security Grants; Fiscal Year 2011

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement

notifies the public of funding decisions made by the Department. The public was notified of the availability of the Safety and Security funds with PIH Notice 2011–56 (Notice), which was issued October 4, 2011. Public Housing Authorities (PHAs) which met the criteria for funding contained in the Notice were funded. This announcement contains the consolidated names and addresses of this year's award recipients under the Capital Fund Safety and Security grant program.

FOR FURTHER INFORMATION CONTACT: For questions concerning the Safety and Security awards, contact Jeffrey Riddel, Director, Office of Capital Improvements, Office of Public Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 4130, Washington, DC 20410, telephone (202) 708–1640. Hearing or speech-impaired individuals may access

this number via TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: The Capital Fund Safety and Security program provides grants to PHAs for physical safety and security measures necessary to address emergency increases in crime and drug-related activity. More specifically, in accordance with Section 9 of the United States Housing Act of 1937 (42 U.S.C. 1437g) (1937 Act), and the Department of Defense and Full-Year Continuing Appropriations Act, 2011 (Pub. L. 112–10, approved April 15, 2011) (FY 2011 appropriations), Congress appropriated funding to provide assistance to “public housing agencies for emergency capital needs including safety and security measures necessary to address crime and drug-related activity as well as needs resulting from unforeseen or unpreventable emergencies and natural

disasters excluding Presidentially declared disasters occurring in fiscal year [2011].”

The FY 2011 awards in this Announcement were evaluated for funding based on the criteria in the Notice. These awards are funded from the set-aside in the FY 2011 appropriations.

In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the names, addresses, and amounts of the 37 awards made under the competition in Appendix A to this document.

Dated: April 11, 2012.

Sandra B. Henriquez,

Assistant Secretary for Public and Indian Housing.

APPENDIX A—CAPITAL FUND SAFETY AND SECURITY PROGRAM FY2011 AWARDS

Name/address of applicant	Amount funded	Project description
Housing Authority of the City of Pine Bluff, 2503 Belle Meade Dr., Pine Bluff, AR 71601–6815.	\$241,155	Security Camera System, Radios, Fencing.
San Francisco Housing Authority, 1815 Egbert Avenue, San Francisco, CA 94124.	250,000	Security Camera Surveillance System.
Housing Authority of the City of Bridgeport, 150 Highland Avenue, Bridgeport, CT 06604–3503.	240,000	Security Camera System and Central Monitoring System.
Hartford Housing Authority, 180 Overlook Terrace, Hartford, CT 06106–3728.	250,000	Security Camera System, Security Lighting, Video Recorders.
Housing Authority of the City of Meriden, 22 Church St., Meriden, CT 06450.	244,890	Key Fob Lock System.
Norwalk Housing Authority, 24½ Monroe Street, Norwalk, CT 06856–2926.	249,932	Security Access Control System/Security Lighting.
Jacksonville Housing Authority, 1300 Broad Street, Jacksonville, FL 32202–3938.	133,000	Security Camera System/Security Lighting.
Newnan Housing Authority, 48 Ball Street, Newnan, GA 30263	250,000	Security Camera System/Security Lighting.
Champaign County Housing Authority, 205 West Park Avenue, Champaign, IL 61820–3928.	164,000	Security Camera System, Security Lighting, Security Fence.
Housing Authority of the City of Freeport, 1052 West Galena Avenue, Freeport, IL 61032.	250,000	Security Lighting, Video Recorders.
Rockford Housing Authority, 223 South Winnebago Street, Rockford, IL 61102–2259.	248,100	Security Camera System and Video Monitoring System.
Saline County Housing Authority, 927 West Barnett Street, Harrisburg, IL 62946.	75,000	Security Camera System.
Housing Authority of Paducah, 2330 Ohio Street, Paducah, KY 42003–3306.	98,590	Security Camera System, Security Lighting Poles.
Housing Authority of Baltimore City, 417 E. Fayette Street, Baltimore, MD 21202–3431.	250,000	Security Camera System, Security Lighting.
Chelsea Housing Authority, 54 Locke Street, Chelsea, MA 02150–2250.	250,000	Security Camera System, Security Lighting, Entry and Alarm System.
New Bedford Housing Authority, 134 South Second Street, New Bedford, MA 02740.	250,000	Security Camera System, Security Lighting, Radios.
Worcester Housing Authority, 40 Belmont Street, Worcester, MA 01605.	250,000	Security Camera System, Security Lighting, Radios, Fencing.
Jackson Housing Commission, 301 Stewart Avenue, Jackson, MI 49201–1132.	250,000	Security Camera System.
Housing Authority of the City of Canton, 120 Faith Lane, Canton, MS 39046–3539.	185,000	Security Cameras, Fencing.
Burlington Housing Authority, 133 North Ireland Street, Burlington, NC 27217–2635.	231,335	Security Camera System.
East Carolina Regional Housing Authority, 2120 S. Slocumb St., Goldsboro, NC 27533–1315.	168,000	Security Camera Surveillance System.
Laurinburg Housing Authority, 1300 Woodlawn Drive, Laurinburg, NC 28352–5028.	221,065	Security Camera Surveillance System.

APPENDIX A—CAPITAL FUND SAFETY AND SECURITY PROGRAM FY2011 AWARDS—Continued

Name/address of applicant	Amount funded	Project description
New Bern Housing Authority, 837 South Front Street, New Bern, NC 28562-5650.	250,000	Security Camera System, Security Lighting.
Omaha Housing Authority, 540 27th St., Omaha, NE 68105-1549.	249,390	Security Lighting.
Troy Housing Authority, One Eddy's Lane, Troy, NY 12180	250,000	Security Camera System.
Cuyahoga Metropolitan Housing Authority, 120 Kinsman Road, Cleveland, OH 44104-4310.	250,000	Security Camera System, Network Video Recorders.
Tulsa Housing Authority, 415 East Independence Street, Tulsa, OK 74106-5727.	250,000	Security Camera System, Security Lighting.
Mercer County Housing Authority, 80 Jefferson Avenue, Sharon, PA 16146.	244,695	Security Camera System, Security Screen Doors, and Motion Sensor Lighting.
Central Falls Housing Authority, 30 Washington St., Central Falls, RI 02863-2842.	54,875	Security Key Lock System.
Providence Housing Authority, 100 Broad Street, Providence, RI 02903-4154.	250,000	Security Camera System.
Columbia Housing Authority, 1917 Harden Street, Columbia, SC 29204-1015.	250,000	Security Camera System, Security Lighting, Fence.
Ripley Housing Authority, 101 Northcrest Street, Ripley, TN 38063-1203.	250,000	Security Camera System, Security Lighting, Gates.
Fort Worth Housing Authority, 1201 E. 13th Street, Fort Worth, TX 76102-5764.	250,000	Security Fencing.
Houston Housing Authority, 2640 Fountain View Dr., Suite 400, Houston, TX 77057.	250,000	Security Camera System.
San Antonio Housing Authority, 818 Flores Street, San Antonio, TX 78204.	250,000	Security Cameras, Security Lighting, and Entry and Alarm System.
Wichita Falls Housing Authority, 501 Webster Street, Wichita Falls, TX 76306-2954.	250,000	Security Camera System, Security Lighting Poles.
Huntington Housing Authority, 300 7th Avenue West, Huntington, WV 25701.	250,000	Security Cameras/Network Video Recorders.

[FR Doc. 2012-9481 Filed 4-18-12; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF THE INTERIOR

Invasive Species Advisory Committee; Request for Nominations

AGENCY: Office of the Secretary, National Invasive Species Council.

ACTION: Request for Nominations for the Invasive Species Advisory Committee.

SUMMARY: The U.S. Department of the Interior, on behalf of the interdepartmental National Invasive Species Council, proposes to appoint new members to the Invasive Species Advisory Committee (ISAC). The Secretary of the Interior, acting as administrative lead, is requesting nominations for qualified persons to serve as members of the ISAC.

DATES: Nominations must be postmarked by June 18, 2012.

ADDRESSES: Nominations should be sent to Lori Williams, Executive Director, National Invasive Species Council (OS/NISC), Regular Mail: 1849 C Street NW., (MS 1201 EYE), Washington, DC 20240; Express Mail: 1201 Eye Street NW., 5th Floor, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Kelsey Brantley, Program Specialist and

ISAC Coordinator, at (202) 513-7243, fax: (202) 371-1751, or by email at Kelsey_Brantley@ios.doi.gov.

SUPPLEMENTARY INFORMATION:

Advisory Committee Scope and Objectives

The purpose and role of the ISAC are to provide advice to the National Invasive Species Council (NISC), as authorized by Executive Order 13112, on a broad array of issues including preventing the introduction of invasive species, providing for their control, and minimizing the economic, ecological, and human health impacts that invasive species cause. NISC is Co-chaired by the Secretaries of the Interior, Agriculture, and Commerce, and is charged with providing coordination, planning and leadership regarding invasive species issues. Pursuant to the Executive Order, NISC developed a 2008-2012 National Invasive Species Management Plan (Plan), which is available on the Web at http://www.invasivespecies.gov/main/nav/mn_NISC_ManagementPlan.html. NISC is responsible for effective implementation of the Plan including any revisions of the Plan, and also coordinates Federal agency activities concerning invasive species; encourages planning and action at local, tribal, state, regional and ecosystem-based levels; develops recommendations for

international cooperation in addressing invasive species; facilitates the development of a coordinated network to document, evaluate, and monitor impacts from invasive species; and facilitates information-sharing.

The role of ISAC is to maintain an intensive and regular dialogue regarding the aforementioned issues. ISAC provides advice in cooperation with stakeholders and communities of interests affected by invasive species. The ISAC usually meets up to twice per year.

After consultation with the other members of NISC, the Secretary of the Interior will actively solicit new nominees and appoint members to ISAC. Prospective members of ISAC should be knowledgeable in and represent communities of interests affected by invasive species such as: Agriculture; aquaculture; biofuel production; livestock grazing and production; landscaping, horticulture, and plant nurseries; pet industry; crop protection; marine fisheries; forest health and management; potable and irrigation water management; natural resource management and restoration; animal health protection; shipping, tourism, highways, and other transportation industries; international development and trade; public land access and management; lake, estuary,

and coastal management; hiking, camping, trail riding, and outdoor recreation; conservation organizations; biodiversity conservation; professional scientific research and education societies; urban and suburban park management; energy and mineral resource development; corporate land management; native plant conservation; bird and wildlife watching; hunting, boating, and angling; invasive plant or animal science; plant pathology; environmental education; science and environmental journalism and outreach; natural resource economics; tribal resource management; natural resource political science; and relevant areas of law and regulatory policy.

Nominees should have experience work related to invasive species planning and coordination in areas such as: developing natural resource management plans; invasive species prevention, early detection and rapid response, control, restoration, and research; multiple jurisdictional planning; integrating science and the human dimension in order to create effective solutions to complex conservation issues; international negotiations; government relations; coordinating the work of diverse groups of stakeholders to resolve complex issues and conflicts; and complying with the National Environmental Policy Act and other Federal requirements for public involvement in major conservation plans. Members will be selected in order to achieve a balanced representation of viewpoints, areas of experience, subject matter expertise, and representation of communities of interests. Members' terms are limited to three (3) years from their appointment to ISAC. Following a term, an ISAC member may request to be considered for an additional term. No member may serve on the ISAC for more than two (2) consecutive terms.

Members of the ISAC and its subcommittees serve without pay. However, while away from their homes or regular places of business in the performance of services of the ISAC, members shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the government service, as authorized by section 5703 of Title 5, United States Code. Employees of the Federal Government are not eligible for nomination or appointment to ISAC.

The Obama Administration prohibits individuals who are currently federally registered lobbyists to serve on all FACA and non-FACA boards, committees or councils.

Submitting Nominations

Nominations should be typed and must include each of the following:

1. A brief summary of no more than two (2) pages explaining the nominee's suitability to serve on the ISAC.
2. A resume or curriculum vitae.
3. A minimum of two (2) letters of reference.

All required documents must be compiled and submitted in one complete nomination package. This office will not assemble nomination packages from documentation sent piecemeal. Incomplete submissions (missing one or more of the items described above) will not be considered. Nominations must be postmarked no later than June 18, 2012, to Lori Williams, Executive Director, National Invasive Species Council (OS/NISC), Regular Mail: 1849 C Street NW., (MS 1201 EYE), Washington, DC 20240; Express Mail: 1201 Eye Street NW., 5th Floor, Washington, DC 20005.

The Secretary of the Interior, on behalf of the other members of NISC, is actively soliciting nominations of qualified minorities, women, persons with disabilities and members of low income populations to ensure that recommendations of the ISAC take into account the needs of the diverse groups served.

Dated: April 11, 2012.

Lori C. Williams,

Executive Director, National Invasive Species Council.

[FR Doc. 2012-9379 Filed 4-18-12; 8:45 am]

BILLING CODE 4310-RK-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNM940000.L1420000.BJ0000]

Notice of Filing of Plats of Survey, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Filing of Plats of Survey.

SUMMARY: The plats of survey described below are scheduled to be officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, thirty (30) calendar days from the date of this publication.

FOR FURTHER INFORMATION CONTACT:

These plats will be available for inspection in the New Mexico State Office, Bureau of Land Management, 301 Dinosaur Trail, Santa Fe, New Mexico. Copies may be obtained from this office upon payment. Contact

Marcella Montoya at 505-954-2097, or by email at:

Marcella_Montoya@nm.blm.gov, for assistance. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 to contact the above individual during normal business hours.

SUPPLEMENTARY INFORMATION:

New Mexico Principal Meridian, New Mexico (NM)

The plat, in nine sheets, representing the dependent resurvey and survey, in Township 23 North, Range 8 East, of the New Mexico Principal Meridian, accepted March 26, 2012, for Group 905 NM.

These plats are scheduled for official filing 30 days from the notice of publication in the **Federal Register**, as provided for in the BLM Manual Section 2097—Opening Orders. Notice from this office will be provided as to the date of said publication. If a protest against a survey, in accordance with 43 CFR 4.450-2, of the above plats is received prior to the date of official filing, the filing will be stayed pending consideration of the protest.

A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

A person or party who wishes to protest against any of these surveys must file a written protest with the Bureau of Land Management New Mexico State Director stating that they wish to protest.

A statement of reasons for a protest may be filed with the Notice of protest to the State Director or the statement of reasons must be filed with the State Director within thirty (30) days after the protest is filed.

Robert A. Casias,

Deputy State Director, Cadastral Survey/GeoSciences.

[FR Doc. 2012-9486 Filed 4-18-12; 8:45 am]

BILLING CODE 4310-FB-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLORW00000.L1610000.DP0000. WBSLXSS073H0000; HAG 12-0164]

Notice of Public Meeting, Eastern Washington Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Public Meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) Eastern Washington Resource Advisory Council (EWRAC) will meet as indicated below.

DATES: May 23, 2012

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. It will begin at 10 a.m. and end at 4 p.m. Members of the public will have an opportunity to address the EWRAC at 10 a.m. The meeting will be held at Big Bend Community College, 7662 N.E. Chanute Street, Moses Lake, Washington, 98837-2950. Discussion will include the Bureau of Land Management's Eastern Washington and San Juan Resource Management Plan, and the U.S. Forest Service's Colville National Forest Plan Revision.

FOR FURTHER INFORMATION CONTACT: Robert St. Clair, BLM Spokane District, 1103 N. Fancher Rd., Spokane Valley, WA 99212, or call (509) 536-1200. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1 (800) 877-8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

Daniel C. Picard,
Spokane District Manager.

[FR Doc. 2012-9457 Filed 4-18-12; 8:45 am]

BILLING CODE 4310-33-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAZG02000.L143000000.EQ0000.TAS:14X1109.241A]

Notice of Relocation of the Bureau of Land Management's Tucson Field Office in Tucson, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of relocation.

SUMMARY: This notice announces the relocation of the Bureau of Land Management's (BLM) Tucson Field Office (TFO) and the temporary closure of the office during the relocation.

FOR FURTHER INFORMATION CONTACT: Brian B. Bellow, Field Manager, BLM Tucson Field Office, 12661 East Broadway, Tucson, Arizona 85748, 520-258-7200. Persons who use a telecommunications device for the deaf

(TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

DATES: Effective April 13, 2012, the relocation begins, and the new office opens Monday, April 16, 2012.

ADDRESSES: The new BLM Tucson Field Office address will be 3201 East Universal Way, Tucson, Arizona 85756.

SUPPLEMENTARY INFORMATION: Effective at the close of business on April 12, 2012, the BLM TFO will close for the purpose of relocating. The Field Office provides access to and inspection of the official Public Records of the Federal government, and the serialized case files of active land, mineral, and grazing transactions for the TFO area. The office will reopen at its new address at 3201 East Universal Way, Tucson, Arizona 85756, at 8 a.m. on Monday, April 16, 2012. The BLM TFO telephone number will remain the same (520-258-7200). Directions to the new BLM TFO office: From I-10 and Valencia Road Exit #267, go west 2.1 miles, then turn left onto South Lisa Frank Avenue, and continue approximately 0.1 mile to East Universal Way, then turn right and proceed 0.1 mile to the new address.

Raymond Suazo,
State Director.

[FR Doc. 2012-9402 Filed 4-18-12; 8:45 am]

BILLING CODE 4130-32-P

DEPARTMENT OF THE INTERIOR

National Park Service

[4502-4025-720]

Boundary Revision of Valley Forge National Historical Park

AGENCY: National Park Service, Interior.

ACTION: Announcement of boundary revision.

SUMMARY: This notice announces the revision to the boundary of Valley Forge National Historical Park, pursuant to the authority specified below, to include adjacent and contiguous parcels of land in Montgomery County, Pennsylvania, totaling 0.73 of an acre. These parcels are depicted on Legislative Boundary Map Number 464/108056, entitled "Valley Forge National Historical Park Proposed Boundary Expansion, Montgomery County, Pennsylvania," dated June 27, 2011. This map is on file and available for inspection at the following locations: National Park

Service, Land Resources, Northeast Region, 200 Chestnut Street, Room 324, Philadelphia, PA 19106, and National Park Service, Department of the Interior, Washington, DC 20240.

SUPPLEMENTARY INFORMATION: The Act of July 4, 1976 (Pub. L. 94-337, 90 Stat. 796) provides that, after notifying the House Committee on Natural Resources and the Senate Committee on Energy and Natural Resources, the Secretary of the Interior may make minor revisions of the boundaries of the park when necessary by publication of a revised map or other boundary description in the **Federal Register**. The Committees have been notified as required. This action will add parcels of land containing a total of 0.73 of an acre to Valley Forge National Historical Park. The National Park Service proposes to acquire these parcels by donation from the individual tract owners, who have consented to the acquisition.

DATES: The effective date of this boundary revision is April 19, 2012.

FOR FURTHER INFORMATION CONTACT: Superintendent, Valley Forge National Historical Park, 1400 North Outer Line Drive, King Prussia, PA 19406, (610) 783-1037.

Dated: March 22, 2012.

Dennis R. Reidenbach,
Regional Director, Northeast Region.

[FR Doc. 2012-9263 Filed 4-18-12; 8:45 am]

BILLING CODE 4310-DJ-P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253-665]

Notice of Intent To Repatriate Cultural Items: Benton County Historical Society and Museum, Philomath, OR

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Benton County Historical Society and Museum, in consultation with the appropriate Indian tribes, has determined that the cultural items meet the definition of objects of cultural patrimony and repatriation to the Indian tribe stated below may occur if no additional claimants come forward. Representatives of any Indian tribe that believes itself to be culturally affiliated with the cultural items may contact the Benton County Historical Society and Museum.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the cultural items should contact the Benton County

Historical Society and Museum at the address below by May 21, 2012.

ADDRESSES: Mary K. Gallagher, Benton County Historical Society and Museum, 1101 Main Street, P.O. Box 35, Philomath, OR 97370, telephone (541) 929-6230.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the Benton County Historical Society and Museum, Philomath, OR, that meet the definition of objects of cultural patrimony under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Items

The 29 cultural items include: 1 basket mortar; 4 baskets; 1 acorn strainer; 1 gathering basket; 2 storage baskets; 10 trinket baskets; 1 basket lid; 2 basket bottles; 4 basketry cups and saucers; 1 basketry candlestick; 1 basketry table mat; and 1 basketry napkin ring. All of the items are from the Horner Museum which was established in 1925 on the campus of what is now Oregon State University in Corvallis, OR. In 2005, items from the Horner Museum were acquired by the Benton County Historical Society and Museum (BCHS) located in nearby Philomath, OR. At the time of the transfer, Oregon State University (OSU) was in the process of completing NAGPRA requirements for items from the Horner Museum. In the transfer agreement with OSU, the BCHS took physical custody all unclaimed NAGPRA items and is now responsible for NAGPRA claims for cultural items from the collection.

All of the above cultural items are from the collection of Mrs. James Edmond Barrett. According to notes found in the Horner Museum donor file, Mrs. Barrett was a schoolteacher in southwestern Oregon who collected these cultural items over a period of 60 years. In 1927, she loaned her collection to the Horner Museum at what was then Oregon Agricultural College (OAC) to honor her son and daughter-in-law who attended OAC. This loan was renewed in 1939 and again in 1947. In 1972, the

collection was donated to the Horner Museum by Lois Barrett, the daughter-in-law of Mrs. James Edmond Barrett. According to the 1934 catalog cards, 28 of the cultural items are identified, but one item has no provenance indicated on the original catalog card. Karuk affiliation of the objects was substantiated for 23 of the items by Martha Matthewson who acted as a consultant for OSU during the inventory process. For five of the cultural items, Ms. Matthewson indicated possible Karuk affiliation, but also suggested Yurok, Yokuts or Hupa affiliation. For one item, a trinket basket, consultants suggested affiliation to the Klamath, Grand Ronde, Warm Springs, Santa Rosa Rancheria and Karuk tribes.

On July 13, 2011, representatives of the Karuk Tribe visited the BCHS to view unclaimed cultural items. On August 15, 2011, the BCHS received a claim from the Karuk Tribe for the repatriation of 29 cultural items. The BCHS has reviewed the claim and determined that cultural affiliation to the Karuk Tribe is clearly established for 28 of the cultural items. After a review of additional evidence, the BCHS has determined that cultural affiliation to the Karuk Tribe exists for all 29 cultural items and that these cultural items meet the definition of objects of cultural patrimony.

Determinations Made by the Benton County Historical Society and Museum

Officials of the BCSM have determined that:

- Pursuant to 25 U.S.C. 3001(3)(D), the 29 cultural items described above have ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the objects of cultural patrimony and the Karuk Tribe (formerly Karuk Tribe of California).

Additional Requestors and Disposition

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the objects of cultural patrimony should contact Mary K. Gallagher, Benton County Historical Society and Museum, 1101 Main Street, PO Box 35, Philomath, OR, 97370, telephone (541) 929-6230 before May 21, 2012. Repatriation of the objects of cultural patrimony to the Karuk Tribe may proceed after that date if no additional claimants come forward.

The Benton County Historical Society and Museum is responsible for notifying

the Karuk Tribe that this notice has been published.

Dated: April 12, 2012.

David Tarler,

Acting Manager, National NAGPRA Program.

[FR Doc. 2012-9434 Filed 4-18-12; 8:45 am]

BILLING CODE 4312-50-P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253-665]

Notice of Intent To Repatriate Cultural Items: Benton County Historical Society and Museum, Philomath, OR

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Benton County Historical Society and Museum (BCHS), in consultation with the appropriate Indian tribes, has determined that the cultural items meet the definition of sacred objects and repatriation to the Indian tribe stated below may occur if no additional claimants come forward. Representatives of any Indian tribe that believes itself to be culturally affiliated with the cultural items may contact the Benton County Historical Society and Museum.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the cultural items should contact the Benton County Historical Society and Museum at the address below by May 21, 2012.

ADDRESSES: Mary K. Gallagher, Benton County Historical Society and Museum, 1101 Main Street, P.O. Box 35, Philomath, OR 97370, telephone (541) 929-6230.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of the Benton County Historical Society and Museum, Philomath, OR, that meet the definition of sacred objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Items

The nine cultural items include: 1 basket hat; 1 drum; 1 wild celery root; 1 decorated wooden projectile point; 1 elk horn purse; 1 grass and bead hair wrap; 1 necklace of dentalia shells and small round black glass beads; 1 ceremonial bow; and 1 associated arrow. All of the items are from the Horner Museum, which was established in 1925 on the campus of what is now Oregon State University in Corvallis, OR. In 2005, items from the Horner Museum were acquired by the Benton County Historical Society and Museum (BCHS) located in nearby Philomath, OR. At the time of the transfer, Oregon State University (OSU) was in the process of completing NAGPRA requirements for items from the Horner Museum. In the transfer agreement with OSU, the BCHS took physical custody all unclaimed NAGPRA items and is now responsible for NAGPRA claims for cultural items from the collection.

Six of the cultural items (the hat, the drum, the wild celery root, the elk horn purse, the projectile point, and the hair wrap) are from the collection of Mrs. James Edmond Barrett. According to notes found in the Horner Museum donor file, Mrs. Barrett was a schoolteacher in southwestern Oregon who collected these cultural items over a period of 60 years. In 1927, she loaned her collection to the Horner Museum at what was then Oregon Agricultural College (OAC) to honor her son and daughter-in-law who attended OAC. This loan was renewed in 1939 and again 1947. In 1972, the collection was donated to the Horner Museum by Lois Barrett, the daughter-in-law of Mrs. James Edmond Barrett. According to the 1934 catalog cards, three items (the elk horn purse, the wild celery root and the projectile point) originated from Happy Camp, CA, and one item (the drum) was used in religious festivals held twice a year on the Klamath River. The other two items do not have catalog cards.

Two of the cultural items (the bow and the arrow) are from the Dr. J. L. Hill collection. The J. L. Hill collection was donated to OAC in 1924 and formed the nucleus of the Horner Museum which opened in 1925. Previously, the J. L. Hill collection was housed at the Hill Museum in Albany, OR. On September 30, 1924, the *Barometer* newspaper reported, "The Hill museum of Albany, the largest private collection of natural history specimens, Indian relics, and miscellaneous articles in Oregon, has been given to the college by the heirs of Dr. J. L. Hill. The material was collected by Doctor Hill during a period of sixty

years from all parts of the earth regardless of expense" (*Barometer*, OAC, Corvallis, OR). The bow and the arrow from the Hill Collection have no original catalog card and no known provenance. Suggested affiliation, based on consultations, include Karuk, Hupa, Towla and Duckwater Shoshone.

One cultural item (the dentalia necklace) is from the collection of the Kennedy-Tartar family. This collection was donated to the Horner Museum in 1973. The original catalog card does not provide any information on the provenance of this item. Members of Kennedy-Tartar family had a connection to Siletz tribal members and donated items to the Horner Museum that clearly came from the Siletz. There are also many items in the Kennedy-Tartar collection from the Klamath tribes, much of which has been claimed. At least one piece of paper in the accession file has the word "Karuk" but there is no indication of what item is referenced.

On July 13, 2011, representatives of the Karuk Tribe visited the BCHS to view unclaimed cultural items. On August 15, 2011, the BCHS received a claim from the Karuk Tribe for the repatriation of nine cultural items. The BCHS reviewed the claim and determined that cultural affiliation to the Karuk Tribe is clearly established for six of the cultural items. On November 17, 2005, Smith River Rancheria withdrew a claim for one of the items (the basket hat) noting that after reviewing the item again they believed that in fact it was Karuk in origin. After a review of additional evidence presented by the Karuk Tribe, the BCHS has determined that cultural affiliation to the Karuk Tribe exists for all nine cultural items and that these cultural items are sacred objects that have religious significance in the practice of traditional ceremony.

Determinations Made by the Benton County Historical Society and Museum

Officials of the BCSM have determined that:

- Pursuant to 25 U.S.C. 3001(3)(C), the nine cultural items described above are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents.

- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the sacred objects and the Karuk Tribe (formerly Karuk Tribe of California).

Additional Requestors and Disposition

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the sacred objects should contact Mary K. Gallagher, Benton County Historical Society and Museum, 1101 Main Street, PO Box 35, Philomath, OR 97370, telephone (541) 929-6230 before May 21, 2012. Repatriation of the sacred objects to the Karuk Tribe may proceed after that date if no additional claimants come forward.

The Benton County Historical Society is responsible for notifying the Karuk Tribe that this notice has been published.

Dated: April 12, 2012.

David Tarler,

Acting Manager, National NAGPRA Program.

[FR Doc. 2012-9433 Filed 4-18-12; 8:45 am]

BILLING CODE 4312-50-P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253-665]

Notice of Intent To Repatriate Cultural Items: The Colorado College, Colorado Springs, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Colorado College, in consultation with the appropriate Indian tribe, has determined that the cultural items meet the definition of unassociated funerary objects and repatriation to the Hopi Tribe of Arizona may occur if no additional claimants come forward. Representatives of any Indian tribe that believes itself to be culturally affiliated with the cultural items may contact The Colorado College.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the cultural items should contact The Colorado College at the address below by May 21, 2012.

ADDRESSES: Jermyn Davis, Chief of Staff, President's Office, Colorado College, Armstrong Hall, Room 201, 14 E. Cache La Poudre, Colorado Springs, CO 80903, telephone (719) 389-6201.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of The Colorado College that meet the definition of unassociated funerary objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Items

The 11 unassociated funerary objects are one basket and 10 ceramic items. The ceramic items are four bowls; two pipes; one miniature jar; two ladles, one of which contains beans; and one pitcher. The vessel styles are brown-on-red zoomorphic; red-ware; Tsegi orange-ware; black-on-tan and red; buff-ware; and oxidized black or brown-on-buff. Between 1897 and 1898, human remains, associated and unassociated funerary objects, as well as other cultural items were removed from Canyon de Chelly, Apache County, AZ, under the auspices of the Lang Expedition of 1897–1898. Prior to 1900, General William Jackson Palmer acquired what became known as the Lang-Bixby Collection, which he subsequently transferred to The Colorado College. Beginning in the late 1960s, the Lang-Bixby Collection was transferred, along with other collections from The Colorado College Museum, through long-term loans to the Fine Arts Center (formerly known as the Taylor Museum and the Colorado Springs Fine Arts Center) and the Denver Museum of Nature & Science (formerly known as the Denver Museum of Natural History). In 1993, the Fine Arts Center included the unassociated funerary objects from the Lang-Bixby Collection in its NAGPRA summary.

The unassociated funerary objects are ancestral Puebloan based on type and style. The human remains and associated funerary objects from this collection were described in two Notices of Inventory Completion (NICs) published in the **Federal Register** (69 FR 19920, April 14, 2004, and 74 FR 48779–48780, September 24, 2009). The human remains and associated funerary objects were determined to be Ancestral Puebloan. A relationship of shared group identity can reasonably be traced between ancestral Puebloan peoples and modern Puebloan peoples based on oral tradition and scientific studies. The human remains and associated funerary objects have been repatriated to the Hopi Tribe of Arizona. A preponderance of the evidence supports cultural affiliation of the unassociated funerary objects to the Hopi Tribe of Arizona.

Determinations Made by The Colorado College

Officials of The Colorado College have determined that:

- Pursuant to 25 U.S.C. 3001(3)(B), the 11 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.

- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Hopi Tribe of Arizona.

Additional Requestors and Disposition

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary objects should contact Jermyn Davis, Chief of Staff, President's Office, Colorado College, Armstrong Hall, Room 201, 14 E. Cache La Poudre, Colorado Springs, CO 80903, telephone (719) 389–6201, before May 21, 2012. Repatriation of the unassociated funerary objects to the Hopi Tribe of Arizona may proceed after that date if no additional claimants come forward.

The Colorado College is responsible for notifying the Hopi Tribe of Arizona that this notice has been published.

Dated: April 12, 2012

David Tarler,

Acting Manager, National NAGPRA Program.

[FR Doc. 2012–9441 Filed 4–18–12; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253–665]

Notice of Intent To Repatriate Cultural Items: Museum of Indian Arts & Culture/Laboratory of Anthropology, Museum of New Mexico, Santa Fe, NM

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Museum of Indian Arts & Culture/Laboratory of Anthropology, Museum of New Mexico, in consultation with the appropriate Indian tribe, has determined that the cultural items meet the definition of unassociated funerary objects and repatriation to the Indian tribe stated below may occur if no additional claimants come forward. Representatives of any Indian tribe that

believes itself to be culturally affiliated with the cultural items may contact the Museum of Indian Arts & Culture/Laboratory of Anthropology, Museum of New Mexico.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the cultural items should contact the Museum of Indian Arts & Culture/Laboratory of Anthropology, Museum of New Mexico, at the address below by May 21, 2012.

ADDRESSES: Dr. Shelby Tisdale, Director, Museum of Indian Arts & Culture, Museum of New Mexico, P.O. Box 2087, Santa Fe, NM 87504, telephone (505) 476–1251.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the Museum of Indian Arts & Culture/Laboratory of Anthropology, Museum of New Mexico, that meet the definition of unassociated funerary objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Items

The 29 cultural items to be repatriated are funerary objects consisting of two Agua Fria glaze bowl fragments, four Agua Fria glaze-on-red bowls, one Cieneguilla glaze-on-yellow cup, one Santa Fe black-on-white bowl, one San Clemente glaze bowl, one selenite fragment, one ceramic pipe, eight pendants and pendant fragments, six bone beads from a cradle board, three lightning stones, and one fingerstone. These objects were removed from site LA 162 (Paa'ko site) in Bernalillo County, NM, during permitted excavations, conducted jointly by the Museum of New Mexico, the School of American Research, and the University of New Mexico between 1935 and 1937. Although the objects are recorded as excavated from numbered burials at site LA 162, the associated human remains are in the custody of the San Diego Museum of Man. Based on material culture, architectural features, and documentary evidence, the Paa'ko site dates to the period Pueblo IV through the early historic periods (AD 1300–1692).

Based on documentation provided by the original excavators, the cultural items have been identified as funerary objects related to specific burials at the Paa'ko site. Based on burial location and associated material culture and architecture, the burials and funerary objects have been identified as Native American. These funerary objects have been identified as ancestral to the Pueblo of Santa Ana, New Mexico, by the museum's staff in consultation with representatives of Santa Ana Pueblo and archeologists working with descendant tribes who have ancestral ties to the Galisteo Basin area of northern NM, which includes the Paa'ko site. The people who inhabited this site are linked by Native oral tradition and archeological evidence to members of the present-day Pueblo of Santa Ana, New Mexico.

Determinations Made by the Museum of Indian Arts & Culture/Laboratory of Anthropology, Museum of New Mexico

Officials of the Museum of Indian Arts & Culture/Laboratory of Anthropology, Museum of New Mexico have determined that:

- Pursuant to 25 U.S.C. 3001(3)(B), the 29 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.

- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the funerary objects and the Pueblo of Santa Ana, New Mexico.

Additional Requestors and Disposition

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the funerary objects should contact Dr. Shelby Tisdale, Director, Museum of Indian Arts & Culture, P.O. Box 2087, Santa Fe, NM 87504, telephone (505) 476-1251, before May 21, 2012. Repatriation of the funerary objects to the Pueblo of Santa Ana, New Mexico, may proceed after that date if no additional claimants come forward.

The Museum of Indian Arts & Culture/Laboratory of Anthropology, Museum of New Mexico is responsible for notifying the Pueblo of Santa Ana, New Mexico, that this notice has been published.

Dated: April 12, 2012.

David Tarler,

Acting Manager, National NAGPRA Program.

[FR Doc. 2012-9439 Filed 4-18-12; 8:45 am]

BILLING CODE 4312-50-P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253-665]

Notice of Intent To Repatriate Cultural Items: Milwaukee Public Museum, Milwaukee, WI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Milwaukee Public Museum, in consultation with the appropriate Indian tribe, has determined that the cultural items meet the definition of sacred objects and repatriation to the Indian tribe stated below may occur if no additional claimants come forward.

Representatives of any Indian tribe that believes itself to be culturally affiliated with the cultural items may contact the Milwaukee Public Museum.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the cultural items should contact the Milwaukee Public Museum at the address below by May 21, 2012.

ADDRESSES: Dawn Scher Thomae, Milwaukee Public Museum, 800 W. Wells Street, Milwaukee, WI 53233, telephone (414) 278-6157.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of the Milwaukee Public Museum that meet the definition of sacred object under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Items

The five cultural items are a water drum, a fastening ring, a drumstick, a drum head and a flour sack (accessions E65165a-e/27301) collected by anthropologist James Howard. After his

death, private donors raised money to purchase his collection for the Milwaukee Public Museum, and the collection came to the museum in December 1985. Documentation from the James Howard collection states that these items are "from the Turtle Mountain band of Plains-Ojibwa." The documentation indicates the items were given to James Howard by Joseph Greatwalker, in Rolla, ND, on December 25, 1960. The items were used in the Midewiwin ceremonies of the Turtle Mountain Band of Plains-Ojibwa, and based on the workmanship of the drum, the objects date to before 1950. The last Midewiwin rites were held in 1952 or 1953.

Review of extant documentation, including the museum catalog book, catalog cards and documentation files indicate that these objects are in the possession and control of the Milwaukee Public Museum, and no restrictions of title apply to the disposition of these materials. These items are affiliated with the Turtle Mountain Band of Chippewa Indians of North Dakota. Based on documentation, the objects were acquired from a tribal member in Rolla, ND, an area long associated with this tribe. The objects meet the definition sacred object based on the documented use of these objects during the Midewiwin ceremonies.

Determinations Made by the Milwaukee Public Museum

Officials of the Milwaukee Public Museum have determined that:

- Pursuant to 25 U.S.C. 3001(3)(C), the five cultural items described in this notice are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents.

- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the sacred objects and the Turtle Mountain Band of Chippewa Indians of North Dakota.

Additional Requestors and Disposition

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the sacred objects should contact Dawn Scher Thomae, Milwaukee Public Museum, 800 W. Wells Street, Milwaukee, WI 53233, telephone (414) 278-6157, before May 21, 2012. Repatriation of the sacred objects to the Turtle Mountain Band of Chippewa Indians of North Dakota may proceed after that date if no additional claimants come forward.

The Milwaukee Public Museum is responsible for notifying the Turtle

Mountain Band of Chippewa Indians of North Dakota that this notice has been published.

Dated: April 12, 2012.

David Tarler,

Acting Manager, National NAGPRA Program.

[FR Doc. 2012-9437 Filed 4-18-12; 8:45 am]

BILLING CODE 4312-50-P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253-665]

Notice of Intent To Repatriate Cultural Item: University of Denver Department of Anthropology and Museum of Anthropology, Denver, CO

AGENCY: National Park Service, Interior.
ACTION: Notice.

SUMMARY: The University of Denver Department of Anthropology and Museum of Anthropology, in consultation with the appropriate Indian tribes, has determined that the cultural item meets the definition of unassociated funerary object and repatriation to the Indian tribes stated below may occur if no additional claimants come forward. Representatives of any Indian tribe that believes itself to be culturally affiliated with the cultural item may contact the University of Denver Department of Anthropology and Museum of Anthropology.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the cultural item should contact the University of Denver Department of Anthropology and Museum of Anthropology at the address below by May 21, 2012.

ADDRESSES: Anne Amati, NAGPRA Coordinator/Registrar, University of Denver Department of Anthropology and Museum of Anthropology, 2000 E. Asbury, Sturm 146, Denver, CO 80208, telephone (303) 871-2687.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate a cultural item in the possession of the University of Denver Department of Anthropology and Museum of Anthropology, Denver, CO (DUMA), that meets the definition of unassociated funerary object under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of

the museum, institution, or Federal agency that has control of the Native American cultural item. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Items

The one cultural object (no. 4217) consists of burned wooden and cord wrapped fragments attached to a glass slide. The cultural object came into the possession of Fallis F. Rees at an unknown date. In 1968, Mr. Rees donated his collection, including this item, to the University of Denver.

In consultation with Santa Rosa Indian Community of the Santa Rosa Rancheria representatives, this object was determined to be an unassociated funerary object under NAGPRA. Geographical and anthropological evidence supports cultural affiliation with the Santa Rosa Indian Community of the Santa Rosa Rancheria. Museum records indicate that the burned fragments originated from a cremation burial at Vernon Mound, in Sacramento County, CA. Santa Rosa Indian Community of the Santa Rosa Rancheria representatives provided maps identifying aboriginal territory inclusive of Sacramento County as well as an ethnographic report identifying cremation as a traditional Yokut funerary practice.

Determinations Made by the University of Denver Department of Anthropology and Museum of Anthropology

Officials of the University of Denver Department of Anthropology and Museum of Anthropology have determined that:

- Pursuant to 25 U.S.C. 3001(3)(B), the one cultural item described above is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and is believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.

- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary object and the Santa Rosa Indian Community of the Santa Rosa Rancheria, California.

Additional Requestors and Disposition

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary object should contact Anne Amati, University of Denver Department of Anthropology and Museum of

Anthropology, 2000 E Asbury Ave., Sturm 146, Denver, CO 80208, telephone (303) 871-2687, before May 21, 2012. Repatriation of the unassociated funerary object to the Santa Rosa Indian Community of the Santa Rosa Rancheria, California, may proceed after that date if no additional claimants come forward.

The University of Denver Department of Anthropology and Museum of Anthropology is responsible for notifying the Buena Vista Rancheria of Me-Wuk Indians of California; California Valley Miwok Tribe, California; Chicken Ranch Rancheria of Me-Wuk Indians of California; Ione Band of Miwok Indians of California; Jackson Rancheria of Me-Wuk Indians of California; Middletown Rancheria of Pomo Indians of California; Picayune Rancheria of Chukchansi Indians of California; Santa Rosa Indian Community of the Santa Rosa Rancheria, California; Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California; Table Mountain Rancheria of California; Tule River Indian Tribe of the Tule River Reservation, California; and the Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California that this notice has been published.

Dated: April 12, 2012.

David Tarler,

Acting Manager, National NAGPRA Program.

[FR Doc. 2012-9459 Filed 4-18-12; 8:45 am]

BILLING CODE 4312-50-P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253-665]

Notice of Inventory Completion: Sheboygan County Historical Museum, Sheboygan, WI

AGENCY: National Park Service, Interior.
ACTION: Notice.

SUMMARY: The Sheboygan County Historical Museum has completed an inventory of human remains, in consultation with the appropriate Indian tribes, and has determined that there is no cultural affiliation between the remains and any present-day Indian tribe. Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains may contact the Sheboygan County Historical Museum. Disposition of the human remains to the Indian tribes stated below may occur if no additional requestors come forward.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the human remains should contact the Sheboygan County Historical Museum at the address below by May 21, 2012.

ADDRESSES: Tamara Lange, Collection Coordinator/Registrar, Sheboygan County Historical Museum, 3110 Erie Avenue, Sheboygan, WI 53081, telephone (920) 458-1103.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the Sheboygan County Historical Museum, Sheboygan, Wisconsin. The human remains are believed to have been removed from an unknown location in or adjoining to Sheboygan County, WI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Sheboygan County Historical Museum professional staff in consultation with representatives of the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bois Forte Band (Nett Lake) of the Minnesota Chippewa Tribe, Minnesota; Citizen Potawatomi Nation, Oklahoma; Flandreau Santee Sioux Tribe of South Dakota; Fond du Lac Band of the Minnesota Chippewa Tribe, Minnesota; Forest County Potawatomi Community, Wisconsin; Grand Portage Band of the Minnesota Chippewa Tribe, Minnesota; Hannahville Indian Community, Michigan; Ho-Chunk Nation of Wisconsin; Keweenaw Bay Indian Community, Michigan; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians, Michigan; Leech Lake Band of the Minnesota Chippewa Tribe, Minnesota; Lower Sioux Indian Community in the State of Minnesota; Menominee Indian Tribe of Wisconsin; Mille Lacs Band of the Minnesota

Chippewa Tribe, Minnesota; Oneida Tribe of Indians of Wisconsin; Prairie Band of Potawatomi Nation, Kansas; Prairie Island Indian Community in the State of Minnesota; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Santee Sioux Nation, Nebraska; Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Sokaogon Chippewa Community, Wisconsin; Spirit Lake Tribe, North Dakota; St. Croix Chippewa Indians of Wisconsin; Stockbridge Munsee Community, Wisconsin; Upper Sioux Community, Minnesota; White Earth Band of Minnesota Chippewa Tribe, Minnesota; and Winnebago Tribe of Nebraska (herein referred to as "The Tribes").

History and Description of the Remains

At an unknown date between 1899 and 1917, human remains representing, at minimum, one individual were removed from a site believed to have been in or adjoining to Sheboygan County, WI, by Dr. Alphonse J. Gerend. At least a portion of Dr. Gerend's collection was held at the Public Library in Sheboygan with the intention that the items be on exhibit there until a museum or other appropriate gallery was established in the city. At some time following the establishment of the Sheboygan County Historical Society in 1923, the Gerend Collection, including the human remains, was transferred to the custody of the Sheboygan County Historical Society & Museum. The exact circumstances or date of the transfer are unknown. Later efforts by staff at the Museum to inventory Dr. Gerend's collection included a 1994 inventory where the bone was misclassified as a potsherd (SCHM Object Number 3240.126). A subsequent inventory in the fall of 2009 uncovered the misidentification. The human remains consist of a single cranial fragment. No known individuals were identified. No associated funerary objects are present.

Determinations Made by the Sheboygan County Historical Museum

Officials of the Sheboygan County Historical Museum have determined that:

- Based upon non-destructive physical analysis and the history and collecting practices of the donor (Dr. Alphonse Gerend), the human remains are Native American.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the

Native American human remains and any present-day Indian tribe.

- According to final judgments of the Indian Claims Commission, the land from which the Native American human remains were removed is the aboriginal land of The Tribes.

- Multiple lines of evidence, including treaties, Acts of Congress, and Executive Orders, indicate that the land from which the Native American human remains were removed is the aboriginal land of The Tribes.

- Other credible lines of evidence indicate that the land from which the Native American human remains were removed is the aboriginal land of The Tribes.

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.

- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains is to The Tribes.

Additional Requestors and Disposition

Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains or any other Indian tribe that believes it satisfies the criteria in 43 CFR 10.11(c)(1) should contact Tamara Lange, Collection Coordinator/Registrar, Sheboygan County Historical Museum, 3110 Erie Avenue, Sheboygan, WI 53081, telephone (920) 458-1103, before May 21, 2012. Disposition of the human remains to The Tribes may proceed after that date if no additional requestors come forward.

The Sheboygan County Historical Museum is responsible for notifying The Tribes that this notice has been published.

Dated: April 12, 2012.

David Tarler,

Acting Manager, National NAGPRA Program.

[FR Doc. 2012-9467 Filed 4-18-12; 8:45 am]

BILLING CODE 4312-50-P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253-665]

Notice of Inventory Completion: University of Denver Department of Anthropology and Museum of Anthropology, Denver, CO

AGENCY: National Park Service, Interior.
ACTION: Notice.

SUMMARY: The University of Denver Department of Anthropology and Museum of Anthropology, Denver, CO, has completed an inventory of human

remains, in consultation with the appropriate Indian tribes, and has determined that there is a cultural affiliation between the human remains and present-day Indian tribes. Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains may contact the University of Denver Department of Anthropology and Museum of Anthropology. Repatriation of the human remains to the Indian tribes stated below may occur if no additional claimants come forward.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the human remains should contact the University of Denver Department of Anthropology and Museum of Anthropology at the address below by May 21, 2012.

ADDRESSES: Anne Amati, University of Denver Department of Anthropology and Museum of Anthropology, 2000 E. Asbury Avenue, Sturm Hall 146, Denver, CO 80208-0910, telephone (303) 871-2687.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the University of Denver Department of Anthropology and Museum of Anthropology, Denver, CO (DUMA). The human remains were removed from an unknown location.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by DUMA professional staff in consultation with representatives of the Santa Rosa Indian Community of the Santa Rosa Rancheria, California. DUMA sent correspondence to all Federally recognized tribes in California inviting them to consult, including all tribes related to the Yokut people (the Picayune Rancheria of Chukchansi Indians of California; Santa Rosa Indian Community of the Santa Rosa Rancheria, California; Table Mountain Rancheria of California; and the Tule River Indian Tribe of the Tule River Reservation, California). Correspondence in support of the

assessment and cultural affiliation was received from the Enterprise Rancheria of Maidu Indians of California; Karuk Tribe (formerly the Karuk Tribe of California); Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, California; and the Sherwood Valley Rancheria of Pomo Indians of California. DUMA staff responded to follow up questions from the Agua Caliente Band of Cahuilla Indians of the Agua Caliente Indian Reservation, California, and the Round Valley Indian Tribes of the Round Valley Reservation, California.

History and Description of the Remains

At an unknown date, human remains (DU 6062) representing, at minimum, one individual were removed from an unknown location in California. The human remains came into the possession of DUMA at an unknown date. No known individuals were identified. No associated funerary objects are present. The remains were marked "Digger Indian, California Mound Graves."

At an unknown date, human remains (DU 6179) representing, at minimum, one individual were removed from an unknown location in southern California. The human remains came into the possession of DUMA at an unknown date. No known individuals were identified. No associated funerary objects are present. The remains were marked "Digger Indian, So. California Mound Graves."

During consultation, Santa Rosa Indian Community of the Santa Rosa Rancheria representatives provided geographical, archeological, and historical evidence to support cultural affiliation with the Yokut people. Santa Rosa Indian Community of the Santa Rosa Rancheria representatives provided maps and written descriptions identifying the expanse of Yokut aboriginal territory in California, from the summit of the inner or Mount Diablo Range of the Coast Mountains to the upper reaches of the Sierra Foothills, from the north of Cosumne River basin to Tejon Canyon on the east, and from Carquinez Strait to Paleta on the west. They also provided archeological documentation identifying "Indian Mound" burial as a cultural aspect of the aboriginal Yokut people and historical reference for the term "Digger Indian," a slander that was applied to many California Indians, including the Yokut people.

Determinations Made by the University of Denver Department of Anthropology and Museum of Anthropology

Officials of the University of Denver Department of Anthropology and Museum of Anthropology have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of two individuals of Native American ancestry.

- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Picayune Rancheria of Chukchansi Indians of California; Santa Rosa Indian Community of the Santa Rosa Rancheria, California; Table Mountain Rancheria of California; and the Tule River Indian Tribe of the Tule River Reservation, California.

Additional Requestors and Disposition

Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains should contact Anne Amati, University of Denver Department of Anthropology and Museum of Anthropology, 2000 E. Asbury Avenue, Sturm Hall 146, Denver, CO 80208-0910, telephone (303) 871-2687, before May 21, 2012. Repatriation of the human remains to the Picayune Rancheria of Chukchansi Indians of California; Santa Rosa Indian Community of the Santa Rosa Rancheria, California; Table Mountain Rancheria of California; and the Tule River Indian Tribe of the Tule River Reservation, California, may proceed after that date if no additional claimants come forward.

The University of Denver Department of Anthropology and Museum of Anthropology is responsible for notifying the Agua Caliente Band of Cahuilla Indians of the Agua Caliente Indian Reservation, California; Enterprise Rancheria of Maidu Indians of California; Karuk Tribe (formerly the Karuk Tribe of California); Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, California; Picayune Rancheria of Chukchansi Indians of California; Round Valley Indian Tribes of the Round Valley Reservation, California; Santa Rosa Indian Community of the Santa Rosa Rancheria, California; Sherwood Valley Rancheria of Pomo Indians of California; Table Mountain Rancheria of California; and the Tule River Indian Tribe of the Tule River Reservation, California, that this notice has been published.

Dated: April 12, 2012.

David Tarler,

Acting Manager, National NAGPRA Program.

[FR Doc. 2012-9461 Filed 4-18-12; 8:45 am]

BILLING CODE 4312-50-P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253-665]

Notice of Inventory Completion: Illinois State Museum, Springfield, IL

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Illinois State Museum has completed an inventory of human remains, in consultation with the appropriate Indian tribes, and has determined that there is a likely cultural affiliation between the human remains and present-day Indian tribes.

Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains may contact the Illinois State Museum. Repatriation of the human remains to the Indian tribes stated below may occur if no additional claimants come forward.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the human remains should contact the Illinois State Museum at the address below by May 21, 2012.

ADDRESSES: Dr. Robert E. Warren, Curator of Anthropology, Illinois State Museum, 1011 East Ash Street, Springfield, IL 62703-3500, telephone (217) 524-7903.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the Illinois State Museum, Springfield, IL.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations within this notice.

Consultation

A detailed assessment of the human remains was made by Illinois State Museum professional staff in consultation with representatives of the

Cherokee Nation, Oklahoma; Eastern Band of Cherokee Indians of North Carolina; and the United Keetoowah Band of Cherokee Indians in Oklahoma.

History and Description of the Remains

Prior to 1967, human remains representing, at minimum, one individual were removed by an unidentified person or persons from a location recorded as "Big Eddy," "By-1" and "Tennessee." The human remains, consisting of one right tibia with healed periostitis (possible healed fracture), were later transferred to the Dickson Mounds Museum, Lewistown, IL, and placed in the Dickson Pathology Collection. In 1967, the Dickson Mounds Museum transferred possession and control of the human remains to the Illinois State Museum (ISM 809 541). No known individual was identified. No associated funerary objects are present.

Museum and historical records indicate the cultural affiliation of the human remains may be Cherokee. The Tennessee Department of Environment & Conservation has no listing for a "Big Eddy" site in its statewide archaeological site file. However, it is likely that "By-1" refers to site 40BY1, a village site recorded in 1936 near the confluence of South Chestuee Creek and the Hiwassee River in Bradley County, TN. Site 40BY1 is currently mapped within the boundaries of two large historic Cherokee town sites: Chestoe (40BY42) on the left (south) bank of the Hiwassee River and Chestuee (40PK2) on the right (north) bank. The names of the towns were derived from the Cherokee term *Tsistuyi*, meaning "Rabbit Place." Chestoe and Chestuee were affiliated with the Overhill division of Cherokee towns located along the Hiwassee and Little Tennessee rivers. They may have been occupied as early as 1715, when mapmaker John Herbert joined Colonel George Chicken on a diplomatic mission to the Cherokee and documented the towns. The towns were destroyed along with nine other Overhill Cherokee towns during a 1780 military campaign led by Colonels Arthur Campbell of Virginia and John Sevier of Tennessee, but the Cherokee apparently reoccupied the towns by 1799. An archaeological survey has confirmed the former existence of a village at the site. A small collection of pottery sherds collected at the site in 1936 contains one shell-tempered sherd with a rim strip that could represent Overhill Cherokee or Mississippian occupations.

A review of the skeletal morphology indicates that the individual is likely to be Native American. The Cherokee Indians are represented by three

present-day Indian tribes, the Cherokee Nation, Oklahoma; Eastern Band of Cherokee Indians of North Carolina; and United Keetoowah Band of Cherokee Indians in Oklahoma.

Determinations Made by the Illinois State Museum, Springfield, IL

Officials of the Illinois State Museum have determined that:

- Pursuant to 25 U.S.C. 3001 (9), the human remains described above represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Cherokee Nation, Oklahoma; Eastern Band of Cherokee Indians of North Carolina; and the United Keetoowah Band of Cherokee Indians in Oklahoma.

Additional Requestors and Disposition

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Dr. Robert E. Warren, Curator of Anthropology, Illinois State Museum, 1011 East Ash Street, Springfield, IL 62703-3500, telephone (217) 524-7903, before May 21, 2012. Repatriation of the human remains to the Cherokee Nation, Oklahoma; Eastern Band of Cherokee Indians of North Carolina; and the United Keetoowah Band of Cherokee Indians in Oklahoma may proceed after that date if no additional claimants come forward.

The Illinois State Museum is responsible for notifying the Cherokee Nation, Oklahoma; Eastern Band of Cherokee Indians of North Carolina; and United Keetoowah Band of Cherokee Indians in Oklahoma that this notice has been published.

Dated: April 12, 2012.

David Tarler,

Acting Manager, National NAGPRA Program.

[FR Doc. 2012-9465 Filed 4-18-12; 8:45 am]

BILLING CODE 4312-50-P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253-665]

Notice of Inventory Completion: Denver Museum of Nature & Science, Denver, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Denver Museum of Nature & Science has completed an inventory of human remains and

associated funerary objects, in consultation with the appropriate Indian tribes, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian tribes. Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects may contact the Denver Museum of Nature & Science. Repatriation of the human remains and associated funerary objects to the Indian tribes stated below may occur if no additional claimants come forward.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the human remains and associated funerary objects should contact the Denver Museum of Nature & Science at the address below by May 21, 2012.

ADDRESSES: Chip Colwell-Chanthaphonh, Denver Museum of Nature & Science, 2001 Colorado Blvd., Denver, CO 80204, telephone (303) 370-6378.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the Denver Museum of Nature & Science, Denver, CO. The human remains and associated funerary objects were removed from Kern County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Denver Museum of Nature & Science professional staff in consultation with representatives of the Picayune Rancheria of Chukchansi Indians of California; Santa Rosa Indian Community of the Santa Rosa Rancheria, California; Table Mountain Rancheria of California; and Tule River Indian Tribe of the Tule River Reservation, California (hereafter referred to as "The Tribes").

History and Description of the Remains

Sometime between 1928 and 1934, human remains representing, at

minimum, four individuals were removed from burial contexts in the area of Buena Vista Lake, Kern County, CA. Mr. George E. Smith and/or Mrs. Ethel Smith may have collected the human remains and associated funerary objects in 1928, while digging and privately collecting in the Buena Vista Lake vicinity, or sometime between 1933 and 1934 while Mr. Smith was working on an archeological excavation with Dr. W. D. Strong of the Smithsonian Institution at Buena Vista Lake. In 1951, Mary W. A. Crane and Francis V. Crane purchased the human remains and associated funerary objects from Mr. Smith's small museum in California. In 1983, the Cranes donated the human remains to the Denver Museum of Nature & Science (then called the Denver Museum of Natural History) and the museum accessioned them into the collection that same year. Two individuals are represented by cranial fragments (AC.2155). One individual is represented by two fragments of a thoracic vertebra, bonded together with an obsidian point between them (AC.2156). One individual is represented by two worn adult molars (AC.2183A) and is associated with a shell necklace (AC.2183B). No known individuals were identified. The two associated funerary objects are a projectile point and a shell necklace.

Museum records originally documented these four individuals as "California Indians." In 1994, the museum incorrectly affiliated the remains with the Yurok Tribe, though paperwork suggests they might have also been affiliated with the Mi'Wuk or Yokut. In 2003, the museum determined that the remains were "culturally unidentifiable." On February 25, 2008, the museum published a Notice of Inventory Completion (73 FR 10054-10055) affiliating other human remains and associated funerary objects from the Smiths' Buena Vista excavations with The Tribes. In 2011, new research and consultation on the remains determined that these human remains also came from the Smiths' collection efforts at Buena Vista Lake.

Based on provenience, museum records, research and consultation with tribal representatives, the human remains and associated funerary objects are determined to be Native American. The Buena Vista Lake vicinity and the Native American town of Tulamniu are in the territory occupied during the early historic period by the Southern Valley Yokuts, now known as the Tule River Indian Tribe of the Tule River Reservation, California. During consultation, representatives of the Tule River Indian Tribe of the Tule River

Reservation, California, confirmed the historic presence of their ancestors in the Buena Vista Lake area and claimed a relationship of shared group identity with the human remains. Additionally, in consultations, and with support of anthropological evidence, tribal representatives emphasized that the Buena Vista Lake vicinity relates to the Yokut people, the ancestors of The Tribes. These tribes confirmed the historic presence of their ancestors in the Buena Vista Lake area and asserted a relationship of shared group identity with the human remains.

Determinations Made by the Denver Museum of Nature & Science

Officials of the Denver Museum of Nature & Science have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described above represent the physical remains of four individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the two objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and The Tribes.

Additional Requestors and Disposition

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Chip Colwell-Chanthaphonh, Denver Museum of Nature & Science, 2001 Colorado Blvd., Denver, CO 80204, telephone (303) 370-6378, before May 21, 2012. Repatriation of the human remains and associated funerary objects to The Tribes may proceed after that date if no additional claimants come forward.

The Denver Museum of Nature & Science is responsible for notifying The Tribes that this notice has been published.

Dated: April 12, 2012.

David Tarler,

Acting Manager, National NAGPRA Program.

[FR Doc. 2012-9471 Filed 4-18-12; 8:45 am]

BILLING CODE 4310-50-P

DEPARTMENT OF THE INTERIOR**National Park Service**

[2253–665]

Notice of Inventory Completion: U.S. Department of Interior, Bureau of Reclamation, Upper Colorado Regional Office, Salt Lake City, UT, and Arizona State University, School of Human Evolution and Social Change, Tempe, AZ

AGENCY: National Park Service, Interior.
ACTION: Notice.

SUMMARY: The U.S. Department of the Interior, Bureau of Reclamation, Upper Colorado Region, Salt Lake City, UT, has completed an inventory of human remains, in consultation with the appropriate Indian tribe, and has determined that there is a cultural affiliation between the human remains and a present-day Indian tribe. Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains may contact the Bureau of Reclamation, Upper Colorado Region. Repatriation of the human remains to the Indian tribe stated below may occur if no additional claimants come forward.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the human remains should contact the agency at the address below by May 21, 2012.

ADDRESSES: Keith Waldron, U.S. Department of Interior, Bureau of Reclamation, Upper Colorado Region, 125 South State Street, Salt Lake City, UT 84138, telephone (801) 524–3816.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the Arizona State University, School of Human Evolution and Social Change, Tempe, AZ, and under the control of the U.S. Department of Interior, Bureau of Reclamation, Upper Colorado Region, Salt Lake City, UT. The human remains were removed from the pre-inundation archeological work for the Navajo Reservoir, in Archuleta and San Juan counties, NM.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Arizona State University, the Museum of New Mexico, and the U.S. Bureau of Reclamation, Upper Colorado Region, professional staffs in consultation with representatives of the Navajo Nation, Arizona, New Mexico and Utah.

History and Description of the Remains

In 1985, human remains representing, at minimum, one individual were recovered from site LA 54175, an isolated burial in San Juan County, NM, during legally authorized excavations and collections by the Complete Archaeological Services at the Navajo Reservoir. These human remains are presently curated at the Arizona State University, School of Human Evolution and Social Change. No known individuals were identified. No associated funerary objects are present. Based on the nature of the remains and the location, the burial has been identified as historic period Navajo, dating to A.D. 1700–1800.

In 1959, human remains representing, at minimum, one individual were recovered from site LA 4212 in Archuleta County, NM, during an archeological survey by the Museum of New Mexico as part of the Navajo Reservoir Project. The site is an historic structure dating to A.D. 1890–1925, and the remains were noted as “from a pot-hunted burial.” The cranium exhibits no cranial deformation, suggesting a probable Navajo affiliation; however, the cranium and mandible are not clearly identifiable as culturally affiliated with an Indian tribe. Given the totality of circumstances surrounding the acquisition of the human remains, they are most likely Navajo. These human remains are presently curated by the Arizona State University, School of Human Evolution and Social Change. No known individual was identified. No associated funerary objects are present.

In 1958, human remains representing, at minimum, one individual with possible fragments of a second individual were recovered from site LA 4072 in San Juan County, NM, during legally authorized excavations and collections by the Museum of New Mexico as part of the Navajo Reservoir Project. These human remains are presently curated by the Arizona State University, School of Human Evolution and Social Change. No known individual was identified. No associated funerary objects are present. Based on material culture, site LA 4072 has been identified as dating to the period A.D.

1500–1775 which includes both the Dinétah and Gobernador phases.

Physical anthropological traits, burial customs, geography, and oral traditions indicate affiliation of the human remains listed above with the historic and present-day Navajo Nation, Arizona, New Mexico and Utah.

Determinations Made by the U.S. Department of Interior, Bureau of Reclamation, Upper Colorado Regional Office, Salt Lake City, UT

Officials of the U.S. Bureau of Reclamation, Upper Colorado Region have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of a minimum of three individuals of Native American ancestry.

- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Navajo Nation, Arizona, New Mexico and Utah.

Additional Requestors and Disposition

Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains should contact Keith Waldron, U.S. Bureau of Reclamation, 125 South State Street, Salt Lake City, UT 84138, telephone (801) 524–3816, before May 21, 2012. Repatriation of the human remains to the Navajo Nation, Arizona, New Mexico and Utah may proceed after that date if no additional claimants come forward.

The U.S. Bureau of Reclamation, Upper Colorado Region is responsible for notifying the Navajo Nation, Arizona, New Mexico and Utah that this notice has been published.

Dated: April 12, 2012.

David Tarler,

Acting Manager, National NAGPRA Program.

[FR Doc. 2012–9436 Filed 4–18–12; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR**National Park Service**

[2253–665]

Notice of Inventory Completion: The Region of Three Oaks Museum, Three Oaks, MI

AGENCY: National Park Service, Interior.
ACTION: Notice.

SUMMARY: The Region of Three Oaks Museum has completed an inventory of human remains, in consultation with the appropriate Indian tribe, and has

determined that there is a cultural affiliation between the human remains and a present-day Indian tribe. Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains may contact The Region of Three Oaks Museum. Repatriation of the human remains to the Indian tribe stated below may occur if no additional claimants come forward.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the human remains should contact The Region of Three Oaks Museum at the address below by May 21, 2012.

ADDRESSES: Judy A Jackson Vice President, The Region of Three Oaks Museum, P.O. Box 121, Three Oaks, MI 49128, telephone (269) 612-0107.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of inventory of human remains in the possession of The Region of Three Oaks Museum. The human remains were removed from an unknown location near the river between Menominee, MI, and Marinette, WI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by The Region of Three Oaks Museum staff in consultation with representatives of the Menominee Indian Tribe of Wisconsin.

History and Description of the Remains

Prior to 1940, human remains representing, at minimum, one individual were removed from an unknown location near the river between Menominee, MI, and Marinette, WI. The human remains were found during a fishing excursion by the uncle of Lyle Perkins, a resident of Three Oaks, MI, and remained in the possession of the Perkins family until the remains were donated to The Region of Three Oaks Museum approximately eight years ago. A handwritten note from the donor's family states that the remains were analyzed by the Smithsonian Institute, but no other documentation supports this assertion.

The human remains consist of one complete human skull, possibly female. No known individual was identified. No associated funerary objects are present.

Due to the location of the recovery of the remains, it is believed the remains are Native American and are affiliated to the Menominee Indian Tribe of Wisconsin. Consultation with the Menominee Indian Tribe of Wisconsin supported this affiliation.

Determinations Made by The Region of Three Oaks Museum

Officials of The Region of Three Oaks Museum have determined that:

- Pursuant to 25 U.S.C. 3001(9), human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Menominee Indian Tribe of Wisconsin.

Additional Requestors and Disposition

Representatives of any Indian tribe that believes it to be culturally affiliated with human remains should contact Judy Jackson, Vice President, The Region of Three Oaks Museum, P.O. Box 121, Three Oaks, MI 49128, telephone (269) 612-0107 before May 21, 2012. Repatriation of the human remains to the Menominee Indian Tribe of Wisconsin may proceed after that date if no additional claimants come forward.

The Region of Three Oaks Museum is responsible for notifying the Menominee Indian Tribe of Wisconsin that this notice has been published.

Dated: April 12, 2012.

David Tarler,

Acting Manager, National NAGPRA Program.

[FR Doc. 2012-9474 Filed 4-18-12; 8:45 am]

BILLING CODE 4312-50-P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253-665]

Notice of Inventory Completion: Museum of Anthropology at Washington State University, Pullman, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Museum of Anthropology at Washington State University has completed an inventory of human remains, in consultation with the appropriate Indian tribes, and has

determined that there is a cultural affiliation between the human remains and present-day Indian tribes.

Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains may contact the Museum of Anthropology at Washington State University. Repatriation of the human remains to the Indian tribes stated below may occur if no additional claimants come forward.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the human remains should contact the Museum of Anthropology at Washington State University at the address below by May 21, 2012.

ADDRESSES: Mary Collins, WSU Museum of Anthropology, P.O. Box 644910, Pullman, WA 99164, telephone (509) 334-2812.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession and control of the Museum of Anthropology at Washington State University. The human remains were removed from Stevens County, WA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by Museum of Anthropology at Washington State University professional staff in consultation with representatives of the Confederated Tribes of the Colville Reservation, Washington, and the Spokane Tribe of the Spokane Reservation, Washington.

History and Description of the Remains

In 1979, human remains representing, at minimum, one individual were removed from an unknown location in Stevens County, WA. The remains were included in a large collection of faunal skeletons used as a comparative collection assembled by former WSU Anthropology graduate students Kent Harkins and Christopher Brown. In 2008, the comparative collection was given to the WSU Conner Museum, a unit within the School of Biological

Sciences. The human remains were recognized by the Conner Museum staff while accessioning the faunal skeletons and were transferred to the WSU Museum of Anthropology so that the NAGPRA process could be completed. No known individuals were identified. No associated funerary objects are present.

The human remains consist of a single cranium that has been described as that of an adult male Native American, determined by the physical character of the remains, particularly the dental remains. The western border of Stevens County, WA, is the eastern shore of Lake Roosevelt, the reservoir behind the Grand Coulee Dam. While available information does not confirm that the remains were removed from the shores of Lake Roosevelt, it is well known that thousands of burials have been located in the eroding lake margin sediments, and it is extremely likely that these remains were also found along the shores of Lake Roosevelt. Both the Confederated Tribes of the Colville Reservation, Washington, and the Spokane Tribe of the Spokane Reservation, Washington, have reservation lands as well as traditional lands along Lake Roosevelt.

Determinations Made by the Museum of Anthropology at Washington State University

Officials of the Museum of Anthropology at Washington State University have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Confederated Tribes of the Colville Reservation, Washington and the Spokane Tribe of the Spokane Reservation, Washington.

Additional Requestors and Disposition

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Mary Collins, WSU Museum of Anthropology, P.O. Box 644910, Pullman, WA 99164, telephone (509) 334-2812, before May 21, 2012. Repatriation of the human remains to the Confederated Tribes of the Colville Indian Reservation, Washington, may proceed after that date if no additional claimants come forward.

The Museum of Anthropology at Washington State University is responsible for notifying Confederated Tribes of the Colville Reservation,

Washington, and the Spokane Tribe of the Spokane Reservation, Washington, that this notice has been published.

Dated: April 12, 2012.

David Tarler,

Acting Manager, National NAGPRA Program.

[FR Doc. 2012-9470 Filed 4-18-12; 8:45 am]

BILLING CODE 4310-50-P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Colorado River Basin Salinity Control Advisory Council

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public meeting.

SUMMARY: The Colorado River Basin Salinity Control Advisory Council (Council) was established by the Colorado River Basin Salinity Control Act of 1974 (Pub. L. 93-320) (Act) to receive reports and advise Federal agencies on implementing the Act. In accordance with the Federal Advisory Committee Act, the Bureau of Reclamation announces that the Council will meet as detailed below. The meeting of the Council is open to the public.

DATES: The Council will convene the meeting on Thursday, May 17, 2012, at 1 p.m. and recess at approximately 5 p.m. The Council will reconvene the meeting on Friday, May 18, 2012, at 8:30 a.m. and adjourn the meeting at approximately 11:30 a.m.

ADDRESSES: The meeting will be held at the Homestead Resort, 700 North Homestead Drive, Midway, Utah 84049. Send written comments to Mr. Kib Jacobson, Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 6107, Salt Lake City, Utah 84138-1147; telephone (801) 524-3753; facsimile (801) 524-3826; email at: kjacobson@usbr.gov.

FOR FURTHER INFORMATION CONTACT: Kib Jacobson, telephone (801) 524-3753; facsimile (801) 524-3826; email at: kjacobson@usbr.gov.

SUPPLEMENTARY INFORMATION: Any member of the public may file written statements with the Council before, during, or up to 30 days after the meeting either in person or by mail. To the extent that time permits, the Council chairman will allow public presentation of oral comments at the meeting. To allow full consideration of information by Council members, written notice must be provided at least 5 days prior to the meeting. Any written comments received prior to the meeting will be

provided to Council members at the meeting.

The purpose of the meeting will be to discuss and take appropriate actions regarding the following: (1) The Basin States Program created by Public Law 110-246, which amended the Act; (2) responses to the Council Report; and (3) other items within the jurisdiction of the Council.

Public Disclosure

Before including your name, address, telephone 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.

Dated: April 12, 2012.

Larry Walkoviak,

Regional Director, Upper Colorado Region.

[FR Doc. 2012-9420 Filed 4-18-12; 8:45 am]

BILLING CODE 4310-MN-P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731-TA-313, 314, 317, and 379 (Third Review)]

Brass Sheet and Strip From France, Germany, Italy, and Japan

Determination

On the basis of the record¹ developed in the subject five-year reviews, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), that revocation of the antidumping duty orders on brass sheet and strip from France, Germany, Italy, and Japan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.²

Background

The Commission instituted these reviews on March 1, 2011 (76 FR 11509) and determined on June 6, 2011 that it would conduct full reviews (76 FR 35910, June 20, 2011). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in

¹ The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

² Commissioner Daniel R. Pearson dissenting with respect to the antidumping duty order on France.

connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on September 12, 2011 (76 FR 58299). The hearing was held in Washington, DC, on January 31, 2012, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in these reviews to the Secretary of Commerce on April 13, 2012. The views of the Commission are contained in USITC Publication 4313 (April 2012), entitled *Brass Sheet and Strip from France, Germany, Italy, and Japan: Investigation Nos. 731-TA-313, 314, 317, and 379 (Third Review)*.

By order of the Commission.

Issued: April 13, 2012.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012-9463 Filed 4-18-12; 8:45 am]

BILLING CODE 7020-02-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 *April 2, 2012 through April 6, 2012*.

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
81,092	Cordis Corporation, Subsidiary of Johnson & Johnson, Kelly Services Leased Workers.	Miami Lakes, FL	August 7, 2011.
81,092A	Leased Workers On Site at Cordis Corporation, Aten Solutions, Accureg, Acro, Advanced Energy Sysytems, APC Workforce, etc.	Miami Lakes, FL	February 13, 2010.
81,116	Clariant Corporation, Austin Industrial, Fluor Enterprises & Securitas Security Services USA.	Martin, SC	February 13, 2010.
81,189	Tecumseh Compressor Company, North American Compressor Engineering Group, Tecumseh Product, Manpower.	Ann Arbor, MI	February 13, 2010.
81,189A	Tecumseh Compressor Company, North American Compressor Engineering Group, Tecumseh Product, Manpower.	Tecumseh, MI	February 13, 2010.
81,224	Catawissa Wood and Components, Inc.	Elysburg, PA	August 18, 2011.
81,278	Milprint Packaging, LLC, Bemis Flexible Packaging	Newark, CA	February 13, 2010.
81,329	Somerset Foundries, A Subsidiary of Consolidated Industries, Inc	Somerset, PA	February 14, 2011.
81,360	Robert Bosch LLC, St. Joseph Plant (JPP), BMSN Stratosphere Quality, LLC, Allied Barton, etc.	St. Joseph, MI	February 25, 2012.
81,379	Manpower Staffing Agency, Working On-Site at International Business Machines (IBM).	Phoenix, AZ	February 3, 2011.
81,437	The Wise Company, People Source	Rector, AR	March 19, 2011.

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
81,289	Transcom Worldwide (US) Inc., Transcom Worldwide S.A., A Luxembourg Company.	Lafayette, LA	February 1, 2011.
81,292	Siemens Medical Solutions, USA, Inc., Oncology Care Systems (Radiation Oncology), Source Right Solutions.	Concord, CA	February 1, 2011.
81,297	Samsung Information Systems America, Inc., Hard Disk Drive Lab, Secure Talent Leased Workers.	San Jose, CA	February 3, 2011.
81,298	Syniverse Technologies, Inc.	Watertown, MA	February 6, 2011.
81,338	GlaxoSmithKline LLC, Global Manufacturing and Supply Division, Manpower, Strategic Resources etc.	East Durham, NY	February 15, 2011.
81,368	CitiGroup Technology, Inc. (CTI), Financial Reporting Operations, Citigroup, Inc., Adecco, Advantage, etc.	Tampa, FL	February 24, 2011.
81,393	Trim Systems Operating Corp., A Subsidiary of Commercial Vehicle Group, Staffmark Statesville.	Statesville, NC	March 1, 2011.
81,400	North American Communications, Inc., Spherion and Advantage Resource Group.	Duncansville, PA	February 27, 2011.
81,422	Thermo Fisher Scientific Milwaukee, LLC, Molecular Biology Reagents Division, Adecco Leased Workers.	Milwaukee, WI	March 14, 2011.
81,450	Schneider Electric, Including On-Site Leased Workers From Volt Workforce Solutions.	Seneca, SC	December 10, 2011.

The following certifications have been issued. The requirements of Section 222(c) (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
81,381	Coplas, Inc., A Tiercon Corp. and AGS USA Affiliate	Shreveport, LA	March 1, 2011.

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)(i)

(decline in sales or production, or both) 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
81,383	Impact Confections, SOS Staffing	Roswell, NM.	

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
81,264	Phillips-Van Heusen Corporation, Izod Women's Wholesale Division.	New York, NY.	
81,268	Follansbee Steel, Louis Berkman Company, Louis Berkman LLC WV.	Follansbee, WV.	
81,313	Wyatt VI, Inc., A Division of Wyatt Field Service Company, On Site at Hovensa Oil Refinery.	Christiansted, VI.	

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 USC 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the petitioner has requested that the petition be withdrawn.

TA-W No.	Subject firm	Location	Impact date
81,088	Unilin Flooring NC, LLC	Holden, WV.	
81,369	Versatile Entertainment, Inc.	Los Angeles, CA.	
81,418	Fortis Plastics LLC	Wilmington, OH.	
81,452	T-Mobile USA, Inc	Redmond, OR.	

The following determinations terminating investigations were issued in cases where these petitions were not filed in accordance with the requirements of 29 C.F.R. 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
81,093	Platinum Ribbon Packaging, Inc.	Port Washington, NY.	

I hereby certify that the aforementioned determinations were issued during the period of April 2, 2012 through April 6, 2012. These determinations are available on the Department's Web site tradeact/taa/taa_search_form.cfm.cfm under the searchable listing of determinations or by calling the Office of Trade Adjustment Assistance toll-free at 888-365-6822.

Dated: April 12, 2012.

Michael W. Jaffe,
Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2012-9431 Filed 4-18-12; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than April 30, 2012.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than April 30, 2012.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N-5428, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC, this 13th day of April 2012.

Michael Jaffe,
Certifying Officer, Office of Trade Adjustment Assistance.

APPENDIX

[21 TAA petitions instituted between 4/2/12 and 4/6/12]

TA-W No.	Subject firm (petitioners)	Location	Date of institution	Date of petition
81466	Gates Corporation (Company)	Charleston, MO	04/02/12	03/29/12
81467	Pro-Dex Astromec (State/One-Stop)	Carson City, NV	04/02/12	03/28/12
81468	Acuity Brands Lighting (Company)	Cochran, GA	04/02/12	03/30/12
81469	TODCO, Division of Overhead Door Corporation (Company).	Upper Sandusky, OH	04/03/12	04/02/12
81470	Capewell Horsenails (Workers)	Bloomfield, CT	04/03/12	03/27/12
81471	SNE Enterprises, Inc. (Union)	Mosinee, WI	04/03/12	03/26/12
81472	Supervalu (State/One-Stop)	Eden Prairie, MN	04/03/12	04/02/12
81473	The Hartford, Universal Underwriters Group (Workers)	Windsor, CT	04/04/12	04/02/12
81474	Wellpoint, Inc.—Albany (State/One-Stop)	Albany, NY	04/04/12	04/02/12
81475	Huntington Foam LLC (State/One-Stop)	Fort Smith, AR	04/04/12	04/04/12
81476	Wells Fargo Card Center (State/One-Stop)	Fort Dodge, IA	04/05/12	04/03/12
81477	Verizon Business Tulsa Campus (Workers)	Tulsa, OK	04/05/12	03/28/12
81478	Supermedia LLC (Workers)	Middleton, MA	04/05/12	03/29/12
81479	River Flats Testing (Union)	Appleton, WI	04/05/12	04/02/12
81480	Convergys (State/One-Stop)	Ogden, UT	04/05/12	04/04/12
81481	Quest Manufacturing (State/One-Stop)	Walsenburg, CO	04/06/12	04/05/12
81482	Quad/Graphics Jonesboro (Union)	Jonesboro, AR	04/06/12	04/05/12
81483	EMD Millipore Corporation (Company)	Gibbstown, NJ	04/06/12	03/03/12
81484	IOWA Health System—Health Information Management Department (State/One-Stop).	Des Moines, IA	04/06/12	04/06/12
81485	Convergys Corporation (Workers)	Ogden, UT	04/06/12	04/05/12
81486	First Advantage (Company)	St. Petersburg, FL	04/06/12	04/02/12

[FR Doc. 2012-9432 Filed 4-18-12; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR

Employment and Training Administration

Advisory Committee on Apprenticeship; virtual meeting

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice of a virtual meeting.

SUMMARY: Pursuant to Section 10 of the Federal Advisory Committee Act (FACA) (Pub. L. 92-463; 5 U.S.C. APP. 1), notice is hereby given to announce a open virtual meeting of the Advisory Committee on Apprenticeship (ACA) on May 9-10, 2012, which will be held online at <http://www.doleta.gov/oa/>. The ACA is a discretionary committee established by the Secretary of Labor, in accordance with FACA, as amended 5 U.S.C., App. 2, and its implementing regulations (41 CFR 101-6 and 102-3). All meetings of the ACA are open to the public. A virtual meeting of the ACA provides cost savings and a greater

degree of public participation and transparency.

DATES: The meeting will begin at approximately 1 p.m. Eastern Standard Time on Wednesday, May 9, 2012, and continues until approximately 5 p.m. The meeting will reconvene on Thursday, May 10, 2012, at approximately 1 p.m. Eastern Standard Time and adjourn at approximately 5 p.m.

FOR FURTHER INFORMATION CONTACT: The designated Federal Official, Mr. John V. Ladd, Administrator, Office of Apprenticeship, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N-5311, Washington, DC 20210. Telephone: (202) 693-2796, (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: This virtual meeting will take place via webinar and audio-video conferencing technology. Web and audio instructions to participate in this meeting will be posted at <http://www.doleta.gov/oa/>.

Members of the public are encouraged to attend the meeting virtually. For members of the public wishing to attend in person, a listening room with limited

seating will be made available upon request. The location for public attendees to attend will be: U.S. Department of Labor, Frances Perkins Building, 200 Constitution Avenue, NW., Washington, DC 20210. The agenda may be updated should priority items come before the Committee between the time of this publication and the scheduled date of the ACA meeting. For meeting updates please refer to <http://www.doleta.gov/oa/>. All meeting participants, whether attending virtually or in person, should submit a notice of intention to attend via email to John V. Ladd at oa.administrator@dol.gov, subject line "Virtual ACA Meeting." The webinar will be limited to 200 participants, unless the Office of Apprenticeship receives more than 200 submissions to attend. If individuals have special needs and/or disabilities that will require special accommodations, please contact Kenya Huckaby on (202) 693-3795 no later than Wednesday, May 2, 2012, to request for arrangements to be made.

Any member of the public who wishes to file written data or comments pertaining to the agenda may do so by sending the data or comments to Mr. John V. Ladd, Administrator via email at

oa.administrator@dol.gov, subject line "Virtual ACA Meeting," or submitting to the Office of Apprenticeship, Employment and Training Administration, U.S. Department of Labor, Room N-5311, 200 Constitution Avenue NW., Washington, DC 20210. Such submissions must be received by Wednesday, May 2, 2012, to be included in the record for the meeting.

Purpose of the Meeting and Topics To Be Discussed

The purpose of the meeting is to consider several policy matters affecting Registered Apprenticeship programs. The meeting will primarily focus on planning for activities in support of the 75th Anniversary of the signing of National Apprenticeship Act of 1937, to include:

- Discussion of the nature, structure, location and date of a culminating event this summer;
- Planning for National Apprenticeship Month including tours of innovative and successful Registered Apprenticeship programs and partnerships (to be scheduled in advance of culminating event);
- Review of *Trailblazer and Innovator* submissions for the 21st Century Registered Apprenticeship Challenge.

Additional topics to be covered during the meeting include:

- Workgroup Report-Outs and Open Committee Discussion
- Regulatory Updates (as needed)
- Update on Veterans Opportunity to Work to Hire Heroes Act of 2011
- Other Matters of Interest to the Apprenticeship Community
- Public Comment

Any member of the public who wishes to speak at the meeting should indicate the nature of the intended presentation and the amount of time needed by furnishing a written statement to the Designated Federal Official, Mr. John V. Ladd, by Wednesday, May 2, 2012. The Chairperson will announce at the beginning of the meeting the extent to which time will permit the granting of such requests.

Signed at Washington, DC, this 13th day of April, 2012.

Jane Oates,

Assistant Secretary for the Employment and Training Administration.

[FR Doc. 2012-9430 Filed 4-18-12; 8:45 am]

BILLING CODE 4510-FR-P

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting; Agenda

TIME AND DATE: 9:30 a.m., Tuesday, April 24, 2012.

PLACE: NTSB Conference Center, 429 L'Enfant Plaza SW., Washington, DC 20594.

STATUS: The TWO items are open to the public.

MATTERS TO BE CONSIDERED:

- 8225A Marine Accident Report—
Allision of Passenger Ferry *Andrew J. Barberi* With St. George Terminal, Staten Island, New York, May 8, 2010.
- 8400 Railroad Accident Report—
Collision of BNSF Coal Train With the Rear End of Standing BNSF Maintenance-of-Way Equipment Train, Red Oak, Iowa, April 17, 2011 (DCA-11-FR-002)

NEWS MEDIA CONTACT: Telephone: (202) 314-6100.

The press and public may enter the NTSB Conference Center one hour prior to the meeting for set up and seating.

Individuals requesting specific accommodations should contact Rochelle Hall at (202) 314-6305 by Friday, April 20, 2012.

The public may view the meeting via a live or archived webcast by accessing a link under "News & Events" on the NTSB home page at www.nts.gov.

Schedule updates including weather-related cancellations are also available at www.nts.gov.

FOR FURTHER INFORMATION CONTACT:

Candi Bing, (202) 314-6403 or by email at bingc@nts.gov.

Dated: April 16, 2012.

Candi R. Bing,

Federal Register Liaison Officer.

[FR Doc. 2012-9507 Filed 4-17-12; 4:15 pm]

BILLING CODE 7533-01-P

NUCLEAR REGULATORY COMMISSION

[NRC-2012-0070]

Updated Aging Management Criteria for Reactor Vessel Internal Components of Pressurized Water Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft interim staff guidance; Request for public comment; Correction.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is supplementing a notice published in the **Federal Register** on March 20, 2012

(77 FR 16270), that requested public comments on draft license renewal interim staff guidance (LR-ISG), LR-ISG-2011-04, "Updated Aging Management Criteria for PWR Reactor Vessel Internal Components."

The original notice provided the ADAMS Accession Number for the main body of LR-ISG-2011-04 but did not include accession numbers for Appendices A and B of the LR-ISG. This supplement provides the appropriate ADAMS Accession Numbers for the LR-ISG in its entirety, and does not change any other information in the original notice for public comment.

FOR FURTHER INFORMATION CONTACT: Ms. Evelyn Gettys, Division of License Renewal, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-4029; email: Evelyn.Gettys@nrc.gov.

SUPPLEMENTARY INFORMATION: On March 20, 2012 (77 FR 16270), the NRC published a notice requesting public comments on draft LR-ISG-2011-04, "Updated Aging Management Criteria for PWR Reactor Vessel Internal Components." In that publication on page 16271, first column under the section titled "**SUPPLEMENTARY INFORMATION:** Accessing Information and Submitting Comments; A. *Accessing Information*," second bulleted point delete "Draft LR-ISG-2011-04 is available electronically under ADAMS Accession No. ML12004A149. Replace deletion with "The body for Draft LR-ISG-2011-04 is available electronically under ADAMS Accession No. ML12004A149 and Appendices for Draft LR-ISG-2011-04 are available electronically under ADAMS Accession No. ML12004A150."

Dated at Rockville, Maryland, this 13th day of April, 2012.

For the Nuclear Regulatory Commission.

Mark S. Delligatti,

Deputy Director, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. 2012-9423 Filed 4-18-12; 8:45 am]

BILLING CODE 7590-01-P

OFFICE OF PERSONNEL MANAGEMENT

Hispanic Council on Federal Employment

AGENCY: Office of Personnel Management.

ACTION: Scheduling of council meeting.

SUMMARY: The Hispanic Council on Federal Employment (HCFE) will hold a

meeting on Friday, May 4, 2012, at the time and location shown below. The Council is an advisory committee composed of representatives from Hispanic organizations and senior government officials. Along with its other responsibilities, the Council shall advise the Director of the Office of Personnel Management on matters involving the recruitment, hiring, and advancement of Hispanics in the Federal workforce. The Council is co-chaired by the Chief of Staff of the Office of Personnel Management and the Assistant Secretary for Human Resources and Administration at the Department of Veterans Affairs.

The meeting is open to the public. Please contact the Office of Personnel Management at the address shown below if you wish to present material to the Council at the meeting. The manner and time prescribed for presentations may be limited, depending upon the number of parties that express interest in presenting information.

DATES: May 4th, 2012, from 3–5 p.m.

Location: U.S. Office of Personnel Management, Theodore Roosevelt Building, the Pendleton, 5th Floor, 1900 E St. NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Veronica E. Villalobos, Director for the Office of Diversity and Inclusion, Office of Personnel Management, 1900 E St. NW., Suite 5H35, Washington, DC 20415. Phone (202) 606–0040; Fax (202) 606–2183; or email at Jesse.Frank@opm.gov.

U.S. Office of Personnel Management.

John Berry,
Director.

[FR Doc. 2012–9469 Filed 4–18–12; 8:45 am]

BILLING CODE 6325–46–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 6c–7; SEC File No. 270–269; OMB Control No. 3235–0276.

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 (the “Commission”) has submitted to the Office of Management and Budget a request for extension of the previously

approved collection of information discussed below.

Rule 6c–7 (17 CFR 270.6c–7) under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) (“1940 Act”) provides exemption from certain provisions of Sections 22(e) and 27 of the 1940 Act for registered separate accounts offering variable annuity contracts to certain employees of Texas institutions of higher education participating in the Texas Optional Retirement Program. There are approximately 50 registrants governed by Rule 6c–7. The burden of compliance with Rule 6c–7, in connection with the registrants obtaining from a purchaser, prior to or at the time of purchase, a signed document acknowledging the restrictions on redeemability imposed by Texas law, is estimated to be approximately 3 minutes per response for each of approximately 2400 purchasers annually (at an estimated \$67 per hour),¹ for a total annual burden of 120 hours (at a total annual cost of \$8,040).

Rule 6c–7 requires that the separate account’s registration statement under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) include a representation that Rule 6c–7 is being relied upon and is being complied with. This requirement enhances the Commission’s ability to monitor utilization of and compliance with the rule. There are no recordkeeping requirements with respect to Rule 6c–7.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules or forms. The Commission does not include in the estimate of average burden hours the time preparing registration statements and sales literature disclosure regarding the restrictions on redeemability imposed by Texas law. The estimate of burden hours for completing the relevant registration statements are reported on the separate PRA submissions for those statements. (See the separate PRA submissions for Form N–3 (17 CFR 274.11b) and Form N–4 (17 CFR 274.11c.)

Complying with the collection of information requirements of the rules is necessary to obtain a benefit. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it

¹ \$67/hour figure for a Compliance Clerk is from SIFMA’s Office Salaries in the Securities Industry 2010, modified by Commission staff to account for an 1800-hour work year and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead.

displays a currently valid control number.

The public may view the background documentation for this information collection at the following Web site, www.reginfo.gov. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: Shagufta_Ahmed@omb.eop.gov; and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o RemiPavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an email to: PRA_Mailbox@sec.gov. Comments must be submitted to OMB within 30 days of this notice.

Dated: April 13, 2012.

Kevin M. O’Neill,
Deputy Secretary.

[FR Doc. 2012–9411 Filed 4–18–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 11a–2; SEC File No. 270–267; OMB Control No. 3235–0272.

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 (the “Commission”) has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 11a–2 (17 CFR 270.11a–2) under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) permits certain registered insurance company separate accounts, subject to certain conditions, to make exchange offers without prior approval by the Commission of the terms of those offers. Rule 11a–2 requires disclosure, in certain registration statements filed pursuant to the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) of any administrative fee or sales load imposed in connection with an exchange offer.

There are currently 693 registrants governed by Rule 11a–2. The Commission includes the estimated

burden of complying with the information collection required by Rule 11a-2 in the total number of burden hours estimated for completing the relevant registration statements and reports the burden of Rule 11a-2 in the separate PRA submissions for those registration statements (see the separate PRA submissions for Form N-3 (17 CFR 274.11b), Form N-4 (17 CFR 274.11c) and Form N-6 (17 CFR 274.11d). The Commission is requesting a burden of one hour for Rule 11a-2 for administrative purposes.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules or forms. With regard to Rule 11a-2, the Commission includes the estimate of burden hours in the total number of burden hours estimated for completing the relevant registration statements and reported on the separate PRA submissions for those statements (see the separate PRA submissions for Form N-3, Form N-4 and Form N-6).

The information collection requirements imposed by Rule 11a-2 are mandatory. Responses to the collection of information will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following Web site, www.reginfo.gov. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: Shagufta_Ahmed@omb.eop.gov; and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an email to: PRA_Mailbox@sec.gov. Comments must be submitted to OMB within 30 days of this notice.

Dated: April 13, 2012.

Kevin M. O'Neill,
Deputy Secretary.

[FR Doc. 2012-9412 Filed 4-18-12; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549-0213.

Extension:

Rule 12d1-1; SEC File No. 270-526; OMB Control No. 3235-0584.

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 (the "Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

An investment company ("fund") is generally limited in the amount of securities the fund ("acquiring fund") can acquire from another fund ("acquired fund"). Section 12(d) of the Investment Company Act of 1940 (the "Investment Company Act" or "Act")¹ provides that a registered fund (and companies it controls) cannot:

- Acquire more than three percent of another fund's securities;
- Invest more than five percent of its own assets in another fund; or
- Invest more than ten percent of its own assets in other funds in the aggregate.²

In addition, a registered open-end fund, its principal underwriter, and any registered broker or dealer cannot sell that fund's shares to another fund if, as a result:

- The acquiring fund (and any companies it controls) owns more than three percent of the acquired fund's stock; or
- All acquiring funds (and companies they control) in the aggregate own more than ten percent of the acquired fund's stock.³

Rule 12d1-1 under the Act provides an exemption from these limitations for "cash sweep" arrangements in which a fund invests all or a portion of its available cash in a money market fund rather than directly in short-term instruments.⁴ An acquiring fund relying on the exemption may not pay a sales load, distribution fee, or service fee on acquired fund shares, or if it does, the

acquiring fund's investment adviser must waive a sufficient amount of its advisory fee to offset the cost of the loads or distribution fees.⁵ The acquired fund may be a fund in the same fund complex or in a different fund complex. In addition to providing an exemption from section 12(d)(1) of the Act, the rule provides exemptions from section 17(a) of the Act and rule 17d-1 thereunder, which restrict a fund's ability to enter into transactions and joint arrangements with affiliated persons.⁶ These provisions would otherwise prohibit an acquiring fund from investing in a money market fund in the same fund complex,⁷ and prohibit a fund that acquires five percent or more of the securities of a money market fund in another fund complex from making any additional investments in the money market fund.⁸

The rule also permits a registered fund to rely on the exemption to invest in an unregistered money market fund that limits its investments to those in which a registered money market fund may invest under rule 2a-7 under the Act, and undertakes to comply with all the other provisions of rule 2a-7.⁹ In addition, the acquiring fund must reasonably believe that the unregistered money market fund (i) operates in compliance with rule 2a-7, (ii) complies with sections 17(a), (d), (e), 18, and 22(e) of the Act¹⁰ as if it were a registered open-end fund, (iii) has adopted procedures designed to ensure that it complies with these statutory provisions, (iv) maintains the records required by rules 31a-1(b)(1), 31a-1(b)(2)(ii), 31a-1(b)(2)(iv), and 31a-

⁵ See Rule 12d1-1(b)(1).

⁶ See 15 U.S.C. 80a-17(a), 15 U.S.C. 80a-17(d); 17 CFR 270.17d-1.

⁷ An affiliated person of a fund includes any person directly or indirectly controlling, controlled by, or under common control with such other person. See 15 U.S.C. 80a-2(a)(3) (definition of "affiliated person"). Most funds today are organized by an investment adviser that advises or provides administrative services to other funds in the same complex. Funds in a fund complex are generally under common control of an investment adviser or other person exercising a controlling influence over the management or policies of the funds. See 15 U.S.C. 80a-2(a)(9) (definition of "control"). Not all advisers control funds they advise. The determination of whether a fund is under the control of its adviser, officers, or directors depends on all the relevant facts and circumstances. See Investment Company Mergers, Investment Company Act Release No. 25259 (Nov. 8, 2001) [66 FR 57602 (Nov. 15, 2001)], at n.11. To the extent that an acquiring fund in a fund complex is under common control with a money market fund in the same complex, the funds would rely on the rule's exemptions from section 17(a) and rule 17d-1.

⁸ See 15 U.S.C. 80a-2(a)(3)(A), (B).

⁹ See 17 CFR 270.2a-7.

¹⁰ See 15 U.S.C. 80a-17(a), 15 U.S.C. 80a-17(d), 15 U.S.C. 80a-17(e), 15 U.S.C. 80a-18, 15 U.S.C. 80a-22(e).

¹ See 15 U.S.C. 80a.

² See 15 U.S.C. 80a-12(d)(1)(A). If an acquiring fund is not registered, these limitations apply only with respect to the acquiring fund's acquisition of registered funds.

³ See 15 U.S.C. 80a-12(d)(1)(B).

⁴ See 17 CFR 270.12d1-1.

1(b)(9);¹¹ and (v) preserves permanently, the first two years in an easily accessible place, all books and records required to be made under these rules.

Rule 2a-7 contains certain collection of information requirements. An unregistered money market fund that complies with rule 2a-7 would be subject to these collection of information requirements. In addition, the recordkeeping requirements under rule 31a-1 with which the acquiring fund reasonably believes the unregistered money market fund complies are collections of information for the unregistered money market fund. The adoption of procedures by unregistered money market funds to ensure that they comply with sections 17(a), (d), (e), 18, and 22(e) of the Act also constitute collections of information. By allowing funds to invest in registered and unregistered money market funds, rule 12d1-1 is intended to provide funds greater options for cash management. In order for a registered fund to rely on the exemption to invest in an unregistered money market fund, the unregistered money market fund must comply with certain collection of information requirements for registered money market funds. These requirements are intended to ensure that the unregistered money market fund has established procedures for collecting the information necessary to make adequate credit reviews of securities in its portfolio, as well as other recordkeeping requirements that will assist the acquiring fund in overseeing the unregistered money market fund (and Commission staff in its examination of the unregistered money market fund's adviser).

The number of unregistered money market funds that would be affected by the proposal is an estimate based on the number of Commission exemptive applications that the Commission received in the past that sought relief for registered funds to purchase shares in an unregistered money market fund in excess of the section 12(d)(1) limits. The hour burden estimates for the condition that an unregistered money market fund comply with rule 2a-7 are based on the burden hours included in the Commission's 2009 and 2010 PRA submissions regarding rule 2a-7 ("rule 2a-7 submissions").¹² The estimated

average burden hours in this collection of information are made solely for purposes of the Paperwork Reduction Act and are not derived from a quantitative, comprehensive or even representative survey or study of the burdens associated with Commission rules and forms.

In the rule 2a-7 submissions, Commission staff made the following estimates with respect to aggregate annual hour and cost burdens for collections of information for each existing registered money market fund:

Documentation of credit risk analyses, and determinations regarding adjustable rate securities, asset backed securities, and securities subject to a demand feature or guarantee:

81 responses
410 hours of professional time
Cost: \$79,130

Public Web site posting of monthly portfolio information:

12 responses
4.4 burden hours of professional time
Cost: \$12,584

The staff estimates that registered funds currently invest in 30 unregistered money market funds in excess of the statutory limits under rule 12d1-1.¹³ Each of these unregistered money market funds engages in the collections of information described above. Accordingly, the staff estimates that unregistered money market funds complying with the collections of information described above engage in a total of 2790 annual responses under rule 12d1-1,¹⁴ the aggregate annual burden hours associated with these

Exchange Commission, Request for OMB Approval of Revision for Approved Collection for Rule 2a-7 under the Investment Company Act of 1940 (OMB Control No. 3235-0268) (approved April 18, 2010).

¹³ This estimate is based on the number of applications seeking exemptions to invest in unregistered money market funds filed with the Commission in 2005 (40), adjusted by the percentage change in registered money market funds from 2005 to November 2011 (870 to 641, according to the Investment Company Institute). This estimate may be understated because applicants generally did not identify the name or number of unregistered money market funds in which registered funds intended to invest, and each application also applies to unregistered money market funds to be organized in the future. Because the Commission adopted rule 12d1-1 in June 2006, 2005 is the last full year in which the Commission received applications seeking an exemption to invest in unregistered money market funds.

¹⁴ The estimate is based on the following calculations: (30 funds × 81 responses for documentation of credit analyses and other determinations) = 2340 responses. (30 funds × 12 responses for public Web site posting) = 360 responses. 2340 responses + 360 responses = 2790 responses.

responses is 12,432,¹⁵ and the aggregate annual cost to funds is \$2.75 million.¹⁶

In the rule 2a-7 submissions, Commission staff further estimated the aggregate annual hour and cost burdens for collections of information for fund complexes with registered money market funds as follows:

Review and revise procedures concerning stress testing:

1 response
7 burden hours of professional and director time

Cost: \$5650

Draft, compile, and provide stress testing reports to board of directors:

10 responses
27 burden hours of director, professional, and support staff time

Cost: \$69,990

Maintain records of stress testing reports to board of directors:

10 responses
0.2 burden hours of support staff time
Cost: \$103

Maintain records of creditworthiness evaluations of repurchase counterparties:

1 response
2 burden hours of support staff time
Cost: \$124

Reporting of rule 17a-9 transactions:¹⁷

1 response
1 burden hour of legal time
Cost: \$305

In the rule 2a-7 submissions, Commission staff estimated that there are 163 fund complexes with 719 registered money market funds subject to rule 2a-7. The staff estimates that there are 30 fund complexes with unregistered money market funds invested in by mutual funds in excess of the statutory limits under rule 12d1-1.¹⁸ Each of these fund complexes engages in the collections of information described above. Accordingly, the staff estimates that these fund complexes complying with the collections of information described above engage in a total of 690 annual responses under rule 12d1-1,¹⁹ the aggregate annual burden

¹⁵ This estimate is based on the following calculations: (30 funds × 410 hours for documentation of credit analyses and other determinations) = 12,300 hours. (30 funds × 4.4 hours for public Web site posting) = 132 hours. 12,300 hours + 132 hours = 12,432 hours.

¹⁶ This estimate is based on the following calculations: (30 funds × \$79,130) = \$2,373,900. (30 funds × \$12,584) = \$377,520. \$2,373,900 + \$377,520 = \$2,751,420.

¹⁷ See 17 CFR 270.17a-9.

¹⁸ Given the fact that exemptive applications are generally filed on behalf of fund complexes rather than individual funds, the staff estimates that each of the exemptive applications upon which its estimates of the number of unregistered money market funds is based represents a separate fund complex. See *supra* note 13.

¹⁹ The estimate is based on the following calculations: (30 fund complexes × 1 response for

¹¹ See 17 CFR 270.31a-1(b)(1), 17 CFR 270.31a-1(b)(2)(ii), 17 CFR 270.31a-1(b)(2)(iv), 17 CFR 270.31a-1(b)(9).

¹² Securities and Exchange Commission, Request for OMB Approval of Extension for Approved Collection for Rule 2a-7 under the Investment Company Act of 1940 (OMB Control No. 3235-0268) (approved October 13, 2009); Securities and

hours associated with these responses is 1116,²⁰ and the aggregate annual cost to funds is \$2,285,160.²¹

In the rule 2a–7 submissions, the staff further estimated the aggregate annual burdens for registered money market funds that amend their board procedures as follows:

Amendment of procedures designed to stabilize the fund's net asset value:
1 response

2.4 burden hours of director time

Cost: \$2,340

Consistent with the estimate in the rule 2a–7 submissions, Commission staff estimates that approximately ¼, or 8, unregistered money market funds review and amend their board procedures each year. Accordingly, the staff estimates that unregistered money market funds complying with this collection of information requirement engage in a total of 8 annual responses under rule 12d1–1,²² the aggregate annual burden hours associated with these responses is 19,²³ and the aggregate annual cost to funds to comply with this collection of information is \$18,720.²⁴

In the rule 2a–7 submissions, Commission staff further estimated the aggregate annual burdens for registered money market funds that experience an

revision of procedures concerning stress testing) = 30 responses. (30 fund complexes × 10 responses to provide stress testing reports) = 300 responses. (30 fund complexes × 10 responses to maintain stress testing reports) = 300 responses. (30 fund complexes × 1 response to maintain records of creditworthiness) = 30 responses. (30 fund complexes × 1 response for reporting of rule 17a–9 transactions) = 30 responses. 30 responses + 300 responses + 300 responses + 30 responses + 30 responses = 690 responses.

²⁰ This estimate is based on the following calculations: (30 fund complexes × 7 hours for revision of procedures concerning stress testing) = 210 hours. (30 fund complexes × 27 hours to provide stress testing reports) = 810 hours. (30 fund complexes × 0.2 hours to maintain stress testing reports) = 6 hours. (30 fund complexes × 2 hours to maintain records of creditworthiness) = 60 hours. (30 fund complexes × 1 hour for reporting of rule 17a–9 transactions) = 30 hours. 210 hours + 810 hours + 6 hours + 60 hours + 30 hours = 1116 hours.

²¹ This estimate is based on the following calculations: (30 fund complexes × \$5650 for revision of procedures concerning stress testing) = \$169,500. (30 fund complexes × \$69,990 to provide stress testing reports) = \$2,099,700. (30 fund complexes × \$103 to maintain stress testing reports) = \$3,090. (30 fund complexes × \$124 to maintain records of creditworthiness) = \$3,720. (30 fund complexes × \$305 for reporting of rule 17a–9 transactions) = \$9,150. \$169,500 + \$2,099,700 + \$3,090 + \$3,720 + \$9,150 = \$2,285,160.

²² The estimate is based on the following calculation: (8 funds × 1 response for board review and amendment of procedures) = 8 responses.

²³ This estimate is based on the following calculation: (8 funds × 2.4 hours for review and amendment of procedures) = 19.2 hours.

²⁴ This estimate is based on the following calculation: (8 funds × \$2,340) = \$18,720.

event of default or insolvency as follows:

Written record of board determinations and actions related to failure of a security to meet certain eligibility standards or an event of default of default or insolvency:
2 responses

1 burden hour of legal time

Cost: \$270

Notice to Commission of an event of default or insolvency:
1 response

1.5 burden hours of legal time

Cost: \$405

Consistent with the estimate in the rule 2a–7 submissions, Commission staff estimates that approximately 2 percent, or 1, unregistered money market fund experiences an event of default or insolvency each year. Accordingly, the staff estimates that one unregistered money market fund will comply with these collection of information requirements and engage in 3 annual responses under rule 12d1–1,²⁵ the aggregate annual burden hours associated with these responses is 2.5,²⁶ and the aggregate annual cost to funds is \$675.²⁷

In the rule 2a–7 submissions, Commission staff further estimated the aggregate annual burdens for newly registered money market funds as follows:

Establishment of written procedures designed to stabilize the fund's net asset value and guidelines for delegating board authority for determinations under the rule:

1 response

15.5 hours of director, legal, and

support staff time

Cost: \$5,610.

Adopt procedures concerning stress testing:

1 response per fund complex

8.33 burden hours of professional and

director time per fund complex

Cost: \$6,017 per fund complex

Commission staff estimates that the proportion of unregistered money market funds that intend to newly undertake the collection of information burdens of rule 2a–7 will be similar to the proportion of money market funds that are newly registered. Because of the recent decrease in registered money market funds and the lack of newly registered money market funds, the staff

²⁵ The estimate is based on the following calculations: (1 fund × 2 responses) + (1 fund × 1 response) = 3 responses.

²⁶ This estimate is based on the following calculations: (1 fund × 1 hour) + (1 fund × 1.5 hours) = 2.5 hours.

²⁷ This estimate is based on the following calculations: (1 fund × \$270) + (1 fund × \$405) = \$675.

believes that there will be no unregistered money market funds that will undertake the collections of information required for newly registered money market funds.²⁸ As a result, the staff estimates that there will be no burdens associated with these collection of information requirements.

Accordingly, the estimated total number of annual responses under rule 12d1–1 for the collections of information described in the rule 2a–7 submissions is 3,491, the aggregate annual burden hours associated with these responses is 13,570, and the aggregate cost to funds is \$5.1 million.²⁹

Rules 31a–1(b)(1), 31a–1(b)(2)(ii), 31a–1(b)(2)(iv), and 31a–1(b)(9) require registered funds to keep certain records, which include journals and general and auxiliary ledgers, including ledgers for each portfolio security and each shareholder of record of the fund. Most of the records required to be maintained by the rule are the type that generally would be maintained as a matter of good business practice and to prepare the unregistered money market fund's financial statements.

Accordingly, Commission staff estimates that the requirements under rules 31a–1(b)(1), 31a–1(b)(2)(ii), 31a–1(b)(2)(iv), and 31a–1(b)(9) would not impose any additional burden because the costs of maintaining these records would be incurred by unregistered money market funds in any case to keep books and records that are necessary to prepare financial statements for shareholders, to prepare the fund's annual income tax returns, and as a normal business custom.

Rule 12d1–1 also requires unregistered money market funds in which registered funds invest to adopt procedures designed to ensure that the unregistered money market funds comply with sections 17(a), (d), (e), and 22(e) of the Act. This is a one-time collection of information requirement that applies to unregistered money market funds that intend to comply with the requirements of rule 12d1–1. As discussed above, Commission staff estimates that because of the recent decrease in registered money market funds and the lack of newly registered money market funds there will be no unregistered money market funds that will undertake the collections of information required for newly

²⁸ See *supra* note 13.

²⁹ These estimates are based upon the following calculations: 2790 + 690 + 8 + 3 = 3,491 annual responses; 12,432 + 1,116 + 19 + 2.5 = 13,569.5 burden hours; and \$2,751,420 + \$2,285,160 + \$18,720 + 675 = \$5,055,975.

registered money market funds.³⁰ For similar reasons, the Commission staff estimates that there will be no registered money market funds that will adopt procedures designed to ensure that the unregistered money market funds comply with sections 17(a), (d), (e), and 22(e) of the Act. The staff concludes that there will be no burdens associated with these collection of information requirements.

Commission staff further estimates that unregistered money market funds will incur costs to preserve records, as required under rule 2a-7. These costs will vary significantly for individual funds, depending on the amount of assets under fund management and whether the fund preserves its records in a storage facility in hard copy or has developed and maintains a computer system to create and preserve compliance records. In the rule 2a-7 submissions, Commission staff estimated that the amount an individual money market fund may spend ranges from \$100 per year to \$300,000. We have no reason to believe the range is different for unregistered money market funds. The Commission does not have specific information on the amount of assets managed by unregistered money market funds or the proportion of those assets held in small, medium-sized, or large unregistered money market funds. Accordingly, Commission staff estimates that unregistered money market funds in which registered funds invest in reliance on rule 12d1-1 are similar to registered money market funds in terms of amount and distribution of assets under management.³¹ Based on a cost of \$0.0051295 per dollar of assets under management for small funds, \$0.0005041 per dollar of assets under management for medium-sized funds and \$0.0000009 per dollar of assets under management for large funds, the staff estimates compliance with rule 2-7 for these unregistered money market funds totals \$3.9 million annually.³²

³⁰ See *supra* text accompanying note 28.

³¹ In the rule 2a-7 submissions, the staff estimated that 757 registered money market funds have \$3.8 trillion in assets under management, or \$5 billion in assets under management per registered money market fund. The staff further estimated that 0.2% of those assets are held in small money market funds (funds with less than \$50 million in assets under management), 3% are held in medium-sized money market funds (funds with \$50 million to \$1 billion in assets under management), and the remaining assets are held in large money market funds (funds with more than \$1 billion in assets under management).

³² This estimate is based on the following calculations: 30 unregistered money market funds × \$5 billion = \$150 billion. (\$150 billion × 0.2% × \$0.0051295) = \$1.5 million for small funds. (\$150 billion × 3% × \$0.0005041) = \$2.3 million for

Consistent with estimates made in the rule 2a-7 submissions, Commission staff estimates that unregistered money market funds also incur capital costs to create computer programs for maintaining and preserving compliance records for rule 2a-7 of \$0.0000132 per dollar of assets under management. Based on the assets under management figures described above, staff estimates annual capital costs for all unregistered money market funds of \$1.98 million.³³

Commission staff further estimates that, even absent the requirements of rule 2a-7, money market funds would spend at least half of the amounts described above for record preservation (\$2.0 million) and for capital costs (\$0.99 million). Commission staff concludes that the aggregate annual costs of compliance with the rule are \$2.0 million for record preservation and \$0.99 million for capital costs.

The collections of information required for unregistered money market funds by rule 12d1-1 are necessary in order for acquiring funds to be able to obtain the benefits described above. Notices to the Commission will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following Web site, www.reginfo.gov. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: Shagufta_Ahmed@omb.eop.gov; and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an email to: PRA_Mailbox@sec.gov. Comments must be submitted to OMB within 30 days of this notice.

April 13, 2012.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012-9413 Filed 4-18-12; 8:45 am]

BILLING CODE 8011-01-P

medium-sized funds. (\$150 billion × 96.8% × 0.0000009) = \$0.1 million for large funds. \$1.5 million + \$2.3 million + \$0.1 million = \$3.9 million. The estimate of cost per dollar of assets is the same as that used in the rule 2a-7 submissions. See *supra* note 12.

³³ This estimate is based on the following calculation: \$150 billion × 0.0000132 = \$1.98 million.

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549-0213.

Extension:

Rule 17g-1; SEC File No. 270-208; OMB Control No. 3235-0213.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), the Securities and Exchange Commission (the "Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 17g-1 (17 CFR 270.17g-1) under the Investment Company Act of 1940 (the "Act") (15 U.S.C. 80a-17(g)) governs the fidelity bonding of officers and employees of registered management investment companies ("funds") and their advisers. Rule 17g-1 requires, in part, the following:

Independent Directors' Approval

The form and amount of the fidelity bond must be approved by a majority of the fund's independent directors at least once annually, and the amount of any premium paid by the fund for any "joint insured bond," covering multiple funds or certain affiliates, must be approved by a majority of the fund's independent directors.

Terms and Provisions of the Bond

The amount of the bond may not be less than the minimum amounts of coverage set forth in a schedule based on the fund's gross assets; the bond must provide that it shall not be cancelled, terminated, or modified except upon 60-days written notice to the affected party and to the Commission; in the case of a joint insured bond, 60-days written notice must also be given to each fund covered by the bond; a joint insured bond must provide that the fidelity insurance company will provide all funds covered by the bond with a copy of the agreement, a copy of any claim on the bond, and notification of the terms of the settlement of any claim prior to execution of that settlement; and a fund that is insured by a joint bond must enter into an agreement with all other parties insured by the joint bond regarding recovery under the bond.

Filings With the Commission

Upon the execution of a fidelity bond or any amendment thereto, a fund must file with the Commission within 10 days a copy of the executed bond or any amendment to the bond, the independent directors' resolution approving the bond, and a statement as to the period for which premiums have been paid on the bond. In the case of a joint insured bond, a fund must also file (i) a statement showing the amount the fund would have been required to maintain under the rule if it were insured under a single insured bond and (ii) the agreement between the fund and all other insured parties regarding recovery under the bond. A fund must also notify the Commission in writing within five days of any claim or settlement on a claim under the fidelity bond.

Notices to Directors

A fund must notify by registered mail each member of its board of directors of (i) any cancellation, termination, or modification of the fidelity bond at least 45 days prior to the effective date, and (ii) the filing or settlement of any claim under the fidelity bond when notification is filed with the Commission.

Rule 17g-1's independent directors' annual review requirements, fidelity bond content requirements, joint bond agreement requirement and the required notices to directors are designed to ensure the safety of fund assets against losses due to the conduct of persons who may obtain access to those assets. These requirements also facilitate oversight of a fund's fidelity bond. The rule's required filings with the Commission are designed to assist the Commission in monitoring funds' compliance with the fidelity bond requirements.

Based on conversations with representatives in the fund industry, the Commission staff estimates that for each of the estimated 3479 active funds,¹ the average annual paperwork burden associated with rule 17g-1's requirements is two hours, one hour each for a compliance attorney and the board of directors as a whole. The time spent by compliance attorney includes time spent filing reports with the Commission for any fidelity losses (if any) as well as paperwork associated with any notices to directors, and managing any updates to the bond and

the joint agreement (if one exists). The time spent by the board of directors as a whole includes any time spent initially establishing the bond, as well as time spent on annual updates and approvals. The Commission staff therefore estimates the total ongoing paperwork burden hours per year for all funds required by rule 17g-1 to be 6958 hours (3479 funds × 2 hours = 6958 hours).

These estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act. These estimates are not derived from a comprehensive or even a representative survey or study of Commission rules. The collection of information required by Rule 17g-1 is mandatory and will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following Web site, www.reginfo.gov. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: Shagufta_Ahmed@omb.eop.gov; and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an email to: PRA_Mailbox@sec.gov. Comments must be submitted to OMB within 30 days of this notice.

Dated: April 13, 2012.

Kevin M. O'Neill,
Deputy Secretary.

[FR Doc. 2012-9414 Filed 4-18-12; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available
From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549-0213.

Extension:

Rule 35d-1; SEC File No. 270-491; OMB Control No. 3235-0548.

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 (the "Commission") has submitted to the Office of Management and Budget ("OMB") a request for extension of the previously approved collection of information discussed below.

Rule 35d-1 (17 CFR 270.35d-1) under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*) defines as "materially deceptive and misleading" for purposes of Section 35(d), among other things, a name suggesting that a registered investment company or series thereof (a "fund") focuses its investments in a particular type of investment or investments, in investments in a particular industry or group of industries, or in investments in a particular country or geographic region, unless, among other things, the fund adopts a certain investment policy. Rule 35d-1 further requires either that the investment policy is fundamental or that the fund has adopted a policy to provide its shareholders with at least 60 days prior notice of any change in the investment policy ("notice to shareholders"). The rule's notice to shareholders provision is intended to ensure that when shareholders purchase shares in a fund based, at least in part, on its name, and with the expectation that it will follow the investment policy suggested by that name, they will have sufficient time to decide whether to redeem their shares in the event that the fund decides to pursue a different investment policy.

The Commission estimates that there are approximately 8,800 open-end and closed-end funds that have names that are covered by the rule. The Commission estimates that of these 8,800 funds, approximately 29 will provide prior notice to shareholders pursuant to a policy adopted in accordance with this rule per year. The Commission estimates that the annual burden associated with the notice to shareholders requirement of the rule is 20 hours per response, for an annual total of 580 hours per year.

Estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even representative survey or study of the costs of Commission rules and forms. The collection of information under rule 35d-1 is mandatory. The information provided under rule 35d-1 will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The public may view the background documentation for this information collection at the following Web site:

¹ Based on statistics compiled by Commission staff, we estimate that there are approximately 3479 funds that must comply with the collections of information under rule 17g-1 and have made a filing within the last 12 months.

www.reginfo.gov. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: Shagufta_Ahmed@omb.eop.gov; and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312; or send an email to: PRA_Mailbox@sec.gov. Comments must be submitted to OMB within 30 days of this notice.

Dated: April 13, 2012.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012-9415 Filed 4-18-12; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549-0213.

Extension:

Form 13F; SEC File No. 270-22; OMB Control No. 3235-0006.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), the Securities and Exchange Commission (the "Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Section 13(f)¹ of the Securities Exchange Act of 1934² (the "Exchange Act") empowers the Commission to: (1) adopt rules that create a reporting and disclosure system to collect specific information; and (2) disseminate such information to the public. Rule 13f-1³ under the Exchange Act requires institutional investment managers that exercise investment discretion over accounts that have in the aggregate a fair market value of at least \$100,000,000 of certain U.S. exchange-traded equity securities, as set forth in rule 13f-1(c), to file quarterly reports with the Commission on Form 13F.

The information collection requirements apply to institutional

investment managers that meet the \$100 million reporting threshold. Section 13(f)(6) of the Exchange Act defines an "institutional investment manager" as any person, other than a natural person, investing in or buying and selling securities for its own account, and any person exercising investment discretion with respect to the account of any other person. Rule 13f-1(b) under the Exchange Act defines "investment discretion" for purposes of Form 13F reporting.

The reporting system required by Section 13(f) of the Exchange Act is intended, among other things, to create in the Commission a central repository of historical and current data about the investment activities of institutional investment managers, and to improve the body of factual data available to regulators and the public.

The Commission staff estimates that 4,286 respondents make approximately 17,144 responses under the rule each year. The staff estimates that on average, Form 13F filers spend 98.8 hours/year to prepare and submit the report. In addition, the staff estimates that 171 respondents file approximately 684 amendments each year. The staff estimates that on average, Form 13F filers spend 4 hours/year to prepare and submit amendments to Form 13F. The total annual burden of the rule's requirements for all respondents therefore is estimated to be 424,141 hours ((4,286 filers × 98.8 hours) + (171 filers × 4 hours)).

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following Web site, www.reginfo.gov. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: Shagufta_Ahmed@omb.eop.gov; and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an email to: PRA_Mailbox@sec.gov. Comments

must be submitted to OMB within 30 days of this notice.

Dated: April 13, 2012.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012-9416 Filed 4-18-12; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request; Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549-0213.

Extension:

Form SE; OMB Control No. 3235-0327; SEC File No. 270-289.

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") has submitted to the Office of Management and Budget a request for extension of the previously approved collections of information discussed below.

Form SE (17 CFR 239.64) is used by registrants to file paper copies of exhibits, reports or other documents that would be difficult or impossible to submit electronically. The information contained in Form SE is used by the Commission to identify paper copies of exhibits. Form SE is a public document and is filed on occasion. Form SE is filed by individuals, companies or other entities that are required to file documents electronically. Approximately 50 registrants file Form SE and it takes an estimated 0.10 hours per response for a total annual burden of 5 hours.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following Web site, www.reginfo.gov. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: Shagufta_Ahmed@omb.eop.gov; and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-

¹ 15 U.S.C. 78m(f).

² 15 U.S.C. 78a *et seq.*

³ 17 CFR 240.13f-1.

Simon, 6432 General Green Way, Alexandria, VA 22312 or send an email to: PRA_Mailbox@sec.gov. Comments must be submitted to OMB within 30 days of this notice.

Dated: April 13, 2012.

Kevin M. O'Neill,
Deputy Secretary.

[FR Doc. 2012-9417 Filed 4-18-12; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission will hold an Open Meeting on Wednesday, April 18, 2012 at 10 a.m., in the Auditorium, Room L-002.

The subject matter of the Open Meeting will be:

The Commission will consider whether to adopt joint rules with the Commodity Futures Trading Commission relating to the definitions of "Swap Dealer," "Security-Based Swap Dealer," "Major Swap Participant," "Major Security-Based Swap Participant," and "Eligible Contract Participant."

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

Commissioner Walter, as duty officer, determined that no earlier notice thereof was possible.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 551-5400.

Dated: April 16, 2012.

Elizabeth M. Murphy,
Secretary.

[FR Doc. 2012-9525 Filed 4-17-12; 11:15 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-66800; File No. SR-Phlx-2012-47]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Qualified Contingent Cross Orders

April 12, 2012.

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 April 2, 2012, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Pricing Schedule to increase a rebate for Qualified Contingent Cross orders.

The text of the proposed rule change is available on the Exchange's Web site at <http://nasdaqtrader.com/micro.aspx?id=PHLXRulefilings>, at the principal office of the Exchange, 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 purpose of the proposed rule change is to increase a certain rebate applicable to both electronic QCC Orders ("eQCC")³ and Floor QCC

Orders⁴ (collectively "QCC Orders"). The Exchange believes that offering an increased rebate for executing in excess of 1,000,000 QCC Orders in a given month should create an additional incentive for market participants to execute a greater number of QCC Orders on the Exchange in Multiply Listed Securities.

There are currently several categories of market participants: Customers, Market Makers,⁵ Directed Participants,⁶ Broker-Dealers, Firms and Professionals.⁷ The Exchange proposes to amend the current rebates applicable to both eQCC Orders and Floor QCC Orders for the above categories of market participants. The proposed amendment is applicable to both Sections I⁸ and II⁹ of the Pricing Schedule. Currently, the Exchange pays a rebate of \$0.07 per contract on all qualifying executed QCC Orders up to 1,000,000 contracts in a month. In addition, if a member exceeds 1,000,000 contracts in a month of qualifying executed QCC Orders, the Exchange currently pays a rebate of \$0.10 per contract on all qualifying executed QCC Orders, both eQCC and Floor QCC Orders, in a given month.¹⁰ The

requirements of the trade through exemption in connection with Rule 611(d) of the Regulation NMS).

⁴ A Floor QCC Order must: (i) Be for at least 1,000 contracts; (ii) meet the six requirements of Rule 1080(o)(3) which are modeled on the QCT Exemption; (iii) be executed at a price at or between the National Best Bid and Offer ("NBBO"); and (iv) be rejected if a Customer order is resting on the Exchange book at the same price. In order to satisfy the 1,000-contract requirement, a Floor QCC Order must be for 1,000 contracts and could not be, for example, two 500-contract orders or two 500-contract legs. See Rule 1064(e). See also Securities Exchange Act Release No. 64688 (June 16, 2011), 76 FR 36606 (June 22, 2011) (SR-Phlx-2011-56).

⁵ A "Market Maker" includes Specialists (see Rule 1020) and Registered Options Traders ("ROTs") (Rule 1014(b)(i) and (ii), which includes Streaming Quote Traders ("SQTs") (see Rule 1014(b)(ii)(A)) and Remote Streaming Quote Traders ("RSQTs") (see Rule 1014(b)(ii)(B)). Directed Participants are also Market Makers.

⁶ A Directed Participant is a Specialist, SQT, or RSQT that executes a customer order that is directed to them by an Order Flow Provider and is executed electronically on PHLX XL II.

⁷ The Exchange defines a "professional" as any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s) (hereinafter "Professional").

⁸ Section I of the Pricing Schedule is entitled "Rebates and Fees for Adding and Removing Liquidity in Select Symbols." The Section I fees and rebates are applicable to certain Select Symbols which are defined in that section.

⁹ Section II of the Pricing Schedule is entitled "Equity Options Fees." Section II includes options overlying equities, ETFs, ETNs, indexes and HOLDRS which are Multiply Listed.

¹⁰ QCC Transaction Fees for a Market Maker, Professional, Firm and Broker-Dealer are \$0.20 per

Continued

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ A QCC Order is comprised of an order to buy or sell at least 1000 contracts that is identified as being part of a qualified contingent trade, as that term is defined in Rule 1080(o)(3), coupled with a contra-side order to buy or sell an equal number of contracts. The QCC Order must be executed at a price at or between the National Best Bid and Offer and be rejected if a Customer order is resting on the Exchange book at the same price. A QCC Order shall only be submitted electronically from off the floor to the PHLX XL II System. See Rule 1080(o). See also Securities Exchange Act Release No. 64249 (April 7, 2011), 76 FR 20773 (April 13, 2011) (SR-Phlx-2011-47) (a rule change to establish a QCC Order to facilitate the execution of stock/option Qualified Contingent Trades ("QCTs") that satisfy

Exchange does not offer a rebate on executed eQCC Orders or Floor QCC Orders where the transaction is either: (i) Customer-to-Customer; or (ii) a dividend,¹¹ merger¹² or short stock interest strategy¹³ and executions subject to the Reversal and Conversion Cap.¹⁴

The Exchange proposes to increase the current rebate paid to a member that exceeds 1,000,000 contracts in a month of qualifying executed QCC Orders, both eQCC and Floor QCC Orders, from \$0.10 per contract to \$0.11 per contract to further incentivize members to execute a greater number of QCC Orders on the Exchange. For example, if a member executed 1,200,000 QCC Orders in April 2012, and those QCC Orders were eligible orders in that they did not include Customer-to-Customer transactions or dividend, merger or short stock interest strategies or executions subject to the Reversal and Conversion Cap, that member would receive a rebate of \$0.11 per contract on all 1,200,000 orders for April 2012. Therefore, depending on the number of executed eligible QCC Orders, a member would receive either a \$0.07 or \$0.11 per contract rebate on all qualifying QCC Orders in a given month.

With respect to a Floor QCC Order, the Exchange will continue to offer the rebate to the Floor Broker. The Exchange will continue to pay a rebate of \$0.07 per contract on all qualifying executed QCC Orders up to 1,000,000 contracts in a month; the Exchange is not amending the \$0.07 rebate. The current exceptions to qualifying QCC Orders will remain the same.¹⁵

contract. QCC Transaction Fees apply to QCC Orders, as defined in Exchange Rule 1080(o), and Floor QCC Orders, as defined in 1064(e).

¹¹ A dividend strategy is defined as transactions done to achieve a dividend arbitrage involving the purchase, sale and exercise of in-the-money options of the same class, executed the first business day prior to the date on which the underlying stock goes ex-dividend. See Section II of the Pricing Schedule.

¹² A merger strategy is defined as transactions done to achieve a merger arbitrage involving the purchase, sale and exercise of options of the same class and expiration date, executed the first business day prior to the date on which shareholders of record are required to elect their respective form of consideration, i.e., cash or stock. See Section II of the Pricing Schedule.

¹³ A short stock interest strategy is defined as transactions done to achieve a short stock interest arbitrage involving the purchase, sale and exercise of in-the-money options of the same class. See Section II of the Pricing Schedule.

¹⁴ Market Maker, Professional, Firm and Broker-Dealer equity options transaction fees are capped at \$1,000 per day for reversal and conversion strategies executed on the same trading day in the same options class.

¹⁵ The following transactions are not eligible for the \$0.07 per contract rebate: (i) Customer-to-Customer; or (ii) a dividend, merger or short stock interest strategy and executions subject to the

Currently, QCC Transaction Fees apply to Sections I and II of the Pricing Schedule and are subject to the Monthly Firm Fee Cap¹⁶ and the Monthly Market Maker Cap.¹⁷ This will also remain the same.

2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act¹⁸ in general, and furthers the objectives of Section 6(b)(4) of the Act¹⁹ in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The Exchange also believes that there is an equitable allocation of reasonable rebates among Exchange members.

The Exchange believes that it is reasonable to incentivize members to transact both eQCC Orders and Floor QCC Orders in Multiply Listed securities²⁰ by continuing to pay a tiered rebate of \$0.07 per contract on all qualifying executed QCC Orders up to 1,000,000 contracts in a month and to increase the rebate for members with qualifying executed QCC Orders exceeding 1,000,000 contracts in a

Reversal and Conversion Cap (as defined in Section II).

¹⁶ Firms are subject to a maximum fee of \$75,000 ("Monthly Firm Fee Cap"). Firm equity option transaction fees and QCC Transaction Fees in the aggregate, for one billing month may not exceed the Monthly Firm Fee Cap per member organization when such members are trading in their own proprietary account. All dividend, merger, short stock interest and reversal and conversion strategy executions are excluded from the Monthly Firm Fee Cap. In addition, Market Makers that (i) are on the contra-side of an electronically-delivered and executed Customer order; and (ii) have reached the Monthly Market Maker Cap will be assessed a \$0.07 per contract fee, excluding PIXL Orders. For QCC Orders as defined in Exchange Rule 1080(o), and Floor QCC Orders, as defined in 1064(e), a Service Fee of \$0.07 per side will apply once a Market Maker has reached the Monthly Market Maker Cap. This \$0.07 Service Fee will apply to every contract side of the QCC Order and Floor QCC Order after a Market Maker has reached the Monthly Market Maker Cap. The Service Fee will not be assessed to a Market Maker that does not reach the Monthly Market Maker Cap in a particular calendar month.

¹⁷ Market Makers are currently subject to a Monthly Market Maker Cap of \$550,000. The trading activity of separate Market Maker member organizations will be aggregated in calculating the Monthly Market Maker Cap if there is at least 75% common ownership between the member organizations. In addition, Market Makers that (i) are on the contra-side of an electronically-delivered and executed Customer order; and (ii) have reached the Monthly Market Maker Cap will be assessed a \$0.07 per contract fee.

¹⁸ 15 U.S.C. 78f(b).

¹⁹ 15 U.S.C. 78f(b)(4).

²⁰ The rebate does not apply to Singly Listed Securities. For purposes of this filing, a Singly Listed Option means an option that is only listed on the Exchange and is not listed by any other national securities exchange or is otherwise defined as a Singly Listed Option in the Pricing Schedule. See Section III of the Exchange's Pricing Schedule entitled "Singly Listed Options."

month from \$0.10 per contract to \$0.11 per contract. The Exchange believes that increasing the rebate for qualifying QCC Orders exceeding 1,000,000 contracts in a month from \$0.10 to \$0.11 per contract is reasonable because the Exchange would continue to pay a rebate on every executed contract QCC Order, as is the case today, while also incentivizing members to execute more than 1,000,000 qualifying executed QCC Orders to achieve a higher rebate on all contracts in a month. In other words, the proposal offers members an incentive to send a greater number of QCC Orders, while still paying a \$0.07 rebate below 1,000,000 contracts. The proposed increased rebate is within the range of rebates paid by other exchanges²¹ and balances the Exchange's desire to incentivize its members to send order flow to the Exchange while considering the costs attributable to offering such rebates. Further, all members have equal opportunity, depending on their chosen business model, to earn rebates for executing QCC Orders on the Exchange.

The Exchange believes that it is equitable and not unfairly discriminatory to increase the rebate for executed QCC Orders to \$0.11 per contract because all market participants will continue to be eligible for the \$0.07 rebate on qualifying QCC Orders, as they are today, unless they are able to exceed 1,000,000 contracts of qualifying executed QCC Orders in a given month, then the member would be entitled to a higher rebate of \$0.11 per contract on all qualifying executed QCC Orders. This benefit is intended to incentivize members to transact a greater number of qualifying QCC Orders in order to take advantage of the higher rebate. Additionally, the proposed rebate increase is within the range of tiered rebates offered by the International Securities Exchange, LLC ("ISE").²²

²¹ See NYSE Arca, Inc.'s ("NYSE Arca") Fee Schedule. NYSE Arca pays a \$0.10 per contract rebate for executed QCC orders entered by a Floor Broker. The Floor Broker Rebate for executed orders is \$0.05 per contract side.

²² See ISE's Schedule of Fees. ISE provides a rebate to members who reach a certain volume threshold in QCC orders and/or solicitation orders during a month. Once a member reaches the volume threshold, ISE pays a rebate to that member for all qualified contingent cross and solicitation traded contracts for that month. The rebate is paid to the member entering a qualifying order, i.e., a qualified contingent cross order and/or a solicitation order. The rebate applies to qualified contingent cross orders and solicitation orders in all symbols traded on the Exchange. Additionally, the threshold levels are based on the originating side. Specifically, the following rebates apply: for 0-199,999 originating contract sides ISE pays no rebate; for 200,000 to 999,999 originating contract sides ISE pays \$0.05 per contract; for 1,000,000 to 1,599,999 originating contract sides ISE pays \$0.08 per contract; and for

Also, all members are equally eligible to transact Multiply Listed securities.

The Exchange believes it continues to be reasonable to not offer a rebate for eQCC Orders and Floor QCC Orders for Customer-to-Customer executions because members executing Customer orders are not assessed a QCC Transaction Fee²³ and therefore do not need to be incentivized to send QCC Orders to the Exchange. Likewise, the Exchange believes that it is reasonable to not offer a rebate for dividend, merger and short stock interest strategies and executions subject to the Reversal and Conversion Cap because the Exchange already provides a cap today on the transaction fees associated with these strategies and therefore does not believe an additional incentive is required.

With respect to the Floor QCC Order, the Exchange will also continue to offer the rebate to the Floor Broker, including the proposed increase. The Floor Broker is in receipt of the Floor QCC Orders and enters those orders into the Floor Broker Management System ("FBMS").²⁴ The Exchange believes it is necessary from a competitive standpoint to offer this rebate to the executing Floor Broker on a Floor QCC Order. The Exchange expects that the rebate offered to executing Floor Brokers will allow them to continue to price their services at a level that will enable them to attract Floor QCC order flow from participants who would otherwise enter these orders electronically from off the floor to the PHLX XL II System²⁵ or choose another exchange. To the extent that Floor Brokers are able to attract these Floor QCC Orders, they will gain important information that will allow them to solicit the parties to the Floor QCC Orders for participation in other trades, which will in turn benefit all other Exchange participants through the additional liquidity and price discovery that may occur as a result. The Exchange believes that it continues to be equitable and not unfairly discriminatory to pay the rebate for Floor QCC Orders to Floor Brokers because the rebate would uniformly apply to all Floor QCC Orders entered by a Floor Broker into FBMS for execution based on volume. The rebate is not unfairly discriminatory to firms

that enter eQCC Orders directly into PHLX XL II, because the transaction fees and rebates are the same whether the order is entered electronically or through a Floor Broker. In addition, pursuant to Exchange Rule 1080(o)(3), only Floor Brokers may enter a Floor QCC Order from the floor of the Exchange; therefore, providing the rebate to Floor Brokers does not discriminate against eQCC orders entered into PHLX XL II. Any participant is able to engage a rebate-receiving Floor Broker in a discussion surrounding the appropriate level of fees that they may be charged for entrusting the entry of the Floor QCC Order to the Floor Broker into FBMS for execution. The additional order flow attracted by this rebate should benefit all participants. The rebate is meant to assist Floor Brokers to recruit business on an agency basis. The Floor Broker may use all or part of the rebate to offset its fees.

The Exchange operates in a highly competitive market comprised of nine U.S. options exchanges in which sophisticated and knowledgeable market participants readily can, and do, send order flow to competing exchanges if they deem fee levels and rebate opportunities at a particular exchange to be excessive. The Exchange believes that the proposed rebates for eQCC Orders and Floor QCC Orders must be competitive with rebates offered at other options exchanges. The Exchange believes that this competitive marketplace impacts the rebates and fees present on the Exchange today and influences the proposals set forth above.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.²⁶ 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-2012-47 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-2012-47. 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

1,600,000+ originating contract sides ISE pays \$0.10 per contract.

²³ Market Makers, Professionals, Firms and Broker-Dealers are assessed a QCC Transaction Fee of \$0.20 per contract.

²⁴ See Exchange Rule 1063(e).

²⁵ In May 2009 the Exchange enhanced the system and adopted corresponding rules referring to the system as "Phlx XL II." See Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR-Phlx-2009-32).

²⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

information that you wish to make available publicly. All submissions should refer to File No. SR-Phlx-2012-47 and should be submitted on or before May 10, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁷

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012-9404 Filed 4-18-12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-66804; File No. SR-FINRA-2012-021]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to Post-Trade Transparency for Agency Pass-Through Mortgage-Backed Securities Traded in Specified Pool Transactions and SBA-Backed Asset-Backed Securities Transactions

April 13, 2012.

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 April 2, 2012, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend the FINRA Rule 6700 Series and Trade Reporting and Compliance Engine ("TRACE") dissemination protocols regarding the reporting and dissemination of transactions in TRACE-Eligible Securities that are: (1) Agency Pass-Through Mortgage-Backed Securities traded in Specified Pool Transactions ("MBS Specified Pool transactions") and (2) Asset-Backed Securities backed by loans guaranteed as to principal and interest by the Small Business Administration ("SBA-Backed ABS") and traded either in Specified Pool Transactions or to be announced

("TBA") (collectively, "SBA-Backed ABS transactions").³

The text of the proposed rule change is available on FINRA's Web site at <http://www.finra.org>, at the principal office of FINRA and at the Commission's Public Reference Room.⁴

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On March 1, 2012, FINRA filed the TBA proposal to provide for the dissemination of MBS TBA transactions, subject to dissemination caps, and concomitant reductions in the reporting periods for such transactions.⁵ FINRA is proposing to further expand transparency in the market for Asset-Backed Securities in this proposed rule change, which provides for the dissemination of MBS Specified Pool and SBA-Backed ABS transactions, subject to dissemination caps, and

³ The terms TRACE-Eligible Security, Agency Pass-Through Mortgage-Backed Security, Specified Pool Transaction, Asset-Backed Security and To Be Announced ("TBA") are defined in, respectively, Rule 6710(a), Rule 6710(v), Rule 6710(x), Rule 6710(m) and Rule 6710(u). The definition of SBA-Backed ABS is proposed in Rule 6710(bb).

⁴ The proposed rule text assumes the SEC approval of File No. SR-FINRA-2012-020, which proposed amendments to the FINRA Rule 6700 Series to provide for the dissemination of transactions in TRACE-Eligible Securities that are Agency Pass-Through Mortgage-Backed Securities that are traded TBA ("MBS TBA transactions"), subject to dissemination caps, and to reduce the reporting periods for such transactions. See Securities Exchange Act Release No. 66577 (March 12, 2012), 77 FR 15827 (March 16, 2012) (Notice of Filing of File No. SR-FINRA-2012-020) ("TBA proposal").

⁵ See *supra* note 4. The TBA proposal distinguished between MBS TBA transactions for good delivery ("MBS TBA transactions GD") and not for good delivery ("MBS TBA transactions NGD"). In response to comments, FINRA proposed a longer period to timely report, and lower dissemination caps for, MBS TBA transactions NGD than the requirements proposed for MBS TBA transactions GD.

concomitant reductions in the reporting periods for such transactions.

FINRA proposes to amend Rule 6730 to reduce, in two stages, the time frames to report MBS Specified Pool and SBA-Backed ABS transactions. FINRA also proposes minor clarifying amendments to Rule 6730(a)(3)(D) and (E) to specify that the reporting requirements set forth therein apply solely to MBS TBA transactions. In connection with such changes, FINRA proposes amendments to the definitions of "To Be Announced ("TBA")," "Specified Pool Transaction," and "Agency Pass-Through Mortgage-Backed Security" and a new defined term, "SBA-Backed ABS." Finally, FINRA proposes to amend Rule 6750 to provide for the dissemination of MBS Specified Pool and SBA-Backed ABS transactions, and proposes to establish, as part of TRACE dissemination protocols, a \$10 million dissemination cap for such transactions.

MBS Specified Pool Transactions

Generally, Agency Pass-Through Mortgage-Backed Securities are traded either TBA or in Specified Pool Transactions as defined in Rule 6710(v) and (x), respectively. In MBS Specified Pool transactions, on the date of trade (trade date), the seller agrees to deliver to the buyer a specific security identifiable by a unique identification number, which is backed by a specific pool (or pools) of mortgage loans, or other Agency Pass-Through Mortgage-Backed Securities, or a combination of such assets. MBS Specified Pool transactions differ from MBS TBA transactions in that, on trade date, in an MBS TBA transaction, the security to be delivered is described (e.g., program, interest rate, type of residential mortgage, maturity) but is not specifically identified (i.e., does not have a specific unique identification number), and will not be identified until shortly before settlement. While the majority of Agency Pass-Through Mortgage-Backed Securities are traded TBA, the daily volume of MBS Specified Pool transactions represents significant economic activity in mortgage-related securities, and FINRA believes that additional transparency in such securities is appropriate. The reported transaction data shows that MBS Specified Pool transaction pricing is strongly correlated to the pricing of the substantially larger market in MBS TBA transactions. Moreover, the two market sectors exhibit similar trading characteristics. For example, approximately 98 percent of the total volume in MBS Specified Pool transactions occurs in securities backed by single-family mortgage loans.

²⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Similarly, for MBS TBA transactions, approximately 95 percent of the total volume occurs in securities backed by single-family mortgage loans.⁶ Accordingly, the data sets are complimentary and the dissemination of the additional pricing information for MBS Specified Pool transactions will further improve transparency in the Agency Pass-Through Mortgage-Backed Securities market.

SBA-Backed ABS Transactions

SBA-Backed ABSs are Asset-Backed Securities created from pooling loans made to small business by banks and other financial institutions in conformity with the program requirements of the Small Business Administration (“SBA”). Loans that meet the SBA’s requirements are guaranteed by SBA as to the timely payment of principal and interest, and pools are then created to issue SBA-Backed Asset-Backed Securities.

SBA-Backed ABS also are traded TBA and in Specified Pool Transactions.⁷ Like Agency Pass-Through Mortgage-Backed Securities discussed above, such TBA trading may occur because market participants may anticipate with some certainty the creation of loan pools and are aware of the pool characteristics, and the extent to which such loan pools are fungible with previously-settled SBA-Backed ABS. FINRA proposes that both types of SBA-Backed ABS transactions be subject to dissemination.

Amendments to Defined Terms

FINRA proposes to define “SBA-Backed ABS” in proposed Rule 6710(bb) as an Asset-Backed Security issued in conformity with a program of the Small Business Administration (SBA), for which the timely payment of principal and interest is guaranteed by the SBA, representing ownership interest in a pool (or pools) of loans and structured to “pass through” the principal and interest payments made by the borrowers in such loans to the holders of the security on a pro rata basis.

In connection with the proposed addition of the definition of SBA-

⁶ Certain programs also dominate both market segments. For example, over half of all transactions in MBS Specified Pool transactions occur in Fannie Mae program securities, and approximately 77 percent of all transactions in MBS TBA transactions occur in Fannie Mae program securities. The data is based on FINRA staff review of all Asset-Backed Securities traded during a six-month period from May 16, 2011 through October 31, 2011.

⁷ SBA-Backed ABS transactions traded in Specified Pool Transactions account for 0.41 percent of the combined total volume of all Specified Pool Transactions (which includes Agency Pass-Through Mortgage Backed-Securities and SBA-Backed ABS traded in Specified Pool Transactions).

Backed ABS, FINRA also proposes amendments to the definitions of “To Be Announced (“TBA”)” and “Specified Pool Transaction” in Rule 6710(u) and Rule 6710(x), respectively. Both definitions currently apply only to Agency Pass-Through Mortgage-Backed Securities. As amended, both terms would include transactions in SBA-Backed ABS.⁸ In addition, FINRA proposes amendments to the definition of “Agency Pass-Through Mortgage-Backed Security” in Rule 6710(v) to incorporate minor, technical changes to the defined term.⁹

Reduction of Reporting Period

Currently, Asset-Backed Securities transactions (except certain pre-issuance transactions in collateralized mortgage obligations (“CMOs”) and real estate mortgage investment conduits (“REMICs”)) that are executed on a business day through 5:00 p.m. Eastern Time must be reported to TRACE on the Trade Date during TRACE System Hours, as provided in Rule 6730(a)(3)(A)(i), subject to the exceptions for transactions executed after 5:00 p.m. and during times when the TRACE System is not open in Rule 6730(a)(3)(A)(ii) and (iii). In contrast, secondary market transactions in all other TRACE-Eligible Securities must be reported within 15 minutes of the Time of Execution.¹⁰ With certain exceptions, transaction information on such TRACE-Eligible Securities is disseminated as soon as the transaction

⁸ As revised, Rule 6710(u) would provide: “To Be Announced” (“TBA”) means a transaction in an Agency Pass-Through Mortgage-Backed Security as defined in paragraph (v) or an SBA-Backed ABS as defined in paragraph (bb) where the parties agree that the seller will deliver to the buyer a security(ies) of a specified face amount and meeting certain other criteria but the specific security(ies) to be delivered at settlement is not specified at the Time of Execution, and includes TBA transactions “for good delivery” (“GD”) and TBA transactions “not for good delivery” (“NGD”).

As revised, Rule 6710(x) would provide: “Specified Pool Transaction” means a transaction in an Agency Pass-Through Mortgage-Backed Security as defined in paragraph (v) or an SBA-Backed ABS as defined in paragraph (bb) requiring the delivery at settlement of a pool(s) that is identified by a unique pool identification number at the Time of Execution.

⁹ As revised, Rule 6710(v) would provide: “Agency Pass-Through Mortgage-Backed Security” means a type of Asset-Backed Security issued in conformity with a program of an Agency or a Government-Sponsored Enterprise (“GSE”), for which the timely payment of principal and interest is guaranteed by the Agency or GSE, representing ownership interest in a pool (or pools) of mortgage loans, other Agency Pass-Through Mortgage-Backed Securities, or a combination of such assets, and structured to “pass through” the principal and interest payments to the holders of the security on a pro rata basis.

¹⁰ The term Time of Execution is defined in Rule 6710(d).

is reported, and the 15-minute reporting requirement results in meaningful price transparency for market participants trading such securities.¹¹

As noted above, FINRA recently filed the TBA proposal, which is pending before the SEC. In the TBA proposal, FINRA proposes that MBS TBA transactions be disseminated, and, in connection with their dissemination, also proposes to reduce the time frames for timely reporting such transactions to provide market participants meaningful and timely price information about MBS TBA transactions.¹²

In connection with proposing that MBS Specified Pool and SBA-Backed ABS transactions be disseminated, FINRA proposes to reduce the reporting time frames for such transactions for the same reasons. FINRA also proposes that the reduction of the reporting time frames occur in two stages to permit industry participants time to adjust policies and procedures and to make required technological changes, as FINRA also proposed in the TBA proposal.

Proposed Rule 6730(a)(3)(F) and proposed Rule 6730(a)(3)(G), respectively, set forth the requirements to report MBS Specified Pool and SBA-Backed ABS transactions. First, FINRA proposes to reduce the reporting period for MBS Specified Pool and SBA-Backed ABS transactions from no later than the close of the TRACE system on Trade Date to no later than two hours (i.e., 120 minutes) from the Time of Execution for the duration of the proposed MBS Specified Pool Pilot Program and the proposed SBA-Backed ABS Pilot Program in, respectively, proposed Rule 6730(a)(3)(F)(i) and proposed Rule 6730(a)(3)(G)(i).¹³ Like

¹¹ See Rule 6750(b) for exceptions to dissemination. See also *supra* note 4 regarding the TBA proposal and proposed dissemination of MBS TBA transactions.

¹² See *supra* note 4. The TBA proposal, which was filed on March 1, 2012, proposes that MBS TBA transactions GD be reported generally within 45 minutes of the Time of Execution during a six-month pilot program (reduced to 15 minutes after the pilot program expires), and MBS TBA transactions NGD be reported within 120 minutes during a six-month pilot program (reduced to 60 minutes after the pilot program expires). Both proposed reporting requirements are subject to exceptions for transactions executed close to the end of the business day or when the TRACE system is not open.

¹³ Proposed Rule 6730(a)(3)(F)(i) and proposed Rule 6730(a)(3)(G)(i) each incorporate by reference Rule 6730(a)(3)(E)(i)a. through d., which provides for a 120-minute reporting time frame in Rule 6730(a)(3)(E)(i)b.

Each of the pilot programs would expire after approximately 180 days. To accommodate member requests that, if possible, rule changes requiring technology changes occur on a Friday, proposed Rule 6730(a)(3)(F)(i) and proposed Rule

the reporting requirements currently in effect for other TRACE-Eligible Securities, FINRA also proposes exceptions to the 120-minute time frame for transactions executed near the end of the business day or when the TRACE system is not open.¹⁴ Second, after the pilot programs expire, the reporting periods for MBS Specified Pool and SBA-Backed ABS transactions would be reduced from no later than two hours (120 minutes) from the Time of Execution to no later than one hour (60 minutes) from the Time of Execution, as set forth in, respectively, proposed Rule 6730(a)(3)(F)(ii) and proposed Rule 6730(a)(3)(G)(ii).¹⁵ Currently, 84 percent of MBS Specified Pool and SBA-Backed ABS transactions are reported within two hours of execution, and 75 percent are reported within one hour of execution.

After the 60-minute reporting requirement is implemented, FINRA will continue to review the reporting of MBS Specified Pool and SBA-Backed ABS transactions and may recommend further reductions in the reporting period.

FINRA also proposes minor clarifying amendments to Rule 6730(a)(3)(D) and (E) to specify that the reporting

6730(a)(3)(G)(i) provide that the MBS Specified Pool Pilot Program and the SBA-Backed ABS Pilot Program each would expire on a Friday (*i.e.*, on the 180th day, if a Friday, or, if the 180th day is not a Friday, on the Friday next occurring that the TRACE system is open).

¹⁴ See proposed Rule 6730(a)(3)(F)(i) and proposed Rule 6730(a)(3)(G)(i), which incorporate by reference Rule 6730(a)(3)(E)(i)a., c. and d. which apply to transactions executed near the end of the business day or when the TRACE system is not open. Under Rule 6730(a)(3)(E)(i)a., transactions executed on a business day at or after 12:00 a.m. Eastern Time through 7:59:59 a.m. Eastern Time must be reported the same day no later than 120 minutes after the TRACE system opens. Under Rule 6730(a)(3)(E)(i)c., transactions executed on a business day less than 120 minutes before 6:30 p.m. Eastern Time (the time the TRACE system closes) must be reported no later than 120 minutes after the TRACE system opens the next business day (T + 1), and if reported on T + 1, designated "as/of" and include the date of execution. Under Rule 6730(a)(3)(E)(i)d., transactions executed on a business day at or after 6:30 p.m. Eastern Time through 11:59:59 p.m. Eastern Time or on a Saturday, a Sunday, a federal or religious holiday or other day on which the TRACE system is not open at any time during that day (determined using Eastern Time) must be reported the next business day (T + 1), no later than 120 minutes after the TRACE system opens, designated "as/of" and include the date of execution.

¹⁵ Proposed Rule 6730(a)(3)(F)(ii) and proposed Rule 6730(a)(3)(G)(ii)—the "post-pilot program" reporting provisions—incorporate by reference the reporting requirements set forth in Rule 6730(a)(3)(E)(i)a. through d., including the exceptions to the requirement to report within 60 minutes that apply to transactions executed near the end of the business day or when the TRACE system is not open in Rule 6730(a)(3)(E)(i)a., c. and d.

requirements set forth therein apply solely to MBS TBA transactions.

Dissemination

Amendment to Rule 6750

Although members began reporting transactions in Asset-Backed Securities to TRACE on May 16, 2011, FINRA currently does not disseminate publicly any of the Asset-Backed Securities transaction data reported to TRACE as provided in Rule 6750(b)(4). However, as noted above, FINRA has filed the TBA proposal, in which FINRA proposes to disseminate MBS TBA transactions, which represent approximately 87 percent of the average daily volume traded in all Asset-Backed Securities.¹⁶ Following the submission of the TBA proposal, FINRA continued to examine transactions in Asset-Backed Securities to determine if FINRA should propose to disseminate additional Asset-Backed Securities, and will continue its review and research. The SEC has been supportive of such efforts.¹⁷

Among other things, FINRA has reviewed the data reported for Asset-Backed Securities, including MBS Specified Pool and SBA-Backed ABS transactions, and studied the total volume of MBS Specified Pool and SBA-Backed ABS transactions, the concentration of trading in such securities, and the pricing disparity among various types of MBS Specified Pool and SBA-Backed ABS transactions to understand their liquidity and fungibility. The market activity reported and reviewed reveals that for MBS Specified Pool transactions, the market is generally active and liquid, and with liquidity comparable to that of corporate bonds.¹⁸ Based on the review, FINRA believes that it is appropriate to provide for the dissemination of MBS Specified Pool and SBA-Backed ABS transactions, and such dissemination will benefit

¹⁶ See *supra* note 4. Beginning on the later of August 1, 2012, or 180 days following publication by FINRA of the *Regulatory Notice* announcing SEC approval of the TBA proposal, FINRA will disseminate such MBS TBA transaction data.

¹⁷ See Securities Exchange Act Release No. 61566 (February 22, 2010), 75 FR 9262, 9265 (March 1, 2010) (Order Approving File No. SR-FINRA-2009-065).

¹⁸ Liquidity as measured by par value traded is comparable to corporate bonds. Although MBS TBA transactions account for approximately 93 percent of all trading in Agency Pass-Through Mortgage-Backed Securities, the average daily volume of MBS Specified Pool transactions is significant—approximately \$17.5 billion is traded daily on average, in approximately 3,000 trades per day. The information is based upon FINRA's review of Asset-Backed Securities transactions reported to TRACE from May 16, 2011 through October 31, 2011.

market participants by improving transparency in both market segments.

FINRA proposes to amend Rule 6750 to provide for the dissemination of MBS Specified Pool and SBA-Backed ABS transactions, with dissemination occurring immediately upon receipt of a transaction report. Specifically, Rule 6750(b)(4) would be amended to provide that FINRA will not disseminate information on a transaction in a TRACE-Eligible Security that is an Asset-Backed Security, except: (A) an Agency Pass-Through Mortgage-Backed Security; and (B) an SBA-Backed ABS.¹⁹ Thus, information would be disseminated on MBS Specified Pool and SBA-Backed ABS transactions within 120 minutes, or, after the expiration of the applicable pilot program, within 60 minutes of the Time of Execution.²⁰

Dissemination Caps

FINRA has TRACE dissemination protocols in place, referred to as dissemination caps, under which the actual size of a transaction over a certain par value is not displayed in disseminated TRACE transaction data. For TRACE-Eligible Securities that are rated Investment Grade, the dissemination cap is \$5 million ("5MM"), and the size of transactions in excess of \$5MM is displayed as "\$5MM+." For TRACE-Eligible Securities that are rated Non-Investment Grade, the dissemination cap is \$1 million ("1MM"), and the size of a transaction in excess of \$1MM is displayed as "\$1MM+."²¹ Upon the approval and effectiveness of the TBA proposal: (1) The dissemination cap will be \$25 million ("25MM") for MBS TBA transactions GD, and the size of transactions in excess of \$25MM will be displayed as "\$25MM+," and (2) the

¹⁹ See *supra* note 4.

²⁰ FINRA continues to review Asset-Backed Security transaction information in other sectors of the Asset-Backed Securities market and, at a later date, may propose that transactions in other Asset-Backed Securities be disseminated.

²¹ The dissemination caps for Investment Grade corporate bonds limit the display of actual size for approximately 1.6 percent of trades representing approximately 48 percent of total par value traded, and, for Agency Debt Securities, approximately 6 percent of trades representing approximately 74 percent of total par value traded. The dissemination cap for Non-Investment Grade corporate bonds limits the display of actual size for approximately 15 percent of trades representing approximately 84 percent of total par value traded. The information is based on a review of all transactions in Investment Grade corporate bonds, Agency Debt Securities and Non-Investment Grade corporate bonds reported to TRACE from May 16, 2011 through January 4, 2012.

The terms Investment Grade, Non-Investment Grade and Agency Debt Security are defined in, respectively, Rule 6710(h), Rule 6710(i) and Rule 6710(l).

dissemination cap will be \$10 million (“\$10MM”) for MBS TBA transactions NGD, and the size of transactions in excess of \$10MM will be displayed as “\$10MM+.”²²

FINRA has analyzed the distribution of MBS Specified Pool and SBA-Backed ABS transactions to determine an appropriate dissemination cap for these transactions, and proposes to set a dissemination cap for each of MBS Specified Pool and SBA-Backed ABS transactions initially at \$10 million (“\$10MM”). Accordingly, the size of MBS Specified Pool and SBA-Backed ABS transactions greater than \$10 million would be displayed in disseminated data as “\$10MM+.” At this level approximately nine percent of transactions and approximately 80 percent of par value traded would be disseminated subject to the \$10MM cap.²³ FINRA believes that these caps will allow the marketplace time to adjust to the new levels of transparency. In setting these dissemination caps, FINRA took into account the liquidity and trading activity in these segments.

As dissemination of MBS Specified Pool and SBA-Backed ABS transactions is implemented, FINRA will continue to review the volume of and liquidity in these securities, and may recommend that the dissemination caps be set at higher levels to provide additional transparency to market participants.

FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval. The effective date will be no earlier than August 1, 2012, and no later than 180 days following publication of the *Regulatory Notice* announcing Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,²⁴ 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 to increase fixed income market transparency is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, generally to protect investors and the public because transparency in MBS Specified Pool and SBA-Backed ABS transactions will enhance the ability of investors and other market participants to identify and negotiate fair and competitive prices for these securities, and because the dissemination of price and other information publicly will promote just and equitable principles of trade among participants in the more transparent market, and will aid in the prevention of fraudulent and manipulative acts and practices in the Asset-Backed Securities market.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-FINRA-2012-021 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-2012-021. 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 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-2012-021 and should be submitted on or before May 10, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁵

Kevin M. O'Neill,
Deputy Secretary.

[FR Doc. 2012-9405 Filed 4-18-12; 8:45 am]

BILLING CODE 8011-01-P

²⁵ 17 CFR 200.30-3(a)(12).

²² See *supra* note 4.

²³ See *supra* note 4. The proposed dissemination caps for MBS TBA transactions CD would limit display of actual size for approximately 20 percent of trades representing approximately 84 percent of par value traded and for MBS TBA transactions NGD would limit the display of actual size for approximately 42 percent of trades representing approximately 85 percent of par value traded. The information is based on a review of all MBS TBA, MBS Specified Pool and SBA-Backed ABS transactions reported to TRACE from May 16, 2011 through January 4, 2012.

²⁴ 15 U.S.C. 78o-3(b)(6).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-66805; File No. SR-Phlx-2012-46]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Equity Option Fees

April 13, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹, and Rule 19b-4² thereunder, notice is hereby given that, on April 2, 2012, NASDAQ OMX PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend certain Options Transaction Charges in Section II³ of the Exchange’s Pricing Schedule entitled “Equity Options Fees” and also offer a rebate on certain Customer orders.

The text of the proposed rule change is available on the Exchange’s Web site at <http://nasdaqtrader.com/micro.aspx?id=PHLXfilings>, 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 aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Section II of the Exchange’s Pricing Schedule to: (1) Increase the Professional⁴ Options Transaction Charges for both Penny Pilot options⁵ and non-Penny Pilot options⁶; and (ii) amend the non-Penny Pilot Broker-Dealer electronic Options Transaction Charge in order to recoup costs associated with supporting a larger number of options classes, option series and overall transaction volume each of which has become larger in the past few years.⁷ The Exchange also believes that increasing the Broker-Dealer electronic Options Transaction Charge in non-Penny Pilot options will allow the Exchange to compete more effectively by subsidizing Customer rebates. In addition, the Exchange proposes to offer an additional rebate on certain Customer orders to attract additional Customer order flow.

Specifically, the Exchange proposes to increase the Professional Options Transaction Charges for both Penny Pilot options and non-Penny Pilot options from \$.20 per contract to \$.25

⁴ The term “Professional” means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). See Rule 1000(b)(14).

⁵ The Penny Pilot was established in January 2007; and in October 2009, it was expanded and extended through June 30, 2012. See Securities Exchange Act Release Nos. 55153 (January 23, 2007), 72 FR 4553 (January 31, 2007) (SR-Phlx-2006-74) (notice of filing and approval order establishing Penny Pilot); 60873 (October 23, 2009), 74 FR 56675 (November 2, 2009) (SR-Phlx-2009-91) (notice of filing and immediate effectiveness expanding and extending Penny Pilot); 60966 (November 9, 2009), 74 FR 59331 (November 17, 2009) (SR-Phlx-2009-94) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 61454 (February 1, 2010), 75 FR 6233 (February 8, 2010) (SR-Phlx-2010-12) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 62028 (May 4, 2010), 75 FR 25890 (May 10, 2010) (SR-Phlx-2010-65) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 62616 (July 30, 2010), 75 FR 47664 (August 6, 2010) (SR-Phlx-2010-103) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 63395 (November 30, 2010), 75 FR 76062 (December 7, 2010) (SR-Phlx-2010-167) (notice of filing and immediate effectiveness extending the Penny Pilot); and 65976 (December 15, 2011), 76 FR 79247 (December 21, 2011) (SR-Phlx-2011-172) (notice of filing and immediate effectiveness extending the Penny Pilot). See also Exchange Rule 1034.

⁶ Non-Penny Pilot refers to options classes not in the Penny Pilot.

⁷ The costs are associated with network infrastructure, database and latency enhancements and regulatory systems.

per contract. The Exchange also proposes increasing the Broker-Dealer Options Transaction Charge in non-Penny Pilot options from \$.50 per contract to \$.60 per contract.

The Exchange also proposes to amend Section II of the Pricing Schedule to further incentivize members to transact Customer orders by offering an increased rebate of \$0.03 per contract on all electronically-delivered Customer orders that: (i) Qualified for the current \$0.07 Customer rebate;⁸ and (ii) added liquidity in a non-Penny Pilot option. The Exchange also proposes to modify the current language in the Pricing Schedule pertaining to the \$0.07 Customer order rebate to make clear that the additional \$0.03 Customer rebate must first qualify for the \$0.07 rebate to be eligible for the additional rebate. The Exchange also proposes to amend certain existing text related to the current \$0.07 per contract rebate to further clarify the text.

2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act⁹ in general, and furthers the objectives of Section 6(b)(4) of the Act¹⁰ in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

The Exchange’s proposal to increase the Professional Options Transaction Charges in both Penny Pilot and non-Penny Pilot options as well as increase the non-Penny Pilot Broker-Dealer electronic Options Transaction Charge is reasonable because of the greater costs incurred by the Exchange associated with supporting a larger number of options classes, option series and overall transaction volume. The Exchange believes increasing the Professional Options Transaction Charges in both Penny Pilot and non-Penny Pilot options from \$.20 per contract to \$.25 per contract is reasonable because the \$.05 per contract increase would allow the Exchange to recoup the aforementioned costs while also continuing to assess a Professional rate that is equal to or lower than a Broker-Dealer and Firm. Also, the increased Professional fees are comparable with fees at other options

⁸ Currently, the Exchange pays a rebate of \$0.07 per contract to members that execute an electronically-delivered Customer order and transact an average daily volume of 50,000 Customer contracts or greater in a given month.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Section II of the Pricing Schedule includes options overlying equities, ETFs, ETNs, indexes and HOLDRS which are Multiply Listed.

exchanges.¹¹ The Exchange believes increasing the Broker-Dealer electronic non-Penny Options Transactions Charge from \$.50 per contract to \$.60 per contract is reasonable because the \$.10 per contract increase would allow the Exchange to recoup the aforementioned costs while also subsidizing increased rebates for certain electronically-delivered Customer orders. An increased Broker-Dealer electronic non-Penny Pilot Options Transaction Charge allows the Exchange to compete more effectively by subsidizing rebates offered on electronically-delivered Customer orders, such as the rebate proposed herein.

The Exchange's proposal to increase the Professional Options Transaction Charges in both Penny Pilot and non-Penny Pilot options is equitable and not unfairly discriminatory because Professionals would continue to be assessed the same or lower fees as compared to Broker-Dealers¹² and Firms.¹³ Market Makers¹⁴ would be assessed the same or lower fees as compared to Professionals,¹⁵ because Market Makers have burdensome

¹¹ See SR-CBOE-2012-032, a rule change recently filed by The Chicago Board Options Exchange, Incorporated ("CBOE") to increase both the voluntary professional and professional transaction fees for equity options and index, ETF, ETN and HOLDRs options, excluding OEX, XEO, SPXW and Volatility Indexes, from \$0.20 to \$0.25 per contract. See also NYSE AMEX LLC's Fee Schedule, which assesses professional customers a \$0.25 per contract fee for manual executions and a \$0.23 per contract fee for electronic executions.

¹² Broker-Dealers are assessed a Penny Pilot Options Transaction Charge of \$.45 per contract for electronic orders and a Penny Pilot Options Transaction Charge of \$.25 for non-electronic orders. Broker-Dealers would be assessed a proposed non-Penny Pilot Options Transaction Charge of \$.60 for electronic orders and are currently assessed a non-Penny Pilot Options Transaction Charge of \$.25 for non-electronic orders.

¹³ Firms are assessed a Penny Pilot Options Transaction Charge of \$.25 per contract for electronic orders and a Penny Pilot Options Transaction Charge of \$.25 for non-electronic orders. Firms are assessed a non-Penny Pilot Options Transaction Charge of \$.40 for electronic orders and a non-Penny Pilot Options Transaction Charge of \$.25 for non-electronic orders.

¹⁴ A "Market Maker" includes Specialists (see Rule 1020) and Registered Options Traders ("ROTs") (Rule 1014(b)(i) and (ii)), which includes Streaming Quote Traders ("SQTs") (see Rule 1014(b)(ii)(A)) and Remote Streaming Quote Traders ("RSQTs") (see Rule 1014(b)(ii)(B)). Directed Participants are also Market Makers.

¹⁵ Market Makers are assessed a Penny Pilot Options Transaction Charge of \$.22 per contract for electronic orders and a Penny Pilot Options Transaction Charge of \$.25 for non-electronic orders. Market Makers are assessed a non-Penny Pilot Options Transaction Charge of \$.23 for electronic orders and a non-Penny Pilot Options Transaction Charge of \$.25 for non-electronic orders.

quoting obligations¹⁶ to the market which do not apply to Professionals, Customers, Firms and Broker-Dealers. Customers are not assessed Options Transactions Charges in either Penny Pilot or non-Penny Pilot options because Customer order flow brings liquidity to the market, which in turn benefits all market participants. Broker-Dealers and Firms today pay higher fees as compared to a Professional. The increased Professional Options Transaction Charges in both Penny Pilot and non-Penny Pilot options would in some cases equalize the fees paid by Professionals, Broker-Dealer and Firms¹⁷ and make them uniform and in other cases the Broker-Dealer and Firms would continue to pay higher fees as is the case today.¹⁸

The Exchange's proposal to increase the non-Penny Pilot Broker Dealer electronic Options Transaction Charge is equitable and not unfairly discriminatory because, currently, Broker-Dealers are assessed higher fees as compared to Customers, Professionals, Market Makers and Firms. Customers are not assessed Options Transaction Charges because Customer order flow brings liquidity to the market, which, in turn, benefits all market participants. Market Makers are assessed lower Options Transaction Charges as compared to other market participants, except Customers, because they have burdensome quoting obligations¹⁹ to the market which do not apply to Customers, Professionals, Firms and Broker-Dealers. In addition, Market Makers are subject to Payment for Order Flow Fees²⁰ whereas Professionals, Firms and Broker-Dealers

¹⁶ See Exchange Rule 1014 entitled "Obligations and Restrictions Applicable to Specialists and Registered Options Traders."

¹⁷ By increasing the Professional Options Transaction Charges in both Penny Pilot and non-Penny Pilot options to \$.25 per contract would cause the rates assessed Professionals to be uniform to the rates assessed Broker-Dealers for non-electronic transactions in Penny Pilot options and non-electronic transactions in non-Penny Pilot options as well as rates assessed Firms for electronic and non-electronic transactions in Penny Pilot options and non-electronic transactions in non-Penny Pilot options.

¹⁸ By increasing the Professional Options Transaction Charges in both Penny Pilot and non-Penny Pilot options to \$.25 per contract would cause the rates assessed Professionals to be lower than the rates assessed Broker-Dealers for electronic transactions in Penny Pilot options and electronic transactions in non-Penny Pilot options (assuming the proposed new rate of \$.60 per contract) and the rate assessed Firms for electronic transactions in non-Penny Pilot options.

¹⁹ See note 16.

²⁰ Payment for Order Flow Fees are \$.25 per contract for options that are trading in the Penny Pilot Program and \$.70 per contract for other equity options. See Section II of the Pricing Schedule.

are not subject to such fees.²¹ For example, a Market Maker electronically transacting a Penny Pilot option contra a Customer order would pay \$.47 per contract and a Market Maker electronically transacting a non-Penny Pilot option contra a Customer order would pay \$.92 [sic] per contract.²² With respect to Professionals, they have access to more information and technological advantages as compared to Customers and Professionals do not bear the obligations of Market Makers. Also, Professionals engage in trading activity similar to that conducted by Market Makers. For example, Professionals continue to join bids and offers on the Exchange and thus compete for incoming order flow. For these reasons, the Exchange believes that Professionals may be priced higher than a Customer and may be priced equal to or higher than a Market Maker. Professionals are currently assessed a \$.20 per contract Options Transaction Charge in non-Penny Pilot options, which the Exchange is proposing to increase to \$.25 per contract, as compared to a Broker-Dealer that is currently assessed an electronic Options Transaction Charge of \$.50 per contract for non-Penny Pilot options.²³ The Exchange believes that increasing the Broker-Dealer electronic non-Penny Pilot Options Transaction Charge to \$.60

²¹ Payment for Order Flow Fees are assessed on transactions resulting from Customer orders and are available to be disbursed by the Exchange according to the instructions of the Specialist units/Specialists or Directed ROTs to order flow providers who are members or member organizations, who submit, as agent, customer orders to the Exchange or non-members or non-member organizations who submit, as agent, Customer orders to the Exchange through a member or member organization who is acting as agent for those Customer orders. Specialists and Directed ROTs who participate in the Exchange's payment for order flow program are assessed a Payment for Order Flow Fee, in addition to ROTs. Therefore, the Payment for Order Flow Fee is assessed, in effect, on equity option transactions between a Customer and an ROT, a Customer and a Directed ROT, or a Customer and a Specialist. A ROT is defined in Exchange Rule 1014(b) as a regular member of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. A ROT includes a SQT, a RSQT and a Non-SQT, which by definition is neither a SQT or a RSQT. See Exchange Rule 1014(b)(i) and (ii).

²² In terms of effective rates, a Market Maker transacting a Penny Pilot option contra a Customer would effectively pay on average \$.0586 per contract and a Market Maker transacting a non-Penny Pilot option contra a Customer would effectively pay on average \$.0684 per contract. These effective rates apply to the fees contained in Section II of the Pricing Schedule. Section I of the Pricing Schedule entitled "Rebates and Fees for Adding and Removing Liquidity in Select Symbols" only applies to the Select Symbols listed in Section I.

²³ Section II of the Pricing Schedule contains electronic vs. non-electronic Options Transaction Charges only for Market Makers, Broker-Dealers and Firms.

per contract for options does not misalign the current rate differentials between a Broker-Dealer and a Professional because the differential is only increasing by \$.05 per contract and is comparable to differentials at other options exchanges.²⁴ Firms are currently assessed different Options Transaction Charges as compared to Broker-Dealers. Firms are assessed an electronic Options Transaction Charge of \$.40 per contract in non-Penny Pilot options as compared to the current Broker-Dealer electronic Options Transaction Charge of \$.50 per contract in non-Penny Pilot options. The proposed rate differential as between a Firm and Broker-Dealer of \$.20 per contract, as proposed herein, is lower than differentials at other options exchanges for such market participants.²⁵ The proposed rate differential as between a Firm and Broker-Dealer of \$.20 per contract in electronic non-Penny Pilot options would be equivalent to the current rate differential between a Firm and Broker-Dealer of \$.20 per contract in electronic Penny Pilot options.²⁶ In addition, the Exchange believes that it is equitable and not unfairly discriminatory to increase the Broker-Dealer electronic non-Penny Pilot Options Transaction Charge to \$.60 per contract to subsidize Customer rebates because attracting Customer order flow to the Exchange will benefit all market participants.

The Exchange believes that offering an increased rebate of \$0.03 per contract on all Customer orders that qualified for the current \$0.07 Customer order rebate and also add liquidity in a non-Penny Pilot option is reasonable because the Exchange is seeking to further incentivize market participants to transact a greater number of Customer orders in non-Penny Pilot options, which order flow should benefit all market participants because of the increased liquidity such orders bring to the market.

The Exchange believes that offering an increased rebate of \$0.03 per contract on all Customer orders that qualified for

the current \$0.07 Customer order rebate and also add liquidity in a non-Penny Pilot option is equitable and not unfairly discriminatory because all market participants are eligible to receive the additional rebate once they meet the volume threshold for Customer Orders. All market participants would be uniformly paid the additional \$0.03 per contract rebate on qualifying Customer orders as long as those orders add liquidity in a non-Penny Pilot option. The Exchange believes that requiring members to transact an average daily volume of 50,000 Customer contracts or greater in a given month to obtain the rebate is reasonable, equitable and not unfairly discriminatory because the volume threshold should incentivize members to bring greater liquidity to the Exchange, thereby benefitting all market participants. Similar to current fees on the NASDAQ Options Market LLC ("NOM"), the Exchange is proposing to offer a rebate based on a certain volume criteria.²⁷ Similar to this proposal, the CBOE offers a volume incentive program. CBOE credits each Trading Permit Holder ("TPH") a certain per contract amount based on the volume of customer contracts the TPH executes electronically at CBOE in multiply-listed option classes (excluding qualified contingent cross trades).²⁸ The Exchange's proposal to exclude PIXL and QCC Orders from the rebate and volume threshold calculation is reasonable, equitable and not unfairly discriminatory because PIXL and QCC Orders have the opportunity to receive rebates today,²⁹ and the Exchange pays the rebate uniformly to its members.

The Exchange operates in a highly competitive market, comprised of nine exchanges, in which market participants can easily and readily direct order flow to competing venues if they deem fee and rebate levels at a particular venue to be excessive. Accordingly, the fees that are assessed and the rebates paid by the Exchange must remain competitive with fees charged and rebates paid by other venues and therefore must

continue to be reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than competing venues.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.³⁰ 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-Phlx-2012-46 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2012-46. This file number should be included on the

²⁴ CBOE currently assesses a professional an equity options fee of \$.20 [sic] per contract and a Broker-Dealer electronic order an equity options fee of \$.45 per contract. See CBOE's Fees Schedule.

²⁵ CBOE currently assesses a Clearing Trading Permit Holder Proprietary an equity options fee of \$.20 per contract and a Broker-Dealer electronic order an equity options fee of \$.45 per contract. See CBOE's Fees Schedule. Similarly, the International Securities Exchange, LLC ("ISE") assesses a Firm Proprietary execution fee of \$.20 per contract/side and a Non-ISE Market Maker a fee of \$.45 per contract side.

²⁶ Currently, a Firm transacting an electronic Penny Pilot options order pays \$.25 per contract while a Broker-Dealer transacting an electronic Penny Pilot options order pays \$.45 per contract.

²⁷ NOM currently has a tiered rebate with certain volume criteria for Customer orders in Penny Pilot Options. See Chapter XV, Section 2 entitled "NASDAQ Options Market—Fees."

²⁸ See CBOE's Fees Schedule. CBOE offers a per contract credit ranging from \$.00 to \$.20 per contract based on a certain volume threshold which ranges from 0 to 375,001 plus customer contracts per day.

²⁹ See Sections II and IV(A) of the Exchange's Pricing Schedule. A PIXL Order will receive the rebate for adding liquidity when executed against contra-side order(s) that respond to the PIXL auction broadcast message as well as when executed against contra-side quotes and unrelated orders on the PHLX book that arrived after the PIXL auction was initiated.

³⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

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-Phlx-2012-46 and should be submitted on or before May 10, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³¹

Kevin M. O'Neill,
Deputy Secretary.

[FR Doc. 2012-9406 Filed 4-18-12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-66806; File No. SR-Phlx-2012-49]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 1014

April 13, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹, and Rule 19b-4² thereunder, notice is hereby given that, on April 4, 2012, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed

rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Section (b)(ii)(D)(3) of Rule 1014, Obligations and Restrictions Applicable to Specialists and Registered Options Traders, a rule pertaining to the minimum size requirement for quotations.

The text of the proposed rule change is available on the Exchange's Web site at <http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings>, 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 aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

This proposed rule change is based on filings previously submitted by the Chicago Board Options Exchange ("CBOE")³ and the International Securities Exchange ("ISE")⁴ that were effective on filing.

The purpose of the proposed rule change is to amend Section (b)(ii)(D)(3) of Rule 1014, Obligations and Restrictions Applicable to Specialists and Registered Options Traders, in order to change a minimum quoting size requirement. Rule 1014(b)(ii)(D) sets forth certain market making obligations that apply to Streaming Quote Traders

³ See Securities Exchange Act Release No. 58828 (October 21, 2008), 73 FR 63749 (October 27, 2008) (SR-CBOE-2008-107).

⁴ See Securities Exchange Act Release No. 60854 (October 21, 2009) 74 FR 55613 (October 28, 2009) (SR-ISE-2009-84).

("SQTs"),⁵ Remote Streaming Quote Traders ("RSQTs")⁶ and specialists. For example, Rule 1014(b)(ii)(D)(1) provides that, in addition to other obligations and with certain exceptions, an SQT and an RSQT shall be responsible to quote two-sided markets in not less than 60% of the series in which such SQT or RSQT is assigned. Likewise, Rule 1014(b)(ii)(D)(2) provides that a specialist must quote two-sided markets in the lesser of 99% of the series or 100% of the series minus one call-put pair in each option in which such specialist is assigned.

Currently Rule 1014(b)(ii)(D)(3) provides that SQTs, RSQTs and the specialist assigned in an option shall submit electronic quotations for such option with a size of not less than 10 contracts. The Exchange proposes to eliminate the 10 contract minimum size and to provide instead that the minimum number of contracts shall be specified by the Exchange for each option. The proposed change would allow the Exchange to set a minimum quotation size requirement for quotes on a class by class basis, provided the minimum set by the Exchange is at least one contract. Phlx would not impose a minimum quotation size requirement greater than 10 contracts.

The Exchange believes it should have the flexibility to change the minimum size requirement on a class by class basis depending on market conditions and the trading and liquidity in a particular option class and its underlying security. Phlx notes that the minimum quotation size requirement for market makers on ISE, CBOE, NYSE Arca, Inc. ("NYSE Arca") and the Nasdaq Options Market ("NOM") is only one contract.⁷ As a result, Phlx believes the proposed rule change is based on and similar to the rules of other options exchanges.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b)

⁵ A Streaming Quote Trader ("SQT") is defined in Exchange Rule 1014(b)(ii)(A) as a ROT who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned.

⁶ A Remote Streaming Quote Trader ("RSQT") is defined Exchange Rule in 1014(b)(ii)(B) as an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange.

⁷ See ISE Rule 804, CBOE Rules 6.2B, 8.7, 8.14, 8.15A, NYSE Arca Rule 6.37B and NOM Rulebook Chapter VII, Section 6(a).

³¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

of the Act⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act⁹ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The proposed rule change would permit the Exchange to set a minimum quotation size requirement on a class by class basis, provided the minimum size is at least one contract. Phlx believes that this flexibility will enable the Exchange to take into consideration market conditions and the trading and liquidity in a particular option class and its underlying security.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act¹⁰ and Rule 19b-4(f)(6)¹¹ thereunder.

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-Phlx-2012-49 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2012-49. 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-Phlx-2012-49 and should be submitted on or before May 10, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Kevin M. O'Neill,
Deputy Secretary.

[FR Doc. 2012-9407 Filed 4-18-12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-66809; File No. SR-NYSEAmex-2012-10]

Self-Regulatory Organizations; NYSE Amex LLC; Order Granting Approval of a Proposed Rule Change Amending NYSE Amex Rule 476A To Update Its "List of Equities Rule Violations and Fines Applicable Thereto"

April 13, 2012.

I. Introduction

On February 16, 2012, NYSE Amex LLC ("Exchange" or "NYSE Amex") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend NYSE Amex Rule 476A to update its "List of Equities Rule Violations and Fines Applicable Thereto." The proposed rule change was published for comment in the **Federal Register** on March 5, 2012.³ The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

II. Description

By way of background, NYSE Amex Rule 476 governs disciplinary proceedings involving charges against members, member organizations, principal executives, approved persons, employees, or others for violations of the federal securities laws, Exchange rules and agreements with the Exchange, and other offenses listed in the rule.

NYSE Amex Rule 476A, "Imposition of Fines for Minor Violation(s) of Rules," provides that, in lieu of commencing a disciplinary proceeding under Rule 476, the Exchange may (subject to specified requirements) "impose a fine, not to exceed \$5,000, on any member, member organization, principal executive, approved person, or registered or non-registered employee of a member or member organization, for

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 66481 (February 28, 2012), 77 FR 13159 ("Notice").

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) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement. 17 CFR 240.19b-4(f)(6).

any violation of a rule of the Exchange, which violation the Exchange shall have determined is minor in nature.”⁴ The provisions of Rule 476A are known as the Exchange’s Minor Rule Violation Plan.

According to the Exchange, the “summary fines” under Rule 476A provide a meaningful sanction for rule violations when the violation calls for stronger discipline than an admonition or cautionary letter, but the facts and circumstances of the violation do not warrant initiation of a formal disciplinary proceeding under Rule 476. A “List of Equities Rule Violations and Fines Applicable Thereto” (“Rule 476A List”) is appended as Part 1A of the Supplementary Material to the rule.

In the instant proposal, NYSE Amex proposes to amend the Rule 476A List to: (i) Make technical, non-substantive changes to conform the list to previously-approved changes in Exchange rules, (ii) update the rules relating to conduct by Designated Market Makers (“DMMs”), and (iii) add rules relating to conduct by DMMs, as follows:

Proposed Non-Substantive Changes to Rule 476A List

The Exchange proposes to update the Rule 476A List by updating the title of a rule, updating references to rules that have been renumbered or harmonized with a Financial Industry Regulatory Authority (“FINRA”) rule, deleting references to rules that have been deleted, updating the descriptions of rules that have been amended, harmonizing the Rule 476A List with the list in the New York Stock Exchange (“NYSE”) Minor Rule Violation Plan, and fixing a typographical error.⁵

Proposed Updates to Rule 476A List for DMM Conduct Rules

The current Rule 476A List includes certain rules that govern DMM conduct (e.g., NYSE Amex Equities Rules 104(a)(1)(A) and 104.10). The Exchange proposes to update the Rule 476A List with current rules governing DMM conduct. In particular, under the proposed rule change, the list would be amended to include, more expansively, “Rule 104—NYSE Amex Equities requirements for the dealings and responsibilities of DMMs,” as well as “Rule 123D—NYSE Amex Equities requirements for DMMs relating to openings, re-openings, delayed openings, trading halts, and tape indications.” Thus, additional elements

of Rule 104, as well as Rule 123D, would be included in the Minor Rule Violation Plan, as further detailed below.

Rule 104

NYSE Amex Equities Rule 104 requires DMMs registered in one or more securities traded on the Exchange to engage in a course of dealings for their own account to assist in the maintenance of a fair and orderly market, insofar as reasonably practicable, by contributing liquidity when lack of price continuity and depth, or disparity between supply and demand exists or is reasonably to be anticipated.⁶

The Rule 476A List currently includes the following elements of Rule 104:

- Rule 104(a)(1)(A), which requires DMMs to maintain a bid or an offer at the National Best Bid and National Best Offer (“inside”) at least 10% of the trading day for securities in which the DMM unit is registered that have a consolidated average daily volume of less than one million shares, and at least 5% for securities in which the DMM unit is registered that have a consolidated average daily volume equal to or greater than one million shares; and
- Rule 104.10, which is described in the Rule 476A List as relating to “Functions of DMM.” Rule 104.10 refers to a former rule relating to certain subject matters that, according to the Exchange, continue to be covered in the current Rule 104. NYSE Amex currently does not have a Rule 104.10.

The proposed rule change would, instead, include a single reference in the Rule 476A List identifying “Rule 104—NYSE Amex Equities requirements for the dealings and responsibilities of DMMs” as subject to the Minor Rule Violation Plan. The proposed rule change would have the effect of adding to the Rule 476A List Rules 104(b), (c), (d), and (e),⁷ as well as Rule 104(a)(1)(B), the rule that governs the DMM’s new pricing obligations, which

⁶ NYSE Amex Equities Rule 104 currently operates on a pilot basis, set to end on July 31, 2012. The Exchange stated its belief that the Rule 476A List should reference those rules that are currently operational, even if operating on a pilot basis.

⁷ See Notice, *supra* note 3 at 13160–61 for a full description of the elements of Rule 104 that, under the proposal, would be included in the Minor Rule Violation Plan. The Exchange states that other elements of Rule 104 (*i.e.*, Rule 104(j) and supplementary material .05) are not related to DMM obligations, but rather reflect operational aspects of the Exchange. See *id.* at note 8. The Exchange notes that, in a separate filing, it has proposed to delete NYSE Amex Equities Rule 104(a)(6). See Securities Exchange Act Release No. 65735 (November 10, 2011), 76 FR 71405 (November 17, 2011) (SR–NYSEAmex–2011–86). The Commission instituted proceedings to determine whether to disapprove SR–NYSEAmex–2011–86. See Securities Exchange Act Release No. 66397 (February 15, 2012), 77 FR 10586 (February 22, 2012).

were implemented by all equities markets on December 6, 2010.⁸

Rule 123D

The Exchange also proposes to include a reference to delayed openings, which is addressed in NYSE Amex Equities Rule 123D, in the Rule 476A List to harmonize the Rule 476A List with the list in the NYSE Minor Rule Violation Plan as existed at the time the Notice was filed with the Commission.⁹ Further, consistent with a recent NYSE filing, the Exchange proposes to expand the reference to Rule 123D to include other elements of that rule (e.g., openings, re-openings, trading halts, and tape indications) as being eligible under the Exchange’s Minor Rule Violation Plan.¹⁰ The effect of the change would be to include additional requirements of DMMs set forth in Rule 123D—relating to openings, re-openings, trading halts, and tape indications—in the Minor Rule Violation Plan.

III. Discussion and Commission Findings

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹¹ In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act¹² because expanding the list of DMM obligations that are subject to the Minor Rule Violation Plan should afford the Exchange increased flexibility in carrying out its supervisory responsibilities, and, in doing so, help to meet the aim of protecting investors and the public interest.

The Commission also believes that the proposed rule change is consistent with

⁸ See Securities Exchange Act Release No. 63255 (November 5, 2010), 75 FR 69484 (November 12, 2010) (SR–NYSEAmex–2010–96).

⁹ At the time of filing of this proposed rule change, “violations of Exchange policies regarding procedures to be followed in delayed opening situations” were eligible for summary fines under the NYSE Minor Rule Violation Plan. According to the Exchange, such policies are codified in NYSE Rule 123D, as well as in NYSE Amex Equities Rule 123D.

¹⁰ The Commission recently approved a proposed rule change by NYSE to, among other things, include “Rule 123D requirements for DMMs relating to openings, re-openings, delayed openings, trading halts, and tape indications” in its Minor Rule Violation Plan. See Securities Exchange Act Release No. 66758 (April 6, 2012), 77 FR 22032 (April 12, 2012).

¹¹ In approving this proposed rule change, the Commission notes that it has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹² 15 U.S.C. 78f(b)(5).

⁴ NYSE Amex Rule 476A(a).

⁵ For a more detailed description of these changes, see Notice, *supra* note 3.

Sections 6(b)(1) and 6(b)(6) of the Act,¹³ which require that an exchange enforce compliance with, and have rules that provide appropriate discipline for violations of, the Act, the rules and regulations thereunder, and Exchange rules. As an initial matter, the proposed rule change will further these objectives through its clarification of the list of Exchange rule violations that are subject to NYSE Amex Rule 476A by updating rule titles and rule references, deleting references to rules that have been deleted, updating descriptions of rules that have been amended, and fixing a typographical error.

Further, the Commission recognizes that the proposed rule change will render violations of DMM obligations under Rule 104 that were not previously on the Rule 476A List,¹⁴ as well as violations of DMM obligations under Rule 123D, as eligible for treatment as minor violations.¹⁵ However, the Commission notes that designating a rule as subject to the Minor Rule Violation Plan does not signify that violation of the rule will always be deemed a minor violation. As noted by the Exchange, Rule 476A preserves the Exchange's discretion to seek formal discipline, as warranted, when transgressions of rules designated as eligible for the Minor Rule Violation Plan are found to be more serious. Thus, the Exchange will remain able to require, on a case-by-case basis, formal disciplinary action for any particular violation. Therefore, the Commission believes that the proposed rule change will not compromise the Exchange's ability to seek more stringent sanctions for the more serious violations of Rules 104 and 123D.

In addition, because NYSE Amex Rule 476A provides procedural rights to a person fined under the rule, entitling the person to contest the fine and receive a full disciplinary proceeding,¹⁶ the Commission believes that NYSE Amex Rule 476A, as amended by this proposed rule change, will provide a fair procedure for the disciplining of Exchange members and persons associated with members, consistent with Sections 6(b)(7) and 6(d)(1) of the Act.¹⁷

Finally, the Commission finds that the proposed rule change is consistent with the public interest, the protection of investors, or is otherwise in furtherance of the purposes of the Act, as required by Rule 19d-1(c)(2) under the Act,¹⁸ which governs minor rule violation plans. The Commission believes that the proposed changes to NYSE Amex Rule 476A will strengthen the Exchange's ability to carry out its oversight and enforcement responsibilities as a self-regulatory organization, in cases where full disciplinary proceedings are unsuitable in view of the nature of a particular violation.

In approving this proposed rule change, the Commission emphasizes that in no way should the amendment of the rule be seen as minimizing the importance of compliance with Exchange rules and all other rules subject to the imposition of fines under NYSE Amex Rule 476A. The Commission believes that the violation of any self-regulatory organization's rules, as well as Commission rules, is a serious matter. However, NYSE Amex Rule 476A provides a reasonable means of addressing rule violations that do not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. The Commission expects that the Exchange will continue to conduct surveillance with due diligence and make a determination based on its findings, on a case-by-case basis, of whether a violation requires formal disciplinary action under NYSE Amex Rule 476.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁹ that the proposed rule change (SR-NYSEAmex-2012-10) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012-9408 Filed 4-18-12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-66810; File No. SR-NYSEArca-2012-30]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Arca Equities Rule 7.31(h)(4) To Make Passive Liquidity Orders in Exchange-Listed Securities Available to All Users, Regardless of Whether a Lead Market Maker Is Assigned to the Security

April 13, 2012.

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 April 3, 2012, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a rule change under Rule 19b-4(f)(6) under the Act,³ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Equities Rule 7.31(h)(4) to make Passive Liquidity Orders ("PL Orders") in Exchange-listed securities available to all Users, regardless of whether a Lead Market Maker ("LMM") is assigned to the security. The text of the proposed rule change is available at the Exchange, www.nyse.com, and the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below,

¹³ 15 U.S.C. 78f(b)(1) and 15 U.S.C. 78f(b)(6).

¹⁴ The Commission believes that it is appropriate to include in NYSE Amex Rule 476A references to rules that are currently operating on a pilot basis.

¹⁵ The Commission also recognizes that the Exchange proposes to harmonize its Rule 476A List with the NYSE Minor Rule Violation Plan by adding violations not currently included in the Rule 476A List.

¹⁶ See NYSE Amex Rule 476A(d).

¹⁷ 15 U.S.C. 78f(b)(7) and 15 U.S.C. 78f(d)(1).

¹⁸ 17 CFR 240.19d-1(c)(2).

¹⁹ 15 U.S.C. 78s(b)(2).

²⁰ 17 CFR 200.30-3(a)(12); 17 CFR 200.30-3(a)(44).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

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 NYSE Arca Equities Rule 7.31(h)(4) to make PL Orders in Exchange-listed securities available to all Users, regardless of whether an LMM is assigned to the security.

A PL Order is an order to buy or sell a stated amount of a security at a specified, undisplayed price.⁴ In securities where the NYSE Arca Marketplace is the primary listings market and there is an LMM assigned to the security that complies with certain display requirements, a PL Order is currently available only to the LMM for such security. In all other securities traded on the Exchange, whether dually-listed securities or securities traded pursuant to unlisted trading privileges, a PL Order is available to all Users. The Exchange proposes to amend NYSE Arca Equities Rule 7.31(h)(4) to remove the text therein that limits the use of PL Orders in Exchange-listed securities to the assigned LMM, thereby making PL Orders available to all Users, regardless of whether an LMM is assigned to the security.⁵

The PL Order was initially designed to attract liquidity to the Exchange by permitting market participants to express their trading interest more accurately than was possible with other order types available at the time.⁶ PL Orders were also designed to offer potential price improvement to incoming marketable orders submitted by any User.⁷ The Exchange originally believed that restricting the use of the PL Order in Exchange-listed securities to LMMs was appropriate because LMMs would be subject to certain minimum display requirements in proximity to the Exchange's Best Bid and Offer ("BBO").⁸ The Exchange believed that these requirements could enhance depth and liquidity at or near the Exchange's BBO.⁹

After significant experience with the use of PL Orders on the Exchange, both by LMMs and other Users, the Exchange believes that PL Orders in Exchange-listed securities should be available to all Users, regardless of whether an LMM is assigned to the security. In this regard, experience has shown that LMMs in Exchange-listed securities generally do not utilize PL Orders in their assigned securities. In contrast, the Exchange has recently received requests from ETP Holders to permit PL Orders in Exchange-listed securities to be entered by Users other than the LMM assigned to the security.

The proposed rule change would enhance the tools available to Users when entering their trading interest by making PL Orders in Exchange-listed securities available to all Users, including LMMs. The Exchange believes that the proposed rule change would not disadvantage LMMs, which generally do not utilize the PL Order type, but would remain able to do so going forward, albeit without the exclusivity that is currently available. Furthermore, the Exchange believes that the elimination of this exclusivity, and the display requirements related thereto, would not have a detrimental impact on the quality of the Exchange's market, because, as discussed above, LMMs generally do not utilize the PL Order. Instead, the proposed rule change could improve the quality of the Exchange's market by increasing the potential for price improvement on the Exchange in Exchange-listed securities.

Because of the related technology changes that this proposed rule change would require, the Exchange proposes to announce the initial implementation date 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"),¹⁰ in general, and furthers the objectives of Section 6(b)(5),¹¹ 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. The Exchange believes that the proposed rule change meets these requirements because it would

promote just and equitable principles of trade and remove impediments to the mechanism of a free and open market by expanding the universe of Users that could submit PL Orders in Exchange-listed securities. The Exchange further believes that by expanding access to PL Orders in Exchange-listed securities to all Users, the Exchange will further promote just and equitable principles of trade. Conversely, the Exchange believes that the proposed rule change would not disadvantage LMMs, which generally do not utilize the PL Order type, because they would remain able to use PL Orders in Exchange-listed securities. Furthermore, the Exchange believes that the elimination of this exclusivity would further the goals of a free and open market and national market system by increasing the potential for price improvement in Exchange-listed securities.

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 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, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹² and Rule 19b-4(f)(6) thereunder.¹³ At any time within 60 days of the filing of such proposed rule change, the Commission

⁴ See NYSE Arca Equities Rule 7.31(h)(4).

⁵ The Exchange also proposes to remove certain text from NYSE Arca Equities Rule 7.37(a)(1) and (b)(1)(A) that would be rendered obsolete by the proposed amendment to NYSE Arca Equities Rule 7.31(h)(4).

⁶ See Securities Exchange Act Release No. 54511 (September 26, 2006), 71 FR 58460, 58461 (October 3, 2006) (SR-PCX-2005-53).

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at 58462.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(6).

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-NYSEArca-2012-30 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-NYSEArca-2012-30. 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-NYSEArca-2012-30 and should be submitted on or before May 10, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012-9409 Filed 4-18-12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-66811; File No. SR-NYSEArca-2012-29]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Arca Equities Rule 7.31(t) To Provide for Limit-on-Open Orders and Market-on-Open Orders

April 13, 2012.

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 April 3, 2012, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a rule change under Rule 19b-4(f)(6) under the Act,³ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Equities Rule 7.31(t) to provide for Limit-on-Open Orders ("LOO Orders") and Market-on-Open Orders ("MOO Orders"). The text of the proposed rule change is available at the Exchange, www.nyse.com, and the Commission's Public Reference Room.

¹⁴ 17 CFR 200.30-3(a)(12).

¹⁵ U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

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 NYSE Arca Equities Rule 7.31(t) to provide for LOO and MOO Orders.

NYSE Arca Equities Rule 7.31(t) currently provides for Auction-Only Orders, which are limit or market orders that are only executed within an auction.⁴ As proposed, LOO and MOO Orders would be defined under NYSE Arca Equities Rule 7.31(t)(1) and (2), respectively, as specific types of Auction-Only Orders. More specifically, a LOO Order would be defined as an Auction-Only Limit Order that is to be executed only during the Market Order Auction, which is the auction that opens the Core Trading Session on the Exchange for Exchange-listed securities.⁵ Any portion of a LOO Order that remains unfilled after completion of the Market Order Auction would be cancelled. A MOO Order would be defined as an Auction-Only Market Order that is to be executed only during the Market Order Auction. As with LOO Orders, any portion of a MOO Order that remains unfilled after completion of the Market Order Auction would be cancelled. MOO and LOO orders would not participate in the Opening Auction, as defined in NYSE Arca Equities Rule 7.35(b), the Closing Auction, as defined in NYSE Arca Equities Rule 7.35(e), or

⁴ An Auction-Only Order is executable during the next auction following entry of the order. If the order is not executed in the auction, the balance is cancelled. An Auction-Only Order is only available for auctions that take place on the Exchange. Auction-Only Orders are not routed to other exchanges and are cancelled where the next auction after entry of the order is cancelled or does not occur. An Auction-Only Order may not be designated as good until cancelled.

⁵ The Market Order Auction is described in NYSE Arca Equities Rule 7.35(c).

Trading Halt Auctions, as defined in NYSE Arca Equities Rule 7.35(f).

The Exchange also proposes the following technical amendments to NYSE Arca Equities Rule 7.35(c):

- First, the Exchange proposes to remove certain text from NYSE Arca Equities Rule 7.35(c) that cross-references New York Stock Exchange (“NYSE”) Rule 123D and NYSE-listed securities subject to a sub-penny trading condition, which was previously described within NYSE Rule 123D(3). NYSE has removed this text from NYSE Rule 123D and eliminated the sub-penny trading condition in its entirety.⁶ The proposed removal of the cross-reference would therefore remove obsolete text from NYSE Arca Equities Rule 7.35(c).

- Second, the Exchange proposes to specify that, for purposes of NYSE Arca Equities Rule 7.35(c), and unless stated otherwise, references to Market Orders include Auction-Only Market Orders. This proposed change would add greater specificity regarding the handling of Auction-Only Market Orders, including MOO Orders, during the Market Order Auction.

- Third, the Exchange proposes to delete duplicative text from NYSE Arca Equities Rule 7.35(c) describing that, after the first opening print on the primary market, all Market Orders and Limit Orders are processed pursuant to NYSE Arca Equities Rule 7.37.

- Finally, the Exchange proposes to specify in NYSE Arca Equities Rule 7.35(c)(3)(A)(3) that only Market Orders that are eligible for both the Market Order Auction and the Core Trading Session, but are not executed in the Market Order Auction, become eligible for execution in the Core Trading Session immediately upon conclusion of the Market Order Auction.⁷ This proposed change would add greater specificity regarding the handling of certain Market Orders, like MOO Orders, that are not eligible for the Core Trading Session.

Because of the related technology changes that this proposed rule change would require, the Exchange proposes to announce the date on which LOO and MOO Orders would be available 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. The proposed rule change is also not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As proposed, LOO and MOO Orders would be a subset of the existing Auction-Only Orders that are currently available on the Exchange. In this regard, the availability of LOO and MOO Orders would enhance the tools available to ETP Holders when entering their trading interest by providing for an Auction-Only Order that could only be executed during the Market Order Auction. Furthermore, the proposed addition of LOO and MOO Orders on the Exchange could contribute to the quality of the Exchange’s opening by increasing the amount of liquidity that ETP Holders are willing to enter to participate in the Market Order Auction. For these reasons, the Exchange believes that its proposal to provide for LOO and MOO Orders would remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest. The Exchange notes that order types similar to LOO and MOO Orders are available on other exchanges.¹⁰ Accordingly, making these order types available for ETP Holders to utilize would promote just and equitable principles of trade and foster cooperation and coordination with persons engaged in facilitating transactions in securities. Furthermore, LOO and MOO Orders would be available for all ETP Holders to utilize on the Exchange. In this regard, the Exchange believes that the proposed rule change is not designed to permit unfair discrimination. The proposed technical changes would also benefit ETP Holders and investors by adding

greater specificity and precision to the Exchange’s Rules.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition 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 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, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹¹ and Rule 19b-4(f)(6) thereunder.¹² At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission’s Internet comment form ([http://www.sec.gov/ comment/sro.shtml](http://www.sec.gov/comment/sro.shtml)); or

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6).

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ See NASDAQ Stock Market LLC (“NASDAQ”) Rule 4752(a)(3) and (4), which define “Limit On Open Order” and “Market On Open Order,” respectively. See also BATS Exchange, Inc. (“BATS”) Rule 11.23(a)(14) and (16), which define “Limit-On-Open” orders and “Market-On-Open” orders, respectively.

⁶ See Securities Exchange Act Release No. 58936 (November 13, 2008), 73 FR 69704 (November 19, 2008) (SR-NYSE-2008-117).

⁷ The Exchange also proposes to remove duplicative text from NYSE Arca Equities Rule 7.35(c)(3)(A)(4).

• Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2012–29 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–NYSEArca–2012–29. 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–NYSEArca–2012–29 and should be submitted on or before May 10, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Kevin M. O'Neill,
Deputy Secretary.

[FR Doc. 2012–9410 Filed 4–18–12; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13058 and #13059]

West Virginia Disaster Number WV–00025

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of West Virginia (FEMA–4061–DR), dated 03/22/2012.

Incident: Severe storms, flooding, mudslides, and landslides.

Incident Period: 03/15/2012 through 03/31/2012.

Effective Date: 03/31/2012.

Physical Loan Application Deadline Date: 05/21/2012.

Economic Injury (EIDL) Loan Application Deadline Date: 12/24/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of WEST VIRGINIA, dated 03/22/2012, is hereby amended to establish the incident period for this disaster as beginning 03/15/2012 and continuing through 03/31/2012.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,
Associate Administrator for Disaster Assistance.

[FR Doc. 2012–9455 Filed 4–18–12; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13054 and #13055]

West Virginia Disaster Number WV–00027

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of West Virginia (FEMA–4061–DR), dated 03/22/2012.

Incident: Severe Storms, Flooding, Mudslides, and Landslides.

Incident Period: 03/15/2012 through 03/31/2012.

Effective Date: 03/31/2012.

Physical Loan Application Deadline Date: 05/21/2012.

EIDL Loan Application Deadline Date: 12/24/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of West Virginia, dated 03/22/2012 is hereby amended to establish the incident period for this disaster as beginning 03/15/2012 and continuing through 03/31/2012.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,
Associate Administrator for Disaster Assistance.

[FR Doc. 2012–9456 Filed 4–18–12; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 7851]

RIN 1400–AC95

Announcement of Entry Into Force of the Defense Trade Cooperation Treaty Between the United States and the United Kingdom

ACTION: Notice.

SUMMARY: On April 13, 2012, the United States and the United Kingdom exchanged diplomatic notes bringing the Treaty between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland Concerning Defense Trade Cooperation (Treaty Doc. 110–7) into force. This Notice announces the entry into force of the Treaty. This Notice also announces April 13, 2012 as the effective date of the rule published on March 21, 2012 (77 FR 16592) implementing the Treaty and making other updates to the International Traffic in Arms Regulations (ITAR).

¹³ 17 CFR 200.30–3(a)(12).

DATES: This notice is effective April 19, 2012.

FOR FURTHER INFORMATION CONTACT: Sarah J. Heidema, Office of Defense Trade Controls Policy, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, U.S. Department of State, Washington, DC 20522–0112, telephone (202) 663–2809, email at heidemasj@state.gov.

SUPPLEMENTARY INFORMATION: On March 21, 2012, the Department of State published a rule (77 FR 16592) amending the ITAR to implement the Treaty, and identify via a supplement the defense articles and defense services that may not be exported pursuant to the Treaty. The rule also amended the ITAR section pertaining to the Canadian exemption and added Israel to the list of countries and entities that have a shorter Congressional notification certification time period and a higher dollar value reporting threshold. This rule indicated it would become effective upon the entry into force of the Treaty and that the Department of State would publish a rule document in the **Federal Register** announcing the effective date of this rule. This notice is being published to make such announcement.

Dated: April 13, 2012.

Beth M. McCormick,

Deputy Assistant Secretary, Defense Trade and Regional Security, Bureau of Political-Military Affairs, U.S. Department of State.

[FR Doc. 2012–9451 Filed 4–18–12; 8:45 am]

BILLING CODE 4710–25–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Dispute No. WTO/DS316]

WTO Dispute Settlement Proceeding Regarding European Communities and Certain Member States—Measures Affecting Trade in Large Civil Aircraft—Recourse by the United States to Article 21.5 of the DSU

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (“USTR”) is providing notice that on March 30, 2012, the United States requested establishment of a dispute settlement panel under the *Marrakesh Agreement Establishing the World Trade Organization* (“WTO Agreement”). That request may be found at www.wto.org contained in a document designated as WT/DS316/23. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before May 21, 2012 to be assured of timely consideration by USTR.

ADDRESSES: Public comments should be submitted electronically to www.regulations.gov, docket number USTR–2012–007. If you are unable to provide submissions to www.regulations.gov, please contact Sandy McKinzy at (202) 395–9483 to arrange for an alternative method of transmission. If (as explained below) the comment contains confidential information, then the comment should be submitted by fax only to Sandy McKinzy at (202) 395–3640.

FOR FURTHER INFORMATION CONTACT: Willis S. Martyn, Associate General Counsel, or Frank J. Schweitzer, Associate General Counsel, Office of the United States Trade Representative, 600 17th Street NW., Washington, DC 20508, (202) 395–3150.

SUPPLEMENTARY INFORMATION: Section 127(b)(1) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)) requires that notice and opportunity for comment be provided after the United States submits or receives a request for establishment of a WTO dispute settlement panel. Consistent with this obligation, USTR is providing notice that it has requested a panel pursuant to the WTO *Understanding on Rules and Procedures Governing the Settlement of Disputes* (“DSU”). Once it is established, the panel will hold its meetings in Geneva, Switzerland, and could issue a report on its findings and recommendations as soon as three months after its establishment.

Major Issues Raised by the United States

On June 1, 2011, the Dispute Settlement Body (“DSB”) adopted its recommendations and rulings in the dispute *European Communities and Certain Member States—Measures Affecting Trade in Large Civil Aircraft* (DS316) (“*EC—Large Civil Aircraft*”). The DSB ruled that the following are specific subsidies within the meaning of Articles 1 and 2 of the *Agreement on Subsidies and Countervailing Measures* (“SCM Agreement”) that caused adverse effects to U.S. interests within the meaning of Articles 5(c) and 6.3(a), (b), and (c) of that Agreement:

- Grants of launch aid/member State financing (“LA/MSF”) by the European Union (“EU”) member state governments of France, Germany, Spain, and the United Kingdom to Airbus for

the A300, A310, A320, A330, A340, A330–200, A340–500/600, and A380;

- The provision of the Mühlenberger Loch site and the lengthened Bremen Airport Runway;

- Grants by authorities in Germany and Spain for the construction of manufacturing and assembly facilities in Nordenham, Germany, and Sevilla, La Rinconada, Toledo, Puerto de Santa Maria, and Puerto Real, Spain, and by the government of Andalusia and Castilla-La Mancha to Airbus in Puerto Real, Sevilla, and Illescas (Toledo);

- The 1989 acquisition by Kreditanstalt für Wiederaufbau (“KfW”) of a 20 percent equity interest in Deutsche Airbus and the 1992 transfer by KfW of its 100 percent equity interest in Deutsche Airbus to Messerschmitt-Bölkow-Blohm GmbH (“MBB”); and
- The 1987, 1988, 1992, and 1994 equity infusions to Aérospatiale.

The DSB recommended that the EU and certain member States bring their WTO-inconsistent measures into compliance with their obligations under the SCM Agreement.

On December 1, 2011, the EU transmitted a document (“EU Notification”) to the United States and the DSB claiming that the EU had brought its measures fully into conformity with the DSB recommendations and rulings. The EU notification included a list of 36 “appropriate steps” taken by the EU to bring its measures into conformity with the EU’s WTO obligations. Upon review of the notification, the United States did not agree with the EU’s position that the EU had fully complied with the DSB recommendations and rulings. Accordingly, the United States requested consultations on December 9, 2011. The United States and the EU held consultations on January 13, 2012. The consultations failed to resolve the dispute.

Article 7.8 of the SCM Agreement provides that a Member found to maintain measures inconsistent with Article 5(c) and 6.3 of the SCM Agreement “shall take appropriate steps to remove the adverse effects or shall withdraw the subsidy.” The United States considers that the EU has done neither of these with regard to the measures identified above. As there is “disagreement as to the existence or consistency with a covered agreement of measures taken to comply with the recommendations and rulings” of the DSB, the United States is seeking recourse to Article 21.5 of the DSU.

The United States has requested that the Article 21.5 panel consider the following matters. With respect to the measures the EU has identified in the

EU Notification as the measures taken to comply with the recommendations and rulings of the DSB for purposes of Article 21.5 of the DSU, the United States considers that (i) these measures are insufficient to remove the adverse effects or withdraw the subsidies, and (ii) certain of these measures taken to comply introduce new inconsistencies with the SCM Agreement. In addition, French, German, Spanish, and UK LA/MSF for the A350XWB (i) are measures closely related to the measures the EU has identified as taken to comply and to the EU measures the DSB found to be inconsistent with the SCM Agreement and (ii) replace or continue the LA/MSF for twin-aisle aircraft covered by the recommendations and rulings of the DSB. The United States considers these LA/MSF measures for the A350XWB to be inconsistent with the SCM Agreement.

Additional details are provided in the panel request, which may be found at www.wto.org contained in a document designated as WT/DS316/23.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in this dispute. Persons may submit public comments electronically to www.regulations.gov docket number USTR-2012-0007. If you are unable to provide submissions by www.regulations.gov, please contact Sandy McKinzy at (202) 395-9483 to arrange for an alternative method of transmission.

To submit comments via www.regulations.gov, enter docket number USTR-2012-0007 on the home page and click "search". The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting "Notice" under "Document Type" on the left side of the search-results page, and click on the link entitled "Submit a Comment." (For further information on using the www.regulations.gov Web site, please consult the resources provided on the Web site by clicking on "How to Use This Site" on the left side of the home page.)

The www.regulations.gov site provides the option of providing comments by filling in a "Type Comments" field, or by attaching a document using an "upload file" field. It is expected that most comments will be provided in an attached document. If a document is attached, it is sufficient

to type "See attached" in the "Type Comments" field.

A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly designated as such and the submission must be marked "BUSINESS CONFIDENTIAL" at the top and bottom of the cover page and each succeeding page. Any comment containing business confidential information must be submitted by fax to Sandy McKinzy at (202) 395-3640. A non-confidential summary of the confidential information must be submitted to www.regulations.gov. The non-confidential summary will be placed in the docket and open to public inspection.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

- (1) Must clearly so designate the information or advice;
- (2) Must clearly mark the material as "SUBMITTED IN CONFIDENCE" at the top and bottom of the cover page and each succeeding page; and
- (3) Must provide a non-confidential summary of the information or advice.

Any comment containing confidential information must be submitted by fax. A non-confidential summary of the confidential information must be submitted to www.regulations.gov. The non-confidential summary will be placed in the docket and open to public inspection.

Pursuant to section 127(e) of the Uruguay Round Agreements Act (19 U.S.C. 3537(e)), USTR will maintain a docket on this dispute settlement proceeding accessible to the public at www.regulations.gov, docket number USTR 2012-0007. The public file will include non-confidential comments received by USTR from the public with respect to the dispute. If a dispute settlement panel is convened or in the event of an appeal from such a panel, the U.S. submissions, any non-confidential submissions, or non-confidential summaries of submissions, received from other participants in the dispute, will be made available to the

public on USTR's Web site at www.ustr.gov, and the report of the panel, and, if applicable, the report of the Appellate Body, will be available on the Web site of the World Trade Organization, www.wto.org. Comments open to public inspection may be viewed on the www.regulations.gov Web site.

Bradford Ward,

Acting Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 2012-9426 Filed 4-18-12; 8:45 am]

BILLING CODE 3190-W2-P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Notice of Delays in Processing of Special Permits Applications

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

ACTION: List of applications delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(c), PHMSA is publishing the following list of special permit applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: Ryan Paquet, Director, Office of Hazardous Materials Special Permits and Approvals, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH-30, 1200 New Jersey Avenue SE., Washington, DC 20590-0001, (202) 366-4535.

Key to "Reason for Delay"

1. Awaiting additional information from applicant.
2. Extensive public comment under review.
3. Application is technically complex and is of significant impact or precedent-setting and requires extensive analysis.
4. Staff review delayed by other priority issues or volume of special permit applications.

Meaning of Application Number Suffixes

N—New application
M—Modification request

R—Renewal Request
P—Party to Exemption Request

Issued in Washington, DC, on April 10, 2012.
Donald Burger,
Chief, General Approvals and Permits.

Application No.	Applicant	Reason for delay	Estimated date of completion
Modification to Special Permits			
10898-M	Hydac Corporation, Bethlehem, PA	3	05-30-2012
14372-M	Kidde Aerospace and Defense, Wilson, NC	3	06-30-2012
11516-M	The Testor Corporation, Rockford, IL	3	07-30-2012
8723-M	Maine Drilling & Blasting, Auburn, NH	3	07-30-2012
New Special Permit Applications			
15080-N	Alaska Airlines, Seattle, WA	1	06-30-2012
15229-N	Linde Gas North America LLC, New Providence, NJ	3	07-30-2012
15283-N	KwikBond Polymers, LLC, Benicia, CA	3	07-30-2012
15334-N	Floating Pipeline Company Incorporated, Halifax, Nova Scotia	3	07-30-2012
15322-N	Digital Wave Corporation, Englewood, CO	1	07-30-2012
15393-N	Savannah Acid Plant LLC, Savannah, GA	3	07-30-2012
15510-N	TEMSCO Helicopters, Inc., Ketchikan, AK	3	07-30-2012
Party to Special Permits Application			
14372-P	L'Hotellier, France	3	07-30-2012
15284-P	Honeywell International, Inc., Morristown, NJ	3	05-30-2012
11136-P	Lantis Productions Inc. dba Lantis Fireworks & Lasers, Draper, UT	3	06-30-2012
Renewal Special Permits Applications			
7891-R	Aldrich Chemical Company Inc., Milwaukee, WI	3	05-30-2012
9929-R	Alliant Techsystems Operations LLC (former Grantee ATK Elkton), Elkton, MD	3	07-30-2012
11110-R	United Parcel Services Company, Louisville, KY	3	08-30-2012
12994-R	Air Liquide Healthcare America Corporation, Houston, TX	3	07-30-2012
12283-R	Interstate Battery of Anchorage, AK	3	06-30-2012

[FR Doc. 2012-9192 Filed 4-18-12; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Notice of Applications for Modification of Special Permit

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

ACTION: List of applications for modification of special permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has

received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modification of special permits (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix "M" denote a modification request. These applications have been separated from the new application for special permits to facilitate processing.

DATES: Comments must be received on or before May 4, 2012.

Address Comments To: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S.

Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT:

Copies of the applications are available for inspection in the Records Center, East Building, PHH-30, 1200 New Jersey Avenue Southeast, Washington DC or at <http://regulations.gov>.

This notice of receipt of applications for modification of special permit is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on April 5, 2012.

Donald Burger,

Chief, General Approvals and Permits.

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permit thereof
Modification Special Permits				
14003-M	INOCOM Inc., Riverside, CA	49 CFR 173.302(a)(1), 173.304(a) and 180.205.	To modify the special permit by replacing the current CFFC gunfire test with the ISO-11119-2 gunfire test for cylinders with diameter of 120 mm or less.
14978-M	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.181(c)(1)	To modify the special permit by removing the references to the drawings of the inner packaging.

[FR Doc. 2012-9190 Filed 4-18-12; 8:45 am]
BILLING CODE 4909-60-M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Notice of Application for Special Permits

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

ACTION: List of applications for special permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material

Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before May 21, 2012.

Address Comments To: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in

triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, East Building, PHH-30, 1200 New Jersey Avenue Southeast, Washington DC or at <http://regulations.gov>.

This notice of receipt of applications for special permit is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on April 10, 2012.

Donald Burger,
Chief, General Approvals and Permits.

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permit thereof
15583-N	Northern Air Cargo, Anchorage, AK	49 CFR 172.101 Column (9B).	To authorize the transportation in commerce of certain Class 1 explosive materials which are forbidden for transportation by air, to be transported by cargo aircraft within the State of Alaska when other means of transportation are impracticable or not available. (mode 4)
15593-N	ITW Sexton, Decatur, AL	49 CFR 173.304a(d)(3), 178.33(a)(8).	To authorize the manufacture, marking and sale of a non-DOT specification container to be used for the transportation in commerce of UN1075. (modes 1, 2, 3, 4)
15598-N	Lockheed Martin Space Systems Company, Denver, CO.	49 CFR, 49 CFR § 172.101, 49 CFR 173.301, 49 CFR 173.302a (a)(1) and 49 CFR 173.304a (a)(2).	To authorize the transportation in commerce of hazardous materials listed in table 6 in spacecraft as non-specification packaging. (modes 1, 3, 4)
15603-N	EC Source Aviation, LLC, Mesa, AZ.	49 CFR, 49 CFR parts 172.101, Column (9b), 172.204(c)(3), 173.27(b)(2), 175.30(a)(1), 172.200, 172.300, 172.400.	To authorize the transportation in commerce of certain hazardous materials by cargo aircraft including by external load in remote areas and without being subject to hazard communication requirements and quantity limitations where no other means of transportation is available. (mode 4)
15615-N	American Promotional Events, Inc.—East d/b/a TNT Fireworks, Florence, AL.	49 CFR 171.8	To authorize the transportation in commerce of UN0336 Fireworks in UN4G packaging with a capacity greater than 450 liters. (mode 1)

[FR Doc. 2012-9191 Filed 4-18-12; 8:45 am]
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DEPARTMENT OF VETERANS AFFAIRS**Privacy Act of 1974; System of Records****AGENCY:** Department of Veterans Affairs.**ACTION:** Notice of Amendment of System of Records Notice "Veterans Tracking Application (VTA)." (163VA 005Q3).

SUMMARY: As required by the Privacy Act of 1974 (5 U.S.C. 552a(e)(4), (11)), notice is hereby given that the Department of Veterans Affairs (VA) is amending the system of records entitled "Veterans Tracking Application (VTA)." VA is amending the system of records by revising the System Name to "Veterans Tracking Application (VTA)/Federal Case Management Tool (FCMT)" and System Location to include the "Federal Case Management Tool (FCMT)." The VTA data will also be accessed using the FCMT. Further, the Routine Uses have been updated in conjunction with VA's Virtual Lifetime Electronic Record (VLER), to reflect the nature of electronic coordination that will fully support the users of this application. VA is republishing the system notice in its entirety.

DATES: Comments on this amended system of records must be received no later than May 21, 2012. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by VA, the amended system will become effective May 21, 2012.

ADDRESSES: Written comments concerning the proposed amended system of records may be submitted through www.Regulations.gov; by mail or hand-delivery to Director, Regulations Management (O2REG), Department of Veterans Affairs, 810 Vermont Avenue NW., Room 1068, Washington, DC 20420; by fax to (202) 273-9026. All 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) 273-9515 for an appointment. 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: Dick Rickard, Program Manager VTA/FCMT, Office of Information & Technology, Department of Veterans Affairs, 810 Vermont Ave. NW., Washington, DC 20420, (352) 686-3227.

SUPPLEMENTARY INFORMATION: The VTA/FCMT and associated databases support

VA enterprise wide. The VTA/FCMT provides the VA tracking information on members of the armed forces who are receiving care from a Department of Defense (DoD) Military Treatment Facility (MTF), a VA health care facility, or who already have Veteran status. The VTA/FCMT provides tracking of the Veteran/Servicemember's arrival at the initial VA health care facility and provides date and location information for subsequent transfers to other health facilities. In addition, VTA/FCMT obtains data about patient history from the imported DoD Theater Medical Data Store (TMDS). In addition to the Veteran patient population, VTA/FCMT records benefit tracking information for all severely injured Veterans requesting benefits. This history includes all benefit award details to include application dates, award decisions, dates and amounts. VTA/FCMT also tracks Servicemembers and Veterans disability claims through the Integrated Disability Eligibility System (IDES) module. The purpose of the VTA/FCMT is to track the initial arrival of a Servicemember into the VA health system and their subsequent movement among VA health facilities, as well as monitor benefits application and administration details.

In this system of records the System Name is amended to reflect the integration of VTA and FCMT. The Purpose in this system of records is being amended to reflect the additional System Location of the FCMT primary and secondary database locations. The routine uses added with this amendment to the system of records notice are: Routine use (5): VA may disclose identifying information, including Social Security number, concerning Veterans, spouses of Veterans, and the beneficiaries of Veterans to other Federal agencies for the purpose of conducting computer matches to obtain information to determine or verify eligibility of Veterans receiving VA medical care under Title 38, United States Code (U.S.C.), (6) VA may disclose relevant health care information regarding individuals treated under 38 U.S.C. 8111A to the DoD, or its components, for the purpose deemed necessary by appropriate military command authorities to assure proper execution of the military mission, and (7) VA may disclose health care information as deemed necessary and proper to Federal, state, and local government agencies and national health organizations in order to assist in the development of programs that will be beneficial to claimants, to protect their

rights under law, and assure that they are receiving all benefits to which they are entitled.

The notice of amendment and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

Approved: March 26, 2012.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

(163VA005Q3)

SYSTEM NAME:

"Veterans Tracking Application (VTA)/Federal Case Management Tool (FCMT)."

SYSTEM LOCATION:

The VTA system containing its associated records is maintained at the Austin Information Technology Center (AITC) at 1615 East Woodward Street, Austin, Texas 78772. The FCMT system containing its associated records is maintained at the Terremark Worldwide computing facility located at 18155 Technology Blvd., Culpeper, VA 22701-3805. A second VTA database with an identical set of records is being established at a disaster recovery site at the Hines Information Technology Center (Hines ITC) at Hines, Illinois. All records are maintained electronically. A second FCMT application and database is being established at a disaster recovery site at Terremark's backup site in Miami, Florida.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The category of the individuals covered by the VTA/FCMT database encompasses Veterans, Servicemembers, civilians working in combat zones and their dependents. This would include current Servicemembers, separated Servicemembers, and their dependents; as well as Veterans whose Veterans Affairs (VA) military service benefits have been sought by others (e.g., burial benefits).

CATEGORIES OF RECORDS IN THE SYSTEM:

The record, or information contained in the record, may include identifying information (e.g., name, contact information, Social Security number), association to dependents, cross reference to other names used, military service participation and status information (branch of service, rank, enter on duty date, release from active duty date, military occupations, type of

duty), reason and nature of active duty separation (completion of commitment, disability, hardship, etc.), combat/environmental exposures (combat pay, combat awards, theater location), combat deployments (period of deployment, location/country), Guard/Reserve activations (type of activation), military casualty/disabilities (line of duty death, physical examination board status, serious/very serious injury status, recovery plans, DoD rated disabilities), benefit participation, eligibility and usage, and VA compensation (rating, award amount).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The authority for maintaining this system is Title 38 U.S.C., 5106.

PURPOSE:

With our Nation's Veterans returning from long wartime engagements, it is of utmost importance that VA implements a streamlined care management solution. VTA/FCMT will work to replace manual processes that result in delays in coordinating or managing care for our Veterans. VTA/FCMT and the associated database support programs throughout the VA. The VTA/FCMT provides the VA tracking information on members of the armed forces who are receiving care from a DoD MTF, a VA health care facility, or who already have Veteran status. The VTA/FCMT provides tracking of the Veteran/Service member's arrival at the initial VA health care facility and provides date and location information for subsequent transfers to other health facilities. In addition, VTA/FCMT obtains data about patient history from the imported DoD Theater Medical Data Store (TMDS). In addition to the Veteran patient population, VTA/FCMT records benefit tracking information for all severely injured Veterans requesting benefits. This history includes all benefit award details to include application dates, award decisions, dates and amounts. VTA/FCMT also tracks Servicemembers and Veterans disability claims through the Integrated Disability Eligibility System (IDES) module. The purpose of the VTA/FCMT is to track the initial arrival of a Servicemember into the VA and DoD health care systems and their subsequent movement among VA health facilities, as well as monitor benefits application and administration details.

The records and information may be used for analysis to produce various management, workload tracking, and follow-up reports for our Veterans; to track and evaluate the ordering and delivery of services and patient care; for the planning, distribution and utilization of resources; and to allocate

clinical and administrative support to patient medical care.

In addition, the data may be used to assist in workload allocation for patient treatment services including provider panel management, nursing care, clinic appointments, surgery, prescription processing, diagnostic and therapeutic procedures; to plan and schedule training activities for employees; for audits, reviews and investigations conducted by the network directors office and VA Central Office; for quality assurance audits, reviews and investigations; for law enforcement investigations; and for personnel management, evaluation and employee ratings, and performance evaluations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The record of an individual included in this system may be provided to DoD systems or offices for use in connection with matters relating to one of DoD's programs to enable delivery of healthcare or other DoD benefits to eligible beneficiaries.

The name, address, VA file number, effective date of compensation or pension, current and historical benefit pay amounts for compensation or pension, service information, date of birth, competency payment status, incarceration status, and Social Security number of Veterans and their surviving spouses or dependents may be disclosed to the approved VA and DoD office/systems to reconcile the disability claims, benefits awards, and patient data.

The name(s) and address(es) of a Veteran may be disclosed to another Federal agency or to a contractor of that agency, at the written request of the head of that agency or designee of the head of that agency for the purpose of conducting government research necessary to accomplish a statutory purpose of that agency.

VA may disclose on its own initiative any information in this system, except the names and addresses of Veterans and their dependents, that is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal, or regulatory in nature and whether arising by general or program statute or by regulation, rule, or order issued pursuant thereto, a Federal, state, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule, or order. VA may also disclose on its own initiative the names and addresses of Veterans and their dependents to a Federal

agency charged with the responsibility of investigating or prosecuting civil, criminal, or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule, or order issued pursuant thereto.

VA may disclose identifying information, including Social Security number, concerning Veterans, spouses of Veterans, and the beneficiaries of Veterans to other Federal agencies for the purpose of conducting computer matches to obtain information to determine or verify eligibility of Veterans receiving VA medical care under Title 38, U.S.C.

VA may disclose relevant health care information regarding individuals treated under 38 U.S.C. 8111A to DoD, or its components, for the purpose deemed necessary by appropriate military command authorities to assure proper execution of the military mission.

VA may disclose health care information as deemed necessary and proper to Federal, state, and local government agencies and national health organizations in order to assist in the development of programs that will be beneficial to claimants, to protect their rights under law, and assure that they are receiving all benefits to which they are entitled.

VA may disclose information in the system of records to the Department of Justice (DOJ), either on VA's initiative or in response to DOJ's request for the information, after either VA or DOJ determines that such information is relevant to DOJ's representation of the United States or any of its components in legal proceeding before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that release of records to the DOJ is a use of information contained in the records that is compatible with the purpose for which VA collected the records. VA, on its own initiative, may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records.

VA may disclose information to assist a person or entity responsible for the licensing, supervision, or professional discipline of the person or organization acting as representative. Names and home addresses of Veterans and their dependents will be released on VA's initiative under this routine use only to Federal entities when VA believes that

the names and addresses are required by the Federal department or agency.

Disclosure of relevant information may be made to individuals, organizations, private or public agencies, or other entities or individuals with whom VA has a contract or agreement to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor, subcontractor or entity or individual with whom VA has an agreement or contract to perform the services of the contract or agreement.

VA may on its own initiative disclose information or records to appropriate agencies, entities, and persons when (1) VA suspects or confirmed that the integrity or confidentiality of information in the system of records has been compromised; (2) VA has determined that as a result of the suspected or confirmed compromise there is a risk embarrassment or harm to the reputations of the records subjects, harm to economic or property interest, identity theft or fraud, or harm to the security, confidentiality or integrity of this system or other systems or programs (whether maintained by VA or another agency or entity) that rely upon the potentially compromised information; and (3) the disclosure is made to such agencies, entities, and persons whom VA determines are reasonably necessary to assist in or carry out VA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm. This routine use permits disclosures by VA to respond to a suspected or confirmed data breach, including the conduct of any risk analysis or provision of credit protection services as provided in 38 U.S.C. 5724, as the terms are defined in 38 U.S.C. 5727.

Disclosure to other Federal agencies may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

The record of an individual who is covered by a system of records may be disclosed to a Member of Congress, or a staff person acting for the member, when the member or staff person requests the record on behalf of and at the written request of the individual.

Disclosure may be made to the National Archives and Records Administration or the General Services Administration in records management inspections conducted under authority of Chapter 29 of Title 44 U.S.C.

Any information in this system of records may be disclosed, in the course of presenting evidence in or to a court,

magistrate, administrative tribunal, or grand jury, including disclosures to opposing counsel in the course of such proceedings or in settlement negotiations.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM STORAGE:

STORAGE:

Records are transmitted between approved VA and DoD office/systems and VTA/FCMT over secure telecommunications (i.e. SFTP, secure web services) using approved encryption technologies. Records (or information contained in records) are maintained in electronic format in the VTA/FCMT database. Information from VTA/FCMT is disseminated in three ways: (1) Approved VA and DoD systems electronically request and receive data from VTA/FCMT over the internal VA and DoD network; (2) data is provided over the secure telecommunications between VTA/FCMT and approved VA and DoD office/systems for reconciliation of records; (3) periodic electronic data extracts of subsets of information contained in VTA/FCMT are provided to approved VA and DoD offices/systems over the internal VA network and DoD network. Backups of VTA/FCMT data are created regularly and stored in a secure off-site facility.

RETRIEVABILITY:

Electronic files are retrieved using various unique identifiers belonging to the individual to whom the information pertains to include such identifiers as name, claim file number, Social Security number and date of birth.

SAFEGUARDS:

1. *Physical Security:* The primary VTA system is located in the AITC and the backup disaster recovery system is located in the Hines ITC. The primary FCMT system is located at Terremark Worldwide facility located in Culpeper, Virginia and the backup disaster recovery system is located at Terremark's backup site in Miami, Florida. Access to data processing centers is generally restricted to center employees, custodial personnel, Federal Protective Service and other security personnel. Access to computer rooms is restricted to authorized operational personnel through electronic passage technology. All other persons needing access to computer rooms are escorted.

2. *System Security:* Access to the VA network is protected by the usage of "logon" identifications and passwords. Once on the VA network, separate ID

and password credentials are required to gain access to the VTA/FCMT server and/or database. Access to the server and/or database is granted to only a limited number of system administrators and database administrators. In addition VTA/FCMT has undergone certification and accreditation. Users of VTA access the system via the approved Veterans Information Portal (VIP). Users must register first through the VIP Portal and obtain a username and password. Upon approval of a VIP account, they may request access to VTA through an electronic form accessible via VIP. Users of FCMT access the system via the approved VA Trusted Internet Connection or through the VA's Virtual Private Network. Users must have accounts in the VA's Active Directory (AD) system. Upon approval of a VA AD account, they may request access to FCMT. Within the VTA/FCMT system, users are designated a role which determines their access to specific data. Based on a risk assessment that followed National Institute of Standards and Technology Vulnerability and Threat Guidelines, the system is considered stable and operational. VTA has received a final Authority to Operate (ATO) and FCMT currently holds a temporary ATO which is currently in process to become permanent. The system was found to be operationally secure, with very few exceptions or recommendations for change.

RETENTION AND DISPOSAL:

VA retains selected information for purposes of making eligibility determinations for VA benefits. The information retained may be included in the VA records that are maintained and disposed of in accordance with the appropriate record disposition authority approved by the Archivist of the United States.

SYSTEM MANAGER(S) AND ADDRESSES:

Program Manager, Office of Information & Technology, Department of Veterans Affairs (005), 810 Vermont Avenue NW., VA Central Office, Washington, DC 20420.

NOTIFICATION PROCEDURES:

Individuals seeking information on the existence and content of a record pertaining to them should contact the system manager, in writing, at the above address. Requests should contain the full name, address and telephone number of the individual making the inquiry.

RECORD ACCESS PROCEDURE:

(See notification procedure above.)

CONTESTING RECORD PROCEDURES:

(See notification procedure above.)

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by components of the

Department of Defense and Department of Veterans Affairs.

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Part II

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 217

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Columbia River Crossing Project, Washington and Oregon; Proposed Rule

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 217**

[Docket No. 110801455–2197–01]

RIN 0648–BB16

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Columbia River Crossing Project, Washington and Oregon

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS has received a request from the Department of Transportation's Federal Transit Authority (FTA) and Federal Highway Administration (FHWA), on behalf of the Columbia River Crossing project (CRC), for authorization to take marine mammals incidental to bridge construction and demolition activities at the Columbia River and North Portland Harbor, Washington and Oregon, over the course of 5 years from approximately July 2013 through June 2018. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is proposing regulations to govern that take and requests information, suggestions, and comments on these proposed regulations.

DATES: Comments and information must be received no later than May 21, 2012.

ADDRESSES: You may submit comments on this document, identified by 110801455–2197–01, 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 110801455–2197–01 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 the right of that line.
- Hand delivery or mailing of comments via paper or disc should be addressed to Tammy Adams, Acting Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

Comments regarding any aspect of the collection of information requirement contained in this proposed rule should

be sent to NMFS via one of the means provided here and to the Office of Information and Regulatory Affairs, NEOB–10202, Office of Management and Budget, Attn: Desk Office, Washington, DC 20503, OIRA@omb.eop.gov.

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, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Ben Laws, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:**Availability**

A copy of CRC's application, and other supplemental documents, may be obtained by writing to the address specified above (see **ADDRESSES**), calling the contact listed above (see **FOR FURTHER INFORMATION CONTACT**), or visiting the internet at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm>. A Draft Environmental Impact Statement (DEIS) on the Columbia River Crossing project, authored by the FTA and FHWA, is available for viewing at <http://www.columbiarivercrossing.org/>.

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined 'negligible impact' in 50 CFR 216.103 as "an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Except with respect to certain activities not pertinent here, the MMPA defines 'harassment' as: "any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild ["Level A harassment"]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering ["Level B harassment"]."

Summary of Request

On November 22, 2010, NMFS received a complete application from CRC requesting authorization for take of three species of marine mammal incidental to construction and demolition activities in the Columbia River and North Portland Harbor, Washington and Oregon. CRC has requested regulations to be effective for the period of 5 years from approximately July 2013 through June 2018; portions of the project that may result in incidental take of marine mammals are anticipated to potentially last until March 2021. Marine mammals would be exposed to various operations, including pile driving and removal, demolition of existing structures, and the presence of construction-related vessels. Because the specified activities have the potential to take marine mammals present within the action area, CRC requests authorization to incidentally take, by Level B harassment only, Steller sea lions (*Eumetopias jubatus*), California sea lions (*Zalophus californianus*), and harbor seals (*Phoca vitulina*).

Description of the Specified Activity

CRC is proposing a multimodal transportation project along a 5-mile section of the Interstate 5 (I–5) corridor connecting Vancouver, Washington, and Portland, Oregon. There are significant

congestion, safety, and mobility problems in the CRC project area. The existing northbound bridge was built in 1917, and the southbound bridge was added in 1958. These bridges have been classified as functionally obsolete because they do not meet current or future demands for interstate service, resulting in congestion-related delays. Assuming that no changes are made, the daily congestion period is projected to grow from the current 6 hours to 15 hours by 2030 (CRC, 2008). In addition, this section of I-5 has an accident rate more than double that of similar urban highways. Narrow lanes, short on-ramps, and non-standard shoulders on the bridges contribute to accidents. When bridge lifts occur to allow passage of river traffic, all vehicular traffic is stopped, resulting in delays on connecting roadways and adding to unsafe driving conditions.

Current public transit service between Vancouver and Portland is limited to bus service constrained by the limited capacity in the I-5 corridor and is subject to the same congestion as other vehicles, which affects transit reliability and operations. Bicycle and pedestrian facilities are currently substandard in much of the project area.

Seismic safety is also an important issue. Recent geotechnical studies have shown that the sandy soil under the mainstem Columbia River bridges would likely liquefy to a depth of 85 ft (26 m) during an earthquake greater than magnitude 8.0. This could cause irreparable damage to the bridges and potential loss of human life.

To remedy these deficiencies, the CRC project proposes:

- Replacement of the existing Columbia River bridges with two new structures;
- Widening of the existing North Portland Harbor Bridge, and construction of three new structures across the harbor; and
- Demolition of existing Columbia River bridges.

The new Columbia River crossing would carry traffic on two separate pier-supported bridges and would include a new light rail transit (LRT) line and improved bicycle/pedestrian facilities, using a stacked alignment that would reduce the number of in-water piers in the Columbia River by approximately one-third from alternative designs. CRC proposes six in-water pier complexes for a total of twelve piers for the Columbia River bridges.

CRC proposes to widen the existing I-5 southbound bridge over North Portland Harbor, and would add three new bridges adjacent to the existing

bridges. From east to west, these structures would carry:

- A three-lane northbound collector-distributor (CD) ramp carrying local traffic;
- Northbound and southbound I-5 on the widened existing bridge across the North Portland Harbor;
- Southbound CD ramps carrying local traffic; and
- LRT combined with a bicycle/pedestrian path.

Each bridge would have four or five in-water bents, consisting of one to three drilled shafts. A bent is part of a bridge's substructure, composed of a rigid frame commonly made of reinforced concrete or steel that supports a vertical load and is placed transverse to the length of a structure. Bents are commonly used to support beams and girders. Each vertical member of a bent may be called a column, pier or pile. The horizontal member resting on top of the columns is a bent cap. The columns stand on top of some type of foundation or footer that is usually hidden below grade. A bent commonly has at least two or more vertical supports.

The permanent in-water piers of both the Columbia River and North Portland Harbor crossings would be constructed using drilled shafts, rather than impact-driven piles. However, the project would require numerous temporary in-water structures to support equipment and materials during the course of construction, which may require the use of temporary impact-driven piles. These structures would include work platforms, work bridges, and tower cranes. Project construction would require the installation and removal of approximately 1,500 temporary steel piles.

The existing Columbia River bridges would be demolished after the new Columbia River bridges have been constructed and after associated interchanges are operating. The existing Columbia River bridges would be demolished in two stages: (1) Superstructure demolition and (2) substructure demolition. In-water demolition would be accomplished either within cofferdams or with the use of diamond wire/wire saw. A full description of the activities proposed by CRC is described in the following sections.

Region of Activity

The Region of Activity is located within the Lower Columbia River sub-basin. The Columbia River and its tributaries are the dominant aquatic system in the Pacific Northwest. The Columbia River originates on the west slope of the Rocky Mountains in Canada

and flows approximately 1,200 mi (1,931 km) to the Pacific Ocean, draining an area of approximately 219,000 mi² (567,207 km²) in Washington, Oregon, Idaho, Montana, Wyoming, Nevada, and Utah. Saltwater intrusion from the Pacific Ocean extends approximately 23 mi (37 km) upstream from the river mouth at Astoria, Oregon. Coastal tides influence the flow rate and river level up to Bonneville Dam at river mile (RM) 146 (RKm 235) (USACE, 1989).

The project area is highly altered by human disturbance, and urbanization extends to the shoreline. There has been extensive removal of streamside forests and wetlands. Riparian areas have been further degraded by construction of dikes and levees and the placement of stream bank armoring. For several decades, industrial, residential, and upstream agricultural sources have contributed to water quality degradation in the river. Additionally, existing levels of disturbance are high due to heavy commercial shipping traffic.

The I-5 bridges are located at RM 106 (RKm 171) of the Columbia River. From north to south, the I-5 bridges cross the Columbia River from Vancouver, Washington, to Hayden Island in Portland, Oregon. From Hayden Island, a single I-5 bridge crosses North Portland Harbor to the mainland in Portland, Oregon. The North Portland Harbor is a large side channel of the Columbia River that flows between the southern bank of Hayden Island and the Oregon mainland. The channel branches off the Columbia River approximately 2 RM (3 RKm) upstream (east) of the existing bridge site, and flows approximately 5 RM (8 RKm) downstream (west) before rejoining the mainstem Columbia River (please see Figure 2-2 of CRC's application). The Region of Activity has been defined as the area of the Columbia River and North Portland Harbor in which marine mammals may be directly impacted by sound generated by in-water construction activities, i.e., the area in which modeling indicates that underwater sound generated by the project would be greater than 120 dB re: 1 μ Pa root mean square (rms); all underwater sound discussed in this document is referenced to 1 μ Pa).

Due to the curvature of the river and islands present, underwater sound from pile installation would encounter land before it reaches modeled distances to the 120 dB disturbance threshold. Sound from pile installation could not extend beyond Sauvie Island, approximately 5.5 RM (8.9 RKm) downstream, and Lady Island, 12.5 RM (20 RKm) upstream; thus, this distance

represents the extent of the Region of Activity downstream and upstream of CRC project construction activities. This distance encompasses the Columbia River from approximately RM 101 to 118 (RKm 163 to 190). Within North Portland Harbor, the maximum distance that underwater sound could extend would be 3.5 mi (5.6 km) downstream and 1.9 mi (3.1 km) upstream of CRC project construction activities.

Dates of Activity

CRC has requested regulations governing the incidental take of marine mammals for the 5-year period from July 2013 through June 2018. Construction activities for both the Columbia River and North Portland Harbor bridges are estimated to begin in July 2013. Construction activities for the Columbia River bridges are estimated to end in 2017, while construction activities for the North Portland Harbor bridges are

estimated to end in 2016. Demolition of the existing Columbia River bridges is expected to occur for eighteen months, from approximately September 2019 until March 2021. However, some demolition could possibly occur during the proposed 5-year authorization period. Table 1 provides an overview of the anticipated CRC project timeline and sequencing of project elements. Funding would be a significant factor in determining the overall sequencing and construction duration. Contractor schedules, weather, materials, and equipment could also influence construction duration. CRC would seek additional authorization under the MMPA for any in-water work continuing beyond the expiration of the proposed rule.

The existing in-water work window for this portion of the Columbia River and North Portland Harbor, developed to reduce construction impacts to

Endangered Species Act (ESA)-listed fish species, is November 1 through February 28. Because of the large amount of in-water work required, the CRC project would not be able to complete the in-water work during this time period. Therefore, CRC has requested a variance to the in-water work window established by the Oregon and Washington Departments of Fish and Wildlife (ODFW and WDFW, respectively). Most in-water construction activities are proposed to occur year-round, although impact pile driving would occur only from September 15 to April 15. The rationale for CRC's proposed variance takes into account project hydroacoustic impacts in relation to run timing for ESA-listed fish species. The project's timing for impact pile driving overlaps with pinniped presence (primarily January through May) from approximately January through April 15.

TABLE 1—PROPOSED TIMING OF IN-WATER WORK
[CR = Columbia River; NPH = North Portland Harbor]

Activity	Description	Activity duration	Timing
1. Install small-diameter piles (less than or equal to 48 in (1.2 m)) with impact methods ¹ .	Small-diameter piles would be used in the construction of temporary work bridges/platforms, tower cranes, and support platforms.	45 min/day (impact hammer operation) with up to 7.5 min/week of unattenuated driving in CR and 5 min/week of unattenuated driving in NPH. 138 days in CR, 134 days in NPH	Only within approved extended in-water work window of September 15 through April 15 each year.
2. Install small-diameter piles with non-impact methods.	Small-diameter piles would be used in the construction of temporary work bridges/platforms, barge moorings, tower cranes, and oscillator support platforms.	Length of work day is subject to local sound ordinances, however could be up to 24 hours/day. 138 days in CR, 134 days in NPH	Year-round provided work does not violate water quality standards. ²
3. Extract small-diameter piles (not including cofferdams).	Removal of small-diameter piles would be done using vibratory equipment or direct pull.	Length of work day is subject to local sound ordinances, however could be up to 24 hours/day.	Year-round provided work does not violate water quality standards.
4. Install/remove cofferdam for construction of Columbia River bridges.	Used to construct piers nearest to shore in the Columbia River (Pier complexes 2 and 7). Steel sheet pile sections to be installed by non-impact means to form a cofferdam. Sheet pile removal can be direct pull or use a vibratory hammer.	Cofferdams could be in place for a maximum of 250 work days each. Installation and dewatering of each cofferdam would not take more than 65 work days; cofferdam removal would not take more than 25 work days. Length of work day is subject to local sound ordinances.	Year-round provided work does not violate water quality standards.
5a. Install large-diameter drilled shaft casings (greater than or equal to 72 in (1.8 m)) using vibratory hammer, rotator, or oscillator outside of a cofferdam.	Used to construct piers and bents not immediately adjacent to shore in the Columbia River and North Portland Harbor.	CR: 110–120 days/pier complex .. NPH: approximately 8 days/shaft.	Year-round provided work does not violate water quality standards.
5b. Install large-diameter drilled shaft casings using vibratory hammer, rotator, or oscillator inside of a water- or sand-filled cofferdam.	Used to construct piers and bents nearest to shore in the Columbia River and North Portland Harbor.	CR pier complexes 2 and 7: approximately 84 days each. NPH: approximately 8 days/shaft.	Year-round provided work does not violate water quality standards.
6. Clean out shafts and place reinforcing and concrete inside steel casings.	Applies to all piers and shafts. All activities/materials would be contained within the casings and have no contact with the water.	CR: 110–120 days/pier complex .. NPH: approximately 8 days/shaft.	Year-round provided work does not violate water quality standards.

TABLE 1—PROPOSED TIMING OF IN-WATER WORK—Continued
[CR = Columbia River; NPH = North Portland Harbor]

Activity	Description	Activity duration	Timing
7a. Perform placement of reinforcement and concrete for a cast-in-place pile cap.	Possible construction method for shaft cap at pier complexes 2 and 7. All activities and materials would be contained within forms and would have no contact with the water. The bottom of the pier caps may sit below the mud line.	Estimate 95 work days per pier ...	Year-round. For pier caps nearest shore: year-round if work occurs within a de-watered cofferdam.
7b. Place a prefabricated pile cap, form, pile template, or similar element into the water.	At CR pier complexes 3–6. Potentially at pier complexes 2 and 7. Assume contact with the water surface, but not with the riverbed.	100 work days per pier	For deep water piers: year-round provided work does not violate water quality standards. For piers nearest shore: year-round if work occurs within a de-watered cofferdam.
8. Install and remove cofferdam for demolition of existing Columbia River bridges.	Steel sheet pile sections would be installed with a vibratory hammer or pushed in, to form a cofferdam. Sheet pile removal can be direct pull or with a vibratory hammer. More than one cofferdam is to be in use at a time.	Approximately 370 days Installation: 10 work days per pier, Demolition: 20 work days per pier, Removal: 10 work days per pier.	Year-round provided work does not violate water quality standards.
9a. Perform wire saw/diamond wire cutting outside of a cofferdam at or below the water surface.	Used throughout for demolition of existing bridges to cut concrete piers into manageable pieces. These pieces would then be loaded onto barges and transported off site.	Pier cutting and removal to take approximately 7 work days per pier.	Year-round provided work does not violate water quality standards.
9b. Perform wire saw/diamond wire cutting or a hydraulic breaker inside of a cofferdam.	Used for demolition of the existing Columbia River bridges. Used in water to cut concrete piers into manageable pieces. Cofferdam would not be dewatered.	Pier cutting and removal to take approximately 7 work days per pier.	Year-round provided work does not violate water quality standards.
10. Remove material from river bed.	Old pier/bent foundations or riprap from North Portland Crossing would be removed if obstructing construction. Would use bucket dredge.	Less than 7 work days during the published standard in-water work window per pier.	No variance requested. November 1 to February 28.
10a. Spot remove debris and riprap from river bed.	Guided removal (likely underwater diver assisted) of specific pieces of debris or large riprap only in the location where the shaft would be drilled. In North Portland Harbor only. Would use bucket dredge.	Up to 2 hrs/day. Less than 7 work days.	Year-round provided work does not violate water quality standards.

Note: Proposed timing is contingent upon obtaining an in-water work variance from all relevant regulatory agencies.

¹ To reduce number of impact pile strikes, temporary piles that are load-bearing would be vibrated to refusal, then driven and proofed with an impact hammer to confirm load-bearing capacity.

² In the event water quality monitoring determines that work exceeds water quality standards, all in-water work would be suspended until corrective measures can be implemented.

Description of the Activity—Columbia River Bridges

The project would construct two new bridges across the Columbia River downstream (to the west) of the existing interstate bridges. Each of the structures would range from approximately 91 to 136 ft (28–41 m) wide, with a gap of approximately 15 ft (5 m) between them. The over-water length of each new mainstem bridge would be approximately 2,700 ft (823 m).

The Columbia River bridges would consist of six in-water pier complexes of two piers each, for a total of twelve in-

water piers. Piers 3–6 would each have separate structures for the northbound and southbound bridges. Each pier would consist of up to nine 10-ft-diameter (3 m) drilled shafts topped by a shaft cap (see Figure 1–4 of CRC’s application for illustration). Pier complexes 2 through 7 are in-water, beginning on the Oregon side. Pier complex 1 would be on land in Oregon, while pier complex 8 would be on land in Washington. Portions of pier complex 7 occur in shallow water (less than 20 ft [6 m] deep). The basic configuration of these bridges, the span lengths, and

the layout of the bridges relative to the Columbia River shoreline and navigation channels are illustrated in Figure 1–2 of CRC’s application.

The proposed Columbia River mainstem crossing design uses dual stacked bridge structures, which reduces the number of in-water piers in the Columbia River by approximately one-third compared with alternative designs, and greatly reduces both the temporary construction impacts and the permanent effects of in-water piers. The western structure would carry southbound I–5 traffic on the top deck,

with LRT on the lower deck. The eastern structure would carry northbound I-5 traffic on the top deck, with bicycle/pedestrian traffic on the lower deck.

At each pier complex, sequencing would occur as listed below. Details of each activity are presented in following sections.

- Install temporary cofferdam (applies to pier complexes 2 and 7 only).
- Install temporary piles to moor barges and to support temporary work platforms (at pier complexes 3 through 6) and work bridges (at pier complexes 2 and 7).
- Install drilled shafts for each pier complex.
- Remove work platform or work bridge and associated piles.
- Install shaft caps at the water level.
- Remove cofferdam (applies to pier complexes 2 and 7 only).
- Erect tower crane.
- Construct columns on the shaft caps.
- Build bridge superstructure spanning the columns.
- Remove tower crane.
- Connect superstructure spans with mid-span closures.
- Remove barge moorings.

A construction sequence was developed for building the new Columbia River bridges and demolishing the existing structures (see Figure 1–5 of CRC’s application). Once a construction contract is awarded, the contractor may sequence the construction in a way that may not conform exactly to the proposed schedule but that best utilizes the materials, equipment, and personnel available to perform the work. However, the amount of in-water work that can be conducted at any one time is limited, and is based on three factors:

1. The amount of equipment available to build the project would likely be

limited. Based on equipment availability, the CRC engineering team estimates that only two drilled shaft operations could occur at any time.

2. The physical space the equipment requires at each pier would be substantial. The estimated sizes of the work platforms/bridges and associated barges are shown in Appendix A of CRC’s application. This is a conceptual design developed by the CRC project team to provide a maximum area of impact. The actual work platforms would be designed by the contractor; therefore, actual sizes would be determined at a later date. The overlap of work platforms/bridges and barge space limits the amount and type of equipment that can operate at a pier complex at one time.

3. The U.S. Coast Guard has required that one navigation channel be open at all times during construction, to the extent feasible.

All the activities listed above may occur at more than one pier complex at a time. Please see Appendix A of CRC’s application for conceptual diagrams of the construction sequence.

Temporary Structures—Pier complexes 2 and 7 would each require one temporary cofferdam. Cofferdams would consist of interlocking sections of sheet piles to be installed with a vibratory hammer or with press-in methods. Cofferdams would be removed using a vibratory hammer or direct pull.

Additionally, the project would include numerous temporary in-water structures to support equipment and materials during the course of construction. These structures would include work platforms, work bridges, and tower cranes. They would be designed by the contractor after a contract is awarded, but prior to construction.

Work platforms, which would surround the future location of each

shaft cap, would be constructed at pier complexes 3 through 6. A conceptual design of a temporary in-water work platform may be found in CRC’s application (Figure 11 of Appendix A). Work bridges would be installed at pier complexes 2 and 7 so that equipment can access these pier complexes directly from land. Temporary work bridges would be placed only on the landward side of these pier complexes. The bottom of the temporary work platforms and bridges would be a few feet above the water surface. The decks of the temporary work structures would be constructed of large, untreated wood beams to accommodate large equipment, such as 250-ton cranes. After drilled shafts and shaft caps have been constructed, the temporary work platforms and their support piles would be removed.

After work platforms/bridges are removed at a given pier complex, one tower crane would be constructed between each pair of adjacent piers that makes up the pier complex. The crane would construct the bridge columns and the superstructure. Following construction of the columns and superstructure, the tower cranes and their support piles would be removed.

Steel pipe piles would be used to support the temporary support structures. In addition, four temporary piles could surround each of the drilled shafts. Due to the heavy equipment and stresses placed on the support structures, all of these temporary piles would need to be load-bearing. Load-bearing piles would be installed using a vibratory hammer and then proofed with an impact hammer to ensure that they meet project specifications demonstrating load-bearing capacity. The number and size of temporary piles for these structures is listed in Table 2.

TABLE 2—SUMMARY OF STEEL PIPE PILES AND TEMPORARY STRUCTURES REQUIRED FOR CONSTRUCTION OF COLUMBIA RIVER BRIDGES

Structure	Number	Pile diameter	Pile length	Piles per structure	Total number of piles	Duration present in water (days-each)
Work platforms/bridges.	6	18–24 in (0.5–0.6 m)	70–90 ft (21–27 m)	100	600	260–315.
Tower cranes	6	42–48 in (1.1–1.2 m)	120 ft (37 m)	32	192	150–275.
		42–48 in	120 ft	8	48	
Barge moorings.	N/A	18–24 in	70–90 ft	Varies	80	120/mooring.
Barges (cumulative, at a single time).	Up to 12.	N/A	N/A	N/A	N/A	Varies.
Total	Varies				920	

Barges would be used as platforms to conduct work activities and to haul materials and equipment to and from the work site. Barges would be moored to non-load-bearing steel pipe piles and adjacent to temporary work structures. Several types and sizes of barges would be used for bridge construction. The type and size of a barge would depend on how the barge is used. No more than twelve barges are estimated to be moored or active in the Columbia River at any one time throughout the construction period. Barges would be moored around each pier complex. Approximately eighty mooring piles would be installed over the life of the project, each in place for approximately 120 work days. Mooring piles would be vibrated into the sediment until refusal. Vibratory installation would take between 5–30 minutes per pile.

The number of temporary platforms or bridges in the Columbia River at one time would vary between zero and three during construction. Up to four work platforms and two work bridges would be required to install drilled shafts and construct shaft caps. Each work platform/bridge would require 22 to 25

work days to install. Each work platform/bridge would be in place for approximately 260 to 315 work days. Each tower crane would require approximately two work days to drive support piles and an additional thirteen work days to construct the platform. Each tower crane would be in place for approximately 150 to 275 work days.

Load-bearing piles (used for work platforms/bridges and tower cranes) would be vibrated to refusal (approximately 5–30 minutes per pile), then driven and proofed with an impact hammer to confirm load-bearing capacity. An average of six temporary piles would be installed per day using vibratory installation to set the piles, and up to two impact drivers to proof them. Rates of installation would be determined by the type of installation equipment, substrate, and required load-bearing capacity of each pile.

Temporary piles would be installed and removed throughout the construction process. No more than two impact pile drivers would operate at one time. Use of two impact pile drivers would primarily occur within a single pier complex.

In general, temporary piles would extend only into the alluvium to an approximate depth of 70 to 120 ft (21–37 m). Standard pipe lengths are 80 to 90 ft (24–27 m), so some piles may need to be spliced to achieve these depths.

Estimated pile installation specifications are provided in Table 3. The number of pile strikes was estimated by Washington Department of Transportation (WSDOT) geotechnical and CRC project engineers, based on information from past projects and knowledge of site sediment conditions. The actual number of pile strikes would vary depending on the type of hammer, the hammer energy used, and substrate composition. The strike interval of 1.5 seconds (forty strikes per minute) is also estimated from past projects and is based on use of a diesel hammer. This estimate is within the typical range of 35–52 strikes per minute for diesel hammers (HammerSteel, 2009). As shown in Table 3, for any one 12-hour daily pile driving period, less than 1 hour of pile driving would occur. Please see Table 8 for a summary of time required for vibratory driving.

TABLE 3—PILE STRIKE SUMMARY FOR CONSTRUCTION IN COLUMBIA RIVER

Pile Size	Estimated piles installed per day	Estimated strikes per pile	Estimated maximum strikes per day	Hours of pile driving per 12-hr daily pile driving work period*
18–24 in (0.5–0.6 m)	2	300	600	0.25
42–48 in (1.1–1.2 m)	4	300	1,200	0.50
Total	6	N/A	1,800	0.75

* This scenario assumes just one pile being driven at a time. During construction, up to two piles may be driven at the same time in the Columbia River. If this were to occur, the strike numbers would stay the same, but the actual driving time would decrease.

A sound attenuation device (*i.e.*, bubble curtain) would be used during all impact pile driving, with the exception of periods when the device would be turned off to measure its effectiveness, in accordance with the hydroacoustic monitoring plan. A period of up to 7.5 min per week of pile driving without the use of an attenuation device has been allocated in analyses of project impacts, to allow for this study of mitigation effectiveness, as well as for instances when the device might fail. If the attenuation device fails, pile driving activities would shut down as soon as practicable and resolution of the problem would occur; however, some amount of unattenuated driving may occur before shut-down can safely occur. By incorporating this time into the analysis, the project may still proceed in the event of an equipment failure without exceeding analyzed thresholds. With the exception of

hydroacoustic monitoring, intentional impact pile driving without a sound attenuation device is not proposed nor would it be authorized. In addition, to limit hydroacoustic impacts to marine mammals, there would be, at minimum, a consecutive 12-hour period without impact pile driving for every 24-hour day.

Permanent Structures—In-water drilled shaft construction is accomplished by installing large diameter steel casing to a specified depth (up to –270 ft (–82 m) North American Vertical Datum of 1988) to the top of the competent geological layer, which is the Troutdale Formation in the project area. The top layer of river substrate is composed of loose to very dense alluvium (primarily sand and some fines), beneath which is approximately 20 ft (6 m) of dense gravel, underlain by the Troutdale Formation.

A vibratory hammer, oscillator, or rotator would be used to advance a casing. If casings are installed by a vibratory hammer, installation is estimated to be 1 work day per casing. If casings need to be welded together, 1 work day is estimated for the weld. No more than two casings are estimated per shaft. Soil would be removed from inside the casing and transferred onto a barge as the casing is advanced, and the soil would be deposited at an approved upland site. Drilling would continue below the casing approximately 30 ft (9 m) into the Troutdale Formation to a specified tip elevation. After excavating soil from inside the casing, reinforcing steel would be installed into the shaft and then the shaft would be filled with concrete.

During construction of the drilled shafts, uncured concrete would be poured into water-filled steel casings, creating a mix of concrete and water. As

the concrete is poured into the casing, it would displace this highly alkaline mixture. The project would implement best management practices (BMPs) to contain the mixture and ensure that it does not enter any surface water body. Once contained, the water would be treated to meet state water quality standards and either released to a wastewater treatment facility or discharged to a surface water body. The steel casing may or may not be removed, depending on the installation method. Figures 1–6 through 1–9 of CRC’s application depict typical drilled shaft operations and equipment.

The total duration of the permanent shaft installation could vary considerably depending on the type of installation equipment used, the quantity of available installation equipment, and actual soil conditions. Installation of each drilled shaft is estimated to take approximately 10 days. With the limited in-water work window for impact pile driving and construction phasing constraints, the total duration of drilled shaft installation would be approximately thirty months. For each of the in-water pier complexes (Piers 2–7), six to nine shafts would be drilled. For piers 3–6, which would support separate northbound and southbound bridges, this means a minimum of 48 drilled shafts. For piers 2 and 7, which would support a unified structure, there would be a minimum of twelve drilled shafts. At minimum, there would be an overall total of 72 drilled shafts.

Precast shaft caps would be placed on top of the drilled shafts. Installation of the shaft caps would require cranes, work barges, and material barges. Columns would be constructed of cast-in-place reinforced concrete or precast concrete. Column construction is estimated to take 120 days for each pier complex. Construction of columns would require cranes, work barges, and material barges in the river year-round. The superstructure would be

constructed of structural steel, cast-in-place concrete, or precast concrete. Precast elements would be fabricated at a casting yard.

Description of the Activity—North Portland Harbor Bridges

The existing North Portland Harbor bridge would be upgraded to meet current seismic standards. The seismic retrofit activities would consist solely of minor modifications to the bent caps and girders that would not require in-water work. In addition, four new bridge structures would be constructed across North Portland Harbor. The bridges, illustrated in Figure 1–12 of CRC’s application are, from west to east: the LRT/pedestrian/bicycle bridge, I–5 southbound off-ramp, I–5 southbound on-ramp, existing mainline, and I–5 northbound on-ramp.

The existing North Portland Harbor bridge was constructed in the early 1980s of prestressed concrete girders and reinforced concrete bents. The bents are supported by driven steel pilings. Two previous bridges, constructed in 1917 and 1958, were built at the same location as the current bridge, but may not have been fully removed during subsequent replacement efforts. These bridges had reinforced concrete bents supported on timber piles. Some of this material may still be present, but this would not be confirmed until construction begins. Some removal of previous bridge elements is anticipated prior to installation of the new bridge shafts. Removal of remnant bridge elements would be with a clamshell dredge. The five new or improved bridges over the North Portland Harbor would range from approximately 900–1,000 ft (274–305 m) over water, and would range from 40–150 ft (12–46 m) in width. Bridge widths would vary due to merging of lanes on some structures.

Construction is expected to be sequential, beginning with either of the most nearshore bents of a given bridge and proceeding to the adjacent bent.

The actual sequencing would be determined by the contractor once a construction contract is awarded. No more than three of the five bridges are likely to have in-water work occurring simultaneously. For the bents closest to shore, construction would occur from work bridges. At the other in-water bents, as described for Columbia River bridges, construction would likely occur from barges and support platforms. General construction activities to build the bents and superstructure are similar to those for the Columbia River bridges, except that shaft caps would not be used and bridge decks would be placed on girders instead of balanced cantilevers. General sequencing of the construction of a single bridge appears below. Some of these activities may occur simultaneously at separate bents.

- Construct support platforms and work bridges using vibratory and impact pile drivers.
- Vibrate temporary piles for barge moorings.
- Extract large pieces of debris as needed to allow casings to advance.
- Install drilled shafts at each bent.
- Construct columns on the drilled shafts.
- Construct a bent cap or crossbeam on top of the columns at a bent location.
- Erect bridge girders on the bent caps or crossbeams.
- Place the bridge deck on the girders.
- Remove temporary work bridges, support platforms, and supporting piles.

Temporary Structures—At the bents closest to shore, up to nine temporary work bridges would be constructed to support equipment for drilled shafts. In addition, at each of the 31 bent locations, one support platform would be constructed, each consisting of four load-bearing piles. The bridges and support platforms would be designed by the contractor after a contract is awarded, but prior to construction. The number and size of piles for temporary in-water work structures are listed in Table 4.

TABLE 4—APPROXIMATE NUMBER OF STEEL PIPE PILES REQUIRED FOR CONSTRUCTION OF NORTH PORTLAND HARBOR BRIDGES

Structure	Number	Pile diameter	Pile length	Piles per structure	Total number of piles	Duration present in water (days-each)
Work bridges	9	18–24 in (0.5–0.6 m)	70–120 ft (21–37 m)	25	225	20–42.
Support platforms	31	36–48 in (0.9–1.2 m)	120 ft	4	124	10–34.
Barge moorings	N/A	36–48 in	120 ft	N/A	216	30/mooring.
Barges (cumulative, at a single time).	Up to 9	N/A	N/A	N/A	N/A	10–34.
Total	Varies .....	.....	.....	.....	565	

As with the mainstem Columbia River bridges, temporary piles would be required to support in-water work bridges or to moor barges during construction of the North Portland Harbor bridges. Unlike the Columbia River bridges, cofferdams are not necessary. Piles used for the temporary work bridges and the support platforms must be load bearing. They would first be vibrated to refusal, and then proofed with an impact hammer to confirm load-bearing capacity. An average of three load-bearing piles would be installed per day using vibratory installation to set the piles, with one impact driver to proof. Rates of installation would be determined by the type of installation equipment, substrate, and required load-bearing capacity of each pile.

Temporary mooring piles would be installed and removed throughout the construction process. Installation of these mooring piles could occur year-round and at any time during sufficient visibility. These piles would be installed using vibratory methods only. In general, temporary piles would

extend only into the alluvium to an estimated depth of 70 to 120 ft (21–37 m). Standard pipe lengths are 80 to 90 ft (24–27 m), so some piles may need to be welded to achieve the lengths required to drive them to these depths. Estimated pile installation specifications are provided in Table 5. Estimates of required number of strikes per pile and total strikes are the same as for the Columbia River. However, only one impact driver at a time would be used. Impact pile driving is proposed to occur only during a modified in-water work period from approximately September 15 to April 15. No impact pile driving would occur outside of the approved dates.

As discussed for Columbia River, a sound attenuation device (i.e., bubble curtain) would be used during all impact pile driving, with the exception of periods when the device would be turned off to measure its effectiveness, in accordance with the hydroacoustic monitoring plan. A period of up to 5 minutes per week of pile driving without the use of an attenuation device

has been allocated in analyses of project impacts for North Portland Harbor, to allow for this study of mitigation effectiveness, as well as for instances when the device might fail. If the attenuation device fails, pile driving activities would shut down as soon as practicable and resolution of the problem would occur; however, some amount of unattenuated driving may occur before shut-down can safely occur. By incorporating this time into the analysis, the project may still proceed in the event of an equipment failure without exceeding analyzed thresholds. With the exception of hydroacoustic monitoring, intentional impact pile driving without a sound attenuation device is not proposed nor would it be authorized. In addition, to limit hydroacoustic impacts to marine mammals, there would be, at minimum, a consecutive 12-hour period without impact pile driving for every 24-hour day. Please see Table 8 for a summary of time required for vibratory driving.

TABLE 5—PILE STRIKE SUMMARY FOR CONSTRUCTION IN NORTH PORTLAND HARBOR

Pile size	Estimated piles installed per day	Estimated strikes per pile	Estimated maximum strikes per day	Hours of pile driving per 12-hr daily pile driving work period
18–24 in (0.5–0.6 m)	3	300	900	0.375
36–48 in (0.9–1.2 m)	3	300	900	0.375
Total	6	N/A	1,800	0.75

Barges would be used as platforms for conducting work activities and to haul materials and equipment to and from the work site. Barges would be moored with steel pipe piles adjacent to temporary work bridges or bents. Several types and sizes of barges would be used according to specific function. No more than nine barges are estimated to be present in North Portland Harbor at any one time during the construction period.

Following installation of the drilled shafts, the temporary work structures and their support piles would be removed through vibratory methods. Other temporary piles would be installed to moor barges adjacent to the new bents. These non-load bearing piles would be installed through vibratory methods only. The installation of steel pipe piles would occur throughout the construction period. Steel piles would be installed and removed during the multi-year construction of the temporary support structures. Although the project would use over 500 piles in the North Portland Harbor, only 100 to

200 piles are estimated to be in the water at any one time.

Debris Removal—Debris from previous structures, including foundations from the 1917 and 1953 bridges, may be present in North Portland Harbor at some locations where drilled shafts would be installed. This debris is likely to consist of large rock or old concrete. Because casings cannot advance through this type of material, it must be removed. Removal would consist of capturing the debris in a clamshell bucket. Capture of sediment would be limited. Debris would be placed in an upland location, and disposed of at a landfill if appropriate. Debris removal activities would be limited to the designated in-water work window of November 1 through February 28. Removal activities would take no more than 10 days over the course of construction.

Before debris removal begins, divers would pinpoint the location of the material. Debris removal would only occur in the precise locations where material overlaps with the footprint of

the new shafts, greatly minimizing the areal extent of the activity. The amount of material in this location is unknown; however, assuming a worst-case scenario (that the area of the material is the same as the footprint of the drilled shafts), the project would remove debris in no more than 31 locations over an area of roughly 2,433 ft² (226 m²). No more than 90 yd³ (69 m³) of material would be removed. If any items are found during excavation that contain potential contaminants (e.g., buried drums, car bodies containing petroleum products), activities to control and clean up contaminants would be implemented in accordance with the project’s approved Spill Prevention, Control, and Countermeasures (SPCC) plan.

Permanent Structures—In-water drilled shaft construction for the North Portland Harbor would occur as described for the Columbia River bridges. Installation of each drilled shaft is estimated to take approximately 10 days. However, the total duration of this activity could vary considerably depending on the type of equipment

used, the quantity of available equipment, and on-site soil conditions. The total duration of drilled shaft installation would be approximately eighteen months. A maximum of 31 shafts would be installed for the North Portland Harbor bridges. Each bridge would have four to seven spans, each a maximum of 255 ft (78 m) long. Each new bridge would have three to five in-water bents, consisting of one to three 10-ft diameter (3 m) drilled shafts. Unlike the Columbia River piers, shafts would not be topped by a shaft cap. Current designs place all of the bents in shallow water (less than 20 ft (6 m) deep).

Columns would be constructed of cast-in-place reinforced concrete. Construction of cast-in-place columns would require cranes, work barges, and material barges continuously throughout this period. The superstructure would consist of girders and a deck. Girders would be constructed of structural steel, cast-in-place concrete, or precast concrete. Precast girders may be fabricated at a casting yard. A cast-in-place concrete deck would be placed on the girders.

Description of the Activity—Columbia River Bridge Demolition

The existing Columbia River bridges would be demolished after the new Columbia River bridges have been constructed and after associated interchanges are operating. The existing Columbia River bridges would be demolished in two stages: (1) Superstructure demolition and (2) substructure demolition.

Demolition of the superstructure would begin with removal of the counterweights. The lift span would be locked into place and the counterweights would be cut into pieces and transferred off-site via truck or barge. Next, the lift towers would be cut into manageable pieces and loaded onto barges by a crane. Prior to removal of the trusses, the deck would be removed by cutting it into manageable pieces; these pieces would be transported by barge or truck or by using a breaker, in which case debris would be caught on a barge or other containment system below the work area. After demolition of the concrete deck, trusses would be lifted off of their bearings and onto

barges and transferred to a shoreline dismantling site.

The existing Columbia River bridge structures comprise eleven pairs of steel through-truss spans with reinforced concrete decks, including one pair of movable spans over the primary navigation channel and one pair of 531-ft long (162 m) span trusses. The remaining nine pairs of trusses range from 265 to 275 ft (81–84 m) in length. In addition to the trusses, there are reinforced concrete approach spans (over land) on either end of the bridges.

Nine sets of the eleven existing Columbia River bridge piers are below the ordinary high water (OHW) level and are supported on a total of approximately 1,800 driven timber piles. Demolition methods are not finalized; however, the final design would consider factors such as pier depth, safety, phasing constraints, and impacts to aquatic species. Demolition of the concrete piers and timber piling foundations would be accomplished using one of two methods:

1. After removal of the trusses, a cofferdam would be installed at each of the nine in-water bridge piers to contain demolition activities. Cofferdams would not be dewatered. The piers would be broken up and removed from within the cofferdam. Timber piles that pose a navigation hazard would then be extracted or cut off below the mud line.

2. A diamond wire/wire saw would be used to cut the piers into manageable chunks that would be transported offsite. Cofferdams would not be used. Timber piles would then be extracted or cut off below the mud line. With either method, the pieces of the piers would be removed via barge.

Although maintenance personnel regularly inspect the existing bridge, the timber piles located underneath the existing piers are inaccessible and have not been inspected. Therefore, it is unknown whether these timber piles have been treated with creosote, but given their age and intended purpose, it is assumed that they have been so treated. Only piles that could pose a navigation hazard would be removed or cut off below the mud line. These piles include those that are present in the proposed navigation channels and any that extend above the surface of the river bed. Piles would be removed (using a vibratory extractor, direct pull,

or clam shell dredge) or cut off below the mud line using an underwater saw. The exact number of piles to be removed is unknown.

A conceptual demolition sequence was determined based on the amount of equipment likely available to build the project and the physical space the equipment requires at each pier. The sequence is provided in Appendix A, Figures 12–16 of CRC's application. The actual construction sequence would be determined by the contractor once a construction contract is awarded.

Demolition would occur after the new Columbia River replacement bridges are built. Demolition activities would take approximately eighteen months, from approximately September 2019 until March 2021. However, some demolition activities could occur during the period of this proposed rule.

Temporary Structures—Temporary cofferdams would be required to isolate work activities and temporary piles would be installed to anchor work and material barges during demolition of the spans and in-water piers. If the diamond wire/wire saw is not used, a temporary cofferdam consisting of interlocking sections of sheet piles would be used to isolate demolition activities at each of the nine in-water piers. Sheet piles for cofferdams would be installed with a vibratory hammer or a press-in method. Up to three cofferdams would be in place at any given time. Sheet piles would be removed using a vibratory hammer or direct pull.

Barges would be used as platforms to perform the demolition and to haul materials and equipment to and from the work site. Several types and sizes of barges are anticipated to be used for bridge demolition. The type and size of each barge would depend on how the barge is used. Up to six stationary or moving barges are expected to be present at any one time during bridge demolition. Over 300 steel pipe piles would be used to anchor and support the work and material barges necessary for demolition. Table 6 summarizes temporary pile use during bridge demolition. All temporary piles would be installed using a vibratory hammer or push-in method. They would be extracted using vibratory methods or direct pull. Piles would be installed and removed continuously throughout the demolition process.

TABLE 6—SUMMARY OF BARGES AND TEMPORARY PILES USED IN BRIDGE DEMOLITION

Application	Locations	Barges per location	Piles per barge	Total piles	Duration in water (days/location)
Span removal	9	4–6	4	160	30
Pier demolition	9	4	4	144	30
Total			304		

Equipment required for bridge demolition includes barge-mounted cranes/hammers or hydraulic rams. Vibratory hammers would be used to install and remove sheet piles for cofferdams and pipe piles for barge moorings. New permanent piles would not be required for demolition of the Columbia River bridges.

Method of Incidental Taking

Vibratory and impact pile installation and removal, and steel casing installation, may result in behavioral disturbance, constituting Level B harassment. Project construction would require the installation and removal of approximately 1,500 temporary steel piles. In addition to pile and casing installation, behavioral disturbance could also be caused by increased activity and vessel traffic, airborne sound from the equipment and human

work activity, as well as underwater sound from debris removal, vessels, and physical disturbance.

Table 7 summarizes the extent, timing, and duration of impact pile driving. Impact pile driving is expected to take place only within a 31-week in-water work window, ranging from September 15 to April 15 over the bridge construction period. There would be a total of about 138 days of impact pile driving in the Columbia River and about 134 days of impact pile driving in North Portland Harbor for the entire project from the start of bridge construction in 2013 to its anticipated completion in 2017 (approximately 4.25 years for both Columbia River and North Portland Harbor Bridges). Impact pile driving in the mainstem Columbia River would occur at more than one pier complex on about 1–2 days total during

the course of the approximately 4-year construction period. Impact pile driving would be restricted to approximately 45 minutes per 12-hour work day. A sound attenuation device would generally be used for all impact pile driving, with the exception of weekly testing of the attenuation device, requiring that some impact hammering occur with the device turned off in order to compare produced sound with that produced while the device is on. This would occur for a maximum of 7.5 minutes per week. Each work day would include a period of at least 12 consecutive hours with no impact pile driving in order to minimize disturbance to aquatic animals. Impact pile driving would only occur during daylight hours. Airborne sound effects from impact pile driving would occur on the same schedule as described in Table 7.

TABLE 7—SUMMARY OF IMPACT PILE DRIVING

Pile size	Columbia River		North Portland Harbor	
	Duration	Days	Duration	Days
18–24 in (without attenuation device)	7.5 min/week	38	2.5–5 min/week	18
18–24 in (with attenuation device)	45 min/day	138	45 min/day	72
36–48 in (without attenuation device)	7.5 min/week	38	2.5–5 min/week	31
36–48 in (with attenuation device)	45 min/day	138	45 min/day	62

Table 8 summarizes the extent, timing, and duration of vibratory installation of pipe pile and sheet pile. Vibratory installation of pipe pile is likely to occur throughout the entire 5-year duration of the proposed regulations period during construction of all new in-water piers or bents and for installation of mooring piles.

Vibratory installation of sheet pile would only occur in the Columbia River during construction of the new Columbia River bridges and demolition of the existing Columbia River bridges. This activity would occur intermittently throughout the construction and demolition period. Vibratory activity is not restricted to an in-water work

window, and therefore may take place during any time of the year. If steel casings for drilled shafts are vibrated into place, the CRC project design team estimates that installation of the 10-ft-diameter casings would take approximately 90 days in the Columbia River and 31 days in North Portland Harbor.

TABLE 8—SUMMARY OF VIBRATORY PILE DRIVING

Pile type	Columbia River		North Portland Harbor	
	Duration	Days	Duration	Days
Pipe pile	Up to 5 hours/day ..	1,470–1,620	Up to 5 hours/day ..	334
Sheet pile	Up to 24 hours/day	99	N/A	N/A
Steel casings		90		31

Debris removal is not certain to occur, but is included to present the fullest

disclosure of potential effects. It is possible that debris removal would

occur in North Portland harbor at the location of each of the new piers where

there is anecdotal evidence that riprap occurs within the pier footprints. The exact quantity of this material is unknown, but as a worst-case scenario this activity would remove approximately 90 yd³ (69 m³) of material over an area of approximately 2,433 ft² (226 m²) from all piers combined. Debris removal would produce sound through use of a bucket dredge, for up to 12 hours per day for a maximum of 7 days during the November 1–February 28 in-water work window each year.

Description of Sound Sources

Sound travels in waves, the basic components of which are frequency, wavelength, velocity, and amplitude. Frequency is the number of pressure waves that pass by a reference point per unit of time and is measured in Hz or cycles per second. Wavelength is the distance between two peaks of a sound wave; lower frequency sounds have longer wavelengths than higher frequency sounds, which is why the lower frequency sound associated with the proposed activities would attenuate more rapidly in shallower water. Amplitude is the height of the sound pressure wave or the ‘loudness’ of a sound and is typically measured using the decibel (dB) scale. A dB is the ratio between a measured pressure (with sound) and a reference pressure (sound at a constant pressure, established by

scientific standards). It is a logarithmic unit that accounts for large variations in amplitude; therefore, relatively small changes in dB ratings correspond to large changes in sound pressure. When referring to sound pressure levels (SPLs; the sound force per unit area), sound is referenced in the context of underwater sound pressure to 1 microPascal (µPa). One pascal is the pressure resulting from a force of one newton exerted over an area of one square meter. The source level represents the sound level at a distance of 1 m from the source (referenced to 1 µPa). The received level is the sound level at the listener’s position.

Root mean square (rms) is the quadratic mean sound pressure over the duration of an impulse. Rms is calculated by squaring all of the sound amplitudes, averaging the squares, and then taking the square root of the average (Urlick, 1975). Rms accounts for both positive and negative values; squaring the pressures makes all values positive so that they may be accounted for in the summation of pressure levels (Hastings and Popper, 2005). This measurement is often used in the context of discussing behavioral effects, in part because behavioral effects, which often result from auditory cues, may be better expressed through averaged units than by peak pressures.

When underwater objects vibrate or activity occurs, sound-pressure waves

are created. These waves alternately compress and decompress the water as the sound wave travels. Underwater sound waves radiate in all directions away from the source (similar to ripples on the surface of a pond), except in cases where the source is directional. The compressions and decompressions associated with sound waves are detected as changes in pressure by aquatic life and man-made sound receptors such as hydrophones.

The underwater acoustic environment consists of ambient sound, defined as environmental background sound levels lacking a single source or point (Richardson *et al.*, 1995). The ambient underwater sound level of a region is defined by the total acoustical energy being generated by known and unknown sources, including sounds from both natural and anthropogenic sources. These sources may include physical (e.g., waves, earthquakes, ice, atmospheric sound), biological (e.g., sounds produced by marine mammals, fish, and invertebrates), and anthropogenic sound (e.g., vessels, dredging, aircraft, construction). Known sound levels and frequency ranges associated with anthropogenic sources similar to those that would be used for this project are summarized in Table 9. Details of each of the sources are described in the following text.

TABLE 9—REPRESENTATIVE SOUND LEVELS OF ANTHROPOGENIC SOURCES

Sound source	Frequency range (Hz)	Underwater sound level (dB re 1 µPa)	Reference
Small vessels	250–1,000	151 dB rms at 1 m	Richardson <i>et al.</i> , 1995.
Tug docking gravel barge	200–1,000	149 dB rms at 100 m (328 ft)	Blackwell and Greene, 2002.
Vibratory driving of 72-in (1.8 m) steel pipe pile.	10–1,500	180 dB rms at 10 m (33 ft)	Caltrans, 2007.
Impact driving of 36-in (0.9 m) steel pipe pile.	10–1,500	195 dB rms at 10 m	WSDOT, 2007.
Impact driving of 66-in (1.7 m) CISS ¹ piles.	100–1,500	195 dB rms at 10 m	Reviewed in Hastings and Popper, 2005.

¹ CISS = cast-in-steel-shell.

The CRC project would produce underwater sound through installation of piles for temporary in-water work platforms and temporary barge moorings, and vibratory installation of steel casings for drilled shafts. Piles would be installed by using impact and/or vibratory hammers, or by press-in techniques that do not produce notable underwater sound.

Several types of impact hammers are commonly used to install in-water piles: air-driven, steam-driven, diesel-driven, and hydraulic. Impact hammers operate by repeatedly dropping a heavy piston onto a pile to drive the pile into the substrate. Sound generated by impact hammers is characterized by rapid rise times and high peak levels, a potentially injurious combination (Hastings and

Popper, 2005). Table 10 summarizes observed underwater sound levels generated by driving various types and sizes of piles. Sound generated by impact pile driving is highly variable, based on site-specific conditions such as substrate, water depth, and current. Sound levels may also vary based on the size of the pile, the type of pile, and the energy of the hammer.

TABLE 10—SUMMARY OF OBSERVED UNDERWATER SOUND LEVELS GENERATED BY IMPACT PILE DRIVING

Pile size, in (m)	Driver type	dB Peak	dB rms
12 (0.3)	Impact	208	191

TABLE 10—SUMMARY OF OBSERVED UNDERWATER SOUND LEVELS GENERATED BY IMPACT PILE DRIVING—Continued

Pile size, in (m)	Driver type	dB Peak	dB rms
14 (0.4)	Impact	¹ 195	¹ 180
16 (0.4)	Impact	² 200	² 187
24 (0.6)	Impact	212	189
30 (0.8)	Impact	212	195
36 (0.9)	Impact	214	201
60 (1.5)	Impact	210	195
66 (1.7)	Impact	210	195
96 (2.4)	Impact	220	205
126 (3.2)	Impact	³ 213	³ 202
150 (3.8)	Impact	⁴ 200	⁴ 185
12	Vibratory	171	155
24 (sheet), typical	Vibratory	175	160
24 (sheet), loudest	Vibratory	182	165
36 (typical)	Vibratory	180	170
36 (loudest)	Vibratory	185	175
72 (typical) (1.8)	Vibratory	183	170
72 (loudest)	Vibratory	195	180

Source: Caltrans, 2009

Note: Sound levels measured at a distance of 10 m except where indicated by the following footnotes: ¹ 30 m; ² 9 m; ³ 11 m; ⁴ 100 m.

Vibratory hammers install piles by vibrating them and allowing the weight of the hammer to push them into the sediment. Vibratory hammers produce much less sound than impact hammers. Peak SPLs may be 180 dB or greater, but are generally 10 to 20 dB lower than SPLs generated during impact pile driving of the same-sized pile (Caltrans, 2009). Rise time is slower, reducing the probability and severity of injury (USFWS, 2009), and sound energy is distributed over a greater amount of time (Nedwell and Edwards, 2002; Carlson *et al.*, 2001).

Vibratory hammers cannot be used in all circumstances. In some substrates, the capacity of a vibratory hammer may be insufficient to drive the pile to load-bearing capacity or depth (Caltrans, 2009). Additionally, some vibrated piles must be 'proofed' (i.e., struck with an impact hammer) for several seconds to several minutes in order to verify the load-bearing capacity of the pile (WSDOT, 2008).

Table 10 outlines typical sound levels produced by installation of various types of pile using a vibratory pile driver. Note that peak sound levels range from 171 to 195 dB, whereas peak sound levels generated by impact pile driving range from 195 to 220 dB.

Impact and vibratory pile driving are the primary in-water construction activities associated with the project. The sounds produced by these activities fall into one of two sound types: pulsed and non-pulsed (defined in next paragraph). Impact pile driving produces pulsed sounds, while vibratory pile driving produces non-pulsed sounds. The distinction between these two general sound types is important because they have differing

potential to cause physical effects, particularly with regard to hearing (e.g., Ward, 1997 in Southall *et al.*, 2007). Please see Southall *et al.* (2007) for an in-depth discussion of these concepts.

Pulsed sounds (e.g., explosions, gunshots, sonic booms, seismic pile driving pulses, and impact pile driving) are brief, broadband, atonal transients (ANSI, 1986; Harris, 1998) and occur either as isolated events or repeated in some succession. Pulsed sounds are all characterized by a relatively rapid rise from ambient pressure to a maximal pressure value followed by a decay period that may include a period of diminishing, oscillating maximal and minimal pressures. Pulsed sounds generally have an increased capacity to induce physical injury as compared with sounds that lack these features.

Non-pulsed sounds (which may be intermittent or continuous) can be tonal, broadband, or both. Some of these non-pulse sounds can be transient signals of short duration but without the essential properties of pulses (e.g., rapid rise time). Examples of non-pulse sounds include those produced by vessels, aircraft, machinery operations such as drilling or dredging, vibratory pile driving, and active sonar systems. The duration of such sounds, as received at a distance, can be greatly extended in a highly reverberant environment.

Sound Attenuation Devices

Sound levels can be greatly reduced during impact pile driving using sound attenuation devices. There are several types of sound attenuation devices including bubble curtains, cofferdams, and isolation casings. Three types of attenuation devices are described here.

Bubble curtains create a column of air bubbles rising around a pile from the substrate to the water surface. The air bubbles absorb and scatter sound waves emanating from the pile, thereby reducing the sound energy. Bubble curtains may be confined or unconfined. An unconfined bubble curtain may consist of a ring seated on the substrate and emitting air bubbles from the bottom. An unconfined bubble curtain may also consist of a stacked system, that is, a series of multiple rings placed at the bottom and at various elevations around the pile. Stacked systems may be more effective than non-stacked systems in areas with high current and deep water (Caltrans, 2009).

A confined bubble curtain contains the air bubbles within a flexible or rigid sleeve made from plastic, cloth, or pipe. Confined bubble curtains generally offer higher attenuation levels than unconfined curtains because they may physically block sound waves and they prevent air bubbles from migrating away from the pile. For this reason, the confined bubble curtain is commonly used in areas with high current velocity (Caltrans, 2009). In Oregon, confined bubble curtains are typically required where current velocity is 0.6 m/s or greater (NMFS, 2008a).

Cofferdams are often used during construction for isolating the in-water work area, but may also be used as a sound attenuation device. Dewatered cofferdams may provide the highest levels of sound reduction of any attenuation device; however, they do not eliminate underwater sound because sound can be transmitted through the substrate (Caltrans, 2009). Cofferdams that are not dewatered provide very limited reduction in sound levels.

An isolation casing is a hollow pipe that surrounds the pile, isolating it from the in-water work area. The casing is dewatered before pile driving. This device provides levels of sound attenuation similar to that of bubble curtains; however, attenuation rates are not as great as those achieved by cofferdams because the dewatered area between the pile and the water column is generally much smaller (Caltrans, 2009).

Both environmental conditions and the characteristics of the sound attenuation device may influence the effectiveness of the device. According to Caltrans (2009):

- In general, confined bubble curtains attain better sound attenuation levels in areas of high current than unconfined bubble curtains. If an unconfined device is used, high current velocity may sweep bubbles away from the pile, resulting in reduced levels of sound attenuation.

- Softer substrates may allow for a better seal for the device, preventing leakage of air bubbles and escape of sound waves. This increases the effectiveness of the device. Softer substrates also provide additional attenuation of sound traveling through the substrate.

- Flat bottom topography provides a better seal, enhancing effectiveness of the sound attenuation device, whereas sloped or undulating terrain reduces or eliminates its effectiveness.

- Air bubbles must be close to the pile; otherwise, sound may propagate into the water, reducing the effectiveness of the device.

- Harder substrates may transmit ground-borne sound and propagate it into the water column.

The literature presents a wide array of observed attenuation results (see, e.g., WSF, 2009; WSDOT, 2008; USFWS, 2009; Caltrans, 2009). The variability in attenuation levels is due to variation in design, as well as differences in site conditions and difficulty in properly installing and operating in-water attenuation devices. WSDOT personnel have observed that, on average, unconfined bubble curtains typically achieve 9 dB of attenuation while confined bubble curtains achieve 12 dB. Caltrans (2009) offers the following generalizations:

- For steel or concrete pile 24 in (0.6 m) in diameter or less, bubble curtains would generally reduce sound levels by 5 dB.

- For steel pile measuring 24 to 48 in (0.6–1.2 m), bubble curtains may reduce sound levels by about 10 dB.

- For piles greater than 48 in diameter, bubble curtains may reduce sound levels by about 20 dB.

- As a general rule, reductions of greater than 10 dB cannot be reliably predicted.

Sound Thresholds

Since 1997, NMFS has used generic sound exposure thresholds to determine when an activity in the ocean that produces sound might result in impacts to a marine mammal such that a take by harassment or injury might occur (NMFS, 2005b). To date, no studies have been conducted that examine impacts to marine mammals from pile driving sounds from which empirical sound thresholds have been established. Current NMFS practice regarding exposure of marine mammals to high level sounds is that cetaceans and pinnipeds exposed to impulsive sounds of 180 and 190 dB rms or above, respectively, are considered to have been taken by Level A (i.e., injurious) harassment. Behavioral harassment (Level B) is considered to have occurred when marine mammals are exposed to sounds at or above 160 dB rms for impulse sounds (e.g., impact pile driving) and 120 dB rms for non-pulsed sound (e.g., vibratory pile driving), but below injurious thresholds. For airborne sound, pinniped disturbance from haul-outs has been documented at 100 dB (unweighted) for pinnipeds in general, and at 90 dB (unweighted) for harbor seals. NMFS uses these levels as guidelines to estimate when harassment may occur.

Distance to Sound Thresholds

The extent of project-generated sound both in and over water was calculated for the locations where pile driving would occur in the Columbia River and North Portland Harbor. The extent of underwater sound was modeled for several pile driving scenarios:

- For two sizes of pile: 18- to 24-in (0.5–0.6 m) pile and 36- to 48-in (0.9–1.2 m) pile.

- For single impact pile drivers operating both with and without an attenuation device. Use of an attenuation device was assumed to decrease initial SPLs by 10 dB (see discussion previously in this document).

- For vibratory driving of pipe pile and sheet pile.

Underwater Sound—Models may be used to estimate the distances and areas within which sound is likely to exceed certain threshold levels. Please note that the results of such modeling are described here to provide a frame of reference for the reader. Actual

distances and areas within which sound is likely to exceed certain threshold levels are known from collection of site-specific hydroacoustic monitoring data (see ‘Test Pile Project’, later in this document).

In the absence of site-specific data, the practical spreading loss model may be used for determining the extent of sound from a source (Davidson, 2004; Thomsen *et al.*, 2006). The model assumes a logarithmic coefficient of 15, which equates to sound energy decreasing by 4.5 dB with each doubling of distance from the source. To calculate the loss of sound energy from one distance to another, the following formula is used:

$$\text{Transmission Loss (dB)} = 15 \log(D_1/D_0)$$

D_1 is the distance from the source for which SPLs need to be known, and D_0 is the distance from the source for which SPLs are known (typically 10 m from the pile). This model also solves for the distance at which sound attenuates to various decibel levels (e.g., a threshold or background level). The following equation solves for distance:

$$D_1 = D_0 \times 10^{(TL/15)}$$

where TL stands for transmission loss (the difference in decibel levels between D_0 and D_1). For example, using the distance to an injury threshold (D_1), the area of effect is calculated as the area of a circle, πr^2 , where r (radius) is the distance to the threshold or background. If a landform or other shadowing element interrupts the spread of sound within the threshold distance, then the area of effect truncates at the location of the shadowing element.

Sound levels are highly dependent on environmental site conditions. Therefore, published hydroacoustic monitoring data for projects with similar site conditions as the CRC project were considered. WSDOT and the California Department of Transportation (Caltrans) have compiled hydroacoustic monitoring data from in-water impact pile driving. No projects with hydroacoustic monitoring data and similar site conditions were identified in the Columbia River.

A review of WSDOT and Caltrans projects containing in-water pile driving found projects in California had the most similar substrates and depths; however, only one project used 48-in pile, the largest size in the CRC project. This work occurred in the Russian River, which was only 15 m wide and 0.6 m deep at the project location. Therefore, the results are not applicable to the CRC project. Instead, data from projects that drove 36-in pile were used, using the highest sound levels

encountered as proxy values for 48-in pile.

Maximum measured sound levels from 36-in steel pile installation were 201 dB rms (WSDOT, 2008), as shown in Table 10. Site conditions for this project, in Puget Sound, are somewhat comparable to the Columbia River, as both are large, with similar depths. The maximum source level from the next largest pile size, 60-in (1.5-m) pile, was 195 dB rms at 10 m. As such, the use of data from the 36-in pile measurements provides a more conservative estimate. The CRC project would also drive 18- to 24-in diameter steel pile. Conservatively, the highest recorded value of 189 dB rms for this range of pile sizes was used (see Table 10).

No studies were available that measured site-specific initial sound levels generated by vibratory pile driving in the Region of Activity. However, Table 10 outlines a range of typical sound levels produced by vibratory pile driving as measured by Caltrans during hydroacoustic monitoring of several construction projects (Caltrans, 2009). A worst-case scenario of installing 48-in steel pipe pile (the largest pile size to be used on the CRC project) at the loudest measured SPLs was considered, however, as there were no data for 48-in pile, it was assumed that sound levels for 48-in pile would be intermediate between those levels generated by 36-in pile and 72-in (1.8-m) pile. Typical values for both 36- and 72-in pile were

170 dB, while the loudest values were 175 dB for 36-in pile and 180 dB for 72-in pile. Thus, 175 dB was considered an appropriate value for initial SPLs for vibratory driving of pipe pile. The project may also install sheet pile, in the Columbia River only. In general, installation of sheet pile produces lower SPLs than pipe pile. Using data presented in Table 10, an initial SPL of approximately 160 dB rms at a distance of 15 m was assumed. Table 11 shows the calculated distances required for underwater sound to attenuate to relevant thresholds, as per the practical spreading model (please see Figures B-1 to B-6 of CRC's application for graphical depictions of threshold distances discussed here).

TABLE 11—CALCULATED DISTANCES TO SOUND THRESHOLDS

Threshold	Pile size	Distance to threshold (without attenuation device) (m)	Distance to threshold (with attenuation device)* (m)
Injury: 190 dB rms	18–24 in	9	2
Harassment: 160 dB rms	18–24 in	858	185
Injury: 190 dB rms	36–48 in	54	12
Harassment: 160 dB rms	36–48 in	5,412	1,166
Harassment: 120 dB rms	36–72 in	23,208	n/a
Harassment: 120 dB rms	24-in sheet pile	6,962	n/a

* 10 dB reduction in SPLs assumed from use of attenuation device.

Landforms in the Columbia River and North Portland Harbor would block underwater sound well before it reaches certain calculated distances. Table 12

shows actual site-specific values for the maximum distance within which sound is likely to exceed a given threshold level until contact with landforms.

Categories not listed in Table 12 would remain the same as shown in Table 11.

TABLE 12—ACTUAL DISTANCES TO SOUND THRESHOLDS

Threshold	Pile size	Location*	Upstream (m)	Downstream (m)
Harassment: 160 dB rms	36–48 in (without attenuation)	NPH	3,058	5,412
Harassment: 120 dB rms	36–72 in	CR	20,166	8,851
Harassment: 120 dB rms	36–72 in	NPH	3,058	5,632

* NPH = North Portland Harbor; CR = Columbia River.

Airborne Sound—For calculating the levels and extent of project-generated airborne sound, a point sound source and hard-site conditions were assumed because pile drivers would be stationary, and work would largely occur over open water and adjacent to an urbanized landscape. Thus, calculations assumed that pile driving sound would attenuate at a rate of 6 dB per doubling distance, based on a spherical spreading model. The following formula was used to determine the distances at which pile-driving sound attenuates to the 90 dB rms and 100 dB rms (re: 20 μPa; all

airborne SPLs discussed here are referenced to 20 μPa) airborne disturbance thresholds:

$$D_1 = D_0 * 10^{((initial\ SPL - airborne\ disturbance\ threshold)/\alpha)}$$

where D₁ is the distance from the pile at which sound attenuates to the threshold value, D₀ is the distance from the pile at which the initial SPLs were measured, and α is the variable for soft-site or hard-site conditions. These calculations used α = 20 for hard-site conditions.

The estimate of initial sound level is based on the results of monitoring performed by WSDOT during pile driving at Friday Harbor Ferry Terminal

(Laughlin, 2005b). The results showed airborne rms sound levels of 112 dB taken at 160 ft (49 m) from the source during impact pile driving. This project drove 24-in steel pipe pile, which is only half the size of the largest pile proposed for use in the CRC project. However, airborne sound levels are independent of the size of the pile (CRC, 2010), and therefore the sound levels encountered at Friday Harbor are applicable to the CRC project.

The model used 112 dB rms at 160 ft from the source as the initial sound level for a single pile driver. Because multiple pile drivers would not strike

piles synchronously, operation of multiple pile drivers would not generate sound louder than that of a single pile driver. Therefore, initial sound levels for multiple pile drivers were assumed to be the same as for a single pile driver. The CRC project is not likely to use an airborne sound-attenuation device. Sound generated by impact pile driving in the Columbia River and North Portland Harbor is likely to exceed the 100 dB rms airborne disturbance threshold within 195 m of the source and is likely to exceed the 90 dB rms airborne disturbance threshold within 650 m of the source.

Debris Removal—Debris removal may occur in North Portland Harbor at the location of each of the new piers where there is anecdotal evidence that riprap occurs within the pier footprints. Debris removal in the North Portland Harbor, if it occurs, is likely to create sound at or above the 120-dB disturbance threshold for continuous sound in underwater portions of the Region of Activity.

Few studies have been conducted on sound emissions produced by underwater debris removal. A review of the literature indicates that underwater debris removal would produce sound in the range of 135 dB to 147 dB at 10 m (Dickerson *et al.*, 2001; OSPAR, 2009; Thomsen *et al.*, 2009).

Underwater debris removal is not expected to generate significant airborne sound. The air-water interface creates a substantial sound barrier and reduces the intensity of underwater sound waves by a factor of more than 1,000 when they cross the water surface. The above-water environment is, thus, virtually insulated from the effects of underwater sound (Hildebrand, 2005). Therefore, underwater debris removal is not expected to measurably increase ambient airborne sound. Underwater sound from debris removal would likely attenuate to the 120-dB underwater disturbance threshold for continuous sound within 631 m of the source. This activity would occur for only 7 days, during the in-water work window.

Test Pile Project

In February 2011, CRC conducted a test pile project in order to acquire geotechnical and sound propagation data to assess site-specific characteristics and verify the modeling results discussed in the preceding section, and to assess mitigation measures related to pile installation activities planned for the CRC project. Please see CRC's Test Pile Hydroacoustic Monitoring Report for detailed analysis (**SUPPLEMENTARY INFORMATION**).

Engineering objectives included the following:

- Determine strike numbers necessary to install piles to reach load-bearing capacity with an impact hammer;
- Identify suitable equipment and materials and verify production rates for pile installation;
- Determine the feasibility of vibratory installation methods; and
- Validate geotechnical and engineering calculations.

Environmental objectives included the following:

- Determine the underwater sound levels resulting from vibratory installation of temporary piles in the predominant substrate types found at typical mid-channel depths at the project site;
- Determine the underwater sound levels resulting from impact installation of temporary piles in the predominant substrate types found at typical mid-channel depths at the project site;
- Determine the effectiveness of two sound attenuation strategies (unconfined and confined bubble curtains) during impact pile driving;
- Determine the transmission loss of pile installation sound for both impact and vibratory installation;
- Determine the extent of construction sound impacts in-air for impact pile driving; and
- Determine the extent of turbidity plumes resulting from vibratory and impact pile installation and extraction, and from unconfined and confined bubble curtain operation.

Test pile operations consisted of impact driving or vibratory driving at six pile locations using 24- and 48-in piles. A confined or unconfined bubble curtain was tested during each pile installation. Background sound level monitoring was successfully conducted between January 27 and February 3, 2011. The background sound level at fifty percent cumulative distribution function (CDF) on the Washington (north) side of the river was found to be 110 dB, while the background level at fifty percent CDF on the Oregon (south) side of the river was slightly higher at 117 dB.

Hydroacoustic monitoring was successfully conducted during test pile construction activities February 11–21, 2011. Rms pressure levels associated with vibratory driving varied widely pile to pile; subsurface driving conditions are the likely cause of this variability. For impact driving, average sound levels were derived for both 24-in and 48-in piles. Impact driving on 48-in piles was, on average, 10 dB louder than driving on 24-in piles.

Measured sound levels for both vibratory driving and impact driving were similar to those expected as outlined previously in this document. For vibratory driving, the maximum observed sound level was 181 dB, only slightly louder than the anticipated maximum sound level (180 dB). For impact driving, observed unattenuated rms sound levels for 24-in piles were 191 dB, slightly louder than anticipated (189 dB). Unattenuated rms sound levels for 48-in piles (201 dB) were as anticipated. The average rms pressure level for vibratory pile extraction was 173 dB, and did not appear to vary with pile size. The 173 dB observed for extraction was slightly less than the 176 dB average observed during pile installation. The variance of the pressure levels was also less, with extraction values ranging from 167–176 dB while installation values ranged from 157–181 dB.

Open curtain attenuation methods reduced the sound levels for 48-in piles 11 dB on average, and 9 dB on average for 24-in piles. Confined curtain attenuation methods reduced the sound levels for 48-in piles 13 dB on average, and 8.5 dB on average for 24-in piles. Open bubble curtain attenuation was similar to confined curtain attenuation at 10 m downstream; however, the effectiveness of the open bubble curtain appeared to be significantly less upstream when compared to downstream, likely due to the effect of current on the open bubble curtain. The observed effectiveness of both open and confined bubble curtains at attenuating peak amplitudes (8–13 dB) was approximately as anticipated (10 dB).

Transmission loss was analyzed for both vibratory driving and impact driving. Transmission loss for vibratory driving was in line with the practical spreading model, as anticipated. However, this analysis is based on results from only one pile; for two of the piles, the signal could not be distinguished from background noise at 200 m, while for a third pile, the signal could not be distinguished from background noise at 800 m. Thus, transmission loss could not be calculated for those piles, although energy from those piles clearly showed rapid attenuation. Transmission loss for impact driving was in line with the practical spreading model at the 200-m range, but steadily increased toward spherical spreading with increasing range, resulting in greater than anticipated transmission loss.

The data for transmission loss associated with vibratory driving suggest that the majority of the energy occurs in frequencies below 1,000 Hz,

with energy levels gradually falling off at higher frequencies (CRC, 2011). For vibratory installation in this study, driving of two piles produced energy that could not be distinguished from background by 200 m, while the signal from a third could not be detected at the 800 m station. The signal was distinguishable from background sound levels at approximately 800 m for only one of the piles, indicating that distance to the threshold would likely be less than the modeling results predicted. However, background sound levels during pile driving were higher than those measured previously. It is possible that increased background levels resulted from sound associated with the project, instrumentation, or some other source. Nevertheless, data indicate that transmission loss for vibratory driving is approximately in conformance with practical spreading loss. Piles were generally installed or extracted during the test pile study in less than 5 minutes (ranging from less than 1 minute to less than 10 minutes, for all but one outlier).

Measured, site-specific values were either substantially similar to assumed values or, in the case of transmission loss or realized attenuation from use of bubble curtains in certain circumstances, the assumed values described previously in this document were more conservative than the actual values. As such, those values remain valid but likely represent a significantly more conservative scenario than would realistically occur. Actual distances to be monitored for potential injury or harassment of pinnipeds would be based on the results of in-situ hydroacoustic monitoring, where relevant, and are discussed in greater detail in 'Proposed Mitigation', later in this document.

Comments and Responses

On December 15, 2010, NMFS published a notice of receipt of an application for a Letter of Authorization (LOA) in the **Federal Register** (75 FR 78228) and requested comments and information from the public for 30 days. NMFS did not receive any substantive comments.

Description of Marine Mammals in the Area of the Specified Activity

Marine mammal species that have been observed within the Region of Activity consist of the harbor seal, California sea lion, and Steller sea lion. Pinnipeds follow prey species into freshwater up to, primarily, the Bonneville Dam (RM 145, Rkm 233) in the Columbia River, but also to Willamette Falls in the Willamette River (RM 26, Rkm 42). The Willamette River

enters the Columbia River approximately 5 mi (8 km) downstream of the CRC project area and is within the Region of Activity. Harbor seals rarely, but occasionally, transit the Region of Activity. The eastern population of the Steller sea lion is listed as threatened under the ESA and as depleted and strategic under the MMPA. Neither the California sea lion nor the harbor seal is listed under the ESA, nor are they considered depleted or strategic under the MMPA.

The sea lions use this portion of the river primarily for transiting to and from Bonneville Dam, which concentrates adult salmonids and sturgeon returning to natal streams, providing for increased foraging efficiency. The U.S. Army Corps of Engineers (USACE) has conducted surface observations to evaluate the seasonal presence, abundance, and predation activities of pinnipeds in the Bonneville Dam tailrace each year since 2002. This monitoring program was initiated in response to concerns over the potential impact of pinniped predation on adult salmonids passing Bonneville Dam in the spring. An active sea lion hazing, trapping, and permanent removal program was in place below the dam from 2008 through 2010. Much of the information presented in this application is based on research conducted as part of the Bonneville Dam sea lion program.

Pinnipeds remain in upstream locations for a couple of days or longer, feeding heavily on salmon, steelhead, and sturgeon (NOAA 2008), although the occurrence of harbor seals near Bonneville Dam is much lower than sea lions (Stansell *et al.*, 2009). Sea lions congregate at Bonneville Dam during the peaks of salmon return, from March through May each year, and a few California sea lions have been observed feeding on salmonids in the area below Willamette Falls during the spring adult fish migration (NOAA, 2008).

There are no pinniped haul-out sites in the Region of Activity. The nearest haul-out sites, shared by harbor seals and California sea lions, are near the Cowlitz River/Carroll Slough confluence with the Columbia River, approximately 45 mi (72 km) downriver from the Region of Activity (Jeffries *et al.*, 2000). The nearest known haul-out for Steller sea lions is a rock formation (Phoca Rock) near RM 132 (Rkm 212) approximately 8 mi (13 km) downstream of Bonneville Dam and 26 mi (42 km) upstream from the Region of Activity. Steller sea lions are also known to haul out on the south jetty at the mouth of the Columbia River, near Astoria, Oregon. There are no pinniped

rookeries located in or near the Region of Activity.

Harbor Seal

Species Description—Harbor seals, which are members of the Phocid family (true seals), inhabit coastal and estuarine waters and shoreline areas from Baja California, Mexico to western Alaska. For management purposes, differences in mean pupping date (i.e., birthing) (Temte, 1986), movement patterns (Jeffries, 1985; Brown, 1988), pollutant loads (Calambokidis *et al.*, 1985) and fishery interactions have led to the recognition of three separate harbor seal stocks along the west coast of the continental U.S. (Boveng, 1988). The three distinct stocks are: (1) Inland waters of Washington (including Hood Canal, Puget Sound, and the Strait of Juan de Fuca out to Cape Flattery), (2) outer coast of Oregon and Washington, and (3) California (Carretta *et al.* 2007b). The seals in the Region of Activity are from the outer coast of Oregon and Washington stock.

The average weight for adult seals is about 180 lb (82 kg) and males are typically slightly larger than females. Male harbor seals weigh up to 245 lb (111 kg) and measure approximately 5 ft (1.5 m) in length. The basic color of harbor seals' coat is gray and mottled but highly variable, from dark with light color rings or spots to light with dark markings (NMFS, 2008c).

Status—In 1999, the population of the Oregon/Washington coastal stock of harbor seals was estimated at 24,732 animals (Carretta *et al.*, 2007a). Although this abundance estimate represents the best scientific information available, per NMFS stock assessment policy it is not considered current because it is more than 8 years old. This harbor seal stock includes coastal estuaries (Columbia River) and bays (Willapa Bay and Grays Harbor). Both the Washington and Oregon portions of this stock are believed to have reached carrying capacity and the stock is within its optimum sustainable population level (Jeffries *et al.*, 2003; Brown *et al.*, 2005). Because there is no current estimate of minimum abundance, potential biological removal (PBR) cannot be calculated for this stock. However, the level of human-caused mortality and serious injury is less than ten percent of the previous PBR of 1,343 harbor seals per year (Carretta *et al.*, 2007), and human-caused mortality is considered to be small relative to the stock size. Therefore, the Oregon and Washington outer coast stock of harbor seals are not classified as a strategic stock under the MMPA.

Behavior and Ecology—Harbor seals are non-migratory with local movements associated with such factors as tides, weather, season, food availability, and reproduction (Scheffer and Slipp, 1944; Fisher, 1952; Bigg, 1969, 1981). They are not known to make extensive pelagic migrations, although some long distance movement of tagged animals in Alaska (174 km), and along the U.S. west coast (up to 550 km), have been recorded (Pitcher and McAllister, 1981; Brown and Mate, 1983; Herder, 1986). Harbor seals are coastal species, rarely found more than 12 mi (20 km) from shore, and frequently occupy bays, estuaries, and inlets (Baird, 2001). Individual seals have been observed several miles upstream in coastal rivers. Ideal harbor seal habitat includes haul-out sites, shelter during the breeding periods, and sufficient food (Bjorge, 2002).

Harbor seals haul out on rocks, reefs, beaches, and ice and feed in marine, estuarine, and occasionally fresh waters. Harbor seals display strong fidelity for haul-out sites (Pitcher and Calkins, 1979; Pitcher and McAllister, 1981), although human disturbance can affect haul-out choice (Harris *et al.*, 2003). Group sizes range from small numbers of animals on intertidal rocks to several thousand animals found seasonally in coastal estuaries. The harbor seal is the most commonly observed and widely distributed pinniped found in Oregon and Washington (Jeffries *et al.*, 2000; ODFW, 2010). Harbor seals use hundreds of sites to rest or haul out along the coast and inland waters of Oregon and Washington, including tidal sand bars and mudflats in estuaries, intertidal rocks and reefs, beaches, log booms, docks, and floats in all marine areas of the two states. Numerous harbor seal haul-out sites are found on intertidal mudflats and sand bars from the mouth of the lower Columbia River to Carroll Slough at the confluence of the Cowlitz and Columbia Rivers.

Harbor seals mate at sea and females give birth during the spring and summer, although the pupping season varies by latitude. Pupping seasons vary by geographic region with pups born in coastal estuaries (Columbia River, Willapa Bay, and Grays Harbor) from mid-April through June and in other areas along the Olympic Peninsula and Puget Sound from May through September (WDFW, 2000). Suckling harbor seal pups spend as much as forty percent of their time in the water (Bowen *et al.*, 1999).

They can be found throughout the year at the mouth of the Columbia River. Peak harbor seal abundances in the Columbia River occur during the winter and spring when a number of upriver

haul-out sites are used. Peak abundances and upriver movements in the winter and spring months are correlated with spawning runs of eulachon (*Thaleichthys pacificus*) smelt and out-migration of salmonid smolts. Harbor seals are infrequently observed at Bonneville Dam or in the Region of Activity. In 2009 and again in 2010, two harbor seals were observed at the dam (Stansell *et al.*, 2009; Stansell and Gibbons, 2010), and observations of harbor seals at Bonneville Dam have ranged from one to three per year from 2002 to 2010.

Within the Region of Activity, there are no known harbor seal haul-out sites. The nearest known haul-out sites to the Region of Activity are located at Carroll Slough at the confluence of the Cowlitz and Columbia Rivers approximately 45 mi (72 km) downriver of the Region of Activity. The low number of observations of harbor seals at Bonneville Dam over the years, combined with the fact that no pupping or haul-out locations are within or upstream from the Region of Activity, suggest that very few harbor seals transit through the Region of Activity (Stansell *et al.*, 2010).

Acoustics—In air, harbor seal males produce a variety of low-frequency (less than 4 kHz) vocalizations, including snorts, grunts, and growls. Male harbor seals produce communication sounds in the frequency range of 100–1,000 Hz (Richardson *et al.*, 1995). Pups make individually unique calls for mother recognition that contain multiple harmonics with main energy below 0.35 kHz (Bigg, 1981; Thomson and Richardson, 1995). Harbor seals hear nearly as well in air as underwater and have lower thresholds than California sea lions (Kastak and Schusterman, 1998). Kastak and Schusterman (1998) reported airborne low frequency (100 Hz) sound detection thresholds at 65 dB for harbor seals. In air, they hear frequencies from 0.25–30 kHz and are most sensitive from 6–16 kHz (Richardson, 1995; Terhune and Turnbull, 1995; Wolski *et al.*, 2003).

Adult males also produce underwater sounds during the breeding season that typically range from 0.25–4 kHz (duration range: 0.1 s to multiple seconds; Hanggi and Schusterman 1994). Hanggi and Schusterman (1994) found that there is individual variation in the dominant frequency range of sounds between different males, and Van Parijs *et al.* (2003) reported oceanic, regional, population, and site-specific variation that could be vocal dialects. In water, they hear frequencies from 1–75 kHz (Southall *et al.*, 2007) and can detect sound levels as weak as 60–85 dB

within that band. They are most sensitive at frequencies below 50 kHz; above 60 kHz sensitivity rapidly decreases.

California Sea Lions

Species Description—California sea lions are members of the Otariid family (eared seals). The species, *Zalophus californianus*, includes three subspecies: *Z. c. wollebaeki* (in the Galapagos Islands), *Z. c. japonicus* (in Japan, but now thought to be extinct), and *Z. c. californianus* (found from southern Mexico to southwestern Canada; referred to here as the California sea lion) (Carretta *et al.*, 2007). The breeding areas of the California sea lion are on islands located in southern California, western Baja California, and the Gulf of California (Carretta *et al.*, 2007). These three geographic regions are used to separate this subspecies into three stocks: (1) The U.S. stock begins at the U.S./Mexico border and extends northward into Canada, (2) the Western Baja California stock extends from the U.S./Mexico border to the southern tip of the Baja California peninsula, and (3) the Gulf of California stock which includes the Gulf of California from the southern tip of the Baja California peninsula and across to the mainland and extends to southern Mexico (Lowry *et al.*, 1992).

The California sea lion is sexually dimorphic. Males may reach 1,000 lb (454 kg) and 8 ft (2.4 m) in length; females grow to 300 lb (136 kg) and 6 ft (1.8 m) in length. Their color ranges from chocolate brown in males to a lighter, golden brown in females. At around 5 years of age, males develop a bony bump on top of the skull called a sagittal crest. The crest is visible in the dog-like profile of male sea lion heads, and hair around the crest gets lighter with age.

Status—The U.S. stock of California sea lions is estimated at 238,000 and the minimum population size of this stock is 141,842 individuals (Carretta *et al.*, 2007). These numbers are from counts during the 2001 breeding season of animals that were ashore at the four major rookeries in southern California and at haul-out sites north to the Oregon/California border. Sea lions that were at-sea or hauled-out at other locations were not counted (Carretta *et al.*, 2007). The stock has likely reached its carrying capacity and, even though current total human-caused mortality is unknown (due a lack of observer coverage in the California set gillnet fishery that historically has been the largest source of human-caused mortalities), California sea lions are not considered a strategic stock under the

MMPA because total human-caused mortality is still likely to be less than the PBR.

Behavior and Ecology—During the summer, California sea lions breed on islands from the Gulf of California to the Channel Islands and seldom travel more than about 31 mi (50 km) from the islands (Bonnell *et al.*, 1983). The primary rookeries are located in the California Channel Islands (Le Boeuf and Bonnell, 1980; Bonnell and Dailey, 1993). Their distribution shifts to the northwest in fall and to the southeast during winter and spring, probably in response to changes in prey availability (Bonnell and Ford, 1987).

The non-breeding distribution extends from Baja California north to Alaska for males, and encompasses the waters of California and Baja California for females (Reeves *et al.*, 2008; Maniscalco *et al.*, 2004). In the non-breeding season, an estimated 3,000 to 5,000 adult and sub-adult males migrate northward along the coast to central and northern California, Oregon, Washington, and Vancouver Island from September to May (Jeffries *et al.*, 2000) and return south the following spring (Mate, 1975; Bonnell *et al.*, 1983). During migration, they are occasionally sighted hundreds of miles offshore (Jefferson *et al.*, 1993). Females and juveniles tend to stay closer to the rookeries (Bonnell *et al.*, 1983).

California sea lions do not breed in Oregon. Though a few young animals may remain in Oregon during summer months, most return south for the breeding season (ODFW, 2010). Male California sea lions are commonly seen in Oregon from September through May. During this time period California sea lions can be found in many bays, estuaries and on offshore sites along the coast, often hauled-out in the same locations as Steller sea lions. Some pass through Oregon to feed along coastal waters to the north during fall and winter months (ODFW, 2010).

California sea lions feed on a wide variety of prey, including many species of fish and squid (Everitt *et al.*, 1981; Roffe and Mate, 1984; Antonelis *et al.*, 1990; Lowry *et al.*, 1991). In some

locations where salmon runs exist, California sea lions also feed on returning adult and out-migrating juvenile salmonids (London, 2006). Sexual maturity occurs at around 4–5 years of age for California sea lions (Heath, 2002). California sea lions are gregarious during the breeding season and social on land during other times.

California sea lions are known to occur in several areas of the Columbia River during much of the year, except the summer breeding months of June through August. Approximately 1,000 California sea lions have been observed at haul-out sites at the mouth of the Columbia River, while approximately 100 individuals have been observed in past years at the Bonneville Dam between January and May prior to returning to their breeding rookeries in California at the end of May (Stansell, 2010). The nearest known haul-out sites to the Region of Activity are near the Cowlitz River/Carroll Slough confluence with the Columbia River, approximately 45 mi (72 km) downriver of the Region of Activity (Jeffries *et al.*, 2000).

The USACE's intensive sea lion monitoring program began as a result of the 2000 Federal Columbia River Power System (FCRPS) biological opinion, which required an evaluation of pinniped predation in the tailrace of Bonneville Dam. The objective of the study was to determine the timing and duration of pinniped predation activity, estimate the number of fish caught, record the number of pinnipeds present, identify and track individual California sea lions, and evaluate various pinniped deterrents used at the dam (Tackley *et al.*, 2008a). The study period for monitoring was January 1 through May 31, beginning in 2002. During the study period, pinniped observations began after consistent sightings of at least one animal occurred. Tackley *et al.* (2008a) note that sightings began earlier each year from 2002 to 2004. Although some sightings were reported earlier in the season, full-time observations began March 21 in 2002, March 3 in 2003, and February 24 in 2004 (Tackley *et al.*, 2008a). In 2005 observations began in April, but in 2006 through 2010

observations began in January or early February (Tackley *et al.*, 2008a, 2008b; Stansell *et al.*, 2009; Stansell and Gibbons, 2010). In 2009, 54 California sea lions were observed at Bonneville Dam, the fewest since 2002 (Stansell *et al.*, 2009). However, in 2010, 89 California sea lion individuals were observed at Bonneville Dam (Stansell *et al.*, 2010). In addition, up to four California sea lions have been observed at Bonneville Dam during the September–January period in recent years (CRC, 2010).

Up to eight California sea lions have been observed in recent years feeding on salmonids in the Willamette River below Willamette Falls (NOAA, 2008). The earliest known report of California sea lions at Willamette Falls was in 1975, when two sea lions were reported taking salmon and hindering fish passage at the fish ladder. Other than the 1975 sighting, there were no reports of sea lions at Willamette Falls until the late 1980s when personnel at the fish ladder reported California sea lion sightings below the falls. California sea lions were sighted sporadically near the falls until 1995 when they began occurring almost daily from February through late May (Scordino, 2010).

California sea lion arrival and departure dates at Bonneville Dam are compiled in Table 13 from the reports listed in the preceding paragraph. If arrival and departure dates were not available, the timing of surface observations within the January through May study period were recorded. Because regular observations in the study period generally began as California sea lions were observed below Bonneville Dam, and sometimes reports stated that observations stopped as sea lion numbers dropped, the observation dates only give a general idea of first arrival and departure. Because tracking data indicate that sea lions travel at fast rates between hydrophone locations above and below the CRC project area, dates of first arrival at Bonneville Dam and departure from the dam are assumed to coincide closely with potential passage timing through the CRC project area.

TABLE 13—ARRIVAL AND DEPARTURE DATES FOR CALIFORNIA SEA LIONS BELOW BONNEVILLE DAM

	2002	2003	2004	2005	2006	2007	2008 ³	2009	2010
Arrival	13–21	13–03	12–24	14–11/1–21	2–09	1–08	11–11	11–14	11–08
Departure	15–24	16–02	15–30	15–31/6–10	6–02	25–26	15–31	45–19	6–04

¹ Dates are dates observations were taken and not when sea lions were first seen. In 2005 through 2007, observations were made intermittently until sea lions were seen consistently (Tackley *et al.*, 2008a). In 2005, surface observations were made from April 11 through May 31. However, the first California sea lion arrived January 21 and departed on June 10 (Tackley *et al.*, 2008a).

² A single sighting was made on November 7 (Tackley *et al.*, 2008a).

³ Three California sea lions were observed between September and December 2008. These observations were opportunistic and outside the regular observation period of January through May (Stansell *et al.*, 2009).

⁴Observations ended because few sea lions were present. One California sea lion was in the Bonneville Dam forebay through at least August 11 (Stansell *et al.*, 2009).

Based on the information presented in Table 13, California sea lions have generally been observed at Bonneville Dam between early January and early June, although beginning in 2008, a few individuals have been noted at the dam as early as September and as late as August. Therefore, the majority of California sea lions are expected to pass the project site beginning in early January through early June. Stansell and Gibbons (2010) and Stansell *et al.* (2009) show that California sea lion abundance below Bonneville Dam peaks in April, when it drops through about the end of May. In 2010, California sea lions stayed below the dam until almost mid-June, which was late historically and enters into the time they normally depart for southern breeding grounds. Wright *et al.* (2010) reported a median start date for the southbound migration from the Columbia River to the breeding grounds of May 20 (range: May 7 to May 27; $n = 8$ sea lions).

The highest number of California sea lions observed in the Bonneville Dam tailrace over the last 9 years was 104 in 2003 (Stansell *et al.*, 2010). However, Tackley *et al.* (2008a) noted that numbers of sea lions estimated from early study years were likely underestimated, because the observers' ability to uniquely identify individuals increased over the years. In addition, the high number of 104 individuals present below the dam in 2003 occurred prior to hazing (2005) or permanent removal (2008) activities began. The high for the 2008 through 2010 time period is a minimum of 89 individuals in a year (Stansell *et al.*, 2010).

The Pacific States Marine Fisheries Commission (PSMFC) leads a tagging and tracking program for California sea lions, observing that the transit time for California sea lions between Astoria and Bonneville Dam is 30–36 hours upstream, and 15 hours downstream (CRC, 2010). ODFW studied the migration of male California sea lions during the nonbreeding season by satellite tracking 26 sea lions captured in the lower Columbia River over the course of three non-breeding seasons between November and May in 2003–04, 2004–05, and 2006–07.

Fourteen of the sea lions had previously been observed in the Columbia River ('river type') and twelve animals were 'unknown' types. Wright *et al.* (2010) found there was considerable within and between individual variation in spatial and temporal movements, which

presumably reflected variation in foraging behavior. Many sea lions repeatedly alternated between several haul-out sites throughout the non-breeding season.

Twenty of the 26 satellite-tagged sea lions remained within the waters of Oregon and Washington during the time they were monitored; the remainder made forays north to British Columbia or south to California. All fourteen of the previously known 'river' sea lions were later documented upriver (either by tracking or direct observation); none of the twelve 'unknown' animals were detected upriver. Southward departure dates from the Columbia River ranged from May 7 to June 17. Travel time to the breeding grounds ranged from 12 to 21 days. Only one animal was tracked back to the Columbia River; it returned on August 18 after a 21-day trip from San Miguel Island (Wright *et al.*, 2010). Movement of sea lions to the base of Bonneville Dam to forage on salmonids was documented in only a fraction of the sea lions tracked, which suggested that the problem of pinniped predation on Columbia River salmonid stocks should be addressed primarily at upriver sites such as Bonneville Dam rather than in the estuary where sea lions of many behavioral types co-occur (Wright *et al.*, 2010).

Acoustics—On land, California sea lions make incessant, raucous barking sounds; these have most of their energy at less than 2 kHz (Schusterman *et al.*, 1967). Males vary both the number and rhythm of their barks depending on the social context; the barks appear to control the movements and other behavior patterns of nearby conspecifics (Schusterman, 1977). Females produce barks, squeals, belches, and growls in the frequency range of 0.25–5 kHz, while pups make bleating sounds at 0.25–6 kHz. California sea lions produce two types of underwater sounds: Clicks (or short-duration sound pulses) and barks (Schusterman *et al.*, 1966, 1967; Schusterman and Baillet, 1969). All of these underwater sounds have most of their energy below 4 kHz (Schusterman *et al.*, 1967).

The range of maximal hearing sensitivity for California sea lions underwater is between 1–28 kHz (Schusterman *et al.*, 1972). Functional underwater high frequency hearing limits are between 35–40 kHz, with peak sensitivities from 15–30 kHz (Schusterman *et al.*, 1972). The California sea lion shows relatively poor hearing at frequencies below 1 kHz

(Kastak and Schusterman, 1998). Peak hearing sensitivities in air are shifted to lower frequencies; the effective upper hearing limit is approximately 36 kHz (Schusterman, 1974). The best range of sound detection is from 2–16 kHz (Schusterman, 1974). Kastak and Schusterman (2002) determined that hearing sensitivity generally worsens with depth—hearing thresholds were lower in shallow water, except at the highest frequency tested (35 kHz), where this trend was reversed. Octave band sound levels of 65–70 dB above the animal's threshold produced an average temporary threshold shift (TTS; discussed later in POTENTIAL EFFECTS OF THE SPECIFIED ACTIVITY ON MARINE MAMMALS) of 4.9 dB in the California sea lion (Kastak *et al.*, 1999).

Steller Sea Lions

Species Description—Steller sea lions are the largest members of the Otariid (eared seal) family. Steller sea lions show marked sexual dimorphism, in which adult males are noticeably larger and have distinct coloration patterns from females. Males average approximately 1,500 lb (680 kg) and 10 ft (3 m) in length; females average about 700 lb (318 kg) and 8 ft (2.4 m) in length. Adult females have a tawny to silver-colored pelt. Males are characterized by dark, dense fur around their necks, giving a mane-like appearance, and light tawny coloring over the rest of their body (NMFS, 2008a). Steller sea lions are distributed mainly around the coasts to the outer continental shelf along the North Pacific Ocean rim from northern Hokkaido, Japan through the Kuril Islands and Okhotsk Sea, Aleutian Islands and central Bering Sea, southern coast of Alaska and south to California. The population is divided into the western and the eastern distinct population segments (DPSs) at 144° W (Cape Suckling, Alaska). The western DPS includes Steller sea lions that reside in the central and western Gulf of Alaska, Aleutian Islands, as well as those that inhabit coastal waters and breed in Asia (e.g., Japan and Russia). The eastern DPS extends from California to Alaska, including the Gulf of Alaska.

Status—Steller sea lions were listed as threatened range-wide under the ESA in 1990. After division into two DPSs, the western DPS was listed as endangered under the ESA in 1997, while the eastern DPS remained classified as threatened. Animals found

in the Region of Activity are from the eastern DPS (NMFS, 1997a; Loughlin, 2002; Angliss and Outlaw, 2005). The eastern DPS breeds in rookeries located in southeast Alaska, British Columbia, Oregon, and California. While some pupping has been reported recently along the coast of Washington, there are no active rookeries in Washington. A final revised species recovery plan addresses both DPSs (NMFS, 2008a).

NMFS designated critical habitat for Steller sea lions in 1993. Critical habitat is associated with breeding and haul-out sites in Alaska, California, and Oregon, and includes so-called 'aquatic zones' that extend 3,000 ft (900 m) seaward in state and federally managed waters from the baseline or basepoint of each major rookery in Oregon and California (NMFS, 2008a). Three major rookery sites in Oregon (Rogue Reef, Pyramid Rock, and Long Brown Rock and Seal Rock on Orford Reef at Cape Blanco) and three rookery sites in California (Ano Nuevo I, Southeast Farallon I, and Sugarloaf Island and Cape Mendocino) are designated critical habitat (NMFS, 1993). There is no designated critical habitat within the Region of Activity.

Factors that have previously been identified as threats to Steller sea lions include reduced food availability, possibly resulting from competition with commercial fisheries; incidental take and intentional kills during commercial fish harvests; subsistence take; entanglement in marine debris; disease; pollution; and harassment. Steller sea lions are also sensitive to disturbance at rookeries (during pupping and breeding) and haul-out sites.

The Recovery Plan for the Steller Sea Lion (NMFS, 2008a) states that the overall abundance of Steller sea lions in the eastern DPS has increased for a sustained period of at least three decades, and that pup production has increased significantly, especially since the mid-1990s. Between 1977 and 2002, researchers estimated that overall abundance of the eastern DPS had increased at an average rate of 3.1 percent per year (NMFS, 2008a; Pitcher *et al.*, 2007). NMFS' most recent stock assessment report estimates that population for the eastern DPS is a minimum of 52,847 individuals; this estimate is not corrected for animals at sea, and actual population is estimated to be within the range 58,334 to 72,223 (Allen and Angliss, 2010). The minimum count for Steller sea lions in Oregon and Washington was 5,813 in 2002 (Pitcher *et al.*, 2007; Allen and Angliss, 2010). Counts in Oregon have shown a gradual increase from 1,486

animals in 1976 to 4,169 animals in 2002 (NMFS, 2008b).

The abundance of the eastern DPS of Steller sea lions is increasing throughout the northern portion of its range (southeast Alaska and British Columbia), and stable or increasing in the central portion (Oregon through central California). Surveys indicate that pup production in Oregon increased at 3 percent per year from 1990–2009, while pup production in California increased at 5 percent per year between 1996 and 2009, with the number of non-pups reported as stable. The best available information indicates that, overall, the eastern DPS has increased from an estimated 18,040 animals in 1979 to an estimated 63,488 animals in 2009; therefore the overall estimated rate of increase for this period is 4.3 percent per year (NMML, 2012).

In the far southern end of Steller sea lion range (Channel Islands in southern California), population declined significantly after the 1930s—probably due to hunting and harassment (Bartholomew and Boolootian, 1960; Bartholomew, 1967)—and several rookeries and haul-outs have been abandoned. The lack of recolonization at the southernmost portion of the range (e.g., San Miguel Island rookery), despite stability in the non-pup portion of the overall California population, is likely a response to a suite of factors including changes in ocean conditions (e.g., warmer temperatures) that may be contributing to habitat changes that favor California sea lions over Steller sea lions (NMFS, 2007) and competition for space on land, and possibly prey, with species that have experienced explosive growth over the past three decades (California sea lions and northern elephant seals [*Mirounga angustirostris*]). Although recovery in California has lagged behind the rest of the DPS, this portion of the DPS' range has recently shown a positive growth rate (NMML, 2012). While non-pup counts in California in the 2000s are only 34 percent of pre-decline counts (1927–47), the population has increased significantly since 1990.

Despite the abandonment of certain rookeries in California, pup production at other rookeries in California has increased over the last 20 years and, overall, the eastern DPS has increased at an average annual growth rate of 4.3 percent per year for 30 years. Even though these rookeries might not be recolonized, their loss has not prevented the increasing abundance of Steller sea lions in California or in the eastern DPS overall.

Because the eastern DPS of Steller sea lion is currently listed as threatened

under the ESA, it is therefore designated as depleted and classified as a strategic stock under the MMPA. However, the eastern DPS has been considered a potential candidate for removal from listing under the ESA by the Steller sea lion recovery team and NMFS (NMFS, 2008), based on observed annual rates of increase. Although the stock size has increased, the status of this stock relative to its Optimum Sustainable Population (OSP) size is unknown. The overall annual rate of increase of the eastern stock has been consistent and long-term, and may indicate that this stock is reaching OSP.

Behavior and Ecology—Steller sea lions forage near shore and in pelagic waters. They are capable of traveling long distances in a season and can dive to approximately 1,300 ft (400 m) in depth. They also use terrestrial habitat as haul-out sites for periods of rest, molting, and as rookeries for mating and pupping during the breeding season. At sea, they are often seen alone or in small groups, but may gather in large rafts at the surface near rookeries and haul-outs. Steller sea lions prefer the colder temperate to sub-arctic waters of the North Pacific Ocean. Haul-outs and rookeries usually consist of beaches (gravel, rocky or sand), ledges, and rocky reefs. In the Bering and Okhotsk Seas, sea lions may also haul-out on sea ice, but this is considered atypical behavior (NOAA, 2010a).

Steller sea lions are gregarious animals that often travel or haul out in large groups of up to 45 individuals (Keple, 2002). At sea, groups usually consist of female and subadult males; adult males are usually solitary while at sea (Loughlin, 2002). In the Pacific Northwest, breeding rookeries are located in British Columbia, Oregon, and northern California. Steller sea lions form large rookeries during late spring when adult males arrive and establish territories (Pitcher and Calkins, 1981). Large males aggressively defend territories while non-breeding males remain at peripheral sites or haul-outs. Females arrive soon after and give birth. Most births occur from mid-May through mid-July, and breeding takes place shortly thereafter. Most pups are weaned within a year. Non-breeding individuals may not return to rookeries during the breeding season but remain at other coastal haul-outs (Scordino, 2006).

Steller sea lions are opportunistic predators, feeding primarily on fish and cephalopods, and their diet varies geographically and seasonally (Bigg, 1985; Merrick *et al.*, 1997; Bredesen *et al.*, 2006; Guenette *et al.*, 2006). Foraging habitat is primarily shallow,

nearshore and continental shelf waters; freshwater rivers; and also deep waters (Reeves *et al.*, 2008; Scordino, 2010).

In Oregon, Steller sea lions are found on offshore rocks and islands. Most of these haul-out sites are part of the Oregon Islands National Wildlife Refuge and are closed to the public (ODFW, 2010). Oregon is home to the largest breeding site in U.S. waters south of Alaska, with breeding areas at Three Arch Rocks (Oceanside), Orford Reef (Port Orford), and Rogue Reef (Gold Beach). Steller sea lions are also found year-round in smaller numbers at Sea Lion Caves and at Cape Arago State Park.

Although Steller sea lions occur primarily in coastal habitat in Oregon and Washington, they are present year-round in the lower Columbia River, usually downstream of the confluence of the Cowlitz River (ODFW, 2008). However, adult and subadult male Steller sea lions have been observed at Bonneville Dam, where they prey primarily on sturgeon and salmon that congregate below the dam. In 2002, the USACE began monitoring seasonal presence, abundance, and predation activities of marine mammals in the Bonneville Dam tailrace (Tackley *et al.*, 2008b). Steller sea lions have been

documented every year since 2003; observations have steadily increased to 75 Steller sea lions in 2010, the most on record and almost triple the number of the previous year (26 individuals) (Stansell *et al.*, 2009, 2010).

Steller sea lions use the Columbia River for travel, foraging, and resting as they move between haul-out sites and the dam. There are no known haul-out sites within the portions of the Region of Activity occurring in the Columbia River, Willamette River, or North Portland Harbor. The nearest known haul-out in the Columbia River is a rock formation (Phoca Rock) approximately 8 mi (13 km) downstream of Bonneville Dam (approximately 26 mi (42 km) upstream from the project site). Steller sea lions are also known to haul out on the south jetty at the mouth of the Columbia River, near Astoria, Oregon. There are no rookeries located in or near the Region of Activity. The nearest Steller sea lion rookery is on the northern Oregon coast at Oceanside (ODFW, 2010), approximately 70 mi (113 km) south of Astoria, i.e., more than 150 mi (240 km) from the Region of Activity.

Steller sea lions arrive at the dam in late fall (Tackley *et al.*, 2008b), although occasionally individuals are sighted

near Bonneville Dam in the months of September, October, and November (Stansell *et al.*, 2009, 2010). Steller sea lions are present at the dam through May, and can travel between the dam and the mouth of the Columbia River several times during these months (Tackley *et al.*, 2008b). Table 14 compiles data from surface observations by the USACE for the Bonneville Dam tailrace. If arrival and departure dates were not available, the timing of surface observations within the January through May study period were recorded. Because regular observations in the study period generally began when California sea lions are observed below Bonneville Dam, and sometimes reports stated that observations stopped as sea lion numbers dropped, the observation dates only give a general idea of first arrival and departure for Steller sea lions. Because tracking data indicate that sea lions travel at fast rates between hydrophone locations above and below the CRC project area (Brown *et al.*, 2010), dates of first arrival at Bonneville Dam and departure from the dam are assumed to coincide closely with potential passage timing through the CRC project area.

TABLE 14—ARRIVAL AND DEPARTURE DATES FOR STELLER SEA LIONS BELOW BONNEVILLE DAM

	2002	2003	2004	2005	2006	2007	2008	2009	2010
Arrival	n/a	¹ 3–03	¹ 2–24	¹ 4–11	^{1,2} 2–10	^{1,2} 1–08	^{1,3} 1–11	^{1,4} 1–14	^{1,6} 1–08
Departure	n/a	¹ 6–02	¹ 5–30	¹ 5–31	^{1,2} 5–31	^{1,2} 5–26	¹ 5–31	⁵ 5–19	⁶ 6–04

¹ Dates are dates observations were taken and not when sea lions were first seen. Observations were made in 2002, but no Steller sea lions were observed. In 2005 through 2007, observations were made intermittently until sea lions were seen consistently (Tackley *et al.*, 2008a). Observation dates for 2006–07 from Scordino 2010.

² In 2006 and 2007 Steller sea lions were seen regularly in the tailrace area from January to early March. Report notes anecdotal information on sightings of Steller sea lions in November and December. Report states that after March when hazing activities began, fewer Steller sea lions were observed through May (Tackley *et al.*, 2008a).

³ Steller sea lions were known to be catching and consuming sturgeon in the Bonneville Dam tailrace and farther downstream as early as November 2007 (Tackley *et al.*, 2008b).

⁴ Steller sea lions were known to be catching and consuming sturgeon in the Bonneville Dam tailrace and farther downstream as early as October 2008 (Stansell *et al.*, 2009).

⁵ Observations ended because few sea lions were present.

⁶ Steller sea lions were observed downriver of the Bonneville Dam tailrace as early as September 2009 (Stansell *et al.*, 2010).

Based on the information presented in Table 14, Steller sea lions are expected to pass the project site beginning with a few individuals as early as September and most individuals in January through early June. Stansell *et al.* (2009, 2010) show that Steller sea lion abundance below Bonneville Dam increases through approximately mid-April, and then drops through about the end of May.

ODFW tagged eight Steller sea lions with acoustic and/or satellite-linked transmitters from March 30 through May 4, 2010 (Wright, 2010a). Data show that the eight individuals only made one or two roundtrips from Bonneville

during the months they were tracked. This study is ongoing and more information will be available in the future to determine both the number of roundtrips from Bonneville and the time to transit between Bonneville and the mouth of the Columbia River. Although transit times between the mouth of the Columbia River and Bonneville Dam are not available for Steller sea lions, they are available for California sea lions. The PSMFC leads a tagging and tracking program for California sea lions, which has observed that the transit time for California sea lions between Astoria and Bonneville Dam is 30–36 hours upstream and 15 hours downstream

(CRC, 2010). Similar transit times are assumed here for Steller sea lions. Steller sea lions have generally been observed at Bonneville Dam between early January and late May, although individuals have been noted at the dam as early as September (Stansell *et al.*, 2010). Thus, Steller sea lions are likely to be transiting in the Columbia River and North Portland Harbor during the time that in-water work would take place.

Acoustics—Like all pinnipeds, the Steller sea lion is amphibious; while all foraging activity takes place in the water, breeding behavior is carried out on land in coastal rookeries (Mulsow

and Reichmuth 2008). On land, territorial male Steller sea lions regularly use loud, relatively low-frequency calls/roars to establish breeding territories (Schusterman *et al.*, 1970; Loughlin *et al.*, 1987). The calls of females range from 0.03 to 3 kHz, with peak frequencies from 0.15 to 1 kHz; typical duration is 1.0 to 1.5 sec (Campbell *et al.*, 2002). Pups also produce bleating sounds. Individually distinct vocalizations exchanged between mothers and pups are thought to be the main modality by which reunion occurs when mothers return to crowded rookeries following foraging at sea (Mulsow and Reichmuth, 2008).

Mulsow and Reichmuth (2008) measured the unmasked airborne hearing sensitivity of one male Steller sea lion. The range of best hearing sensitivity was between 5 and 14 kHz. Maximum sensitivity was found at 10 kHz, where the subject had a mean threshold of 7 dB. The underwater hearing threshold of a male Steller sea lion was significantly different from that of a female. The peak sensitivity range for the male was from 1 to 16 kHz, with maximum sensitivity (77 dB re: 1 μ Pa-m) at 1 kHz. The range of best hearing for the female was from 16 to above 25 kHz, with maximum sensitivity (73 dB re: 1 μ Pa-m) at 25 kHz. However, because of the small number of animals tested, the findings could not be attributed to either individual differences in sensitivity or sexual dimorphism (Kastelein *et al.*, 2005).

Background on Marine Mammal Hearing

When considering the influence of various kinds of sound on the marine environment, it is necessary to understand that different kinds of marine life are sensitive to different frequencies of sound. Based on available behavioral data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data, Southall *et al.* (2007) designate functional hearing groups for marine mammals and estimate the lower and upper frequencies of functional hearing of the groups. The functional groups and the associated frequencies are indicated below (though animals are less sensitive to sounds at the outer edge of their functional range and most sensitive to sounds of frequencies within a smaller range somewhere in the middle of their functional hearing range):

- Low frequency cetaceans (mysticetes): Functional hearing is estimated to occur between approximately 7 Hz and 22 kHz;

- Mid-frequency cetaceans (dolphins, larger toothed whales, beaked and bottlenose whales): Functional hearing is estimated to occur between approximately 150 Hz and 160 kHz;

- High frequency cetaceans (true porpoises, river dolphins, *Kogia* sp.): Functional hearing is estimated to occur between approximately 200 Hz and 180 kHz; and

- Pinnipeds in water: functional hearing is estimated to occur between approximately 75 Hz and 75 kHz, with the greatest sensitivity between approximately 700 Hz and 20 kHz.

As mentioned previously in this document, three species of pinnipeds are likely to occur in the Region of Activity.

Potential Effects of the Specified Activity on Marine Mammals

CRC's in-water construction and demolition activities (e.g., pile driving and removal) introduce sound into the marine environment, and have the potential to have adverse impacts on marine mammals. The potential effects of sound from the proposed activities associated with the CRC project may include one or more of the following: Tolerance; masking of natural sounds; behavioral disturbance; non-auditory physical effects; and temporary or permanent hearing impairment (Richardson *et al.*, 1995). However, for reasons discussed later in this document, it is unlikely that there would be any cases of temporary or permanent hearing impairment resulting from these activities. As outlined in previous NMFS documents, the effects of sound on marine mammals are highly variable, and can be categorized as follows (based on Richardson *et al.*, 1995):

- The sound may be too weak to be heard at the location of the animal (i.e., lower than the prevailing ambient sound level, the hearing threshold of the animal at relevant frequencies, or both);

- The sound may be audible but not strong enough to elicit any overt behavioral response;

- The sound may elicit reactions of varying degrees and variable relevance to the well being of the marine mammal; these can range from temporary alert responses to active avoidance reactions such as vacating an area until the stimulus ceases, but potentially for longer periods of time;

- Upon repeated exposure, a marine mammal may exhibit diminishing responsiveness (habituation), or disturbance effects may persist; the latter is most likely with sounds that are highly variable in characteristics and unpredictable in occurrence, and

associated with situations that a marine mammal perceives as a threat;

- Any anthropogenic sound that is strong enough to be heard has the potential to result in masking, or reduce the ability of a marine mammal to hear biological sounds at similar frequencies, including calls from conspecifics and underwater environmental sounds such as surf sound;

- If mammals remain in an area because it is important for feeding, breeding, or some other biologically important purpose even though there is chronic exposure to sound, it is possible that there could be sound-induced physiological stress; this might in turn have negative effects on the well-being or reproduction of the animals involved; and

- Very strong sounds have the potential to cause a temporary or permanent reduction in hearing sensitivity, also referred to as threshold shift. In terrestrial mammals, and presumably marine mammals, received sound levels must far exceed the animal's hearing threshold for there to be any temporary threshold shift (TTS). For transient sounds, the sound level necessary to cause TTS is inversely related to the duration of the sound. Received sound levels must be even higher for there to be risk of permanent hearing impairment (PTS). In addition, intense acoustic or explosive events may cause trauma to tissues associated with organs vital for hearing, sound production, respiration and other functions. This trauma may include minor to severe hemorrhage.

Tolerance

Numerous studies have shown that underwater sounds from industrial activities are often readily detectable by marine mammals in the water at distances of many kilometers. However, other studies have shown that marine mammals at distances more than a few kilometers away often show no apparent response to industrial activities of various types (Miller *et al.*, 2005). This is often true even in cases when the sounds must be readily audible to the animals based on measured received levels and the hearing sensitivity of that mammal group. Although various baleen whales, toothed whales, and (less frequently) pinnipeds have been shown to react behaviorally to underwater sound from sources such as airgun pulses or vessels under some conditions, at other times, mammals of all three types have shown no overt reactions (e.g., Malme *et al.*, 1986; Richardson *et al.*, 1995; Madsen and Mohl, 2000; Croll *et al.*, 2001; Jacobs and Terhune, 2002; Madsen *et al.*, 2002;

Miller *et al.*, 2005). In general, pinnipeds seem to be more tolerant of exposure to some types of underwater sound than are baleen whales. Richardson *et al.* (1995) found that vessel sound does not seem to strongly affect pinnipeds that are already in the water. Richardson *et al.* (1995) went on to explain that seals on haul-outs sometimes respond strongly to the presence of vessels and at other times appear to show considerable tolerance of vessels, and Brueggeman *et al.* (1992) observed ringed seals (*Pusa hispida*) hauled out on ice pans displaying short-term escape reactions when a ship approached within 0.16–0.31 mi (0.25–0.5 km).

Masking

Masking is the obscuring of sounds of interest to an animal by other sounds, typically at similar frequencies. Marine mammals are highly dependent on sound, and their ability to recognize sound signals amid other sound is important in communication and detection of both predators and prey. Background ambient sound may interfere with or mask the ability of an animal to detect a sound signal even when that signal is above its absolute hearing threshold. Even in the absence of anthropogenic sound, the marine environment is often loud. Natural ambient sound includes contributions from wind, waves, precipitation, other animals, and (at frequencies above 30 kHz) thermal sound resulting from molecular agitation (Richardson *et al.*, 1995).

Background sound may also include anthropogenic sound, and masking of natural sounds can result when human activities produce high levels of background sound. Conversely, if the background level of underwater sound is high (e.g., on a day with strong wind and high waves), an anthropogenic sound source would not be detectable as far away as would be possible under quieter conditions and would itself be masked. Ambient sound is highly variable on continental shelves (Thompson, 1965; Myrberg, 1978; Chapman *et al.*, 1998; Desharnais *et al.*, 1999). This results in a high degree of variability in the range at which marine mammals can detect anthropogenic sounds.

Although masking is a phenomenon which may occur naturally, the introduction of loud anthropogenic sounds into the marine environment at frequencies important to marine mammals increases the severity and frequency of occurrence of masking. For example, if a baleen whale is exposed to continuous low-frequency sound from

an industrial source, this would reduce the size of the area around that whale within which it can hear the calls of another whale. The components of background noise that are similar in frequency to the signal in question primarily determine the degree of masking of that signal. In general, little is known about the degree to which marine mammals rely upon detection of sounds from conspecifics, predators, prey, or other natural sources. In the absence of specific information about the importance of detecting these natural sounds, it is not possible to predict the impact of masking on marine mammals (Richardson *et al.*, 1995). In general, masking effects are expected to be less severe when sounds are transient than when they are continuous.

Masking is typically of greater concern for those marine mammals that utilize low frequency communications, such as baleen whales and, as such, is not likely to occur for pinnipeds in the Region of Activity.

Disturbance

Behavioral disturbance is one of the primary potential impacts of anthropogenic sound on marine mammals. Disturbance can result in a variety of effects, such as subtle or dramatic changes in behavior or displacement, but the degree to which disturbance causes such effects may be highly dependent upon the context in which the stimulus occurs. For example, an animal that is feeding may be less prone to disturbance from a given stimulus than one that is not. For many species and situations, there is no detailed information about reactions to sound.

Behavioral reactions of marine mammals to sound are difficult to predict because they are dependent on numerous factors, including species, maturity, experience, activity, reproductive state, time of day, and weather. If a marine mammal does react to an underwater sound by changing its behavior or moving a small distance, the impacts of that change may not be important to the individual, the stock, or the species as a whole. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on the animals could be important. In general, pinnipeds seem more tolerant of, or at least habituate more quickly to, potentially disturbing underwater sound than do cetaceans, and generally seem to be less responsive to exposure to industrial sound than most cetaceans. Pinniped responses to underwater sound from some types of industrial activities such as seismic

exploration appear to be temporary and localized (Harris *et al.*, 2001; Reiser *et al.*, 2009).

Because the few available studies show wide variation in response to underwater and airborne sound, it is difficult to quantify exactly how pile driving sound would affect pinnipeds. The literature shows that elevated underwater sound levels could prompt a range of effects, including no obvious visible response, or behavioral responses that may include annoyance and increased alertness, visual orientation towards the sound, investigation of the sound, change in movement pattern or direction, habituation, alteration of feeding and social interaction, or temporary or permanent avoidance of the area affected by sound. Minor behavioral responses do not necessarily cause long-term effects to the individuals involved. Severe responses include panic, immediate movement away from the sound, and stampeding, which could potentially lead to injury or mortality (Southall *et al.*, 2007).

Southall *et al.* (2007) reviewed literature describing responses of pinnipeds to non-pulsed sound in water and reported that the limited data suggest exposures between approximately 90 and 140 dB generally do not appear to induce strong behavioral responses in pinnipeds, while higher levels of pulsed sound, ranging between 150 and 180 dB, will prompt avoidance of an area. It is important to note that among these studies, there are some apparent differences in responses between field and laboratory conditions. In contrast to the mid-frequency odontocetes, captive pinnipeds responded more strongly at lower levels than did animals in the field. Again, contextual issues are the likely cause of this difference. For airborne sound, Southall *et al.* (2007) note there are extremely limited data suggesting very minor, if any, observable behavioral responses by pinnipeds exposed to airborne pulses of 60 to 80 dB; however, given the paucity of data on the subject, we cannot rule out the possibility that avoidance of sound in the Region of Activity could occur.

In their comprehensive review of available literature, Southall *et al.* (2007) noted that quantitative studies on behavioral reactions of pinnipeds to underwater sound are rare. A subset of only three studies observed the response of pinnipeds to multiple pulses of underwater sound (a category of sound types that includes impact pile driving), and were also deemed by the authors as having results that are both measurable

and representative. However, a number of studies not used by Southall et al. (2007) provide additional information, both quantitative and anecdotal, regarding the reactions of pinnipeds to multiple pulses of underwater sound.

- Harris et al. (2001) observed the response of ringed, bearded (*Erignathus barbatus*), and spotted seals (*Phoca largha*) to underwater operation of a single air gun and an eleven-gun array. Received exposure levels were 160 to 200 dB. Results fit into two categories. In some instances, seals exhibited no response to sound. However, the study noted significantly fewer seals during operation of the full array in some instances. Additionally, the study noted some avoidance of the area within 150 m of the source during full array operations.

- Blackwell et al. (2004) is the only cited study directly related to pile driving. The study observed ringed seals during impact installation of steel pipe pile. Received underwater SPLs were measured at 151 dB at 63 m. The seals exhibited either no response or only brief orientation response (defined as "investigation or visual orientation"). It should be noted that the observations were made after pile driving was already in progress. Therefore, it is possible that the low-level response was due to prior habituation.

- Miller et al. (2005) observed responses of ringed and bearded seals to a seismic air gun array. Received underwater sound levels were estimated at 160 to 200 dB. There were fewer seals present close to the sound source during air gun operations in the first year, but in the second year the seals showed no avoidance. In some instances, seals were present in very close range of the sound. The authors concluded that there was "no observable behavioral response" to seismic air gun operations.

During a Caltrans installation demonstration project for retrofit work on the East Span of the San Francisco Oakland Bay Bridge, California, sea lions responded to pile driving by swimming rapidly out of the area, regardless of the size of the pile-driving hammer or the presence of sound attenuation devices (74 FR 63724).

Jacobs and Terhune (2002) observed harbor seal reactions to acoustic harassment devices (AHDs) with source level of 172 dB deployed around aquaculture sites. Seals were generally unresponsive to sounds from the AHDs. During two specific events, individuals came within 141 and 144 ft (43 and 44 m) of active AHDs and failed to demonstrate any measurable behavioral response; estimated received levels

based on the measures given were approximately 120 to 130 dB.

Costa et al. (2003) measured received sound levels from an Acoustic Thermometry of Ocean Climate (ATOC) program sound source off northern California using acoustic data loggers placed on translocated elephant seals. Subjects were captured on land, transported to sea, instrumented with archival acoustic tags, and released such that their transit would lead them near an active ATOC source (at 0.6 mi depth [939 m]; 75-Hz signal with 37.5-Hz bandwidth; 195 dB maximum source level, ramped up from 165 dB over 20 min) on their return to a haul-out site. Received exposure levels of the ATOC source for experimental subjects averaged 128 dB (range 118 to 137) in the 60- to 90-Hz band. None of the instrumented animals terminated dives or radically altered behavior upon exposure, but some statistically significant changes in diving parameters were documented in nine individuals. Translocated northern elephant seals exposed to this particular non-pulse source began to demonstrate subtle behavioral changes at exposure to received levels of approximately 120 to 140 dB.

Several available studies provide information on the reactions of pinnipeds to non-pulsed underwater sound. Kastelein et al. (2006) exposed nine captive harbor seals in an approximately 82 x 98 ft (25 x 30 m) enclosure to non-pulse sounds used in underwater data communication systems (similar to acoustic modems). Test signals were frequency modulated tones, sweeps, and bands of sound with fundamental frequencies between 8 and 16 kHz; 128 to 130 ± 3 dB source levels; 1- to 2-s duration (60–80 percent duty cycle); or 100 percent duty cycle. They recorded seal positions and the mean number of individual surfacing behaviors during control periods (no exposure), before exposure, and in 15-min experimental sessions (n = 7 exposures for each sound type). Seals generally swam away from each source at received levels of approximately 107 dB, avoiding it by approximately 16 ft (5 m), although they did not haul out of the water or change surfacing behavior. Seal reactions did not appear to wane over repeated exposure (i.e., there was no obvious habituation), and the colony of seals generally returned to baseline conditions following exposure. The seals were not reinforced with food for remaining in the sound field.

Reactions of harbor seals to the simulated sound of a 2-megawatt wind power generator were measured by Koschinski et al. (2003). Harbor seals

surfaced significantly further away from the sound source when it was active and did not approach the sound source as closely. The device used in that study produced sounds in the frequency range of 30 to 800 Hz, with peak source levels of 128 dB at 1 m at the 80- and 160-Hz frequencies.

Ship and boat sound do not seem to have strong effects on seals in the water, but the data are limited. When in the water, seals appear to be much less apprehensive about approaching vessels. Some would approach a vessel out of apparent curiosity, including noisy vessels such as those operating seismic airgun arrays (Moulton and Lawson, 2002). Gray seals (*Halichoerus grypus*) have been known to approach and follow fishing vessels in an effort to steal catch or the bait from traps. In contrast, seals hauled out on land often are quite responsive to nearby vessels. Terhune (1985) reported that northwest Atlantic harbor seals were extremely vigilant when hauled out and were wary of approaching (but less so passing) boats. Suryan and Harvey (1999) reported that Pacific harbor seals commonly left the shore when powerboat operators approached to observe the seals. Those seals detected a powerboat at a mean distance of 866 ft (264 m), and seals left the haul-out site when boats approached to within 472 ft (144 m).

Southall et al. (2007) also compiled known studies of behavioral responses of marine mammals to airborne sound, noting that studies of pinniped response to airborne pulsed sounds are exceedingly rare. The authors deemed only one study as having quantifiable results.

- Blackwell et al. (2004) studied the response of ringed seals within 500 m of impact driving of steel pipe pile. Received levels of airborne sound were measured at 93 dB at a distance of 63 m. Seals had either no response or limited response to pile driving. Reactions were described as "indifferent" or "curious."

Efforts to deter pinniped predation on salmonids below Bonneville Dam began in 2005, and have used Acoustic Deterrent Devices (ADDs), boat chasing, above-water pyrotechnics (cracker shells, screamer shells or rockets), rubber bullets, rubber buckshot, and beanbags (Stansell et al., 2009). Review of deterrence activities by the West Coast Pinniped Program noted "USACE observations from 2002 to 2008 indicated that increasing numbers of California sea lions were foraging on salmon at Bonneville Dam each year, salmon predation rates increased, and the deterrence efforts were having little

effect on preventing predation” (Scordino, 2010). In the USACE status report through May 28, 2010, boat hazing was reported to have limited, local, short term impact in reducing predation in the tailrace, primarily from Steller sea lions. ODFW and the WDFW reported that sea lion presence did not appear to be significantly influenced by boat-based activities and several “new” sea lions (initially unbranded or unknown from natural markings) continued to forage in the observation area in spite of shore- and boat-based hazing. They suggested that hazing was not effective at deterring naive sea lions if there were large numbers of experienced sea lions foraging in the area (Brown *et al.*, 2010). Observations on the effect of ADDs, which were installed at main fishway entrances in 2007, noted that pinnipeds were observed swimming and eating fish within 20 ft (6 m) of some of the devices with no deterrent effect observed (Tackley *et al.*, 2008a, 2008b; Stansell *et al.*, 2009, 2010). Many of the animals returned to the area below the dam despite hazing efforts (Stansell *et al.*, 2009, Stansell and Gibbons, 2010). Relocation efforts to Astoria and the Oregon coast were implemented in 2007; however, all but one of fourteen relocated animals returned to Bonneville Dam within days (Scordino, 2010).

No information on in-water sound levels of hazing activities at Bonneville Dam has been published other than that ADDs produce underwater sound levels of 205 dB in the 15 kHz range (Stansell *et al.*, 2009). Durations of boat-based hazing events were reported at less than 30 minutes for most of the 521 boat-based events in 2009, but ranged up to 90 minutes (Brown *et al.*, 2009). Durations of boat-based hazing events were not reported for 2010. However, 280 events occurred over 44 days during a five-month period using a total of 4,921 cracker shells, 777 seal bombs, and 97 rubber buckshot rounds (Brown *et al.*, 2010). Based on knowledge of in-water sound from construction activities, the CRC project believes that sound levels from in-water construction and demolition activities that pinnipeds would be potentially exposed to are not as high as those produced by hazing techniques.

In addition, sea lions are expected to quickly traverse through and not remain in the project area. Tagging studies of California sea lions indicate that they pass hydrophones upriver and downriver of the CRC project site quickly. Wright *et al.* (2010) reported minimum upstream and downstream transit times between the Astoria haul-

out and Bonneville Dam (river distance approximately 20 km) were 1.9 and 1 day, respectively, based on fourteen trips by eleven sea lions. The transit speed was calculated to be 4.6 km/hr in the upstream direction and 8.8 km/hr in the downstream direction. Data from the six individuals acoustically tagged in 2009 show that they made a combined total of eleven upriver or downriver trips quickly through the CRC project site to or from Bonneville Dam and Astoria (Brown *et al.*, 2009). Data from four acoustically tagged California sea lions in 2010 also indicate that the animals move through the area below Bonneville Dam down to the receivers located below the CRC project site rapidly both in the upriver or downriver directions (Wright, 2010). Although the data apply to California sea lions, Steller sea lions and harbor seals similarly have no incentive to stay near the CRC project area, in contrast with a strong incentive to quickly reach optimal foraging grounds at the Bonneville Dam, and are thus expected to also pass the project area quickly. Therefore, pinnipeds are not expected to be exposed to a significant duration of construction sound.

It is possible that deterrence of passage through the project area could be a concern. However, given the 800-m width of the Columbia River and the rarity of impact pile driving on opposite sides of the river (approximately 1–2 days total throughout the approximately 4-year construction period), passage should not be hindered. Vibratory installation or removal of piles at more than one pier complex would likely occur at the same time on occasion during construction and demolition. During construction and demolition, space limitations due to barge size and limitations on the amount of equipment available are anticipated to be limiting factors for the contractor. Vibratory installation of steel casings, pipe piles, and sheet piles are calculated to exceed behavioral disturbance thresholds at large distances; thus, the entire width of the channel would be affected by sound above the disturbance threshold even if only one pier complex was being worked on. However, because these sound levels are lower than those produced by ADDs at Bonneville Dam—which have shown only limited efficacy in deterring pinnipeds—and because pinnipeds transiting the Region of Activity will be highly motivated to complete transit, deterrence of passage is not anticipated to occur.

Debris Removal—The reactions of pinnipeds to sound from debris removal (a non-pulsed sound) have received virtually no study. Previous studies

indicate that dredging sound has resulted in avoidance reactions in marine mammals; however, the number of studies is small and limited to only a handful of locations. Thomsen *et al.* (2009) caution that, given the limited number of studies, the existing published data may not be representative and that it is therefore impossible to extrapolate the potential effects from one area to the next.

In a review of the available literature regarding the effects of dredging sound on marine mammals, Richardson *et al.* (1995) found studies only related to whales and porpoises, and none related to pinnipeds. The review did, however, find studies related to the response of pinnipeds to “other construction activities”, which may be applicable to dredging sound. Three studies of ringed seals during construction of artificial islands in Alaska showed mostly mild reactions ranging from negligible to temporary local displacement. Green and Johnson (1983, as cited in Richardson *et al.* [1995]) observed that some ringed seals moved away from the disturbance source within a few kilometers of construction. Frost and Lowry (1988, as cited in Richardson *et al.* [1995]) and Frost *et al.* (1988, as cited in Richardson *et al.*, 1995) noted that ringed seal density within 3.7 km of construction was less than seal density in areas located more than 3.7 km away. Harbor seals in Kachemak Bay, Alaska, continued to haul out despite construction of hydroelectric facilities located 1,600 m away. Finally, Gentry and Gilman (1990) reported that the strongest reaction to quarrying operations on St. George Island in the Bering Sea was an alert posture when heavy equipment occurred within 100 m of northern fur seals.

There are no established levels of underwater debris removal sound shown to cause injury to pinnipeds. However, since the maximum expected debris removal sound levels on the CRC project are below the established injury threshold, it is unlikely that this activity would produce sound levels that are injurious to pinnipeds. Additionally, the limited body of literature does not include any reports of injuries caused by sound from underwater excavation. Debris removal sound is likely to exceed the disturbance threshold for only a short distance from the source (approximately 631 m). Specific responses to sound above this level may range from no response to avoidance to minor disruption of migration and/or feeding. Alternatively, pinnipeds may become habituated to elevated sound levels (NMFS, 2005; Stansell, 2009). This is consistent with the literature,

which reports only the following behavioral responses to these types of sound sources: No reaction, alertness, avoidance, and habituation. NMFS (2005) posits that continuous sound levels of 120 dB rms may elicit responses such as avoidance, diving, or changing foraging locations.

Debris removal is only estimated to occur for up to 7 days over the 4-year construction period in North Portland Harbor. If this activity overlaps with pinniped presence, behavioral disturbance is expected to be brief and temporary, and restricted to individuals that are transiting the North Portland Harbor portion of the Region of Activity. Because many of the individual pinnipeds transiting the Region of Activity are already habituated to hazing at Bonneville Dam and to high levels of existing noise throughout the lower Columbia River, it is expected that they would not be especially sensitive to a marginal increase in existing noise. Thus, due to the short duration of this sound, its location only in North Portland Harbor and the high level of existing disturbance throughout the lower Columbia River, sound generated from debris removal is not expected to result in disturbance that would rise to the level of Level B harassment.

Vessel Operations—Various types of vessels, including barges, tug boats, and small craft, would be present in the Region of Activity at various times. Vessel traffic would continually traverse the in-water CRC project area, with activities centered on Piers 2 through 7 of the Columbia River and the new North Portland Harbor bents. Such vessels already use the Region of Activity in moderately high numbers; therefore, the vessels to be used in the Region of Activity do not represent a new sound source, only a potential increase in the frequency and duration of these sound source types.

There are very few controlled tests or repeatable observations related to the reactions of pinnipeds to vessel noise. However, Richardson *et al.* (1995) reviewed the literature on reactions of pinnipeds to vessels, concluding overall that pinnipeds showed high tolerance to vessel noise. One study showed that, in water, sea lions tolerated frequent approach of vessels at close range. Because the Region of Activity is heavily traveled by commercial and recreational craft, it seems likely that pinnipeds that transit the Region of Activity are already habituated to vessel noise, thus the additional vessels that would occur as a result of CRC project activities would likely not have an additional effect on these pinnipeds.

Therefore, CRC project vessel noise in the Region of Activity is unlikely to rise to the level of Level B harassment.

Physical Disturbance—Vessels, in-water structures, and over-water structures have the potential to cause physical disturbance to pinnipeds, although in-water and over-water structures would cover no more than 20 percent of the entire channel width at one time (CRC, 2010). As previously mentioned, various types of vessels already use the Region of Activity in high numbers. Tug boats and barges are slow moving and follow a predictable course. Pinnipeds would be able to easily avoid these vessels while transiting through the Region of Activity, and are likely already habituated to the presence of numerous vessels, as the lower Columbia River and North Portland Harbor receive high levels of commercial and recreational vessel traffic. Therefore, vessel strikes are extremely unlikely and, thus, discountable. Potential encounters would likely be limited to brief, sporadic behavioral disturbance, if any at all. Such disturbances are not likely to result in a risk of Level B harassment of pinnipeds transiting the Region of Activity.

Hearing Impairment and Other Physiological Effects

Temporary or permanent hearing impairment is a possibility when marine mammals are exposed to very strong sounds. Non-auditory physiological effects might also occur in marine mammals exposed to strong underwater sound. Possible types of non-auditory physiological effects or injuries that may occur in mammals close to a strong sound source include stress, neurological effects, bubble formation, and other types of organ or tissue damage. It is possible that some marine mammal species (i.e., beaked whales) may be especially susceptible to injury and/or stranding when exposed to strong pulsed sounds, particularly at higher frequencies. Non-auditory physiological effects are not anticipated to occur as a result of CRC activities. The following subsections discuss the possibilities of TTS and PTS.

TTS—TTS, reversible hearing loss caused by fatigue of hair cells and supporting structures in the inner ear, is the mildest form of hearing impairment that can occur during exposure to a strong sound (Kryter, 1985). While experiencing TTS, the hearing threshold rises and a sound must be stronger in order to be heard. TTS can last from minutes or hours to (in cases of strong TTS) days. For sound exposures at or somewhat above the TTS threshold,

hearing sensitivity in both terrestrial and marine mammals recovers rapidly after exposure to the sound ends.

NMFS considers TTS to be a form of Level B harassment rather than injury, as it consists of fatigue to auditory structures rather than damage to them. Pinnipeds have demonstrated complete recovery from TTS after multiple exposures to intense sound, as described in the studies below (Kastak *et al.*, 1999, 2005). The NMFS-established 190-dB criterion is not considered to be the level above which TTS might occur. Rather, it is the received level above which, in the view of a panel of bioacoustics specialists convened by NMFS before TTS measurements for marine mammals became available, one could not be certain that there would be no injurious effects, auditory or otherwise, to pinnipeds. Therefore, exposure to sound levels above 190 dB does not necessarily mean that an animal has incurred TTS, but rather that it may have occurred. Few data on sound levels and durations necessary to elicit mild TTS have been obtained for marine mammals, and none of the published data concern TTS elicited by exposure to multiple pulses of sound.

Human non-impulsive sound exposure guidelines are based on exposures of equal energy (the same sound exposure level [SEL]; SEL is reported here in dB re: 1 $\mu\text{Pa}^2\text{-s/re}$: 20 $\mu\text{Pa}^2\text{-s}$ for in-water and in-air sound, respectively) producing equal amounts of hearing impairment regardless of how the sound energy is distributed in time (NIOSH, 1998). Until recently, previous marine mammal TTS studies have also generally supported this equal energy relationship (Southall *et al.*, 2007). Three newer studies, two by Mooney *et al.* (2009a,b) on a single bottlenose dolphin (*Tursiops truncatus*) either exposed to playbacks of U.S. Navy mid-frequency active sonar or octave-band sound (4–8 kHz) and one by Kastak *et al.* (2007) on a single California sea lion exposed to airborne octave-band sound (centered at 2.5 kHz), concluded that for all sound exposure situations, the equal energy relationship may not be the best indicator to predict TTS onset levels. Generally, with sound exposures of equal energy, those that were quieter (lower SPL) with longer duration were found to induce TTS onset more than those of louder (higher SPL) and shorter duration. Given the available data, the received level of a single seismic pulse (with no frequency weighting) might need to be approximately 186 dB SEL in order to produce brief, mild TTS.

In free-ranging pinnipeds, TTS thresholds associated with exposure to

brief pulses (single or multiple) of underwater sound have not been measured. However, systematic TTS studies on captive pinnipeds have been conducted (e.g., Bowles *et al.*, 1999; Kastak *et al.*, 1999, 2005, 2007; Schusterman *et al.*, 2000; Finneran *et al.*, 2003; Southall *et al.*, 2007). Specific studies are detailed here:

- Finneran *et al.* (2003) studied responses of two individual California sea lions. The sea lions were exposed to single pulses of underwater sound, and experienced no detectable TTS at received sound level of 183 dB peak (163 dB SEL).

There were three studies conducted on pinniped TTS responses to non-pulsed underwater sound. All of these studies were performed in the same lab and on the same test subjects, and, therefore, the results may not be applicable to all pinnipeds or in field settings.

- Kastak and Schusterman (1996) studied the response of harbor seals to non-pulsed construction sound, reporting TTS of about 8 dB. The seal was exposed to broadband construction sound for 6 days, averaging 6 to 7 hours of intermittent exposure per day, with SPLs from just approximately 90 to 105 dB.

- Kastak *et al.* (1999) reported TTS of approximately 4–5 dB in three species of pinnipeds (harbor seal, California sea lion, and northern elephant seal) after underwater exposure for approximately 20 minutes to sound with frequencies ranging from 100–2,000 Hz at received levels 60–75 dB above hearing threshold. This approach allowed similar effective exposure conditions to each of the subjects, but resulted in variable absolute exposure values depending on subject and test frequency. Recovery to near baseline levels was reported within 24 hours of sound exposure.

- Kastak *et al.* (2005) followed up on their previous work, exposing the same test subjects to higher levels of sound for longer durations. The animals were exposed to octave-band sound for up to 50 minutes of net exposure. The study reported that the harbor seal experienced TTS of 6 dB after a 25-minute exposure to 2.5 kHz of octave-band sound at 152 dB (183 dB SEL). The California sea lion demonstrated onset of TTS after exposure to 174 dB and 206 dB SEL.

Southall *et al.* (2007) reported one study on TTS in pinnipeds resulting from airborne pulsed sound, while two studies examined TTS in pinnipeds resulting from airborne non-pulsed sound:

- Bowles *et al.* (unpubl. data) exposed pinnipeds to simulated sonic booms. Harbor seals demonstrated TTS at 143 dB peak and 129 dB SEL. California sea lions and northern elephant seals experienced TTS at higher exposure levels than the harbor seals.

- Kastak *et al.* (2004) used the same test subjects as in Kastak *et al.* 2005, exposing the animals to non-pulsed sound (2.5 kHz octave-band sound) for 25 minutes. The harbor seal demonstrated 6 dB of TTS after exposure to 99 dB (131 dB SEL). The California sea lion demonstrated onset of TTS at 122 dB and 154 dB SEL.

- Kastak *et al.* (2007) studied the same California sea lion as in Kastak *et al.* 2004 above, exposing this individual to 192 exposures of 2.5 kHz octave-band sound at levels ranging from 94 to 133 dB for 1.5 to 50 min of net exposure duration. The test subject experienced up to 30 dB of TTS. TTS onset occurred at 159 dB SEL. Recovery times ranged from several minutes to 3 days.

The sound level necessary to cause TTS in pinnipeds depends on exposure duration; with longer exposure, the level necessary to elicit TTS is reduced (Schusterman *et al.*, 2000; Kastak *et al.*, 2005, 2007). For very short exposures (e.g., to a single sound pulse), the level necessary to cause TTS is very high (Finneran *et al.*, 2003). Impact pile driving associated with CRC would produce maximum underwater pulsed sound levels estimated at 210 dB peak and 176 dB SEL with 10 dB of attenuation from an attenuation device (214 dB peak and 186 dB SEL without an attenuation device). Summarizing existing data, Southall *et al.* (2007) assume that pulses of underwater sound result in the onset of TTS in pinnipeds when received levels reach 212 dB peak or 171 dB SEL. They did not offer criteria for non-pulsed sounds. These recommendations are presented in order to discuss the likelihood of TTS occurring during the CRC project. The literature does not allow conclusions to be drawn regarding levels of underwater non-pulsed sound (e.g., vibratory pile installation) likely to cause TTS. With a sound attenuation device, TTS is not likely to occur based on estimated source levels from the CRC project. Without a sound attenuation device, it is estimated that the extent of the area in which underwater sound levels could potentially cause TTS is somewhere in between the extent of where the injury threshold occurs and the extent of where the disturbance threshold occurs (described previously in this document). Impact pile driving would produce initial airborne sound levels of

approximately 112 dB peak at 160 ft (49 m) from the source, as compared to the level suggested by Southall *et al.* (2007) of 143 dB peak for onset of TTS in pinnipeds from multiple pulses of airborne sound. It is not expected that airborne sound levels would induce TTS in individual pinnipeds.

Although underwater sound levels produced by the CRC project may exceed levels produced in studies that have induced TTS in pinnipeds, there is a general lack of controlled, quantifiable field studies related to this phenomenon, and existing studies have had varied results (Southall *et al.*, 2007). Therefore, it is difficult to extrapolate from these data to site-specific conditions for the CRC project. For example, because most of the studies have been conducted in laboratories, rather than in field settings, the data are not conclusive as to whether elevated levels of sound would cause pinnipeds to avoid the Region of Activity, thereby reducing the likelihood of TTS, or whether sound would attract pinnipeds, increasing the likelihood of TTS. In any case, there are no universally accepted standards for the amount of exposure time likely to induce TTS. Lambourne (in CRC, 2010) posits that, in most circumstances, free-roaming Steller sea lions are not likely to remain in areas subjected to high sound levels long enough to experience TTS unless there is a particularly strong attraction, such as an abundant food source. While it may be inferred that TTS could theoretically result from the CRC project, it is impossible to quantify the magnitude of exposure, the duration of the effect, or the number of individuals likely to be affected. Exposure is likely to be brief because pinnipeds use the Region of Activity for transiting, rather than breeding or hauling out. In summary, it is expected that elevated sound would have only a negligible probability of causing TTS in individual seals and sea lions.

PTS—When PTS occurs, there is physical damage to the sound receptors in the ear. In some cases, there can be total or partial deafness, whereas in other cases, the animal has an impaired ability to hear sounds in specific frequency ranges.

There is no specific evidence that exposure to underwater industrial sounds can cause PTS in any marine mammal (see Southall *et al.*, 2007). However, given the possibility that marine mammals might incur TTS, there has been further speculation about the possibility that some individuals occurring very close to industrial activities might incur PTS. Richardson *et al.* (1995) hypothesized that PTS

caused by prolonged exposure to continuous anthropogenic sound is unlikely to occur in marine mammals, at least for sounds with source levels up to approximately 200 dB. Single or occasional occurrences of mild TTS are not indicative of permanent auditory damage in terrestrial mammals. Studies of relationships between TTS and PTS thresholds in marine mammals are limited; however, existing data appear to show similarity to those found for humans and other terrestrial mammals, for which there is a large body of data. PTS might occur at a received sound level at least several decibels above that inducing mild TTS.

Southall *et al.* (2007) propose that sound levels inducing 40 dB of TTS may result in onset of PTS in marine mammals. The authors present this threshold with precaution, as there are no specific studies to support it. Because direct studies on marine mammals are lacking, the authors base these recommendations on studies performed on other mammals. Additionally, the authors assume that multiple pulses of underwater sound result in the onset of PTS in pinnipeds when levels reach 218 dB peak or 186 dB SEL. In air, sound levels are assumed to cause PTS in pinnipeds at 149 dB peak or 144 dB SEL (Southall *et al.*, 2007). Sound levels this high are not expected to occur as a result of the proposed activities.

The potential effects to marine mammals described in this section of the document do not take into consideration the proposed monitoring and mitigation measures described later in this document (see the PROPOSED MITIGATION and PROPOSED MONITORING AND REPORTING sections). It is highly unlikely that marine mammals would receive sounds strong enough (and over a sufficient duration) to cause PTS (or even TTS) during the proposed CRC activities. When taking the mitigation measures proposed for inclusion in the regulations into consideration, it is highly unlikely that any type of hearing impairment would occur as a result of CRC's proposed activities.

Anticipated Effects on Marine Mammal Habitat

Construction activities would likely impact pinniped habitat in the Columbia River and North Portland Harbor by producing temporary disturbances, primarily through elevated levels of underwater sound, reduced water quality, and physical habitat alteration associated with the structural footprint of the CRC bridges. Other potential temporary changes are

passage obstruction and changes in prey species distribution during construction. Permanent changes to habitat would be produced primarily through the presence of new bridge piers in the Columbia River and in North Portland Harbor and removal of the existing piers in the Columbia River. A limited amount of debris removal in the North Portland Harbor may occur.

The underwater sounds would occur as short-term pulses (i.e., minutes to hours), separated by virtually instantaneous and complete recovery periods. These disturbances are likely to occur several times a day for up to a week, 2–14 weeks per year, for 6 years (5 years of activity would be authorized under this rule). Water quality impairment would also occur as short-term pulses (i.e., minutes to hours) during construction, most likely due to erosion during precipitation events, and would continue due to stormwater runoff for the design life of CRC. Physical habitat alteration due to modification and replacement of existing in-water and over-water structures would also occur intermittently during construction, and would remain as the final, as-built project footprint for the design life of CRC.

Elevated levels of sound may be considered to affect the in-water habitat of pinnipeds via impacts to prey species or through passage obstruction (discussed later). However, due to the timing of the in-water work and the limited amount of pile driving that may occur on a daily basis, these effects on pinniped habitat would be temporary and limited in duration. Very few harbor seals are likely to be present in any case, and any pinnipeds that do encounter increased sound levels would primarily be transiting the action area in route to or from foraging below Bonneville Dam where fish concentrate, and thus unlikely to forage in the action area in anything other than an opportunistic manner. The direct loss of habitat available during construction due to sound impacts is expected to be minimal.

Impacts to Prey Species

Fish are the primary dietary component of pinnipeds in the Region of Activity. The Columbia River and North Portland Harbor provides migration and foraging habitat for sturgeon and lamprey, migration and spawning habitat for eulachon, and migration habitat for juvenile and adult salmon and steelhead, as well as some limited rearing habitat for juvenile salmon and steelhead.

Impact pile driving would produce a variety of underwater sound levels. Underwater sound caused by vibratory installation would be less than impact driving (Caltrans, 2009; WSDOT, 2010b). Oscillating and rotating steel casements for drilled shafts are not likely to elevate underwater sound to a level that is likely to cause injury or that would cause adverse changes to fish behavior on a long-term basis.

Literature relating to the impacts of sound on marine fish species can be divided into categories which describe the following: (1) Pathological effects; (2) physiological effects; and (3) behavioral effects. Pathological effects include lethal and sub-lethal physical damage to fish; physiological effects include primary and secondary stress responses; and behavioral effects include changes in exhibited behaviors of fish. Behavioral changes might be a direct reaction to a detected sound or a result of anthropogenic sound masking natural sounds that the fish normally detect and to which they respond. The three types of effects are often interrelated in complex ways. For example, some physiological and behavioral effects could potentially lead ultimately to the pathological effect of mortality. Hastings and Popper (2005) reviewed what is known about the effects of sound on fish and identified studies needed to address areas of uncertainty relative to measurement of sound and the responses of fish. Popper *et al.* (2003/2004) also published a paper that reviews the effects of anthropogenic sound on the behavior and physiology of fish. Please see those sources for more detail on the potential impacts of sound on fish.

Underwater sound pressure waves can injure or kill fish (e.g., Reyff, 2003; Abbott and Bing-Sawyer, 2002; Caltrans, 2001; Longmuir and Lively, 2001; Stotz and Colby, 2001). Fish with swim bladders, including salmon, steelhead, and sturgeon, are particularly sensitive to underwater impulsive sounds with a sharp sound pressure peak occurring in a short interval of time (Caltrans, 2001). As the pressure wave passes through a fish, the swim bladder is rapidly squeezed due to the high pressure, and then rapidly expanded as the underpressure component of the wave passes through the fish. The pneumatic pounding may rupture capillaries in the internal organs as indicated by observed blood in the abdominal cavity and maceration of the kidney tissues (Caltrans, 2001). Although eulachon lack a swim bladder, they are also susceptible to general pressure wave injuries including hemorrhage and rupture of internal organs, as described

above, and damage to the auditory system. Direct take can cause instantaneous death, latent death within minutes after exposure, or can occur several days later. Indirect take can occur because of reduced fitness of a fish, making it susceptible to predation, disease, starvation, or inability to complete its life cycle. Effects to prey species are summarized here and are outlined in more detail in NMFS' biological opinion.

There are no physical barriers to fish passage within the Region of Activity, nor are there fish passage barriers between the Region of Activity and the Pacific Ocean. The proposed project would not involve the creation of permanent physical barriers; thus, long-term changes in pinniped prey species distribution are not expected to occur.

Nevertheless, impact pile-driving would likely create a temporary migration barrier to all life stages of fish using the Columbia River and North Portland Harbor, although this would be localized. Cofferdams and temporary in-water work structures also may create partial barriers to the migration of juvenile fish in shallow-water habitat. Impacts to fish species distribution would be temporary during in-water work and hydroacoustic impacts from impact pile driving would only occur for limited periods during the day and only during the in-water work window established for this activity in conjunction with ODFW, WDFW, and NMFS. The overall effect to the prey base for pinnipeds is anticipated to be insignificant.

Prey may also be affected by turbidity, contaminated sediments, or other contaminants in the water column. The CRC project involves several activities that could potentially generate turbidity in the Columbia River and North Portland Harbor, including pile installation, pile removal, installation and removal of cofferdams, installation of steel casings for drilled shafts, and debris removal. Because these actions would take place in a sandy substrate and would be limited to a small area and a brief portion of the work period, the increase in turbidity is expected to be small. Turbidity is not expected to cause mortality to fish species in the Region of Activity, and effects would probably be limited to temporary avoidance of the discrete areas of elevated turbidity (anticipated to be no more than 300 ft [91 m] from the source) for approximately 4–6 hours at a time (CRC, 2010), or effects such as abrasion to gills and alteration in feeding and migration behavior for fish close to the activity. Therefore, turbidity would likely have only insignificant effects to

fish and, thus, insignificant effects on pinnipeds.

The CRC project would minimize, avoid, or contain much of the potential sources of contamination, minimizing the risk of exposure to prey species of pinnipeds. The CRC project team would, in advance of in-water work, perform an extensive search for evidence of contamination, pinpointing the location, extent, and concentration of the contaminants. Then, BMPs would be implemented to ensure that the CRC project: (1) Avoids areas of contaminated sediment or (2) enables responsible parties to initiate cleanup activities for contaminated sediments occurring from construction activities within the Region of Activity. These BMPs would be developed and implemented in coordination with regulatory agencies. Because the CRC project would identify the locations of contaminated sediments and use BMPs to ensure that they do not become mobilized, there is little risk that the prey base of pinnipeds would be significantly affected by or exposed to contaminated sediments.

Though treatment of runoff would occur, the ability to remove pollutants to a level without effect upon fish or that does not synergistically combine with other sources is technologically limited and unfeasible. Exposure to these ubiquitous contaminants even in low concentrations is likely to affect the survival and productivity of salmonid juveniles in particular (e.g., Loge *et al.*, 2006; Hecht *et al.*, 2007; Johnson *et al.*, 2007; Sandahl *et al.*, 2007; Spromberg and Meador, 2006). Short-term exposure to contaminants such as pesticides and dissolved metals may disrupt olfactory function (Hecht, 2007) and interfere with associated behaviors such as foraging, anti-predator responses, reproduction, imprinting (odor memories), and homing (the upstream migration to natal streams). The toxicity of these pollutants varies with water quality speciation and concentration. Regarding dissolved heavy metals, Santore *et al.* (2001) indicate that the presence of natural organic matter and changes in pH and hardness affect the potential for toxicity (increase and decrease). Additionally, organics (living and dead) can adsorb and absorb other pollutants such as polycyclic aromatic hydrocarbons (PAHs). The variables of organic decay further complicate the path and cycle of pollutants.

The release of contaminants is likely to occur. Wind and water erosion is likely to entrain and transport soil from disturbed areas, contributing fine sediments that are likely to contain pollutants, and the use of heavy

equipment, including stationary equipment like generators and cranes, also creates a risk that accidental spills of fuel, lubricants, hydraulic fluid, coolants, and other contaminants may occur. Petroleum-based contaminants, such as fuel, oil, and some hydraulic fluids, contain PAHs, which are acutely toxic to salmonids and other aquatic organisms at high levels of exposure and cause sublethal adverse effects on aquatic organisms at lower concentrations (Heintz *et al.*, 1999, 2000; Incardona *et al.*, 2004, 2005, 2006).

However, due to the relatively small amount of time that any heavy equipment would be in the water and the use of proposed conservation measures, including site restoration after construction is complete, any increase in contaminants is likely to be small, infrequent, and limited to the construction period. In-water and near-water construction would employ numerous BMPs and would comply with all required regulatory permits to ensure that contaminants do not enter surface water bodies. In the unlikely event of accidental release, BMPs and a Pollution Control and Contamination Plan (PCCP) would be implemented to ensure that contaminants are prevented from spreading and are cleaned up quickly. Therefore, contaminants are not likely to significantly affect fish and, thus, effects on pinnipeds are also likely to be insignificant.

Physical Loss of Prey Species Habitat

The project would lead to temporary physical loss of approximately 20,700 ft² (2,508 m²) of shallow-water habitat. Project elements responsible for temporary physical loss include the footprint of the numerous temporary piles associated with in-water work platforms, work bridges, tower cranes, oscillator support piles, cofferdams, and barge moorings in the Columbia River and North Portland Harbor.

The in-water portions of the new structures would result in the permanent physical loss of approximately 250 ft² (23 m²) of shallow-water habitat at pier complex 7 in the Columbia River. Demolition of the existing Columbia River structures would permanently restore about 6,000 ft² (557 m²) of shallow-water habitat, and removal of one large overwater structure would permanently restore about 600 ft² (56 m²) of shallow-water habitat. Overall, there would be a net permanent gain of about 5,345 ft² (497 m²) of shallow-water habitat in the Columbia River (CRC, 2010). At North Portland Harbor, there would be a permanent net loss of about 2,435 ft²

(218 m²) of shallow-water habitat at all of the new in-water bridge bents. Note that all North Portland Harbor impacts are in shallow water.

Physical loss of shallow-water habitat is of particular concern for rearing of subyearling migrant salmonids. In theory, in-water structures that completely block the nearshore may force these juveniles to swim into deeper-water habitats to circumvent them. Deep-water areas represent lower quality habitat because predation rates are higher there. Studies show that predators such as walleye (*Stizostedion vitreum*), northern pike-minnow (*Ptychocheilus oregonensis*), and other predatory fish occur in deepwater habitat for at least part of the year (e.g., Johnson, 1969; Ager, 1976; Paragamian, 1989; Wahl, 1995; Pribyl *et al.*, 2004). In the case of the CRC project, in-water portions of the structures would not pose a complete blockage to nearshore movement anywhere in the Region of Activity. Although these structures would cover potential rearing and nearshore migration areas, the habitat is not rare and is not of particularly high quality. Juveniles would still be able to use the abundant shallow-water habitat available for miles in either direction. Neither the permanent nor the temporary structures would necessarily force juveniles into deeper water, and therefore pose no definite added risk of predation.

To the limited extent that the proposed actions do increase risk of predation, pinnipeds may accrue minor benefits. Alterations to adult eulachon and salmon behavior may make them more vulnerable to predation. Changes in cover that congregate fish or cause them to slow or pause migration would likely attract pinnipeds, which may then forage opportunistically. While individual pinnipeds are likely to take advantage of such conditions, it is not expected to increase overall predation rates across the run. Aggregating features would be small in comparison to the channel, and ample similar opportunities exist throughout the lower Columbia River.

Physical loss of shallow-water habitat would have only negligible effects on foraging, migration, and holding of salmonids that are of the yearling age class or older. These life functions are not dependent on shallow-water habitat for these age classes. Furthermore, the lost habitat is not of particularly high quality. There is abundant similar habitat immediately adjacent along the shorelines of the Columbia River and throughout North Portland Harbor. The lost habitat represents only a small fraction of the remaining habitat

available for miles in either direction. There would still be many acres of habitat for yearling or older age-classes of salmonids foraging, migrating, and holding in the Region of Activity. Physical loss of shallow-water habitat would have only negligible effects on eulachon and green sturgeon for the same reason. Thus, the effects to these elements of pinniped habitat would be minimal.

The CRC project would cause a temporary physical loss of approximately 16,635 ft² (1,545 m²) of deep-water habitat, consisting chiefly of coarse sand with a small proportion of gravel. CRC project elements responsible for temporary physical loss include the cofferdams and numerous temporary piles associated with in-water work platforms and moorings. The in-water portions of the new structures would result in the permanent physical loss of approximately 6,300 ft² (585 m²) of deep-water habitat at pier complexes 2 through 7 in the Columbia River. Demolition of the existing Columbia River piers would permanently restore about 21,000 ft² (1,951 m²) of deep-water habitat. Overall, there would be a net permanent gain of about 15,000 ft² (1,394 m²) of deep-water habitat in the Columbia River.

Although there would be a temporary net physical loss of deep-water habitat, this is not expected to have a significant impact on prey species. The lost habitat is not rare or of particularly high quality, and there is abundant similar habitat in immediately adjacent areas of the Columbia River and for many miles both upstream and downstream. The lost habitat would represent a very small fraction (less than one percent) of the remaining habitat available. Additionally, the in-water portions of the permanent and temporary in-water structures would occupy no more than about one percent of the width of the Columbia River. Therefore, the structures would not be likely to pose a physical barrier to fish migration.

In addition, compensatory mitigation for direct permanent habitat loss to jurisdictional waters from permanent pier placement would occur in accordance with requirements set by USACE, Oregon Department of State Lands (DSL), Washington Department of Ecology, ODFW, and WDFW. To meet these requirements, CRC is proposing to restore habitat in the lower Lewis River and lower Hood River. At the Hood River site, one mile of a historic side channel would be reconnected to the lower Hood River and an existing 21-acre (8.5-ha) wetland, resulting in habitat benefits to salmonids and

eulachon. At the Lewis River site, restoration of 18.5 acres (7.5 ha) of side channels would occur between the lower Lewis River and the lower Columbia River, resulting in habitat benefits to salmonid and other native species. Therefore, permanent habitat loss is expected to have a negligible impact to habitat for pinniped prey species.

Due to the small size of the impact relative to the remaining habitat available, and the permanent benefits from habitat restoration, both temporary and permanent physical habitat loss are likely to be insignificant to fish and, thus, to the habitat and foraging opportunities of pinnipeds.

Passage Obstruction

The new overwater bridge structures would permanently decrease the overall footprint of piers below the OHW in the Columbia River and permanently increase the overall footprint of the piers below the OHW in North Portland Harbor. The permanent changes would be to riverine habitat; no pinniped haul-out sites or rookeries would be affected. The effects to habitat in the action area would not result in significant changes to pinniped passage. Therefore, permanent changes due to bridge piers would not significantly affect pinnipeds.

There are a variety of temporary structures that could potentially obstruct passage of pinnipeds including barges, moorings, tower cranes, cofferdams, and work platforms. Although there would be many such structures in the Region of Activity, they would cover no more than twenty percent of the entire channel width at one time. There would still be ample room for pinnipeds to navigate around these structures while transiting the action area. Pinnipeds may need to slightly alter their course as they move through the construction area to avoid these structures, but there is no potential for physical structures to completely block upstream or downstream movement. Due to the small size of the structures relative to the remaining portion of the river available, delays to pinniped movements would be negligible. Therefore, the effect of in-water and overwater structures on the ability of pinnipeds to pass upstream and downstream would be insignificant.

The impact of temporary and permanent habitat changes from bridge construction is expected to be minimal to pinnipeds. The effects to pinnipeds from temporary and permanent habitat changes are summarized below.

- *Sound disturbance:* Temporary modification of habitat during in-water construction from elevated levels of sound may affect pinniped foraging; however, very few seals are in the Region of Activity and most sea lions are swimming upriver to forage below Bonneville Dam. Sound disturbance would not be continuous, would only occur temporarily as animals pass through the area and would be in the form of Level B harassment only.

- *Passage obstruction:* The permanent changes to the overall footprint of the bridges in the Columbia River and North Portland Harbor would not affect pinniped breeding habitat or haul-out sites and would not affect passage significantly. Temporary structures during construction would not cover more than twenty percent of the entire channel and are not likely to significantly affect the ability of pinnipeds to pass through the construction area or delay their movements.

- *Changes in prey distribution and quality:* The CRC project is likely to impact a small percentage of all salmon and steelhead runs that swim through the Region of Activity as a result of in-water work including pile installation. This impact would be temporary and would only occur during construction of the bridges in the Columbia River and North Portland Harbor and during demolition of the existing Columbia River Bridges. BMPs and minimization measures would avoid or limit the extent of the impact to prey species from sound, changes to water quality, and temporary structures. Short-term impacts to the prey base from project work do not represent a large part of the pinniped prey base in comparison to prey available through the entirety of their foraging range, which includes the Columbia River from Bonneville Dam to the mouth and foraging grounds off the Pacific Coast. Overall, effects to the prey base would be temporary, limited to the in-water work period over the CRC project duration, and would not cause measurable changes in the distribution or quality of prey available to pinnipeds.

- *Physical changes to prey species habitat:* The new bridge structures would permanently decrease the overall footprint of piers below the OHW in the Columbia River and permanently increase the overall footprint of the piers below the OHW in North Portland Harbor. Habitat mitigation for direct permanent habitat loss to fish from permanent pier placement would occur in the lower Lewis River and lower Hood River and would provide long-term benefits to fish species in the lower

Columbia River, resulting in long-term benefits to the pinniped prey base. Therefore, permanent habitat loss is expected to have a negligible impact to habitat for pinniped prey species. Temporary physical loss of habitat from temporary structures would only occur during the period of in-water work in the Columbia River and North Portland Harbor. These temporary losses are not expected to significantly affect the prey base for pinnipeds.

In conclusion, NMFS has preliminarily determined that CRC's proposed activities are not expected to have any habitat-related effects that could cause significant or long-term consequences for individual marine mammals or on the food sources that they utilize.

Proposed Mitigation

In order to issue an incidental take authorization under section 101(a)(5)(A) of the MMPA, NMFS must, where applicable, set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (where relevant). NMFS and CRC worked to devise a number of mitigation measures designed to minimize impacts to marine mammals to the level of least practicable adverse impact, described in the following.

The results from hydroacoustic monitoring during the test pile project, as well as results from modeling the zones of influence (ZOIs) (both described previously in this document and in following sections), were used to develop mitigation measures for CRC pile driving and removal activities. ZOIs are often used to effectively represent the mitigation zone that would be established around each pile to prevent Level A harassment of marine mammals. In addition to the specific measures described later, CRC would employ the following general mitigation measures:

- All work would be performed according to the requirements and conditions of the regulatory permits issued by federal, state, and local governments. Seasonal restrictions, e.g., work windows, would be applied to the project to avoid or minimize potential impacts to protected species (including marine mammals) based on agreement with, and the regulatory permits issued by, DSL, WDFW, and USACE in consultation with ODFW, the U.S. Fish

and Wildlife Service (USFWS), and NMFS.

- Briefings would be conducted between the CRC project construction supervisors and the crew, marine mammal observer(s), and acoustical monitoring team prior to the start of all pile-driving activity, and when new personnel join the work, to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures. The CRC project would contact the Bonneville Dam marine mammal monitoring team to obtain information on the presence or absence of pinnipeds prior to initiating pile driving in any discrete pile driving time period described in the project description.

- CRC would comply with all applicable equipment sound standards and ensure that all construction equipment has sound control devices no less effective than those provided on the original equipment (i.e., equipment may not have been modified in such a way that it is louder than it was initially).

- Permanent foundations for each in-water pier would be installed by means of drilled shafts. This approach significantly reduces the amount of impact pile driving, the size of piles, and amount of in-water sound.

- Installation of piles using impact driving may only occur between September 15 and April 15 of the following year.

- On an average work day, six piles could be installed using vibratory installation to set the piles, with impact driving then used to drive the piles to refusal per project specifications to meet load-bearing capacity requirements. This method reduces the number of daily pile strikes by over ninety percent.

- No more than two impact pile drivers may be operated simultaneously within the same water body channel.

- In waters with depths more than 2 ft (0.67 m), a bubble curtain or other sound attenuation measure would be used for impact driving of pilings, except when testing device performance. As described previously, testing of the sound attenuation device would occur approximately weekly. This would require up to 7.5 minutes of unattenuated driving per week. If a bubble curtain or similar measure is used, it would distribute small air bubbles around 100 percent of the piling perimeter for the full depth of the water column. Any other attenuation measure (e.g., temporary sound attenuation pile) must provide 100 percent coverage in the water column for the full depth of the pile. A performance test of the sound attenuation device in accordance with the approved hydroacoustic

monitoring plan would be conducted prior to any impact pile driving. If a bubble curtain or similar measure is utilized, the performance test would confirm the calculated pressures and flow rates at each manifold ring.

- For in-water heavy machinery work other than pile driving (e.g., standard barges, tug boats, barge-mounted excavators, or clamshell equipment used to place or remove material), if a marine mammal comes within 50 m (164 ft), operations shall cease and/or vessels shall reduce speed to the minimum level required to maintain stearage and safe working conditions.

Monitoring and Shutdown

Shutdown Zones—For all pile driving and removal activities, a shutdown zone (defined as, at minimum, the area in which SPLs equal or exceed 190 dB rms) would be established. The purpose of a shutdown zone is to define an area within which shutdown of activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area), thus preventing injury, serious injury, or death of marine mammals. Although hydroacoustic data from the test pile project indicate that radial distances to the 190-dB threshold would be less than 50 m, shutdown zones would conservatively be set at a minimum 50 m. This precautionary measure is

intended to further reduce any possibility of injury to marine mammals by incorporating a buffer to the 190-dB threshold within the shutdown area. Please see the discussion of “Distance to Sound Thresholds” and “Test Pile Project” under Description of Sound Sources, previously in this document.

Disturbance Zones—For all pile driving and removal activities, a disturbance zone would be established. Disturbance zones are typically defined as the area in which SPLs equal or exceed 160 or 120 dB rms (for impact and vibratory pile driving, respectively). However, when the size of a disturbance zone is sufficiently large as to make monitoring of the entire area impracticable (as in the case of the 120-dB zone here), the disturbance zone may be defined as some area that may reasonably be monitored. Here, the disturbance zone is defined for monitoring purposes as an area of 800 m radius. Disturbance zones provide utility for monitoring conducted for mitigation purposes (i.e., shutdown zone monitoring) by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring of disturbance zones enables PSOs to be aware of and communicate the presence of marine mammals in the project area but outside the shutdown zone and thus prepare for potential

shutdowns of activity. However, the primary purpose of disturbance zone monitoring is for documenting incidents of Level B harassment; disturbance zone monitoring is discussed in greater detail later (see Proposed Monitoring and Reporting).

Monitoring Protocols—Initial monitoring zones are based on worst case values measured during the test pile project and with the attenuation device operating during impact driving, and are presented in Table 15. A minimum distance of 50 m is used for all shutdown zones, even if actual or initial calculated distances are less. A maximum distance of 800 m is used for all disturbance zones for vibratory pile driving, even if actual or calculated values are greater. Monitoring of the full disturbance zone for these activities is impracticable. The data collected during the test pile project consistently support the belief that the coefficient of transmission loss increases with increasing range from the source pile, out to at least 800 m. To provide the best estimate of transmission loss at a specific range, the data were interpolated to one meter increments using a quadratic interpolation routine. To establish a disturbance zone for impact pile driving, an iterative solution was computed based on the interpolated transmission loss data.

TABLE 15—DISTANCE TO INITIAL SHUTDOWN AND DISTURBANCE MONITORING ZONES FOR IN-WATER SOUND IN THE COLUMBIA RIVER AND NORTH PORTLAND HARBOR

Pile type	Hammer type	Distance to monitoring zones (m) ¹		
		190 dB ²	160 dB ²	120 dB ²
18–24 in steel pipe ³	Impact	50	258	N/A
36–48 in steel pipe ⁴	Impact	50	582	N/A
48-in steel pipe	Vibratory	50	N/A	800
120-in steel casing	Vibratory	50	N/A	800
Sheet pile	Vibratory	50	N/A	800

¹ Monitoring zones based on worst case values measured during test pile project and with the attenuation device operating during impact driving. A minimum distance of 50 m is used for all shutdown zones, even if actual or initial calculated distances are less. A maximum distance of 800 m is used for all disturbance zones for vibratory pile driving, even if actual or calculated values are greater. For modeled values, see Tables 11 and 12.

² All values unweighted and relative to 1 µPa.

³ For 24-in pile, test pile data show a worst case source level of 191 dB rms with a worst-case attenuation of 8 dB and transmission loss coefficient based on quadratic interpolation of test pile data of 16.3.

⁴ For 48-in pile, test pile data show a worst case source level of 201 dB RMS with a worst-case attenuation of 11 dB, and transmission loss coefficient based on quadratic interpolation of test pile data of 17.0.

Data from the test pile project suggest that the majority of the energy from vibratory driving occurs in frequencies below 1,000 Hz, with energy levels gradually falling off at higher frequencies (CRC, 2011). For vibratory installation during the test pile study, the energy was not distinguishable above background levels by 800 m (2,625 ft) for all but one pile. Therefore, although transmission loss data were

not conclusive—only one pile produced a signal that could be distinguished at all three monitoring stations, above background sound that was much higher than was previously measured for the action area—the modeled results for vibratory driving are validated by the empirical data, and it is likely that actual distances to the 120-dB threshold would be much less than modeled values. Piles were generally installed or

extracted during the test pile study in less than 10 minutes. Vibratory extraction of piles would conservatively be treated similarly to vibratory installation, with similar monitoring zones. As described previously in this document (see section on “Test Pile Project”), a maximum SPL of 181 dB for vibratory installation was recorded, while a maximum SPL of 176 dB was recorded for vibratory extraction.

The vibratory installation of steel casings and sheet piles was not measured as part of the test pile project. As noted in Table 11, modeled distance to the 120-dB isopleths resulting from vibratory installation of sheet pile was significantly less than that for vibratory installation of pipe pile. No published information is available on vibratory installation of 120-in (3 m) steel casings, which would be installed for drilled shafts. Published information from Caltrans (2007) shows that driving of 36-in pile produced up to 175 dB rms while driving of 72-in pile produced up to 180 dB rms, both measured at 5 m from the pile. By extrapolating from these published values, CRC assumes the energy imparted through a larger casing would be up to 10 dB rms (an order of magnitude) higher than the highest value for a 72-in pile. In the absence of specific data, the initial disturbance zone for vibratory installation of steel casings and sheet pile would be established at 800 m, as described previously for vibratory pile driving.

In order to accomplish appropriate monitoring for mitigation purposes, CRC would have an observer stationed on each active pile driving barge to closely monitor the shutdown zone as well as the surrounding area. In addition, CRC would post one shore-based observer, whose primary responsibility would be to record pinnipeds in the disturbance zone and to alert barge-based observers to the presence of pinnipeds in the disturbance zone, thus creating a redundant alert system for prevention of injurious interaction as well as increasing the probability of detecting pinnipeds in the disturbance zone. CRC estimates that shore-based observers would be able to scan approximately 800 m (upstream and downstream) from the available observation posts; therefore, shore-based observers would be capable of monitoring the agreed-upon disturbance zone. Visibility would be somewhat reduced by the existing bridges in the upstream direction.

As described, at least two observers would be on duty during all pile driving/removal activity. The first observer would be positioned on a work platform or barge where the entire 50 m shutdown zone is clearly visible, with the second shore-based observer positioned to observe the disturbance zone from either the north or south bank of the river, depending on where the work platform or barge is positioned. Protocols would be implemented to ensure that coordinated communication of sightings occurs between observers in a timely manner.

When pile driving/removal is occurring simultaneously at multiple sites, each site would have one observer dedicated to monitoring the shutdown zone for that site. Depending on the location of activity sites and the spacing of equipment, additional shore-based observers may be required to provide complete observational coverage of each site's disturbance zone. That is, each site would have at least one observer, while one or multiple shore-based observers may be required.

In summary:

- CRC would implement a minimum shutdown zone of 50 m radius around all pile driving and removal activity, including installation of steel casings. The 50-m shutdown zone provides a buffer for the 190-dB threshold but is also intended to further avoid the risk of direct interaction between marine mammals and the equipment.
- CRC would have a redundant monitoring system, in which one observer would be stationed on each pile driving barge, while one or multiple observers would be shore-based, as required to provide complete observational coverage of the reduced disturbance zone for each pile driving/removal site. The former would be capable of providing comprehensive monitoring of the proposed shutdown zones, and would likely be able to effectively monitor a distance, in both directions, of approximately 800 m (the distance for the vibratory pile driving disturbance zone). These observers' first priority would be shutdown zone monitoring in prevention of injurious interaction, with a secondary priority of counting takes by Level B harassment in the disturbance zone. The additional shore-based observer(s) would be able to monitor the same distances, but their primary responsibility would be counting of takes in the disturbance zone and communication with barge-based observers to alert them to pinniped presence in the action area.
- The shutdown and disturbance zones would be monitored throughout the time required to drive a pile. If a marine mammal is observed within the disturbance zone, a take would be recorded and behaviors documented. However, that pile segment would be completed without cessation, unless the animal approaches or enters the shutdown zone, at which point all pile driving activities would be halted.
- All shutdown and disturbance zones would either be based on empirical, site-specific data, or would initially be based on data for similar sources. For all activities, in-situ hydroacoustic monitoring would be conducted to either verify or determine

the actual distances to these threshold zones, and the size of the zones would be adjusted accordingly based on received SPLs. As noted previously, the minimum shutdown zone would always be 50 m.

The following measures would apply to visual monitoring:

- If a small boat is used for monitoring, the boat would remain 50 yd (46 m) from swimming pinnipeds in accordance with NMFS marine mammal viewing guidelines (NMFS, 2004).
 - If vibratory installation of steel pipe piles or casings occurs after dark, monitoring would be conducted with a night vision scope and/or other suitable device. Impact driving would only occur during daylight hours.
 - If the shutdown zone is obscured by fog or poor lighting conditions, pile driving would not be initiated until the entire shutdown zone is visible. Work that has been initiated appropriately in conditions of good visibility may continue during poor visibility.
 - The shutdown zone would be monitored for the presence of pinnipeds before, during, and after any pile driving activity. The shutdown zone would be monitored for 30 minutes prior to initiating the start of pile driving. If pinnipeds are present within the shutdown zone prior to pile driving, the start of pile driving would be delayed until the animals leave the shutdown zone of their own volition, or until 15 minutes elapse without resighting the animal(s).
 - Monitoring would be conducted using binoculars. When possible, digital video or still cameras would also be used to document the behavior and response of pinnipeds to construction activities or other disturbances.
 - Each observer would have a radio or cell phone for contact with other monitors or work crews. Observers would implement shut-down or delay procedures when applicable by calling for the shut-down to the hammer operator.
 - A GPS unit or electric range finder would be used for determining the observation location and distance to pinnipeds, boats, and construction equipment.
- Monitoring would be conducted by qualified observers. In order to be considered qualified, observers must meet the following criteria:
- Visual acuity in both eyes (correction is permissible) sufficient for discernment of moving targets at the water's surface with ability to estimate target size and distance; use of binoculars may be necessary to correctly identify the target.

- Advanced education in biological science, wildlife management, mammalogy, or related fields (bachelor's degree or higher is required).

- Experience and ability to conduct field observations and collect data according to assigned protocols (this may include academic experience).

- Experience or training in the field identification of pinnipeds, including the identification of behaviors.

- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations.

- Writing skills sufficient to prepare a report of observations including but not limited to the number and species of pinnipeds observed; dates and times when in-water construction activities were conducted; dates and times when in-water construction activities were suspended to avoid potential incidental injury from construction sound of pinnipeds observed within a defined shutdown zone; and pinniped behavior.

- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on pinnipeds observed in the area as necessary.

Hydroacoustic Monitoring—

Hydroacoustic monitoring would be conducted to determine actual values and distances to relevant acoustic thresholds, including for vibratory installation of steel casings and sheet piles. The initial disturbance zones would then be adjusted as appropriate on the basis of that information. If new zones are established based on SPL measurements, NMFS requires each new zone be based on the most conservative measurement (i.e., the largest zone configuration). Vibratory installation of steel pipe and sheet pile is not anticipated to produce underwater sound above the 190-dB injury threshold, while vibratory installation of steel casings is estimated to produce SPLs of 190 dB at a maximum distance of 5 m from the source. However, a minimum 50 m shutdown zone would be established for these activities as for impact driving. Table 15 shows initial distances for shutdown and disturbance zones for these activities.

Ramp-Up and Shutdown

The objective of a ramp-up is to alert any animals close to the activity and allow them time to move away, which would expose fewer animals to loud sounds, including both underwater and above water sound. This procedure also ensures that any pinnipeds missed during shutdown zone monitoring would move away from the activity and

not be injured. Although impact driving would occur from September 15 through April 15, and vibratory driving would occur year-round, ramp-up would be required only from January 1 through June 15 of any year, during the period of greatest potential overlap with pinniped presence in the project area. The following ramp-up procedures would be used for in-water pile installation:

- A ramp-up technique would be used at the beginning of each day's in-water pile driving activities or if pile driving has ceased for more than 1 hour.

- If a vibratory driver is used, contractors would be required to initiate sound from vibratory hammers for 15 seconds at reduced energy followed by a 1-minute waiting period. The procedure would be repeated two additional times before full energy may be achieved.

- If a non-diesel impact hammer is used, contractors would be required to provide an initial set of strikes from the impact hammer at reduced energy, followed by a 1-minute waiting period, then two subsequent sets. The reduced energy of an individual hammer cannot be quantified because they vary by individual drivers. Also, the number of strikes would vary at reduced energy because raising the hammer at less than full power and then releasing it results in the hammer "bouncing" as it strikes the pile, resulting in multiple "strikes".

- If a diesel impact hammer is used, contractors would be required to turn on the sound attenuation device (e.g., bubble curtain or other approved sound attenuation device) for 15 seconds prior to initiating pile driving to flush pinnipeds from the area.

The shutdown zone would also be monitored throughout the time required to drive a pile (or install a steel casing). If a pinniped is observed approaching or entering the shutdown zone, piling operations would be discontinued until the animal has moved outside of the shutdown zone. Pile driving would resume only after the animal is determined to have moved outside the shutdown zone by a qualified observer or after 15 minutes have elapsed since the last sighting of the animal within the shutdown zone.

Work Zone Lighting

If work occurs at night, temporary lighting would be used in the night work zones. During overwater construction, the contractor would use directional lighting with shielded luminaries to control glare and direct light onto work area, not surface waters.

Additional Mitigation Measures

In addition, NMFS and CRC, together with other relevant regulatory agencies, have developed a number of mitigation measures designed to protect fish through prevention or minimization of turbidity and disturbance and introduction of contaminants, among other things. These measures have been prescribed under the authority of statutes other than the MMPA, and are not a part of this proposed rulemaking. However, because these measures minimize impacts to pinniped prey species (either directly or indirectly, by minimizing impacts to prey species' habitat), they are summarized briefly here. Additional detail about these measures may be found in CRC's application.

Timing restrictions would be used to avoid in-water work when ESA-listed fish are most likely to be present. Fish entrapment would be minimized by containing and isolating in-water work to the extent possible, through the use of drilled shaft casings and cofferdams. The contractor would provide a qualified fishery biologist to conduct and supervise fish capture and release activity to minimize risk of injury to fish. All pumps must employ fish screen that meet certain specifications in order to avoid entrainment of fish. A qualified biologist would be present during all impact pile driving operations to observe and report any indications of dead, injured, or distressed fishes, including direct observations of these fishes or increases in bird foraging activity.

CRC would work to ensure minimum degradation of water quality in the project area, and would require the contractor to prepare a Water Quality Sampling Plan for conducting water quality monitoring for all projects occurring in-water in accordance with specific conditions. The Plan shall identify a sampling methodology as well as method of implementation to be reviewed and approved by the engineer. In addition, the contractor would prepare a Spill Prevention, Control, and Countermeasures (SPCC) Plan prior to beginning construction. The SPCC Plan would identify the appropriate spill containment materials; as well as the method of implementation. All equipment to be used for construction activities would be cleaned and inspected prior to arriving at the project site, to ensure no potentially hazardous materials are exposed, no leaks are present, and the equipment is functioning properly. Equipment that would be used below OHW would be identified; daily inspection and cleanup

procedures would insure that identified equipment is free of all external petroleum-based products. Should a leak be detected on heavy equipment used for the project, the equipment must be immediately removed from the area and not used again until adequately repaired.

The contractor would also be required to prepare and implement a Temporary Erosion and Sediment Control (TESC) Plan and a Source Control Plan for project activities requiring clearing, vegetation removal, grading, ditching, filling, embankment compaction, or excavation. The BMPs in the plans would be used to control sediments from all vegetation removal or ground-disturbing activities.

Conclusions

NMFS has carefully evaluated the applicant's proposed mitigation measures and considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

- The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals;
- The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and
- The practicability of the measure for applicant implementation.

Based on our evaluation, NMFS has preliminarily determined that the mitigation measures proposed from both NMFS and CRC provide the means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance. The proposed rule comment period will afford the public an opportunity to submit recommendations, views, and/or concerns regarding this action and the proposed mitigation measures.

Proposed Monitoring and Reporting

In order to issue an incidental take authorization (ITA) for an activity, section 101(a)(5)(A) of the MMPA states that NMFS must, where applicable, set forth "requirements pertaining to the monitoring and reporting of such taking". The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for ITAs must

include the suggested means of accomplishing the necessary monitoring and reporting that would result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area.

CRC proposed a marine mammal monitoring plan in their application (see Appendix D of CRC's application). The plan may be modified or supplemented based on comments or new information received from the public during the public comment period. All methods identified herein have been developed through coordination between NMFS and the design and environmental teams at CRC. The methods are based on the parties' professional judgment supported by their collective knowledge of pinniped behavior, site conditions, and proposed project activities. Because pinniped monitoring has not previously been conducted at this site, aspects of these methods may warrant modification. Any modifications to this protocol would be coordinated with NMFS. A summary of the plan, as well as the proposed reporting requirements, is contained here.

The intent of the monitoring plan is to:

- Comply with the requirements of the MMPA as well as the ESA section 7 consultation;
- Avoid injury to pinnipeds through visual monitoring of identified shutdown zones and shut-down of activities when animals enter or approach those zones; and
- To the extent possible, record the number, species, and behavior of pinnipeds in disturbance zones for pile driving and removal activities.

As described previously, monitoring for pinnipeds would be conducted in specific zones established to avoid or minimize effects of elevated levels of sound created by the specified activities. Shutdown zones would not be less than 50 m, while initial disturbance zones would be based on site-specific data. Zones may be modified on the basis of actual recorded SPLs from acoustic monitoring.

Visual Monitoring

The established shutdown and disturbance zones would be monitored by qualified marine mammal observers for mitigation purposes, as well as to document marine mammal behavior and incidents of Level B harassment, as described here. CRC's marine mammal monitoring plan (see Appendix D of CRC's application) would be implemented, requiring collection of sighting data for each pinniped

observed during the proposed activities for which monitoring is required, including impact or vibratory installation of steel pipe or sheet pile or steel casings. A qualified biologist(s) would be present on site at all times during impact pile driving or vibratory installation or removal of steel pile or casings. Disturbance zones, briefly described previously under Proposed Mitigation, are discussed in greater depth here.

Disturbance Zone Monitoring—Disturbance zones, described previously in Proposed Mitigation, are defined in Table 15 for underwater sound. Monitoring zones for Level B harassment from airborne sound would be 650 m for harbor seals and 196 m for sea lions (corresponding to the anticipated extent of airborne sound reaching 90 and 100 dB, respectively). The size of the disturbance zone for vibratory pile installation or extraction would be approximately 800 m in both the upstream and downstream directions, corresponding with the area that can reasonably be monitored by a shore-based observer. Any sighted animals outside of this area would be recorded as takes, but it is impossible to guarantee that all animals would be observed or to make observations of fine-scale behavioral reactions to sound throughout this zone. Nevertheless, because any animals transiting the action area (and the larger disturbance zone) would pass through the monitored area, all animals may potentially be observed, and use of the smaller disturbance zone for monitoring purposes does not necessarily mean that a significant number of harassed animals would not be observed. Monitoring of disturbance zones would be implemented as described previously.

The monitoring biologists would document all pinnipeds observed in the monitoring area. Data collection would include a count of all pinnipeds observed by species, sex, age class, their location within the zone, and their reaction (if any) to construction activities, including direction of movement, and type of construction that is occurring, time that pile driving begins and ends, any acoustic or visual disturbance, and time of the observation. Environmental conditions such as wind speed, wind direction, visibility, and temperature would also be recorded. No monitoring would be conducted during inclement weather that creates potentially hazardous conditions, as determined by the biologist, nor would monitoring be conducted when visibility is significantly limited, such as during

heavy rain or fog. During these times of inclement weather, in-water work that may produce sound levels in excess of 190 dB rms would be halted; these activities would not commence until monitoring has started for the day.

All monitoring personnel must have appropriate qualifications as identified previously, with qualifications to be certified by CRC (see Proposed Mitigation). These qualifications include education and experience identifying pinnipeds in the Columbia River and the ability to understand and document pinniped behavior. All monitoring personnel would meet at least once for a training session sponsored by CRC. Topics would include: Implementation of the protocol, identifying marine mammals, and reporting requirements.

All monitoring personnel would be provided a copy of the LOA and final biological opinion for the project. Monitoring personnel must read and understand the contents of the LOA and biological opinion as they relate to coordination, communication, and identifying and reporting incidental harassment of pinnipeds.

Hydroacoustic Monitoring

Hydroacoustic monitoring would be conducted on a representative number of piles or casings, according to protocols developed and approved by NMFS and USFWS. The number, size, and location of piles or casings monitored would represent the variety of substrates and depths, as necessary, in both the Columbia River and North Portland Harbor. Hydroacoustic monitoring would be conducted as necessary to measure representative source levels for impact and vibratory installation and removal of piles and casings. Measurements would represent a worst-case for size, depth, and substrate for all materials and installation methods. For standard underwater sound monitoring, one hydrophone positioned at 10 m from the pile is used. Some additional initial monitoring at several distances from the pile is anticipated to determine site-specific transmission loss and directionality of sound. This data would be used to establish the radii of the shutdown and disturbance zones for pinnipeds.

One hydrophone would be placed at between 1 and 3 m above the bottom at a distance of 10 m from each pile being monitored. Hydrophones placed upriver and downriver (at the 200-, 400- and 800-meter distances) would be placed at a depth greater than 5 m below the water surface or placed 1–3 meters above the bottom. A weighted tape

measure would be used to determine the depth of the water. Each hydrophone would be attached to a nylon cord or a steel chain if the current is swift enough to cause strumming of the line. The nylon cord or chain would be attached to an anchor that would keep the line the appropriate distance from each pile. The nylon cord or chain would be attached to a buoy or raft at the surface and checked regularly to maintain the tightness of the line. The distances would be measured by a tape measure, where possible, or a range-finder for those hydrophones that are distant from the pile. There would be a direct line of sight between the pile and the hydrophone in all cases. GPS coordinates would be recorded for each hydrophone location.

When the river velocity is greater than 1 m/s, a flow shield around each hydrophone would be used to provide a barrier between the irregular, turbulent flow and the hydrophone. River velocity would be measured concurrent to sound measurements. If velocity is greater than 1 m/s, a correlation between sound levels and current speed would be made to determine whether the data is valid and should be included in the analysis. Hydrophone calibrations would be checked at the beginning of each day of monitoring activity. Prior to the initiation of pile driving, the hydrophones would be placed at the appropriate distances and depth as described.

Prior to and during the pile driving activity environmental data would be gathered such as wind speed and direction, air temperature, humidity, surface water temperature, water depth, wave height, weather conditions, and other factors that could contribute to influencing the underwater sound levels (e.g., aircraft, boats). Start and stop time of each pile driving event and the time at which the bubble curtain or functional equivalent is turned on and off would be recorded. The chief construction inspector would supply the acoustics specialist with a description of the substrate composition, hammer model and size, hammer energy settings and any changes to those settings during the piles being monitored, depth pile driven, blows per foot for the piles monitored, and total number of strikes to drive each pile that is monitored.

Proposed Reporting

Reports of data collected during monitoring would be submitted to NMFS weekly. The reporting would include:

- All data described previously under monitoring, including observation dates, times, and conditions; and

- Correlations of observed behavior with activity type and received levels of sound, to the extent possible.

CRC would also submit a report(s) concerning the results of all acoustic monitoring. Acoustic monitoring reports would include:

- Size and type of piles.
- A detailed description of any sound attenuation device used, including design specifications.
- The impact hammer energy rating used to drive the piles, make and model of the hammer(s), and description of the vibratory hammer.
- A description of the sound monitoring equipment.
- The distance between hydrophones and depth of water at the hydrophone locations.
- The depth of the hydrophones.
- The distance from the pile to the water's edge.
- The depth of water in which the pile was driven.
- The depth into the substrate that the pile was driven.
- The physical characteristics of the bottom substrate into which the piles were driven.
- The total number of strikes to drive each pile.
- The background sound pressure level reported as the fifty percent CDF, if recorded.
- The results of the hydroacoustic monitoring, including the frequency spectrum, ranges and means including the standard deviation/error for the peak and rms SPL's, and an estimation of the distance at which rms values reach the relevant marine mammal thresholds and background sound levels. Vibratory driving results would include the maximum and overall average rms calculated from 30-s rms values during the drive of the pile.
- A description of any observable pinniped behavior in the immediate area and, if possible, correlation to underwater sound levels occurring at that time.

An annual report on marine mammal monitoring and mitigation would be submitted to NMFS, Office of Protected Resources, and NMFS, Northwest Regional Office. The annual reports would summarize information presented in the weekly reports and include data collected for each distinct marine mammal species observed in the project area, including descriptions of marine mammal behavior, overall numbers of individuals observed, frequency of observation, and any behavioral changes and the context of

the changes relative to activities would also be included in the annual reports. Additional information that would be recorded during activities and contained in the reports include: Date and time of marine mammal detections, weather conditions, species identification, approximate distance from the source, and activity at the construction site when a marine mammal is sighted.

In addition to annual reports, NMFS proposes to require CRC to submit a draft comprehensive final report to NMFS, Office of Protected Resources, and NMFS, Northwest Regional Office, 180 days prior to the expiration of the regulations. This comprehensive technical report would provide full documentation of methods, results, and interpretation of all monitoring during the first 4.5 years of the regulations. A revised final comprehensive technical report, including all monitoring results during the entire period of the regulations, would be due 90 days after the end of the period of effectiveness of the regulations.

Adaptive Management

The final regulations governing the take of marine mammals incidental to the specified activities at CRC would contain an adaptive management component. In accordance with 50 CFR 216.105(c), regulations for the proposed activity must be based on the best available information. As new information is developed, through monitoring, reporting, or research, the regulations may be modified, in whole or in part, after notice and opportunity for public review. The use of adaptive management would allow NMFS to consider new information from different sources to determine if mitigation or monitoring measures should be modified (including additions or

deletions) if new data suggest that such modifications are appropriate.

The following are some of the possible sources of applicable data:

- Results from CRC's monitoring from the previous year;
- Results from general marine mammal and sound research; or
- Any information which reveals that marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent LOAs.

If, during the effective dates of the regulations, new information is presented from monitoring, reporting, or research, these regulations may be modified, in whole or in part, after notice and opportunity of public review, as allowed for in 50 CFR 216.105(c). In addition, LOAs would be withdrawn or suspended if, after notice and opportunity for public comment, the Assistant Administrator finds, among other things, that the regulations are not being substantially complied with or that the taking allowed is having more than a negligible impact on the species or stock, as allowed for in 50 CFR 216.106(e). That is, should substantial changes in marine mammal populations in the project area occur or monitoring and reporting show that CRC actions are having more than a negligible impact on marine mammals, then NMFS reserves the right to modify the regulations and/or withdraw or suspend LOAs after public review.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as: "any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has

the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment]." Take by Level B harassment only is anticipated as a result of CRC's proposed activities. Take of marine mammals is anticipated to be associated with the installation and removal of piles and installation of steel casings, via impact and vibratory methods, and debris removal. No take by injury, serious injury, or death is anticipated.

Assumptions regarding numbers of pinnipeds and number of round trips per individual per year in the Region of Activity are based on information from ongoing pinniped research and management activities conducted in response to concern over California sea lion predation on fish populations concentrated below Bonneville Dam. An intensive monitoring program has been conducted in the Bonneville Dam tailrace since 2002, using surface observations to evaluate seasonal presence, abundance, and predation activities of pinnipeds. Minimum estimates of the number of pinnipeds present in the tailrace from 2002 through 2011 are presented in Table 16. Bonneville Dam is the first dam on the river, located at RKm 235, and is upriver of the CRC project site, which is located at approximately RKm 170. The primary California sea lion haul-out in the Columbia River is located in the Columbia River estuary in Astoria, approximately 151 RKm downstream of the project. This haul-out is the site of trapping and tagging for research and monitoring of pinnipeds that reach the Bonneville Dam tailrace.

TABLE 16—MINIMUM ESTIMATED TOTAL NUMBERS OF PINNIPEDS PRESENT AT BONNEVILLE DAM FROM 2002 THROUGH 2011

Species	2002	2003	2004	2005**	2006	2007	2008	2009	2010	2011
California sea lion	30	104	99	81	72	71	82	54	89	54
Steller sea lion*	0	3	3	4	11	9	39	26	75	89
Harbor seal	1	2	2	1	3	2	2	2	2	1

Data from Stansell *et al.* 2010, pers. comm. Stansell, 2011.

* Animals not uniquely identified through 2007. Numbers through 2007 represent the highest number seen on any one day for each year (Tackley *et al.*, 2008a).

** Regular observations did not begin until March 18 in 2005; minimum estimate should likely be considered somewhat higher than these numbers (Tackley *et al.*, 2008a).

Monitoring began as a result of the 2000 FCRPS biological opinion, which required an evaluation of pinniped predation in the tailrace of Bonneville Dam. The objective of the study was to determine the timing and duration of

pinniped predation activity, estimate the number of fish caught, record the number of pinnipeds present, identify and track individual California sea lions, and evaluate various pinniped deterrents used at the dam (Tackley *et*

al., 2008a). The study period for monitoring was January 1 through May 31, beginning in 2002. During the study period pinniped observations began after consistent sightings of at least one animal occurred. Tackley *et al.* (2008a)

notes that sightings began earlier each year from 2002 to 2004. Although some sightings were reported earlier in the season, full-time observations began March 21 in 2002, March 3 in 2003, and February 24, 2004 (Tackley *et al.*, 2008a). In 2005 observations began in April, but in 2006 through 2010 observations began in January or early February (Tackley *et al.*, 2008a, b; Stansell *et al.*, 2009; Stansell and Gibbons, 2010). California sea lion and Steller sea lion arrival and departure

dates at Bonneville Dam are compiled from the reports above and were detailed previously in Table 13 and Table 14. If arrival and departure dates were not available, the timing of surface observations within the January through May study period were recorded. Because regular observations in the study period generally began as sea lions were observed below Bonneville Dam, and sometimes reports stated that observations stopped as sea lion numbers dropped, the observation dates

only give a general idea of first arrival and departure. Because acoustic telemetry data indicate that sea lions travel at fast rates between hydrophone locations above and below the CRC project area (see Brown *et al.*, 2010), dates of first arrival at Bonneville Dam and departure from the dam are assumed to coincide closely with potential passage timing through the CRC project area. Table 17 details observation effort by year; data is not yet available for observations in 2011.

TABLE 17—HOURS OF OBSERVATION FOR PINNIPEDS AT THE BONNEVILLE DAM TAILRACE, BY YEAR

2002	2003	2004	2005	2006	2007	2008	2009	2010
662	1,356	553	1,108	3,647	4,433	5,131	3,455	3,609

Pinniped species presence is determined by likelihood of occurrence near the CRC project construction activities based on general abundance at Bonneville Dam and the number of times individuals are estimated to make the trip to and from the dam in a year. Individuals observed at the dam are known to have passed the project site at least once; however, not all individuals that pass the project site would go all the way to the dam, although it is expected that the vast majority would. Therefore, the use of abundances at Bonneville Dam in estimating take would produce a slight underestimation. These estimates also assume that all pinnipeds that pass the project site would be exposed to project activities (e.g., pile installation would be occurring every time an individual passes the project site). However, project activities that may impact pinnipeds would not occur 24 hours a day; therefore, this assumption results in an overestimate of exposures. Table 18 summarizes the estimated take.

Harbor Seal

During most of the year, it is possible that small numbers of adults and subadults of both sexes may be expected to transit through the Region of Activity. In general, harbor seals remain close to haul-out sites when foraging and resting. As described previously, there are no known harbor seal haul-out sites within or near the Region of Activity, with the nearest known haul-out sites at least 45 mi (72 km) downstream. Pupping sites are generally restricted to coastal estuaries and other areas along the Olympic Peninsula and Puget Sound.

One to three harbor seals were documented below the dam in all 9 years of surface observations. Estimates are minimums and are based on

observations made only within the January through May timeframe, although harbor seals have been observed in very low numbers year-round near Bonneville Dam (Tackley *et al.*, 2008a). However, based on salmon and steelhead run timing, as well as lamprey and smelt timing, seals would most likely occur during the same January through May period when sea lions are present. Based on the preceding information, CRC estimates a minimum of one to three adult or subadult harbor seals would be potentially exposed to in-water project activities each year. Based on the limited data available, CRC assumes that the number of individuals that actually pass by the CRC project area would be slightly higher than the highest minimum observed at the dam. CRC therefore conservatively estimates six individuals per year may potentially pass the project site. This may overestimate the number in some years. However, based on the consistency in the data, the number of individuals that have the potential to be exposed to project activities is likely to remain small in future years.

The number of round trips made per individual year is difficult to discern from the limited data available. Because harbor seals are not uniquely identified in the observations at Bonneville Dam, repeat observations of the same individual may have been reported on different observation days. Only one to three harbor seals have been observed at Bonneville Dam in any year (although this may represent greater than three individuals). One may safely assume that each individual completes at least one round-trip past the project site, although it may be more; because of the lack of data regarding seal movement to and from the dam, it is difficult to justify a number of round-trips per

individual. We do know that harbor seals occur only infrequently at the dam and, therefore, only a limited number of round-trips could occur per individual. CRC conservatively estimates that each individual may make up to two round-trips.

Based on known pupping and haul-out locations, and the low number of observations of harbor seals at Bonneville Dam over the years, it is likely that very few harbor seals transit through the Region of Activity, and that those that do are subadults or adults. CRC conservatively estimates that up to six subadult or adult harbor seals (double the maximum number observed at Bonneville Dam to date) may transit the Region of Activity up to four times per year (two round-trips).

California Sea Lion

California sea lions are observed in the winter and spring (January through May) with only a limited number of exceptions. No haul-out sites are located within the Region of Activity and no breeding or pupping occurs in the Region of Activity. All animals documented in the Columbia River have been adult or juvenile males (Jeffries *et al.*, 2000). Table 16 presents numbers of California sea lions observed at Bonneville Dam. Numbers are presented as minimums, because not all sea lions are able to be uniquely identified in all observations and therefore may not be in the count. Tackley *et al.* (2008) noted that individuals were not uniquely identified prior to 2008; thus, the numbers of sea lions estimated from 2002 through 2007 were likely underestimated. During those years, Tackley *et al.* (2008) estimate that an additional 15 to 35 California sea lions may have been present, but observers were not able to uniquely identify them and therefore they are not represented

in the counts. In addition, the high number of 104 individuals present below the dam in 2003 occurred prior to hazing (started in 2005) or permanent removal (2008–2010) activities. CRC believes the high number is not representative of current levels, due to extensive efforts to deter sea lions.

Permanent removal of forty individuals occurred from 2008–2010 (Stansell *et al.*, 2010). In 2010, the number of individual sea lions observed was a minimum of 89 individuals. Of the 89 individuals, fourteen were removed (Stansell *et al.*, 2010). Typically, the percentage of individuals making their first appearance at Bonneville Dam has been approximately thirty percent; however, in 2010 the percentage of new individuals was approximately 65 percent (51 were first time visitors below the dam) (Stansell *et al.*, 2010). The removal program is currently suspended by court order, further complicating the estimation of sea lion abundance at the dam in future years. Trends are particularly hard to discern because numbers passing the project site would be a reflection of the number of returning sea lions, numbers of sea lions successfully removed in future years (should the program be resumed), and numbers of new sea lions, none of which may be estimated on the basis of data indicating clear trends.

Based on 2010 data, new animals would likely largely replace those removed (e.g., in 2010, fourteen animals were removed and 51 were first time visitors below the dam) and still possibly result in an overall increase in California sea lion numbers. It is possible that a more effective method of deterrence will be developed in the future, or continued removal efforts will result in the number of California sea lions stabilizing or decreasing in future years. However, spring Chinook (*Oncorhynchus tshawytscha*) returns to the Columbia River in 2010 were the third largest on record since 1938 (CBB 2010), based on a preliminary summary (ODFW and WDFW 2010). If the numbers remain high or increase, it is possible that the numbers of sea lions foraging near Bonneville Dam may increase.

CRC estimates that the number of sea lions passing the project site would be approximately 89 individuals (the minimum high count since significant effort toward sea lion deterrence began) annually. There is a substantial amount of uncertainty in this estimate; therefore, NMFS presents the take estimate with the caveat that the estimate of California sea lions potentially present in each year of in-

water project work may need to be adapted using the most recent data and trends available in future years (see Adaptive Management).

CRC examined satellite-linked and acoustic tracking reports of California sea lions to help estimate the number of times individual sea lions may pass the CRC project site. Tracking has been conducted on an almost annual basis since 2004. Based on data from 100 to 150 animals, annual California sea lion round trips to the dam range from one to five trips per individual (CRC, 2010). Movements of 26 satellite-tagged sea lions captured in the Columbia River during three non-breeding seasons (2003–04, 2004–05, and 2006–07) are described by Wright *et al.* (2010). Duration below the Bonneville Dam ranged from 2 to 43 days (Wright *et al.*, 2010). The authors noted that movements of sea lions captured in the Columbia River varied considerably within and across individuals, and that estimating the mean number of trips to Bonneville Dam in a given season is problematic given that many animals were tagged after they may have already made one or more such trips (Wright *et al.*, 2010). In 2009, six California sea lions were tagged in early April with acoustic transmitters, and four of those tagged had relatively long datasets (approximately 1–1.5 months) (Brown *et al.*, 2009). After tagging, three of the animals made one round trip from Astoria to Bonneville Dam, and one made two round trips prior to final departure from Bonneville Dam by the end of May (Brown *et al.*, 2009). The animals may have made additional trips prior to tagging in early April. Data from five animals tagged in 2010 indicate that at least one to four round-trips were made to Bonneville Dam from Astoria (Brown *et al.* 2010). Four animals were tagged in March or April for 22 to 51 days. Of these four individuals, two made at least four trips, one made two trips and one made one trip. The fifth animal was tagged in May at the end of the season and departed immediately after capture. Again, the preliminary data do not include trips taken prior to tagging.

Based on past data, the estimated number of times an individual sea lion would pass the CRC project site ranges from at least two to ten times per year (one to five roundtrips per year). However, the actual number is quite variable from individual to individual. Therefore, based on the data available, CRC conservatively estimates a maximum of ten trips (five round-trips) past the project site annually.

In summary, CRC conservatively estimates that up to 89 California sea

lions may travel through the Region of Activity, annually, in future years. The nearest haul-out site is 45 mi (72 km) from the Region of Activity, California sea lion hazing efforts at Bonneville Dam are expected to continue, and there is no information indicating that a large increase in the numbers of California sea lions traveling up the Columbia River to Bonneville Dam is likely. Each California sea lion could be behaviorally harassed ten times per year (five round-trips).

Steller Sea Lion

Exposure of Steller sea lions to elevated sound levels in the Region of Activity is likely to occur from November through May, when primarily adult and subadult male Steller sea lions typically forage at Bonneville Dam. Steller sea lions are known to migrate through the Region of Activity as they transit between the dam and the ocean during this time period, often making multiple round-trip journeys. Beginning in 2008, individual sea lions have also been present during September or October, but in low numbers (Stansell *et al.*, 2009, 2010; Tackley *et al.*, 2008b). Therefore, exposure during fall months is possible in very low numbers, but less likely.

There are no Steller sea lion haul-outs or breeding sites in the Region of Activity. The nearest known haul-out is located approximately 26 mi (42 km) upstream of the CRC project area, and the nearest breeding site is located more than 200 mi (322 km) from the CRC project area (NMFS, 2008b). Therefore, elevated sound levels would have no effect on individuals at breeding or haul-out sites.

Similar to California sea lions, projections of Steller sea lion numbers estimated to pass the CRC project site during construction in future years are impossible to make with a high degree of confidence. Unlike California sea lions, ESA-listed Steller sea lions have not been subject to removal programs. Regular observations from 2002 through 2011 showed an increase in minimum numbers observed from 0 to 89 individuals, even though hazing efforts at the fish ladder entrances started in 2005 and vessel-based hazing began in 2006 (Scordino, 2010; Tackley *et al.*, 2008a; Stansell *et al.*, 2009). In 2010, the minimum number observed of 75 individuals was approximately triple the 2009 minimum of 26 individuals (Stansell and Gibbons, 2010); however, the 2009 minimum was reduced by one third from the 2008 minimum of 39.

The minimum number of animals projected in future years would be expected to be at least 89 individuals

and may continue to increase based on recent past trends. However, there is very little certainty in this estimate, especially when it is projected into the future. It is possible a more effective method of deterrence would be developed in the future and the number of Steller sea lions may stabilize or decrease in future years. However, if trends in the numbers of fish continue, it is also possible that the number of Steller sea lions present would continue to increase.

Acoustic and satellite-linked tracking data for Steller sea lions in the Columbia River are only available for six individuals, and most were only tracked for one month beginning at the end of March or during April of 2010 (CRC, 2010). Additional data are available from two individuals that were

tagged with only satellite-linked transmitters (which do not provide in-river movement data). From the limited dataset, seven individuals made one round trip from marine areas, and one individual made two round trips (Wright, 2010a). The number of round trips made earlier in the season, prior to tagging, is not included in the estimate and could increase the number of trips per individual. Like California sea lions, considerable variation within and across individuals may exist. Acoustic and satellite-linked data collection efforts will continue in the future and will better inform the estimate of number of round-trips Steller sea lions are likely to make past the CRC project area.

Summary

Based on past data, the number of times an individual Steller sea lion

would pass the CRC project site ranges from a minimum of two to four times per year (one to two round-trips). Therefore, CRC estimates that individuals may transit the Region of Activity six times per year (three round-trips). As for California sea lions, the significant uncertainty associated with these estimates may require adaptation of the estimates using the most recent data and trends available (see Adaptive Management). Based on trends in Steller sea lions identified below Bonneville Dam in recent years, CRC conservatively estimates a tripling of the minimum of 75 individuals seen in 2010, to 225 individuals that may transit the project site six times (three round-trips) each per year.

TABLE 18—ESTIMATED NUMBER OF INDIVIDUALS EXPOSED TO PROPOSED ACTIVITIES PER YEAR

Species	Sex/age class affected	Estimated number of individuals per year	Estimated number of exposures per individual per year*	Total estimated take per year
Harbor seal	Adult males or females	6	4 (2 round-trips)	24
California sea lion	Subadult or adult males	89	10 (5 round-trips)	890
Steller sea lion	Subadult or adult males	225	6 (3 round-trips)	1,350

* It is assumed that individuals exposed to CRC's proposed activities would be in transit to/from Bonneville Dam to forage. Trips to Bonneville Dam are assumed to be round-trips to/from the mouth of the Columbia River.

Negligible Impact and Small Numbers Analyses and Preliminary Determination

NMFS has defined “negligible impact” in 50 CFR 216.103 as “* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.” In making a negligible impact determination, NMFS considers a variety of factors, including but not limited to: (1) The number of anticipated mortalities; (2) the number and nature of anticipated injuries; (3) the number, nature, intensity, and duration of Level B harassment; and (4) the context in which the takes occur.

Incidental take, in the form of Level B harassment only, is likely to occur primarily as a result of pinniped exposure to elevated levels of sound caused by impact and vibratory installation and removal of pipe and sheet pile and steel casings. No take by injury, serious injury, or death is anticipated or would be authorized. By incorporating the proposed mitigation measures, including pinniped monitoring and shut-down procedures described previously, harassment to

individual pinnipeds from the proposed activities is expected to be limited to temporary behavioral impacts. CRC assumes that all individuals traveling past the project area would be exposed each time they pass the area and that all exposures would cause disturbance. NMFS agrees that this represents a worst-case scenario and is therefore sufficiently precautionary. There are no pinniped haul-outs or rookeries located within or near the Region of Activity. The nearest haul-out for California sea lions and harbor seals is approximately 45 mi (72 km) downriver from the Region of Activity, while the nearest known haul-out for Steller sea lions is approximately 26 mi (42 km) upstream from the Region of Activity.

The shutdown zone monitoring proposed as mitigation, and the small size of the zones in which injury may occur, makes any potential injury of pinnipeds extremely unlikely, and therefore discountable. Because pinniped exposures would be limited to the period they are transiting the disturbance zone, with potential repeat exposures (on return to the mouth of the Columbia River) separated by days to weeks, the probability of experiencing TTS is also considered unlikely.

These activities may cause individuals to temporarily disperse from the area or avoid transit through the area. However, existing traffic sound, commercial vessels, and recreational boaters already occur in the area. Thus, it is likely that pinnipeds are habituated to these disturbances while transiting the Region of Activity and would not be significantly hindered from transit. Behavioral changes are expected to potentially occur only when an animal is transiting a disturbance zone at the same time that the proposed activities are occurring.

In addition, it is unlikely that pinnipeds exposed to elevated sound levels would temporarily avoid traveling through the affected area, as they are highly motivated to travel through the action area in pursuit of foraging opportunities upriver (NMFS, 2008e). Sea lions have shown increasing habituation in recent years to various hazing techniques used to deter the animals from foraging in the Bonneville tailrace area, including acoustic deterrent devices, boat chasing, and above-water pyrotechnics (Stansell *et al.*, 2009). Many of the individuals that travel to the tailrace area return in subsequent years (NMFS, 2008). Therefore, it is likely that pinnipeds

would continue to pass through the action area even when sound levels are above disturbance thresholds.

Although pinnipeds are unlikely to be deterred from passing through the area, even temporarily, they may respond to the underwater sound by passing through the area more quickly, or they may experience stress as they pass through the area. Sea lions already move quickly through the lower river on their way to foraging grounds below Bonneville Dam (transit speeds of 4.6 km/hr in the upstream direction and 8.8 km/hr in the downstream direction [Brown *et al.*, 2010]). Any increase in transit speed is therefore likely to be slight. Another possible effect is that the underwater sound would evoke a stress response in the exposed individuals, regardless of transit speed. However, the period of time during which an individual would be exposed to sound levels that might cause stress is short given their likely speed of travel through the affected areas. In addition, there would be few repeat exposures for individual animals. Thus, it is unlikely that the potential increased stress would have a significant effect on individuals or any effect on the population as a whole.

Therefore, NMFS finds it unlikely that the amount of anticipated disturbance would significantly change pinnipeds' use of the lower Columbia River or significantly change the amount of time they would otherwise spend in the foraging areas below Bonneville Dam. Pinniped usage of the Bonneville Dam foraging area, which results in transit of the action area, is a relatively recent learned behavior resulting from human modification (i.e., fish accumulation at the base of the dam). Even in the unanticipated event that either change was significant and animals were displaced from foraging areas in the lower Columbia River, there are alternative foraging areas available to the affected individuals. NMFS does not anticipate any effects on haul-out behavior because there are no proximate haul-outs within the areas affected by elevated sound levels. All other effects of the proposed action are at most expected to have a discountable or insignificant effect on pinnipeds, including an insignificant reduction in the quantity and quality of prey otherwise available.

Any adverse effects to prey species would occur on a temporary basis during project construction. Given the large numbers of fish in the Columbia River, the short-term nature of effects to fish populations, and extensive BMPs and minimization measures designed by NMFS in cooperation with CRC to

protect fish during construction, as well as conservation and habitat mitigation measures that would continue into the future, the project is not expected to have significant effects on the distribution or abundance of potential prey species in the long term. All project activities would be conducted using the BMPs and minimization measures, which are described in detail in NMFS' biological opinion, pursuant to section 7 of the ESA, on the effects of the CRC project on ESA-listed species. Therefore, these temporary impacts are expected to have a negligible impact on habitat for pinniped prey species.

A detailed description of potential impacts to individual pinnipeds was provided previously in this document. The following sections put into context what those effects mean to the respective populations or stocks of each of the pinniped species potentially affected.

Harbor Seal

The Oregon/Washington coastal stock of harbor seals consisted of about 25,000 animals in 1999 (Carretta *et al.*, 2007). As described previously, both the Washington and Oregon portions of this stock have reached carrying capacity and are no longer increasing, and the stock is believed to be within its OSP level (Jeffries *et al.*, 2003; Brown *et al.*, 2005). The estimated take of 24 individuals per year by Level B harassment is small relative to a stable population of approximately 25,000 (0.1 percent), and is not expected to impact annual rates of recruitment or survival of the stock.

California Sea Lion

The U.S. stock of California sea lions was estimated to be 238,000 in the 2007 Stock Assessment Report and may be at carrying capacity, although more data are needed to verify that determination (Carretta *et al.*, 2007). Generally, California sea lions in the Pacific Northwest are subadult or adult males (NOAA, 2008). The estimated take of 890 individuals per year is small relative to a population of approximately 238,000 (0.4 percent), and is not expected to impact annual rates of recruitment or survival of the stock.

Steller Sea Lion

The total population of the eastern DPS of Steller sea lions is estimated to be within a range from approximately 58,334 to 72,223 animals with an overall annual rate of increase of 3.1 percent throughout most of the range (Oregon to southeastern Alaska) since the 1970s

(Allen and Angliss, 2010). In 2006, the NMFS Steller sea lion recovery team proposed removal of the eastern stock from listing under the ESA based on its annual rate of increase. CRC's take estimate is conservative, assuming a three-fold increase above the largest minimum count in 2010. An increase of this magnitude occurred from 2009 to 2010, and so may be warranted; however, that 1-year increase is not necessarily a reliable indicator of future trends and so may result in an overestimate of future take. The total estimated take of 1,350 individuals per year is small compared to a population of approximately 65,000 (2.1 percent).

For California and Steller sea lions, individuals that may be disturbed would be males, so the anticipated behavioral harassment is not expected to impact recruitment or survival of the stock. For all species, because the type of incidental harassment is not expected to actually remove individuals from the population or decrease significantly their ability to feed or breed, this amount of incidental harassment is anticipated to have a negligible impact on the stock.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS preliminarily finds that CRC's proposed activities would result in the incidental take of small numbers of marine mammals, by Level B harassment only, and that the total taking from CRC's proposed activities would have a negligible impact on the affected species or stocks.

Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act (ESA)

On January 19, 2011, NMFS concluded consultation with FHWA and FTA under section 7 of the ESA on the proposed activities in the Columbia River and North Portland Harbor and issued a biological opinion. The finding of that consultation was that the proposed activities may adversely affect but are not likely to jeopardize the continued existence of the eastern DPS of Steller sea lions as well as a number

of ESA-listed fish. NMFS has preliminarily determined that issuance of these regulations and subsequent LOAs would not have any impacts beyond those analyzed in the 2011 biological opinion.

National Environmental Policy Act (NEPA)

CRC released a Draft Environmental Impact Statement (EIS) for the proposed activities in May 2008. The draft EIS analyzed the potential environmental and community effects of five alternatives against the project's goals, as identified in the Statement of Purpose and Need. The Final EIS, released in September 2011, described additional analysis of potential environmental and community effects of the project and incorporated the comments received on the Draft EIS and public input received at more than 950 community briefings, workshops and public meetings. Following a 30-day review period, the CRC federal oversight agencies (FHWA and FTA) selected an alternative for the project and signed a record of decision (ROD) on December 7, 2011. Further information about CRC's NEPA process, as well as the EIS and ROD, is available at www.columbiarivercrossing.com. Because NMFS was not a cooperating agency in the development of CRC's EIS, NMFS will conduct a separate NEPA analysis for issuance of authorizations pursuant to section 101(a)(5)(A) of the MMPA for the activities proposed by CRC.

Information Solicited

NMFS requests interested persons to submit comments, information, and suggestions concerning the request and the content of the proposed regulations to govern the taking described herein (see ADDRESSES).

Classification

The Office of Management and Budget (OMB) has determined that this proposed rule is not significant for purposes of Executive Order 12866.

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The SBA defines small entity as a small business, small organization, or a small governmental jurisdiction. Applying this definition, there are no small entities that are impacted by this proposed rule. This proposed rule

impacts only the activities of CRC, which has submitted a request for authorization to take marine mammals incidental to bridge construction within the Columbia River, over the course of 5 years. CRC is a joint project of ODOT and WSDOT, in cooperation with FHWA and FTA. Project staff coordinates with state and local agencies in both Oregon and Washington, and also collaborates with federal agencies and tribal governments. CRC is not considered to be a small governmental jurisdiction under the RFA's definition. Under the RFA, governmental jurisdictions are considered to be small if they are "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000, unless an agency establishes, after opportunity for public comment, one or more definitions of such term which are appropriate to the activities of the agency and which are based on such factors as location in rural or sparsely populated areas or limited revenues due to the population of such jurisdiction, and publishes such definition(s) in the **Federal Register**." Because this proposed rule impacts only the activities of CRC, which is not considered to be a small entity within SBA's definition, the Chief Counsel for Regulation certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. As a result of this certification, a regulatory flexibility analysis is not required and none has been prepared.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB control number. This proposed rule contains collection-of-information requirements subject to the provisions of the PRA. These requirements have been approved by OMB under control number 0648-0151 and include applications for regulations, subsequent LOAs, and reports. Send comments regarding any aspect of this data collection, including suggestions for reducing the burden, to NMFS and the OMB Desk Officer (see ADDRESSES).

List of Subjects in 50 CFR Part 217

Exports, Fish, Imports, Indians, Labeling, Marine mammals, Penalties, Reporting and recordkeeping requirements, Seafood, Transportation.

Dated: April 10, 2012.

Alan D. Risenhoover,

Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 217 is proposed to be amended as follows:

PART 217—REGULATIONS GOVERNING THE TAKE OF MARINE MAMMALS INCIDENTAL TO SPECIFIED ACTIVITIES

1. The authority citation for part 217 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

2. Subpart V is added to part 217 to read as follows:

Subpart V—Taking of Marine Mammals Incidental to Columbia River Crossing Project, Washington and Oregon

Sec.

- 217.210 Specified activity and specified geographical region.
- 217.211 Effective dates.
- 217.212 Permissible methods of taking.
- 217.213 Prohibitions.
- 217.214 Mitigation.
- 217.215 Requirements for monitoring and reporting.
- 217.216 Letters of Authorization.
- 217.217 Renewals and Modifications of Letters of Authorization.

Subpart V—Taking of Marine Mammals Incidental to Columbia River Crossing Project, Washington and Oregon

§ 217.210 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to Columbia River Crossing (CRC) and those persons it authorizes to conduct activities on its behalf for the taking of marine mammals that occurs in the area outlined in paragraph (b) of this section and that occurs incidental to bridge construction and demolition associated with the CRC project.

(b) The taking of marine mammals by CRC may be authorized in a Letter of Authorization (LOA) only if it occurs in the Columbia River or North Portland Harbor, in the states of Washington and Oregon.

§ 217.211 Effective dates.

[Reserved]

§ 217.212 Permissible methods of taking.

(a) Under LOAs issued pursuant to § 216.106 and § 217.216 of this chapter, the Holder of the LOA (hereinafter "CRC") may incidentally, but not intentionally, take marine mammals within the area described in § 217.210(b) of this chapter, provided the activity is in compliance with all terms, conditions, and requirements of

the regulations in this subpart and the appropriate LOA.

(b) The incidental take of marine mammals under the activities identified in § 217.210(a) of this chapter is limited to the indicated number of Level B harassment takes of the following species:

(1) Harbor seal (*Phoca vitulina*)—120 (an average of 24 annually)

(2) California sea lion (*Zalophus californianus*)—4,450 (an average of 890 annually)

(3) Steller sea lion (*Eumetopias jubatus*)—6,750 (an average of 1,350 annually)

§ 217.213 Prohibitions.

Notwithstanding takings contemplated in § 217.212(b) of this chapter and authorized by a LOA issued under § 216.106 and § 217.216 of this chapter, no person in connection with the activities described in § 217.210 of this chapter may:

(a) Take any marine mammal not specified in § 217.212(b) of this chapter;

(b) Take any marine mammal specified in § 217.212(b) of this chapter other than by incidental, unintentional Level B Harassment;

(c) Take a marine mammal specified in § 217.212(b) of this chapter if NMFS determines such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(d) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or a LOA issued under § 216.106 and § 217.216 of this chapter.

§ 217.214 Mitigation.

(a) When conducting the activities identified in § 217.210(a) of this chapter, the mitigation measures contained in the LOA issued under § 216.106 and § 217.216 of this chapter must be implemented. These mitigation measures include:

(1) General Conditions:

(i) Briefings shall be conducted between the CRC project construction supervisors and the crew, marine mammal observer(s), and acoustical monitoring team prior to the start of all pile driving activity, and when new personnel join the work, to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures. The CRC project shall contact the Bonneville Dam marine mammal monitoring team to obtain information on the presence or absence of pinnipeds prior to initiating pile driving in any discrete pile driving time period described in the project description.

(ii) CRC shall comply with all applicable equipment sound standards

and ensure that all construction equipment has sound control devices no less effective than those provided on the original equipment.

(iii) For in-water heavy machinery work other than pile driving (e.g., standard barges, tug boats, barge-mounted excavators, or clamshell equipment used to place or remove material), if a marine mammal comes within 50 m of such activity, operations shall cease and vessels shall reduce speed to the minimum level required to maintain steerage and safe working conditions.

(2) Pile Installation:

(i) Permanent foundations for each in-water pier shall be installed by means of drilled shafts.

(ii) All piles shall be installed using vibratory driving to the extent possible. Installation of piles using impact driving may only occur between September 15 and April 15 of the following year, during daylight hours only. No more than two impact pile drivers may be operated simultaneously within the same water body channel.

(iii) In waters with depths more than 2 ft (0.67 m), a bubble curtain or other sound attenuation measure shall be used for impact driving of pilings. If a bubble curtain or similar measure is used, it shall distribute small air bubbles around 100 percent of the piling perimeter for the full depth of the water column. Any other attenuation measure (e.g., temporary sound attenuation pile) must provide 100 percent coverage in the water column for the full depth of the pile. A performance test of the sound attenuation device in accordance with the approved hydroacoustic monitoring plan shall be conducted prior to any impact pile driving. If a bubble curtain or similar measure is utilized, the performance test shall confirm the calculated pressures and flow rates at each manifold ring.

(3) Shutdown and Monitoring:

(i) Shutdown zone: For all impact pile driving and vibratory pile driving and removal, or installation of steel casings, shutdown zones shall be established. These zones shall include all areas where underwater sound pressure levels (SPLs) are anticipated to equal or exceed 190 dB re: 1 μ Pa rms. Shutdown zones shall be established on the basis of existing worst-case site-specific data for 24- or 48-in steel pile, as appropriate, collected by CRC with NMFS approval, and shall be adjusted as indicated by the results of acoustic monitoring conducted during the specified activities, but shall not be less than 50 m radius.

(ii) Disturbance zone: For all impact pile driving and vibratory pile driving

or removal, disturbance zones shall be established. For impact pile driving, these zones shall include all areas where underwater SPLs are anticipated to equal or exceed 160 dB re: 1 μ Pa rms, and shall be established on the basis of existing worst-case site-specific data for 24- or 48-in steel pile, as appropriate, collected by CRC with NMFS approval. The zones shall be adjusted as indicated by the results of acoustic monitoring conducted during the specified activities. The actual size of the zone for vibratory pile driving and removal that includes all areas where underwater SPLs equal or exceed 120 dB re: 1 μ Pa rms shall be empirically determined and reported by CRC, and on-site biologists shall be aware of the size of this zone. However, because of its large size, monitoring of the entire zone may not be required but shall be conducted as described in paragraph (v) of this section.

(A) Initial disturbance zones for vibratory installation or removal of steel pipe pile and sheet pile and vibratory installation of steel casings shall be set at 800 m. In-situ acoustic monitoring shall be performed to determine the actual distances to these zones, and the size of the zones shall be adjusted accordingly based on worst-case site-specific data for vibratory installation of steel sheet pile and steel casings, but the area to be visually monitored shall not be larger than 800 m.

(B) [Reserved]

(iii) Airborne sound: Disturbance zones for pile driving and removal activity and steel casing installation, to include all areas where airborne SPLs are anticipated to equal or exceed 90 dB re: 20 μ Pa rms or 100 dB re: 20 μ Pa rms (for harbor seals and sea lions, respectively), shall be established. These zones shall be adjusted accordingly based on worst-case site-specific data collected during acoustic monitoring of the specified activities.

(iv) The shutdown and disturbance zones shall be monitored throughout the time required to drive a pile. If a marine mammal is observed within or approaching the shutdown zone, activity shall be halted as soon as it is safe to do so, until the animal is observed exiting the shutdown zone or 15 minutes has elapsed. If a marine mammal is observed within the disturbance zone, a take shall be recorded and behaviors documented.

(v) Monitoring of shutdown and disturbance zones shall occur for all pile driving and removal and steel casing installation activities. The following measures shall apply:

(A) Shutdown and disturbance zones shall be monitored from a work

platform, barge, or other vantage point. If a small boat is used for monitoring, the boat shall remain 50 yd (46 m) from swimming pinnipeds. CRC shall at all times employ, at minimum, one Protected Species Observer (PSO) to be located on each barge or work platform engaging in pile driving or removal or steel casing installation and, at minimum, one PSO to be based on shore or at another appropriate vantage point, as determined by CRC. If a single shore-based PSO is unable to provide full observational coverage of disturbance zones when multiple pile driving or removal or steel casing installation activities are occurring simultaneously, additional shore-based PSOs shall be stationed so that such coverage is attained. For vibratory pile driving and removal or steel casing installation, CRC shall maintain comprehensive observation of a maximum disturbance zone of 800 m radial distance.

(B) If the shutdown zone is obscured by fog or poor lighting conditions, pile driving or removal or steel casing installation shall not be initiated until the entire shutdown zone is visible. Pile driving or removal or steel casing installation may continue under such conditions if properly initiated.

(C) The shutdown zone shall be monitored for the presence of pinnipeds before, during, and after any pile driving activity. The shutdown zone shall be monitored for 30 minutes prior to initiating the start of pile driving and for 30 minutes following the completion of pile driving. If pinnipeds are present within the shutdown zone prior to pile driving, the start of pile driving shall be delayed until the animals leave the shutdown zone of their own volition or until 15 minutes has elapsed without observing the animal.

(4) Ramp-up

(i) A ramp-up technique shall be used at the beginning of each day's in-water pile driving activities and if pile driving resumes after it has ceased for more than 1 hour.

(ii) If a vibratory driver is used, contractors shall be required to initiate sound from vibratory hammers for 15 seconds at reduced energy followed by a 1-minute waiting period. The procedure shall be repeated two additional times before full energy may be achieved.

(iii) If a non-diesel impact hammer is used, contractors shall be required to provide an initial set of strikes from the impact hammer at reduced energy, followed by a 1-minute waiting period, then two subsequent sets.

(iv) If a diesel impact hammer is used, contractors shall be required to turn on

the sound attenuation device for 15 seconds prior to initiating pile driving.

(5) Additional mitigation measures as contained in a LOA issued under § 216.106 and § 217.216 of this chapter.

(b) [Reserved]

§ 217.215 Requirements for monitoring and reporting.

(a) Visual Monitoring Program: (1) CRC shall employ PSOs during in-water construction and demolition activities. All PSOs must receive advance NMFS approval after a review of their qualifications and NMFS-approved training. The PSOs shall be responsible for visually locating marine mammals in the shutdown and disturbance zones and, to the extent possible, identifying the species. PSOs shall record, at minimum, the following information:

(i) A count of all pinnipeds observed by species, sex, and age class.

(ii) Their location within the shutdown or disturbance zone, and their reaction (if any) to construction activities, including direction of movement.

(iii) Activity that is occurring at the time of observation, including time that pile driving begins and ends, any acoustic or visual disturbance, and time of the observation.

(iv) Environmental conditions, including wind speed, wind direction, visibility, and temperature.

(2) Monitoring shall be conducted using appropriate binoculars. When possible, digital video or still cameras shall also be used to document the behavior and response of pinnipeds to construction activities or other disturbances.

(3) Each monitor shall have a radio or cell phone for contact with other monitors or work crews. Observers shall implement shut-down or delay procedures when applicable by calling for the shut-down to the hammer operator.

(4) A GPS unit or electric range finder shall be used for determining the observation location and distance to pinnipeds, boats, and construction equipment.

(5) No monitoring shall be conducted during inclement weather that creates potentially hazardous conditions, as determined by the biologist on-site. No monitoring shall be conducted when visibility in the shutdown zone is significantly limited, such as during heavy rain or fog. During these times of inclement weather, in-water work that may produce sound levels in excess of 190 dB rms must be halted; these activities may not commence until appropriate monitoring of the shutdown zone can take place.

(b) Reporting—CRC must implement the following reporting requirements:

(1) Reports of data collected during monitoring shall be submitted to NMFS weekly. The reports shall include:

(i) All data required to be collected during monitoring, as described under 217.215(a) of this chapter, including observation dates, times, and conditions; and

(ii) Correlations of observed behavior with activity type and received levels of sound, to the extent possible.

(2) CRC shall also submit a report(s) concerning the results of all acoustic monitoring. Acoustic monitoring reports shall include:

(i) Size and type of piles.

(ii) A detailed description of any sound attenuation device used, including design specifications.

(iii) The impact hammer energy rating used to drive the piles, make and model of the hammer(s), and description of the vibratory hammer.

(iv) A description of the sound monitoring equipment.

(v) The distance between hydrophones and depth of water at the hydrophone locations.

(vi) The depth of the hydrophones.

(vii) The distance from the pile to the water's edge.

(viii) The depth of water in which the pile was driven.

(ix) The depth into the substrate that the pile was driven.

(x) The physical characteristics of the bottom substrate into which the piles were driven.

(xi) The total number of strikes to drive each pile.

(xii) The background sound pressure level reported as the fifty percent cumulative distribution function, if recorded.

(xiii) The results of the hydroacoustic monitoring, including the frequency spectrum, ranges and means including the standard deviation/error for the peak and rms SPLs, and an estimation of the distance at which rms values reach the relevant marine mammal thresholds and background sound levels. Vibratory driving results shall include the maximum and overall average rms calculated from 30-s rms values during the drive of the pile.

(xiv) A description of any observable pinniped behavior in the immediate area and, if possible, correlation to underwater sound levels occurring at that time.

(3) Reporting Injured or Dead Marine Mammals

(i) In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by a LOA (if issued), such as

an injury (Level A harassment), serious injury, or mortality, CRC shall immediately cease the specified activities and report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the Northwest Regional Stranding Coordinator, NMFS. The report must include the following information:

- (A) Time and date of the incident;
- (B) Description of the incident;
- (C) Environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- (D) Description of all marine mammal observations in the 24 hours preceding the incident;
- (E) Species identification or description of the animal(s) involved;
- (F) Fate of the animal(s); and
- (G) Photographs or video footage of the animal(s).

Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS will work with CRC to determine what measures are necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. CRC may not resume their activities until notified by NMFS.

(ii) In the event that CRC discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (e.g., in less than a moderate state of decomposition), CRC shall immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the Northwest Regional Stranding Coordinator, NMFS.

The report must include the same information identified in 217.215(b)(3)(i) of this chapter. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with CRC to determine whether additional mitigation measures or modifications to the activities are appropriate.

(iii) In the event that CRC discovers an injured or dead marine mammal, and the lead PSO determines that the injury or death is not associated with or related to the activities authorized in the LOA (e.g., previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), CRC shall report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the Northwest Regional Stranding Coordinator, NMFS, within 24 hours of the discovery. CRC shall provide photographs or video footage or

other documentation of the stranded animal sighting to NMFS.

(4) Annual Reports.

(i) An annual report summarizing all pinniped monitoring and construction activities shall be submitted to NMFS, Office of Protected Resources, and NMFS, Northwest Regional Office (specific contact information to be provided in LOA) each year.

(ii) The annual reports shall include data collected for each distinct marine mammal species observed in the project area. Description of marine mammal behavior, overall numbers of individuals observed, frequency of observation, and any behavioral changes and the context of the changes relative to activities shall also be included in the annual reports. Additional information that shall be recorded during activities and contained in the reports include: Date and time of marine mammal detections, weather conditions, species identification, approximate distance from the source, and activity at the construction site when a marine mammal is sighted.

(5) Five Year Comprehensive Report.

(i) CRC shall submit a draft comprehensive final report to NMFS, Office of Protected Resources, and NMFS, Northwest Regional Office (specific contact information to be provided in LOA) 180 days prior to the expiration of the regulations. This comprehensive technical report shall provide full documentation of methods, results, and interpretation of all monitoring during the first 4.5 years of the activities conducted under the regulations in this Subpart.

(ii) CRC shall submit a revised final comprehensive technical report, including all monitoring results during the entire period of the LOAs, 90 days after the end of the period of effectiveness of the regulations to NMFS, Office of Protected Resources, and NMFS, Northwest Regional Office (specific contact information to be provided in LOA).

§ 217.216 Letters of Authorization.

(a) To incidentally take marine mammals pursuant to these regulations, CRC must apply for and obtain a LOA.

(b) A LOA, unless suspended or revoked, may be effective for a period of time not to exceed the expiration date of these regulations.

(c) If an LOA expires prior to the expiration date of these regulations, CRC must apply for and obtain a renewal of the LOA.

(d) In the event of projected changes to the activity or to mitigation and monitoring measures required by an LOA, CRC must apply for and obtain a

modification of the LOA as described in § 217.217 of this chapter.

(e) The LOA shall set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact (i.e., mitigation) on the species, its habitat, and on the availability of the species for subsistence uses; and

(3) Requirements for monitoring and reporting.

(f) Issuance of the LOA shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations.

(g) Notice of issuance or denial of a LOA shall be published in the **Federal Register** within 30 days of a determination.

§ 217.217 Renewals and Modifications of Letters of Authorization.

(a) A LOA issued under § 216.106 and § 217.216 of this chapter for the activity identified in § 217.210(a) of this chapter shall be renewed or modified upon request by the applicant, provided that: (1) The proposed specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for these regulations (excluding changes made pursuant to the adaptive management provision in § 217.217(c)(1) of this chapter), and (2) NMFS determines that the mitigation, monitoring, and reporting measures required by the previous LOA under these regulations were implemented.

(b) For LOA modification or renewal requests by the applicant that include changes to the activity or the mitigation, monitoring, or reporting (excluding changes made pursuant to the adaptive management provision in § 217.217(c)(1) of this chapter) that do not change the findings made for the regulations or result in no more than a minor change in the total estimated number of takes (or distribution by species or years), NMFS may publish a notice of proposed LOA in the **Federal Register**, including the associated analysis illustrating the change, and solicit public comment before issuing the LOA.

(c) A LOA issued under § 216.106 and § 217.216 of this chapter for the activity identified in § 217.210(a) of this chapter may be modified by NMFS under the following circumstances:

(1) Adaptive Management—NMFS may modify (including augment) the existing mitigation, monitoring, or reporting measures (after consulting with CRC regarding the practicability of the modifications) if doing so creates a

reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring set forth in the preamble for these regulations.

(i) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, or reporting measures in an LOA:

(A) Results from CRC's monitoring from the previous year(s).

(B) Results from other marine mammal and/or sound research or studies.

(C) Any information that reveals marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent LOAs.

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, NMFS will publish a notice of proposed LOA in the **Federal Register** and solicit public comment.

(2) Emergencies—If NMFS determines that an emergency exists that poses a

significant risk to the well-being of the species or stocks of marine mammals specified in § 217.212(b) of this chapter, an LOA may be modified without prior notice or opportunity for public comment. Notice would be published in the **Federal Register** within 30 days of the action.

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H.R. 886/P.L. 112-104
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