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NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2 and 171

[NRC–2012–0062]

RIN 3150–AJ14

Receipts-Based, Small Business Size Standard

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is amending the size standard that it uses to qualify an NRC licensee as a ''small entity'' under the Regulatory Flexibility Act of 1980, as amended. The NRC is increasing its receipts-based, small business size standard from $6.5 million to $7 million to conform to the standard set by the Small Business Administration (SBA). This size standard reflects the most commonly used SBA size standard for nonmanufacturing industries. The SBA adjusted this standard on July 18, 2008 (73 FR 41237), to account for inflation.

DATES: The direct final rule will become effective on August 22, 2012, unless significant adverse comments on the amendment are received by August 2, 2012. If the rule is withdrawn as a result of such comments, timely notice of the withdrawal will be published in the **Federal Register**. Comments received after August 2, 2012 will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Please refer to Docket ID NRC–2012–0062 when contacting the NRC about the availability of information for this final rule. You may access information and comment submittals related to this final rulemaking, which the NRC possesses and are publicly available, by any of the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0062.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly-available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''*Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Theresa Barczy, Regulations Specialist, Rules, Announcements, and Directives Branch, Division of Administrative Services, Office of Administration, telephone: 301–492–3666, email: *Theresa.Barczy@nrc.gov.*

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V. Environmental Impact: Categorical Exclusion
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XI. Plain Writing

I. Procedural Background

The NRC is using the direct final rule procedure because it considers this action noncontroversial and routine. This direct final rule is updating the NRC's size standard to reflect that of the SBA. The amendments in this rule will become effective on August 22, 2012, unless significant adverse comments are received by August 2, 2012. A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. If the rule is withdrawn, timely notice will be published in the **Federal Register**.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the staff to make a change (other than editorial) to the rule.

II. Discussion

The NRC established its size standards on December 9, 1985 (50 FR 50241). On November 6, 1991 (56 FR 56671), the NRC conformed its format for size standards to mirror the definitions of small entities in the Regulatory Flexibility Act of 1980, as amended. On April 11, 1995 (60 FR 18344), the NRC again adjusted its receipts-based, small business size standard in a final rule published in the **Federal Register**. In a direct final rule published in the **Federal Register** on August 10, 2007 (72 FR 44951), the NRC adjusted its receipts-based small business size standard in order to conform to the SBA size standard for nonmanufacturing industries.

The NRC is amending Title 10 of the *Code of Federal Regulations* (10 CFR) part 2, ''Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders,'' and 10 CFR part 171, ''Annual Fees for Reactor Licenses and Fuel Cycle License and Materials Licenses,

Including Holders of Certificates of Compliance, Registrations, and Quality Assurance Program Approvals and Government Agencies Licensed by the NRC,'' to reflect its receipts-based, small business size standard increasing from $6.5 million to $7.0 million. This adjustment is to conform to the SBA receipts-based, small business size standard, the most commonly used SBA standard for the non-manufacturing industries. The SBA adjusted this standard for inflation on January 23, 2002 (67 FR 3041), on December 6, 2005 (70 FR 72577), and again on July 18, 2008 (73 FR 41237). The NRC is not revising any of its other size standards at this time. The NRC informed the Chief, Office of Size Standards, SBA, of these amendments.[1] This rule change will result in reduced annual fees being imposed on licensees under the Fiscal Year 2012 fee rule for those licensees with receipts between $6.5 million and $7.0 million.

III. Section-by-Section Analysis

Sections 2.810(a)(1) and (b)

Section 2.810 establishes the size standards for determining whether a licensee qualifies as a small entity in the NRC's regulatory programs. The NRC is increasing its receipts-based, small business size standard from $6.5 million to $7.0 million. Therefore, paragraphs (a)(1) and (b) are amended by revising ''$6.5'' to read ''$7.0.''

Section 171.16(c)

Section 171.16 establishes the annual fees that will be paid by the following: materials licensees, holders of certificates of compliance, holders of sealed source and device registrations, holders of quality assurance program approvals, and government agencies licensed by the NRC. The NRC is increasing its receipts-based, small business size standard from $6.5 million to $7.0 million. Therefore, the chart within the introductory text of paragraph (c) is amended by revising ''$6.5'' to read ''7.0.''

IV. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Public Law 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies, unless using a standard is inconsistent with applicable law or otherwise impractical. This direct final rule is updating the NRC's receipts-based, small business size standard to reflect that of the SBA. This action is administrative in nature and does not involve the establishment or application of a technical standard containing generally applicable requirements.

V. Environmental Impact: Categorical Exclusion

The NRC has determined that this direct final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this direct final rule.

VI. Paperwork Reduction Act Statement

This direct final rule does not contain any information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid Office of Management and Budget (OMB) control number.

VII. Regulatory Analysis

A regulatory analysis has not been prepared for this direct final rule. This direct final rule amends the criteria that the NRC uses to determine which of its licensees qualify as small entities for the purpose of compliance with the Regulatory Flexibility Act of 1980, as amended. The amended size standard conforms to the SBA's revised standard and is expected to result in an increase in the number of NRC licensees that qualify as small entities for annual fee assessments and other purposes. These amendments are administrative in nature and will neither impose new safety requirements nor relax existing ones and therefore do not call for the sort of safety/cost analysis described in the NRC's regulatory analysis guidelines in NUREG/BR–0058, Revision 4, ''Regulatory Analysis Guidelines of the US NRC,'' September 2004 (ADAMS Accession No. ML042820192).

VIII. Regulatory Flexibility Certification

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this direct final rule amending 10 CFR parts 2 and 171 does not have a significant economic impact on a substantial number of small entities. The direct final rule is administrative in that it amends the criteria that the NRC uses to determine which of its licensees qualify as small entities for the purposes of compliance with the Regulatory Flexibility Act of 1980, as amended. The amended size standard conforms to the SBA's revised standard and is expected to result in an increase in the number of NRC licensees that qualify as small entities.

IX. Backfit Analysis

The NRC has determined that the backfit rule does not apply to this direct final rule and that a backfit analysis is not required, because these amendments do not include any provisions that would impose backfits as defined in 10 CFR 50.109(a)(1).

X. Congressional Review Act

In accordance with the Congressional Review Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

XI. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, ''Plain Language in Government Writing,'' published June 10, 1998 (63 FR 31883).

List of Subjects

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 171

Annual charges, Byproduct material, Holders of certificates, registrations, approvals, Intergovernmental relations, Nonpayment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 2 and 171.

[1] The NRC's letter to the Chief, Office of Size Standards, SBA, is in ADAMS under Accession No. ML120810390.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS AND ISSUANCE OF ORDERS

■ 1. The authority citation for part 2 is revised to read as follows:

Authority: Atomic Energy Act secs.161, 181, 191 (42 U.S.C. 2201, 2231, 2241); Energy Reorganization Act sec. 201 (42 U.S.C. 5841); FOIA 5 U.S.C. 552; Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note).

Section 2.101 also issued under Atomic Energy Act secs. 53, 62, 63, 81, 103, 104 (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); Nuclear Waste Policy Act sec. 114(f) (42 U.S.C. 10143(f)); National Environmental Protection Act sec. 102 (42 U.S.C. 4332); Energy Reorganization Act sec. 301 (42 U.S.C. 5871).

Sections 2.102, 2.103, 2.104, 2.105, 2.321 also issued under Atomic Energy Act secs. 102, 103, 104, 105, 183i, 189 (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Sections 2.200–2.206 also issued under Atomic Energy Act secs. 161, 186, 234 (42 U.S.C. 2201 (b), (i), (o), 2236, 2282); sec. 206 (42 U.S.C. 5846). Section 2.205(j) also issued under Pub. L. 101–410, as amended by section 3100(s), Pub. L. 104–134 (28 U.S.C. 2461 note). Subpart C also issued under Atomic Energy Act sec. 189 (42 U.S.C. 2239). Section 2.301 also issued under 5 U.S.C. 554. Sections 2.343, 2.346, 2.712 also issued under 5 U.S.C. 557. Section 2.340 also issued under Nuclear Waste Policy Act secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.390 also issued under 5 U.S.C. 552. Sections 2.600–2.606 also issued under sec. 102 (42 U.S.C. 4332). Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553; AEA sec. 29 (42 U.S.C. 2039). Subpart K also issued under Atomic Energy Act sec. 189 (42 U.S.C. 2239); Nuclear Waste Policy Act sec. 134 (42 U.S.C. 10154). Subpart L also issued under Atomic Energy Act sec. 189 (42 U.S.C. 2239). Subpart M also issued under Atomic Energy Act sec. 184, 189 (42 U.S.C. 2234, 2239). Subpart N also issued under Atomic Energy Act sec. 189 (42 U.S.C. 2239).

§ 2.810 [Amended]

■ 2. In § 2.810, paragraphs (a)(1) and (b) are amended by removing ''$6.5'' and adding in its place ''$7.0''.

PART 171—ANNUAL FEES FOR REACTOR LICENSES AND FUEL CYCLE LICENSES AND MATERIALS LICENSES, INCLUDING HOLDERS OF CERTIFICATES OF COMPLIANCE, REGISTRATIONS, AND QUALITY ASSURANCE PROGRAM APPROVALS AND GOVERNMENT AGENCIES LICENSED BY THE NRC

■ 3. The authority citation for part 171 is revised to read as follows:

Authority: Consolidated Omnibus Budget Reconciliation Act sec. 6101 Pub. L. 99–272, as amended by sec. 5601, Pub. L. 100–203, as amended by sec. 3201, Pub. L. 101–239, as amended by sec. 6101, Pub. L. 101–508, as amended by sec. 2903a, Pub. L. 102–486 (42 U.S.C. 2213, 2214), and as amended by Title IV, Pub. L. 109–103 (42 U.S.C. 2214);

Atomic Energy Act secs. 161(w), 223, 234 (42 U.S.C. 2201(w), 2273, 2282); Energy Reorganization Act sec. 201 (42 U.S.C. 5841); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005 sec. 651(e), Pub. L. 109–58 (42 U.S.C. 2014, 2021, 2021b, 2111).

■ 4. In § 171.16, paragraph (c) is revised to read as follows:

§ 171.16 Annual fees: Materials licensees, holders of certificates of compliance, holders of sealed source and device registrations, holders of quality assurance program approvals, and government agencies licensed by the NRC.

* * * * *

(c) A licensee who is required to pay an annual fee under this section may qualify as a small entity. If a licensee qualifies as a small entity and provides the Commission with the proper certification along with its annual fee payment, then the licensee may pay a reduced annual fee as shown in the following table. Failure to file small entity certification in a timely manner could result in the receipt of a delinquent invoice requesting the outstanding balance due and/or denial of any refund that might otherwise be due. The small entity fees are as follows:

	Maximum annual fee per licensed category
Small businesses not engaged in manufacturing (Average gross receipts over last 3 completed fiscal years):	
$450,000 to $7.0 million	$2,300
Less than $450,000	500
Small not-for-profit organizations (Annual gross receipts):	
$450,000 to $7.0 million	2,300
Less than $450,000	500
Manufacturing entities that have an average of 500 employees or fewer:	
35 to 500 employees	2,300
Fewer than 35 employees	500
Small governmental jurisdictions (Including publicly supported educational institutions) (Population):	
20,000 to 50,000	2,300
Fewer than 20,000	500
Educational institutions that are not State or publicly supported, and have 500 employees or fewer:	
35 to 500 employees	2,300
Fewer than 35 employees	500

* * * * *

Dated at Rockville, Maryland, this 20th day of June, 2012.

For the Nuclear Regulatory Commission.

R.W. Borchardt,

Executive Director for Operations.

[FR Doc. 2012–16252 Filed 7–2–12; 8:45 am]

BILLING CODE 7590–01–P

FARM CREDIT ADMINISTRATION

12 CFR Part 614

RIN 3052–AC60

Loan Policies and Operations; Lending and Leasing Limits and Risk Management; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA or Agency), through the FCA Board (Board), issued a final rule under part 614 on May 24, 2011 (76 FR 29992) amending our regulations relating to lending and leasing limits and loan and lease concentration risk mitigation with a delayed effective date. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the

effective date of the regulations is July 1, 2012.

DATES: *Effective Date:* Under the authority of 12 U.S.C. 2252, the regulation amending 12 CFR part 614 published on May 24, 2011 (76 FR 29992) is effective July 1, 2012.

FOR FURTHER INFORMATION CONTACT:

Paul K. Gibbs, Senior Accountant, Office of Regulatory Policy, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4498, TTY (703) 883–4434, or

Wendy R. Laguarda, Assistant General Counsel, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4020, TTY (703) 883–4020.

Authority: 12 U.S.C. 2252(a)(9) and (10)

Dated: June 28, 2012.

Dale L. Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2012–16318 Filed 7–2–12; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

14 CFR Part 1

[Docket No. FAA–2012–0019; Amdt. No. 1–67]

RIN 2120– AK03

Removal of Category IIIa, IIIb, and IIIc Definitions; Confirmation of Effective Date and Response to Public Comments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date and response to public comments.

SUMMARY: This action confirms the effective date of the direct final rule published on February 16, 2012 (77 FR 9163), and responds to the comments received on that direct final rule. In that document, the FAA proposed to remove the definitions of Category IIIa, IIIb, and IIIc operations because the definitions are outdated and no longer used for aircraft certification or operational authorization.

DATES: The direct final rule becomes effective on June 12, 2012.

ADDRESSES: For information on where to obtain copies of rulemaking documents and other information related to this action, see ''How To Obtain Additional Information'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact Bryant Welch, Flight Technologies and Procedures Division, Flight Operations Branch, AFS–410, Federal Aviation Administration, 470 L'Enfant Plaza, Suite 4102, Washington, DC 20024; telephone (202) 385–4539; email *bryant.welch@faa.gov.*

For legal questions concerning this action, contact Nancy Sanchez, Office of the Chief Counsel, Regulations Division, AGC–200, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3073; email *nancy.sanchez@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On February 7, 2012, the FAA issued Amendment No. 1–67, entitled ''Removal of Category IIIa, IIIb, and IIIc Definitions'' (77 FR 9163). The direct final rule removes the definitions of Category IIIa, IIIb, and IIIc operations. The definitions are outdated because they are no longer used for aircraft certification or operational authorization. Removing the definitions will aid in international harmonization efforts, future landing minima reductions, and airspace system capacity improvements due to the implementation of performance based operations. The FAA requested that comments on that rule be received on or before March 19, 2012.

By letter dated March 16, 2012, the International Civil Aviation Organization (ICAO) requested that the FAA consider postponing the effective date of the rule until the rule is reviewed through an international process. ICAO stated that due to the short time frame, it was not in the position to understand the full implications of removing the Category IIIa, IIIb, and IIIc definitions. ICAO further stated that additional time was necessary to adequately assess the impact of the Direct Final Rule and prepare comments.

On April 13, 2012, the FAA reopened the comment period for the Direct Final Rule until May 14, 2012, and delayed the effective date from April 16, 2012 to June 12, 2012. A direct final rule takes effect on the specified date unless the FAA receives an adverse comment or notice of intent to file an adverse comment within the comment period. If adverse comments are received, the FAA will advise the public by publishing a document in the **Federal Register** before the effective date of the direct final rule. An adverse comment explains why a rule would be inappropriate or would be ineffective or unacceptable without a change, or may challenge the rule's underlying premise or approach. The FAA received eight comments on this rule. The FAA does not consider these comments to be adverse and is therefore publishing this Confirmation of Effective Date and Response to Public Comments in response to those comments.

Discussion of Comments

The FAA received eight comments on this rule. Six of those comments were received during the original comment period, and two comments were received after the comment period reopened. ICAO, Boeing, and five individuals commented on this rule.

On March 16, 2012, ICAO requested that the FAA delay the effective date of the rule so that it may conduct further review of this rulemaking. By letter dated May 14, 2012, ICAO submitted a follow up comment, stating that it has been clarified that ''removal of the Category IIIa, IIIb, and IIIc definitions from 14 CFR part 1 will not impact relevant operational documents such as advisory circulars.'' Additionally, ICAO further stated that ''this initiative would have no impact on the recognition of any CAT III a, b, or c operational approval for international operators or United States-issued operational approvals which conform to Annex 6—*Operation of Aircraft.* On this basis, the International Civil Aviation Organization has no objection to the change * * *''

Two individual commenters expressed support for this rulemaking. Boeing and three individual commenters expressed concern about various aspects of this rulemaking. Boeing submitted a comment during the original comment period. It stated that ''[w]ithout additional guidance, the removal of these categories' definitions will create confusion and inconsistencies in the establishment of operational authorizations, and leave subject to individual interpretation the low weather minima capabilities of the combined ground, space, and airborne systems.'' Boeing also noted that this rulemaking will require corresponding changes to other FAA regulations, orders and advisory circulars and will have substantial international ramifications. Additionally, Boeing suggested that ''the public be given the opportunity to review the proposed changes in their entirety and comment via the Notice of Proposed Rulemaking (NPRM) process.'' Boeing did not submit an additional comment during the reopened comment period.

Several individual commenters expressed similar concerns. One commenter stated that ''[a] unilateral change of these standards by the United

States will negate the current global harmony of these landing definitions, and compel international flight crews to train and operate differently in the United States versus the rest of the world.'' This commenter further stated that ''* * * these changes should not be allowed to become effective until ICAO has changed the internationally recognized standard definitions, and all member states have concurred * * *'' Two anonymous commenters submitted nearly identical comments and stated that ''[t]he proposed definition relaxation will result in blending the Cat III operational and system performance distinctions, and appears to ignore the potential reduction in safety'' These individuals also commented that ''* * * fail-passive systems and flight crews trained to the fail-passive minimums and procedures will be permitted to fly to fail-operational minimums.''

In response to Boeing's comment, the FAA notes that the removal of the Category IIIa, IIIb, and IIIc definitions will not affect current FAA category III aircraft certifications or operator authorizations and will not require changes to other FAA regulations. Category III standards used in the United States will be completely unaffected by the removal of the Category IIIa, IIIb, and IIIc definitions. The Category III operational concepts represented by the Category IIIa, IIIb, and IIIc definitions are used to develop the certification and authorization criteria and these criteria are then applied directly to individual aircraft certifications and operator authorizations. Thus, the certification of Category III aircraft systems under Advisory Circular (AC) 120–28D no longer directly refers to the Category IIIa, b, and c definitions contained in 14 CFR 1.1, but uses the airworthiness criteria in the AC and the certification statements refer to those criteria as well. Likewise, Operations Specification (OpSpec) C060, the operational authorization for Category III operators, no longer specifically uses the Category IIIa, IIIb, and IIIc definitions, but rather ties authorized weather minima to the certification level of aircraft, as specified in the AC.

In response to the individual comments, the FAA notes that AC 120–28D uses the ICAO Category IIIa, IIIb, and IIIc definitions in its development of Category III operational concepts. Category IIIa, IIIb, and IIIc definitions will continue to be used unless changed in the normal ICAO process. In its second comment, ICAO stated that this rulemaking would have no impact on the recognition of any CAT III a, b, or c operational approval for international operators or United States-issued operational approvals which conform to Annex 6—*Operation of Aircraft* and therefore has no objection to the change. Thus, operational authorizations for all operators and aircraft certification through AC 120–28D and OpSpec C060 rely only upon the ICAO Category IIIa, IIIb, and IIIc definitions and will be completely unaffected by removing the definitions of Category IIIa, IIIb, and IIIc in the CFR. Additionally, the use of Fail Passive or Fail Operational Category III minima is not bound by the Category III definition. Category III minima are controlled completely by the operational authorization, OpSpec C060, under criteria contained in AC 120–28D. Since, as explained above, the AC criteria will be unaffected by removal of the sub-definitions, CAT III minima authorized through the OpSpec will be unchanged.

Conclusion

After consideration of the comments submitted in response to the direct final rule, the FAA has determined that no further rulemaking action is necessary. Therefore, Amendment 1–67 remains in effect.

How To Obtain Additional Information

A. Rulemaking Documents

An electronic copy of a rulemaking document my be obtained by using the Internet—

1. Search the Federal eRulemaking Portal (*http://www.regulations.gov*);

2. Visit the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies/* or

3. Access the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html.*

Copies may also be obtained by sending a request (identified by notice, amendment, or docket number of this rulemaking) to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680.

B. Comments Submitted to the Docket

Comments received may be viewed by going to *http://www.regulations.gov* and following the online instructions to search the docket number for this action. Anyone is able to search the electronic form of all comments received into any of the FAA's dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.).

C. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document, may contact its local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. To find out more about SBREFA on the Internet, visit *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/.*

Issued in Washington, DC on June 11, 2012.

John M. Allen,

Director, Flight Standards Service.

[FR Doc. 2012–16280 Filed 7–2–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 67

[Docket No. FAA–2012–0056; Amdt. No. 67–21]

RIN 2120–AK00

Removal of the Part 67 Requirement for Individuals Granted the Special Issuance of a Medical Certificate to Carry Their Letter of Authorization While Exercising Pilot Privileges; Confirmation of Effective Date

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This action confirms the effective date of the direct final rule published on March 22, 2012. The rule removes a regulatory provision under Federal Aviation Administration (FAA) medical certification standards that requires individuals granted the Special Issuance of a Medical Certificate (Authorization) to have their letter of Authorization in their physical possession or readily accessible on the aircraft while exercising pilot privileges.

DATES: The direct final rule becomes effective on July 20, 2012.

ADDRESSES: For information on where to obtain copies of rulemaking documents and other information related to this action, see ''How To Obtain Additional Information'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this

action, contact Judi Citrenbaum, Office of Aerospace Medicine, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–9689; email *Judi.M.Citrenbaum@faa.gov*.

For legal questions concerning this action, contact Sabrina Jawed, Office of the Chief Counsel, Regulations Division, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3073; email *Sabrina.Jawed@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

Since 2008, Title 14, Code of Federal Regulations (14 CFR) § 67.401(j) has required individuals granted the Special Issuance of a Medical Certificate (Authorization) to have their letter of Authorization in their physical possession or readily accessible in the aircraft while exercising pilot privileges. The FAA published a direct final rule on March 22, 2012 (77 FR 16664) to remove this provision for several reasons. Namely, affected individuals find the standard burdensome given that other longstanding FAA operational requirements already mandate that pilots carry their medical certificate when exercising pilot privileges. In addition, the FAA is not aware of any individuals affected by the standard who have had to produce their letter of Authorization for any civil aviation authorities during the nearly 4-year period the rule has been in effect. In this regard, the FAA identified this rulemaking action as burden-relieving under Executive Order 13563 of January 18, 2011 entitled ''Improving Regulation and Regulatory Review.''

Once this rule becomes effective, § 67.401(j) no longer will apply. This means that the ''*Note''* under the regulatory reference to § 67.401(j) listed under the ''Conditions of Issue'' on an individual's existing FAA medical certificate no longer will be necessary. This does not mean that the FAA needs or intends to re-issue medical certificates. It will be acceptable for the FAA medical certificate to reference this ''*Note''* until an individual's medical certificate is renewed. The FAA will begin using medical certificates with updated ''Conditions of Issue'' that do not include reference to the removed standard as soon as possible after July 20, 2012.

Discussion of Comments

The FAA received nine supportive comments from individuals and one supportive comment from the Air Line Pilots Association International regarding this action. All of the commenters believe that this regulation is unnecessary, and removing it would relieve affected pilots of an undue burden.

Conclusion

The FAA received no adverse comments in response to the direct final rule ''Removal of the Part 67 Requirement for Individuals Granted the Special Issuance of a Medical Certificate to Carry Their Letter of Authorization While Exercising Pilot Privileges''. The FAA has determined that no further rulemaking action is necessary. Therefore, the rule is adopted as amendment 67–21 and becomes effective on July 20, 2012.

How To Obtain Additional Information

A. Rulemaking Documents

An electronic copy of a rulemaking document my be obtained by using the Internet —

1. Search the Federal eRulemaking Portal (*http://www.regulations.gov*);

2. Visit the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies/* or

3. Access the Government Printing Office's Web page at *http://www.gpo.gov/fdsys*.

Copies may also be obtained by sending a request (identified by notice, amendment, or docket number of this rulemaking) to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680.

B. Comments Submitted to the Docket

Comments received may be viewed by going to *http://www.regulations.gov* and following the online instructions to search the docket number for this action. Anyone is able to search the electronic form of all comments received into any of the FAA's dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.).

Issued in Washington, DC on June 6, 2012.

Frederick E. Tilton,

Federal Air Surgeon.

[FR Doc. 2012–16317 Filed 7–2–12; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 229 and 240

[Release Nos. 33–9330; 34–67220; File No. S7–13–11]

RIN 3235–AK95

Listing Standards for Compensation Committees

Correction

In rule document 2012–15408, appearing on pages 38422–38455, in the issue of Wednesday, June 27, 2012, make the following correction:

1. On page 38422, in column one, under the heading **DATES,** Compliance Dates, thirteenth line, ''June 27, 2012'' should read ''June 27, 2013''.

[FR Doc. C1–2012–15408 Filed 7–2–12; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 522 and 556

[Docket No. FDA–2012–N–0002]

Implantation or Injectable Dosage Form New Animal Drugs; Maropitant; Tildipirosin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval actions for new animal drug applications (NADAs) and abbreviated new animal drug applications (ANADAs) during May 2012. FDA is also informing the public of the availability of summaries of the basis of approval and of environmental review documents, where applicable.

DATES: This rule is effective July 3, 2012.

FOR FURTHER INFORMATION CONTACT: George K. Haibel, Center for Veterinary Medicine (HFV–6), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–276–9019, email:*george.haibel@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: FDA's Center for Veterinary Medicine (CVM) is adopting use of a monthly **Federal Register** document to codify approval actions for NADAs and ANADAs. CVM will no longer publish a separate rule for each action. This approach will allow a more efficient use of available resources.

In this document, FDA is amending the animal drug regulations to reflect the original and supplemental approval actions during May 2012, as listed in table 1 of this document. In addition, FDA is informing the public of the availability, where applicable, of documentation of environmental review required under the National Environmental Policy Act (NEPA) and, for actions requiring review of safety or effectiveness data, summaries of the basis of approval (freedom of information summaries) under the Freedom of Information Act (FOIA). These public documents may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday. Persons with access to the Internet may obtain these documents at the CVM FOIA Electronic Reading Room at *http://www.fda.gov/AboutFDA/CentersOffices/OfficeofFoods/CVM/CVMFOIAElectronicReadingRoom/default.htm.*

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

TABLE 1—ORIGINAL AND SUPPLEMENTAL NADAS AND ANADAS APPROVED DURING MAY 2012

NADA/ ANADA	Sponsor	New animal drug product name	Action	21 CFR Section	FOIA Summary	NEPA Review
141–334	Intervet, Inc., 556 Morris Ave., Summit, NJ 07901.	ZUPREVO 18% (tildipirosin) Injectable Solution.	Original approval for the treatment of bovine respiratory disease (BRD) in beef and non-lactating dairy cattle; and for the control of respiratory disease in beef and non-lactating dairy cattle at high risk of developing BRD.	522.2460 556.733	yes	CE [1]
141–263	Pfizer, Inc., 235 East 42d St., New York, NY 10017.	CERENIA (maropitant citrate) Injectable Solution.	Supplemental approval adding treatment of vomiting in cats.	522.1315	yes	CE [1]

[1] The Agency has determined under 21 CFR 25.33 that this action is categorically excluded from the requirement to submit an environmental assessment or an environmental impact statement because it is of a type that does not individually or cumulatively have a significant effect on the human environment.

List of Subjects

21 CFR Part 522

Animal drugs.

21 CFR Part 556

Animal drugs, Foods.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 522 and 556 are amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 522 continues to read as follows:

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

■ 2. In § 522.1315, revise paragraph (c) to read as follows:

§ 522.1315 Maropitant.

* * * * *

(c) *Conditions of use*—(1) *Dogs*—(i) *Amount.* Administer 1.0 mg per kilogram (mg/kg) of body weight by subcutaneous injection once daily for up to 5 consecutive days.

(ii) *Indications for use.* For the prevention and treatment of acute vomiting.

(iii) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(2) *Cats*—(i) *Amount.* Administer 1.0 mg/kg of body weight by subcutaneous injection once daily for up to 5 consecutive days.

(ii) *Indications for use.* For the treatment of vomiting.

(iii) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 3. Section 522.2460 is added to read as follows:

§ 522.2460 Tildipirosin.

(a) *Specifications.* Each milliliter of solution contains:

(1) 180 milligrams (mg) tildipirosin.

(2) [Reserved]

(b) *Sponsor.* See No. 000061 in § 510.600(c) of this chapter.

(c) *Related tolerances.* See § 556.733 of this chapter.

(d) *Conditions of use*—(1) *Cattle*—(i) *Amount.* Administer 4 mg/kg of bodyweight one time by subcutaneous injection in the neck.

(ii) *Indications for use.* For the treatment of bovine respiratory disease (BRD) associated with *Mannheimia haemolytica, Pasteurella multocida,* and *Histophilus somni* in beef and non-lactating dairy cattle; and for the control of respiratory disease in beef and non-lactating dairy cattle at high risk of developing BRD associated with *M. haemolytica, P. multocida,* and *H. somni.*

(iii) *Limitations.* Cattle intended for human consumption must not be slaughtered within 21 days from the last treatment. Do not use in female dairy cattle 20 months of age or older. A withdrawal period has not been established for this product in preruminating calves. Do not use in calves to be processed for veal. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(2) [Reserved]

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

■ 4. The authority citation for 21 CFR part 556 continues to read as follows:

Authority: 21 U.S.C. 342, 360b, 371.

■ 5. Add § 556.733 to read as follows:

§ 556.733 Tildipirosin.

(a) *Acceptable Daily Intake (ADI).* The ADI for total residues of tildipirosin is 10 micrograms per kilogram of body weight per day.

(b) *Tolerances.* The tolerances for tildipirosin (the marker residue) are:

(1) *Cattle*—(i) *Liver (the target tissue):* 10 parts per million.

(ii) [Reserved]

(2) [Reserved]

(c) *Related conditions of use.* See § 522.2460 of this chapter.

Dated: June 27, 2012.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. 2012–16203 Filed 7–2–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF STATE

22 CFR Part 126

RIN 1400–AD23

[Public Notice 7944]

Amendment to the International Traffic in Arms Regulations: Yemen

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department of State is amending the International Traffic in Arms Regulations (ITAR) to update the policy toward Yemen. Licenses or other approvals for exports or imports of defense articles and defense services destined for or originating in Yemen will be reviewed, and may be issued, on a case-by-case basis.

DATES: *Effective Date:* This rule is effective July 3, 2012.

FOR FURTHER INFORMATION CONTACT: Ms. Candace M. J. Goforth, Director, Office of Defense Trade Controls Policy, U.S. Department of State, telephone (202) 663–2792, or email *DDTCResponseTeam@state.gov.* ATTN: Regulatory Change, Part 126, Yemen.

SUPPLEMENTARY INFORMATION: The Department of State published a notice in the **Federal Register** on December 16, 1992, providing that the defense export policy for Yemen included a ''presumption of denial'' for proposed exports of lethal defense articles or items supporting such articles. On August 8, 2011, the Department amended the ITAR to include Yemen in § 126.1, which describes prohibited exports, imports, and sales to or from certain countries. That policy allowed for the export of non-lethal defense articles and defense services and non-lethal, safety-of-use defense articles for lethal end-items. License applications for the export of lethal defense articles and defense services were denied.

This rule removes the ITAR § 126.1 limitations on defense trade with Yemen. Less restrictive defense trade will further the national security and foreign policy interests of the United States. The Republic of Yemen has taken important steps to stabilize the country, including holding successful presidential elections in February 2012. Furthermore, the Republic of Yemen is a critical partner in the United States' continuing efforts against terrorism. Defense assistance to the Yemeni government will be critical to increasing stability and security throughout the country and countering this threat.

Therefore, § 126.1(u) is removed, and the Department will review on a case-by-case basis all requests for licenses or other approvals for exports or temporary imports of defense articles and defense services destined for or originating in Yemen.

Regulatory Analysis and Notices

Administrative Procedure Act

The Department of State is of the opinion that controlling the import and export of defense articles and services is a foreign affairs function of the United States Government and that rules implementing this function are exempt from sections 553 (rulemaking) and 554 (adjudications) of the Administrative Procedure Act. Since the Department is of the opinion that this rule is exempt from 5 U.S.C. 553, it is the view of the Department of State that the provisions of § 553(d) do not apply to this rulemaking. Therefore, this rule is effective upon publication. The Department also finds that, given the national security issues surrounding U.S. policy towards Yemen, notice and public procedure on this rule would be impracticable, unnecessary, or contrary to the public interest; for the same reason, the rule will be effective immediately. *See* 5 U.S.C. 808(2).

Regulatory Flexibility Act

Since the Department is of the opinion that this rule is exempt from the rulemaking provisions of 5 U.S.C. 553, it does not require analysis under the Regulatory Flexibility Act.

Unfunded Mandates Act of 1995

This amendment does not involve a mandate that will result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This amendment has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996.

Executive Orders 12372 and 13132

This amendment 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, in accordance with Executive Order 13132, it is determined that this amendment does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this amendment.

Executive Orders 12866 and 13563

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributed impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a ''significant regulatory action,'' although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988

The Department of State has reviewed the amendment in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13175

The Department has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not preempt tribal law. Accordingly, Executive Order 13175 does not apply to this rulemaking.

Paperwork Reduction Act

This rule does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. chapter 35.

List of Subjects in 22 CFR Part 126

Arms and munitions, Exports.

Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, part 126 is amended as follows:

PART 126—GENERAL POLICIES AND PROVISIONS

■ 1. The authority citation for part 126 continues to read as follows:

Authority: Secs. 2, 38, 40, 42, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2780, 2791, and 2797); E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp., p. 79; 22 U.S.C. 2651a; 22 U.S.C. 287c; E.O. 12918, 59 FR 28205; 3 CFR, 1994 Comp., p. 899; Sec. 1225, Pub. L. 108–375; Sec. 7089, Pub. L. 111–117; Pub. L. 111–266; Section 7045, Pub. L. 112–74; Section 7046, Pub. L. 112–74.

■ 2. Section 126.1 is amended by removing and reserving paragraph (u), as follows:

§ 126.1 Prohibited exports, imports, and sales to or from certain countries.

* * * * *

(u) [Reserved]

* * * * *

Dated: June 26, 2012.

Rose E. Gottemoeller,

Acting Under Secretary, Arms Control and International Security, Department of State.

[FR Doc. 2012–16283 Filed 7–2–12; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2012–0312]

RIN 1625–AA00

Special Local Regulation; Upper Mississippi River, Mile 842.0 to 840.0

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary special local regulation for all waters of the Upper Mississippi River, Mile 842.0 to 840.0, extending the entire width of the river. This special local regulation is needed to protect participants and event personnel during the swim leg of the Optum Health Twin Cities Triathlon occurring on the Upper Mississippi River. Entry into this area immediately before, during, and immediately after the swim portion of the triathlon will be prohibited unless specifically authorized by the Captain of the Port Upper Mississippi River or a designated representative.

DATES: This rule is effective and enforceable from 7:00 a.m. until 11:00 a.m. on July 22, 2012.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2012–0312 and are available online by going to *http://www.regulations.gov,* selecting the Advanced Docket Search option on the right side of the screen, inserting USCG–2012–0312 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email Lieutenant Junior Grade (LTJG) Colin Fogarty, Sector Upper Mississippi River Response Department at telephone 314–269–2546, email *Colin.M.Fogarty@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR **Federal Register**
NPRM Notice of Proposed Rulemaking

A. Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.''

Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not using the NPRM process. The Coast Guard received notice from the sponsor, Optum Health Performance, on March 13, 2012 stating they will be holding a triathlon on the Upper Mississippi River on July 22, 2012. The triathlon is being advertised via press releases to various media outlets to target people on a local, state, and national level to ensure maximum outreach and preparation for the event. Completing the NPRM process is impracticable and contrary to the public interest as it would delay the necessary special local regulation, providing restricted areas and safety measures required to protect participants and event personnel from hazards associated with a swim event in the Mississippi River. Delaying this rule by completing the NPRM would also unnecessarily interfere with and delay the planned event and possible contractual obligations. For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying this rule by providing 30 days notice would be contrary to public interest because action is needed to protect participants and event personnel during the swim leg of the Optum Health Twin Cities Triathlon.

B. Background and Purpose

On July 22, 2012 Optum Health Performance will hold the Optum Health Performance Twin Cities Triathlon between mile 842.0 and 840.0 on the Upper Mississippi River. There are expected to be at least 700 athletes participating in the event. Anticipated traffic on the river, presents safety risks to the athletes swimming the swim section of the triathlon. Under 33 U.S.C. 1233 authority the Coast Guard is establishing this special local regulation to provide for the safety of participants, event personnel, spectators, and other users and vessels on the Upper Mississippi River during the swim section of the Optum Health Triathlon.

C. Discussion of Rule

The Coast Guard is establishing a temporary special local regulation for all waters of the Upper Mississippi River, from mile 842.0 to 840.0, extending the entire width of the river. Entry into this zone is prohibited to all vessels and persons, except persons and vessels specifically authorized by the Captain of the Port Upper Mississippi River or designated representative. This rule is effective from 7:00 a.m. until 11:00 a.m. on July 22, 2012. The Captain of the Port Upper Mississippi River will inform the public of the enforcement period by local notice to mariners, and changes to the enforcement by broadcast notice to mariners.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under

section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). This rule is not expected to have a significant regulatory impact as it will be in effect for a limited time period and notifications to the marine community will be made by local notice to mariners, and subsequent notifications through broadcast notice to mariners. Deviation from the rule may be requested and will be considered on a case-by-case basis by the Captain of the Port or a designated representative.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit the Upper Mississippi River, mile 842.0 to 840.0 from 7:00 a.m. until 11:00 a.m. on July 22, 2012. This temporary special local regulation will not have a significant economic impact on a substantial number of small entities because this rule will be in effect for a limited time period and notifications to the marine community will be made by local notice to mariners, and subsequent notifications through broadcast notice to mariners. Deviation from the rule may be requested and will be considered on a case-by-case basis by the Captain of the Port or a designated representative.

If you are a small business entity and are significantly affected by this regulation, please contact LTJG Colin Fogarty, Sector Upper Mississippi River Response Department at telephone 314–269–2546, email *Colin.M.Fogarty@uscg.mil.*

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

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

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has 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 various levels of government. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishing a special local regulation, requiring a permit wherein an analysis of the environmental impact of the regulations was performed. This rule is categorically excluded from further review under paragraph 34(h) of Figure 2–1 of the Commandant Instruction and an environmental analysis checklist and a categorical exclusion determination

are not required for this rule. This rule is categorically excluded from further review under paragraph 34 (h) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. Add § 100.35T08–0312 to read as follows:

§ 100.35T08–0312 Special Local Regulation; Upper Mississippi River, Mile 842.0 to 840.0.

(a) *Regulated area.* The following area is a regulated area: a portion of the Upper Mississippi River, from mile 842.0 to 840.0, extending the entire width of the river near Saint Paul, MN.

(b) *Enforcement dates.* This rule will be enforced from 7:00 a.m. until 11:00 a.m. on July 22, 2012.

(c) *Special Local Regulations.* (1) The Coast Guard will patrol the regulated area under the direction of a designated Coast Guard Patrol Commander with assistance from local authorities. The Patrol Commander may be contacted on Channel 16 VHF–FM (156.8 MHz) by the call sign ''PATCOM''.

(2) ''Official patrol vessels'' are defined as any Coast Guard, state or local law enforcement, and sponsor provided vessels assigned or approved by the Captain of the Port Upper Mississippi River to patrol the regulated area.

(3) Spectator vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer and will be operated at a minimum safe navigation speed in a manner which will not endanger participants or any other vessels.

(4) No vessel shall transit through the regulated area, unless cleared for entry by or through an official patrol vessel.

(5) The patrol commander may forbid and control the movement of all vessels in the regulated area. When hailed or signaled by an official patrol vessel, a vessel shall come to an immediate stop and comply with the directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(6) Any spectator vessel may anchor outside the regulated area, but may not anchor in, block, or loiter in a navigable channel. Spectator vessels may be moored to a waterfront facility within the regulated area in such a way that they shall not interfere with the progress of the event. Such mooring must be complete at least 30 minutes prior to the establishment of the regulated area and remain moored through the duration of the event.

(7) The Patrol Commander may terminate the event or the operation of any vessel at any time it is deemed necessary for the protection of life or property.

(8) The Patrol Commander will terminate enforcement of the special local regulations at the conclusion of the event.

(d) *Informational Broadcasts.* The Captain of the Port or a designated representative will inform the public through broadcast notice to mariners of changes to the enforcement period for the regulated area.

Dated: June 8, 2012.

B.L. Black,

Captain, U.S. Coast Guard, Captain of the Port Upper Mississippi River.

[FR Doc. 2012–16297 Filed 7–2–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2012–0073]

RIN 1625–AA08

Special Local Regulations; Ocean State Tall Ships Festival 2012, Narragansett Bay, RI

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing temporary special local regulations on the navigable waters of Narragansett Bay and Newport Harbor, Rhode Island, for the Ocean State Tall Ships Festival 2012.

DATES: This rule is effective from July 6, 2012 until July 10, 2012.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2012–0073. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Edward G. LeBlanc, Waterways Management Division at Coast Guard Sector Southeastern New England, telephone 401–435–2351, email *Edward.G.LeBlanc@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

COTP Captain Of The Port
DHS Department of Homeland Security
FR **Federal Register**
LLNR Light List Number
NEPA National Environmental Policy Act
NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

On March 23, 2012, we published a notice of proposed rulemaking (NPRM) entitled ''Special Local Regulations: Ocean State Tall Ships Festival 2012, Narragansett Bay, RI'' in the **Federal Register** (77 FR 16974). We received no comments on the proposed rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The Ocean State Tall Ships Festival 2012 begins on July 6, 2012. Delaying the effective date of this rule beyond July 6, 2012, would be contrary to the public interest in seeing the festival conducted according to schedule, and would make it more difficult for the Coast Guard to ensure the safety of vessels and spectators from hazards associated with this event.

B. Basis and Purpose

The legal basis for this rule is 33 U.S.C. 1233, which authorizes the Coast Guard to define Special Local Regulations.

These temporary special local regulations are necessary to ensure the safety of vessels and spectators from

hazards associated with the Ocean State Tall Ships Festival 2012.

C. Discussion of Comments, Changes and the Final Rule

No comments were received, and no changes were made to the language contained in the NPRM.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this rule to be minimal. These regulations involve only the southern portion of Narragansett Bay and will close the East Passage to commercial traffic only for several hours during the actual Parade of Sail on July 9, 2012. The West Passage will remain open to vessel traffic at all times. The impact of these regulations will not be significant because the majority of these regulations will be in effect for only a portion of one day centered on the Parade of Sail, and most vessel traffic can pass safely around affected areas of the East Passage by transiting through the West Passage, Narragansett Bay.

Notice of these special local regulations will be provided prior to the event through the Local Notice to Mariners and Broadcast Notice to Mariners. In addition, the sponsoring organization, Ocean State Tall Ships, Inc., will publish information of the event in local newspapers, pamphlets, internet sites, television and radio broadcasts.

Mariners will be able to adjust their plans accordingly based on the extensive advance information.

Moreover, the Areas created by these special local regulations have been narrowly tailored to impose the least impact on maritime interests yet provide the level of safety and protection deemed necessary.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612), as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard received no comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule may affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in a portion of Narragansett Bay between July 6 and July 9, 2012, particularly during the Parade of Sail on July 9, 2012, when the navigation channel in the East Passage, Narragansett Bay, will be closed for a period of time to all traffic except vessels participating in the Parade of Sail.

These regulations will not have a significant economic impact on a substantial number of small entities for the following reasons: The regulations affecting navigation in the East Passage, Narragansett Bay, will be in effect temporarily, and only for those periods of time necessary for the safety of the Ocean State Tall Ships Festival 2012 participants and spectators in boats viewing the Parade of Sail from waters adjacent to the parade route. The East Passage will remain open to all vessel traffic for the entire Festival from July 6–8, 2012, and will only be closed to vessel traffic for several hours during the Parade of Sail on July 9, 2012. While the East Passage is closed, the West Passage will remain open and capable of being used by all recreational and most commercial vessels.

Notice of these special local regulations will be provided prior to the event by Local Notice to Mariners and Broadcast Notice to Mariners. In addition, the sponsoring organization, Ocean State Tall Ships, Inc., will publish information of the event in local newspapers, pamphlets, internet sites, television and radio broadcasts.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule does not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has 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. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule establishes temporary special local regulations to provide for the safety of life and property on the navigable waterways of Narragansett Bay and Newport Harbor, Rhode Island, during the Ocean State Tall Ships Festival on July 6–9 2012. This rule is categorically excluded from further review under paragraph (34)(h) of figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233. 33 U.S.C. 1233

■ 2. Add § 100.T01–0073 to read as follows:

§ 100.T01–0073 Special Local Regulations; Ocean State Tall Ships 2012, Narragansett Bay and Newport Harbor, Rhode Island.

(a) *Regulated Areas:*

(1) Area Newport Harbor: All waters of Newport Harbor within an area bounded by Aquidneck Island to the east and south; by the Goat Island Causeway to the north; and by a line extending from the southernmost tip of Goat Island due south to Aquidneck Island.

(2) Area Potter Cove: This Area is of the same coordinates as that portion of charted Anchorage A, as defined in § 110.145(a)(1) of this chapter, that lies north of the Claiborne Pell/Newport Bridge.

(3) Area Parade of Sail: Includes all waters of the East Passage, Narragansett Bay, Rhode, Island, within the following boundaries: Beginning at position 41°27′19″ N, 71°23′08″ W, then northward to position 41°28′18″ N, 71°22′14″ W, (Lighted Gong Buoy ''7'' (LLNR 17800)) then to position 41°28′38″ N, 71°21′15″ W, (Lighted Gong Buoy ''9'' (LLNR 17805)) then to position 41°29′00″ N, 71°21′00″ W, (Lighted Bell Buoy ''11'' (LLNR 17810)) then to position 41°29′33″ N, 71°21′04″ W, then to position 41°30′19″, 71°21′04″ W below the Claiborne Pell/Newport Bridge, then to position 41°31′07″ N, 71°21′17″ W, then to position 41°31′49″ N, 71°21′26″ W, then to position 41°32′30″ N, 71°21′22″ W, then to position 41°33′00″ N, 71°21′17″ W, then to position 41°33′38″ N, 71°21′00″ W, (U.S. Navy Buoy ''E'' (LLNR 18035)) then to position 41°33′52″, 71°20′27″ W, (U.S. Navy Buoy ''F'' (LLNR 18040)) then to position 41°33′48″ N, 71°19′55″ W, (the charted Halfway Rock). Area Parade of Sail will continue southward to position 41°33′14″ N, 71°19′12.5″ W, then to position 41°32′28″ N, 71°19′30.6″ W, then to position 41°31′55″ N, 71°19′42.7″ W, then to position 41°31′00″ N, 71°20′04″ W, (Lighted Bell Buoy ''14'' (LLNR 17940)) then to position 41°30′28″ N, 71°20′21″ W, then to position 41°30′12″, 71°20′30″ W below the Claiborne Pell/Newport Bridge, then to position 41°29′34″ N, 71°20′11″ W, (Mitchell Rock Gong Buoy ''3'' (LLNR 17865)), then to position 41°28′55″ N, 71°20′19″ W, then to position 41°27′55″ N, 71°21′43″ W, then to position 41°27′27″ N, 71°21′57″ W, (Bell Buoy ''6'' (LLNR 17790)), then to position 41°26′57″, 71°21′57″ W, then returning to the starting point at 41°27′19″ N, 71°23′08″ W. All coordinates are NAD 1983.

(b) *Special Local Regulations*—

(1) *Definitions.*

(i) As used in this section, designated representative means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, or local officer designated by the Captain of the Port (COTP).

(ii) Excursion vessel, as used in this sections, refers to any vessel granted an excursion permit as such term is defined in 46 CFR 2.01–45.

(iii) Vessel carrying passengers-for-hire, as used in this section, refers to, but is not limited to, vessels subject to regulation under Subchapters H, K, and T of Title 46 of the Code of Federal Regulations.

(2) In accordance with the general regulations in § 100.35 of this part, entering into, transiting through, anchoring or remaining within the regulated areas is prohibited unless permitted by this rule or entry is authorized by the Captain of the Port (COTP) Southeastern New England or designated representative.

(3) All persons and vessels are authorized by the COTP Southeastern New England to enter areas of these special location regulations in accordance with the following restrictions:

(i) Area Newport Harbor: Vessels transiting this Area must do so at a speed of at least three (3) knots or at no wake speed, whichever is more, while not exceeding six (6) knots. Vessels must not maneuver within 20 yards of a moored Tall Ship. Vessels must transit this Area in a counterclockwise direction, entering Newport Harbor from the west, then proceeding north along the eastern side of the harbor to a turning point south of the Goat Island causeway in approximate position 41°29′28″ N and 71°19′40″ N, then

proceeding south along the western side of Newport Harbor to the exit of the Area. Vessels proceeding under sail will not be allowed in Area Newport Harbor unless also propelled by machinery, due to increased difficulty in maintaining required speed of advance while sailing as well as limited maneuvering ability to proceed in a single file behind numerous other spectator craft viewing the moored Tall Ships.

(ii) Area Potter Cove: This area is a spectator anchoring area limited to excursion and passenger-for-hire vessels greater than 50 feet in length carrying passengers for the viewing of the Parade of Sail. Vessels transiting this Area must do so at a speed of at least three (3) knots or at no wake speed, whichever is more, while not exceeding six (6) knots. Vessels transiting this Area must not maneuver within 20 yards of any vessel lawfully anchored within this area for the viewing of the Parade of Sail.

(iii) Area Parade of Sail: This will be closed to all vessel traffic, except those vessels designated as participants.

(4) All persons and vessels shall comply with the instructions of the COTP Southeastern New England or designated representative. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing lights, or other means the operator of a vessel shall proceed as directed.

(5) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated areas must contact the COTP Southeastern New England by telephone at 508–457–3211, or designated representatives via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated areas is granted by the COTP Southeastern New England or designated representative, all persons and vessels receiving such authorization must comply with the instructions of the COTP Southeastern New England or designated representative.

(6) The Coast Guard will provide notice of the regulated areas prior to the event through the Local Notice to Mariners and Broadcast Notice to Mariners. Notice will also be provided by on-scene designated representatives.

(c) *Enforcement Period:* This section will be enforced during the following times.

(1) Area Newport Harbor, from 6 a.m. on July 6, 2012, to noon on July 9, 2012.

(2) Area Potter Cove, from 9 a.m. to 4 p.m. on July 9, 2012.

(3) Area Parade of Sail, from 9 a.m. to 4 p.m. on July 9, 2012.

Dated: June 8, 2012.

Verne B. Gifford, Jr.,

Captain, U.S. Coast Guard, Captain of the Port, Southeastern New England.

[FR Doc. 2012–16307 Filed 7–2–12; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 100 and 165

[Docket No. USCG–2012–0405]

RIN 1625–AA00; 1625–AA08

Safety Zone and Special Local Regulation; 2012 Macy's 4th of July Fireworks and Spectator Viewing Areas, Hudson River, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone and temporary special local regulation (SLR) on the navigable waters of the Hudson River in the vicinity of New York, NY for the 2012 Macy's 4th of July Fireworks Display. The temporary safety zone and temporary SLR are intended to restrict certain vessels from portions of the Hudson River before, during and immediately after the fireworks event. This regulation is necessary to provide for the safety of life on the navigable waters by controlling vessel movement and to establish public viewing areas for the fireworks event.

DATES: This rule is effective from 6:00 p.m. on July 4, 2012 until 11:00 p.m. on July 5, 2012. This rule will be enforced from 6 p.m. until 11 p.m. on July 4, 2012, and if the fireworks display is postponed due to inclement weather, it will be enforced from 6 p.m. until 11 p.m. on July 5, 2012.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2012–0405]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Ensign Kimberly Farnsworth, Coast Guard; Telephone (718) 354–4163, email *Kimberly.A.Farnsworth@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR **Federal Register**
NPRM Notice of Proposed Rulemaking
COTP Captain of the Port

A. Regulatory History and Information

On November 9, 2011, we published a final rule entitled ''Special Local Regulations and Safety Zones: Recurring Events in Captain of Port New York Zone'' in the **Federal Register** (76 FR 69613). In that rulemaking, the Coast Guard established a permanent safety zone for the annual Macy's 4th of July Fireworks, listed in Table 1 to 33 CFR 165.160, entitled Macy's 4th of July Fireworks.

On March 23, 2012, we published a notice of proposed rulemaking (NPRM) entitled ''Special Local Regulation; Macy's Fourth of July Fireworks Display Spectator Viewing Areas; Hudson River; New York, NY'' in the **Federal Register** (77 FR 16978). We received no comments on the proposed rule. No public meeting was requested, and none was held.

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(3)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the logistics of the event for this year were not finalized and provided to the Coast Guard with sufficient time to publish a NPRM followed by a final rule before the effective date of the event. Immediate action is necessary to ensure public safety due to the inherent hazards associated with launching fireworks and the explosive nature of the fireworks display. Therefore any delay in promulgating this regulation would reduce public safety and is therefore contrary to the public interest.

On Friday, April 27, 2012 the sponsor notified the Coast Guard that it intended

to shift the fireworks display further south of the existing safety zone established in Table 1 to 33 CFR 165.160.

The sponsor advised that it intends to use four barges spaced 1500 feet apart in order to enhance safety and improve the visual effect of the fireworks for the 2012 Macy's 4th of July Fireworks Display. The sponsor further advised that because the command center for the event will be located at Pier 64 in the vicinity of Chelsea Piers, it was necessary to shift the fireworks display south on the Hudson River to allow for constant monitoring and unobstructed view of the entire display site and fallout areas. In previous years the command center was located further north in the vicinity of Pier 88 at the Intrepid Sea, Air and Space Museum. The sponsor requested that the Coast Guard increase the size of the safety zone for the 2012 fireworks display.

Based on the information received regarding the placement of the launch platforms further south on the Hudson River, the fall out area is outside of the existing safety zone established in Table 1 to 33 CFR 165.160 and will not meet the needs of this year's fireworks display.

Therefore, to mitigate the potential danger to spectators, the Coast Guard is establishing a temporary safety zone and temporary SLR. Any delay or cancellation of the event in order to allow for a notice and comment period is contrary to the public interest in having this event occur on July 4, 2012 as scheduled.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during the event and immediate action is necessary to prevent possible loss of life or property. Also, a delay or cancellation of the fireworks event in order to allow for publication in the **Federal Register** is contrary to the public's interest in having this event occur as scheduled.

B. Basis and Purpose

The legal basis for the rule is 33 U.S.C. 1231, 1233; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Public Law 107–295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1, which collectively authorizes the Coast Guard to define regulatory safety zones and special local regulations.

This regulation is necessary to ensure the safety of vessels and spectators from hazards associated with fireworks display. Based on the inherent hazards associated with fireworks, the COTP New York has determined that fireworks launches proximate to watercraft pose significant risk to public safety and property. The combination of increased numbers of recreation vessels, congested waterways, darkness punctuated by bright flashes of light, and debris, especially burning debris falling on passing or anchored spectator vessels has the potential to result in serious injuries or fatalities. This regulation temporarily establishes limited access areas to restrict vessel movement around the location of the launch platforms to reduce the risk associated with the launch of fireworks.

C. Discussion of the Final Rule

The 2012 Macy's 4th of July Fireworks event is scheduled to occur on the waters of the Hudson River, New York, NY. This rule establishing a temporary safety zone and a temporary special local regulation is necessary to ensure the safety of spectators and vessels from hazards associated with the fireworks display.

The fireworks display is scheduled to occur from 9:20 p.m. until 9:50 p.m. This rule will be enforced from 6:00 p.m. until 11:00 p.m. on July 4, 2012 in order to ensure that the area is clear of persons and vessels before the fireworks display begins, and to ensure that no explosive hazards remain after the fireworks display ends. If the event is cancelled due to inclement weather, then this regulation will be enforced from 6:00 p.m. until 11:00 p.m. on July 5, 2012.

The COTP New York will establish five limited access areas within the boundary of the regulated area. Access to these areas will be restricted to vessels of a certain size. The five limited access areas are: (1) A ''spectator area'' designated ALPHA in which access is limited to vessels less than 20 meters in length (65.6 ft); (2) a ''spectator area'' designated BRAVO in which access is limited to vessels greater than 20 meters in length (65.6 ft); (3) a ''buffer zone'' around the fireworks launch barges, designated area CHARLIE, limited to all vessels tending the fireworks launch barges; (4) a ''spectator area'' designated DELTA in which access is limited to vessels greater than 20 meters in length (65.6 ft); and (5) a ''spectator area'' designated ECHO in which access is limited to vessels less than 20 meters in length (65.6 ft).

Public notifications will be made to the local maritime community prior to the event through the Local Notice to Mariners, and Broadcast Notice to Mariners.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. This determination is based on the limited time that vessels will be restricted from the zone. The temporary safety zone and special local regulation will only be in effect for approximately five hours during the evening. The Coast Guard expects minimum adverse impact to mariners from the zone's activation as the event has been extensively advertised to the public. Also, mariners may request authorization from the COTP New York or the designated representative to transit the zone.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the Hudson River, in the vicinity of New York, NY during the effective period.

This rule will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will be in effect for only five hours on a single-day during the late evening. Although the temporary safety zone and temporary special local regulation will apply to the entire width of the river, vessel traffic will be allowed to pass through the area with the permission of the COTP New York or the designated representative. The event is well known and extensive advertisement has allowed for public

notification. Also, before the effective period, we will issue maritime advisories widely available to users of the waterway.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

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

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has 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. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishment of a temporary safety zone and a temporary special local regulation. This rule is categorically excluded from further review under paragraph 34(g) and 34(h) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects

33 CFR Part 100

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

33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR parts 100 and 165 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. Add § 100.T01–0405 to read as follows:

§ 100.T01–0405 Special Local Regulations; 2012 Macy's 4th of July Fireworks Spectator Viewing Areas, Hudson River, New York, NY.

(a) *Regulated Area.* The regulated area includes all navigable waters of the Hudson River bounded by a line drawn from position 40°46′39.48″ N, 073°59′27.06″ W (West 66th Street, New York, NY), west to position 40°46′56.58″ N, 074°00′12.04″ W (North of Pier 9, Weehawken, NJ), then south along the New Jersey shoreline to position 40°46′8.78″ N, 074°00′54.12″ W (north east corner of Hanley Towers, Weehawken, NJ), then east to position 40°45′51.55″ N, 074°00′10.85″ W (pier 84, New York, NY), then along the

Manhattan shoreline north to the point of origin; as well as all navigable waters of the Hudson River bounded by a line drawn from position 40°44′33.25″ N, 074°01′38.48″ W (Stevens Institute of Tech Tower, Castle Point, Hoboken, NJ), east to position 40°44′29.41″ N, 074°00′43.64″ W (Pier 54, New York, NY), south along the Manhattan shore line to position 40°43′36.09″ N, 074°00′54.13″ W (Holland Tunnel Ventilator, Spring Street), and west to position 40°43′42.78″ N, 074°01′35.92″ W (Holland Tunnel Ventilator, Jersey City, NJ), then north to the point of origin. All geographic coordinates are North American Datum of 1983 (NAD 83). Within the overall regulated area defined above, the following are individually defined areas subject to specific requirements:

(1) *Area ALPHA:* all navigable waters of the Hudson River south of a line drawn from position 40°46′56.58″ N, 074°00′12.04″ W (North of Pier 9, Weehawken, NJ), east to position 40°46′39.48″ N, 073°59′27.06″ W (West 66th Street, New York, NY), and north of a line drawn from position 40°46′34.23″ N, 074°00′36.81″ W (Port Imperial Ferry Terminal, Weehawken, NJ), east to position 40°46′14.64″ N, 073°59′55.29″ W (Pier 94, New York, NY) (NAD 83).

(2) *Area BRAVO:* all navigable waters of the Hudson River south of a line drawn from position 40°46'34.23''N 074°00′36.81″ W (Port Imperial ferry terminal, Weehawken, NJ), east to position 40°46′14.64″ N, 073°59′55.29″ W (Pier 94, New York, NY), and north of a line drawn from position 40°46′8.78″ N, 074°00′54.12″ W (north east corner of Hanley Towers, Weehawken, NJ), east to position 40°45′51.55″ N, 074°00′10.85″ W (Pier 84, New York, NY) (NAD 83).

(3) *Area DELTA:* All navigable waters of the Hudson River north of a line drawn from position 40°44′5.78″ N, 074°01′38.48″ W (Hudson Tunnel Station Tower, Hoboken, NJ), then east to position 40°44′02.97″ N, 074°00′42.48″ W (Charles Street Pier, New York, NY), and south of a line drawn from position 40°44′29.41″ N, 074°00′43.64″ W (Pier 54, New York, NY), then west to position 40°44′33.25″ N, 074°01′38.48″ W (Stevens Institute of Tech Tower, Castle Point, Hoboken, NJ) (NAD 83).

(4) *Area ECHO:* All navigable waters of the Hudson River north of a line drawn from position 40°43′42.78″ N, 074°01′35.92″ W (Holland Tunnel Ventilator, Jersey City, NJ), east to position 40°43′36.08″ N, 074°00′54.13″ W (Holland Tunnel Ventilator, Spring Street, New York, NY), and south of a line drawn from position 40°44′05.78″ N, 074°01′38.48″ W (Hudson Tunnel Station Tower, Hoboken, NJ), east to position 40°44′02.97″ N, 074°00′42.48″ W (Charles Street Pier, New York, NY) (NAD 83).

(b) *Definitions.* The following definitions apply to this section:

(1) *Designated Representative.* A ''designated representative'' is any Coast Guard commissioned, warrant or petty officer of the U.S. Coast Guard who has been designated by the Captain of the Port (COTP), Sector NY, to act on his or her behalf. The designated representative may be on an official patrol vessel or may be on shore and will communicate with vessels via VHF–FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(2) *Official Patrol Vessels.* Official patrol vessels may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP Sector New York.

(3) *Spectators.* All persons and vessels not registered with the event sponsor as participants or official patrol vessels.

(c) *Special local regulations.*

(1) In accordance with the general regulations in § 100.35 of this part, entry into, transiting, or anchoring within the regulated areas is prohibited, unless authorized by the COTP or the designated representative.

(2) Vessels are authorized by the COTP or the designated representative to enter areas of this special location regulation in accordance with the following restrictions:

(i) Area ALPHA access is limited to vessels less than 20 meters (65.6 ft) in length.

(ii) Area BRAVO access is limited to vessels greater than 20 meters (65.6 ft) in length.

(iii) Area DELTA access is limited to vessels greater than 20 meters (65.6 ft) in length.

(iv) Area ECHO access is limited to vessels less than 20 meters (65.6 ft) in length.

(3) All persons and vessels in the regulated areas shall comply with the instructions of the COTP or the designated representative.

(4) Upon being hailed by a U.S. Coast Guard vessel or the designated representative, by siren, radio, flashing light or other means, the operator of the vessel shall proceed as directed. Failure to comply with a lawful direction may result in expulsion from the area, citation for failure to comply, or both.

(5) Vessel operators desiring to enter or operate within the regulated area should contact the COTP Sector NY at (718) 354–4356 (Sector NY Command Center) or the designated representative via VHF channel 16 to obtain permission to do so.

(6) Spectators or other vessels shall not anchor, block, loiter, or impede the transit of event participants or official patrol vessels in the regulated areas during the effective dates and times, or dates and times as modified through the Local Notice to Mariners, unless authorized by COTP Sector NY or designated representative.

(7) The COTP Sector NY or designated representative may delay or terminate any marine event in this subpart at any time if it is deemed necessary to ensure the safety of life or property.

(d) *Enforcement period.* This regulation will be enforced from 6 p.m. until 11 p.m. on July 4, 2012, and if the fireworks display is postponed due to inclement weather, it will be enforced from 6 p.m. until 11 p.m. on July 5, 2012.

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 4. Add § 165.T01–0405 to read as follows:

§ 165.T01–0405 Safety Zone; 2012 Macy's 4th of July Fireworks, Hudson River, NY.

(a) *Regulated area.* The following area is a temporary safety zone: all navigable waters of the Hudson River bounded by a line drawn east from position 40°46′08.78″ N, 074°00′54.12″ W (north east corner of Hanley Towers, Weehawken, NJ); to position 40°45′51.55″ N, 074°00′10.85″ W (Pier 84, Manhattan, NY); thence south along the Manhattan shoreline to position 40°44′29.41″ N, 074°00′43.64″ W (Pier 54, Manhattan, NY); then west to position 40°44′33.25″ N, 074°01′29.48″ W (Stevens Institute of Tech Tower, Castle Point, Hoboken, NJ); then north along the New Jersey shoreline and back to the point of origin. All geographic coordinates are North American Datum of 1983 (NAD 83).

(b) *Definitions.* The following definitions apply to this section:

(1) *Designated Representative.* A ''designated representative'' is any Coast Guard commissioned, warrant or petty officer of the U.S. Coast Guard who has been designated by the Captain of the Port (COTP), Sector NY, to act on his or

her behalf. The designated representative may be on an official patrol vessel or may be on shore and will communicate with vessels via VHF–FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(2) *Official Patrol Vessels.* Official patrol vessels may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP Sector New York.

(3) *Spectators.* All persons and vessels not registered with the event sponsor as participants or official patrol vessels.

(c) *Regulations.*

(1) The general regulations contained in 33 CFR 165.23 apply. In accordance with the general regulations in § 165.23 of this part, entry into or movement within this zone is prohibited unless authorized by the COTP New York or the designated representative.

(2) All persons and vessels in the regulated areas shall comply with the instructions of the COTP or the designated representative.

(3) Upon being hailed by a U.S. Coast Guard vessel or the designated representative, by siren, radio, flashing light or other means, the operator of the vessel shall proceed as directed. Failure to comply with a lawful direction may result in expulsion from the area, citation for failure to comply, or both.

(4) Vessel operators desiring to enter or operate within the regulated area should contact the COTP Sector NY at (718) 354–4356 (Sector NY Command Center) or the designated representative via VHF channel 16 to obtain permission to do so.

(5) Spectators or other vessels shall not anchor, block, loiter, or impede the transit of event participants or official patrol vessels in the regulated areas during the effective dates and times, or dates and times as modified through the Local Notice to Mariners, unless authorized by COTP Sector NY or designated representative.

(6) The COTP Sector NY or designated representative may delay or terminate any marine event in this subpart at any time if it is deemed necessary to ensure the safety of life or property.

(d) *Enforcement period.* This regulation will be enforced from 6 p.m. until 11 p.m. on July 4, 2012. If the event is cancelled due to inclement weather, then this regulation will be enforced from 6:00 p.m. until 11:00 p.m. on July 5, 2012.

Dated: June 12, 2012.

G.P. Hitchen,

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

[FR Doc. 2012–16241 Filed 7–2–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–0567]

RIN 1625–AA00

Safety Zone; Cleveland Yachting Club Fireworks, Lake Erie, Rocky River, OH

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on Lake Erie, Rocky River, OH. This safety zone is intended to restrict vessels from a portion of Lake Erie during the Cleveland Yachting Club Fireworks display. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with a fireworks display.

DATES: This rule will be effective between 9:15 p.m. until 10:30 p.m. on July 12, 2012.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2012–0567]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box, and click ''Search.'' You may visit the Docket Management Facility, Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email LT Christopher Mercurio, Chief of Waterways Management, U.S. Coast Guard Sector Buffalo; telephone 716–843–9343, email *SectorBuffaloMarineSafety@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR **Federal Register**
NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable. The final details for this event were not known to the Coast Guard until there was insufficient time remaining before the event to publish an NPRM. Thus, delaying the effective date of this rule to wait for a comment period to run would be both impracticable and contrary to the public interest because it would inhibit the Coast Guard's ability to protect spectators and vessels from the hazards associated with a maritime fireworks display, which are discussed further below.

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

B. Basis and Purpose

Between 9:45 p.m. and 10:00 p.m. on July 12, 2012, a fireworks display will be held on Lake Erie near Rocky River, OH. The Captain of the Port Buffalo has determined that fireworks launched proximate to a gathering of watercraft pose a significant risk to public safety and property. Such hazards include premature and accidental detonations, dangerous projectiles, and falling or burning debris.

C. Discussion of Rule

With the aforementioned hazards in mind, the Captain of the Port Buffalo has determined that this temporary safety zone is necessary to ensure the safety of spectators and vessels during the Cleveland Yachting Club Fireworks. This zone will be effective and enforced from 9:15 p.m. until 10:30 p.m. on July 12, 2012. This zone will encompass all waters of Lake Erie, Rocky River, OH within a 560 foot radius of position

41°29′24.09″ N and 81°50′18.42″ W (NAD 83).

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule will be relatively small and enforced for a relatively short time. Also, the safety zone is designed to minimize its impact on navigable waters. Furthermore, the safety zone has been designed to allow vessels to transit around it. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in a portion of Lake Erie on the evening of July 12, 2012.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This safety zone would be activated, and thus subject to enforcement, for only an hour and fifteen minutes late in the day. Traffic may be allowed to pass through the zone with the permission of the Captain of the Port. The Captain of the Port can be reached via VHF channel 16. Before the activation of the zone, we would issue local Broadcast Notice to Mariners.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

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

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has 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. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations

That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a safety zone and, therefore, it is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T09–0567 to read as follows:

§ 165.T09–0567 Safety Zone; Cleveland Yachting Club Fireworks, Lake Erie, Rocky River, OH.

(a) *Location.* The safety zone will encompass all waters of Lake Erie, Rocky River, OH within a 560 foot radius of position 41°29′24.09″ N and 81°50′18.42″ W (NAD 83).

(b) *Effective and Enforcement Period.* This regulation is effective and will be enforced on July 12, 2012 from 9:15 p.m. until 10:30 p.m.

(c) *Regulations.*

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

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

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

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

Dated: June 20, 2012.

S.M. Wischmann,

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

[FR Doc. 2012–16263 Filed 7–2–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–0425]

RIN 1625–AA00

Safety Zone; Wicomico Community Fireworks Rain Date, Great Wicomico River, Mila, VA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the Great Wicomico River in the vicinity of Mila, VA in support of the Wicomico Community Rain Date Fireworks event. This action is necessary to provide for the safety of life on navigable waters during the Wicomico Community Fireworks. This action is intended to restrict vessel traffic movement on the Great Wicomico River to protect mariners from the hazards associated with fireworks displays.

DATES: This rule is effective from 9 p.m. until 10 p.m. on July 7, 2012.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2012–0425 and are available online by going to *http://www.regulations.gov,* inserting USCG–2012–0425 in the ''Search'' box, and then clicking ''Search.'' They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email LCDR Hector Cintron, Waterways Management Division Chief, Sector Hampton Roads, Coast Guard; telephone 757–668–5581, email *Hector.L.Cintron@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because any delay encountered in this regulation's effective date by publishing a NPRM would be impracticable since immediate action is needed to provide for the safety of life and property on navigable waters.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date would be impracticable since immediate action is needed to ensure the safety of the event participants, spectator craft, and other vessels transiting the event area.

B. Basis and Purpose

On July 7, 2012 the Wicomico Church will sponsor a fireworks display, if the scheduled event is cancelled on July 4, 2012 on the Great Wicomico River in the vicinity of Mila, VA. Due to the need to protect mariners and spectators from the hazards associated with the fireworks display, access to the Great Wicomico River within 420 feet of the fireworks launching platform at position 37°50′31″ N/076°19′42″ W (NAD 1983) will be temporarily restricted.

C. Discussion of Rule

The Coast Guard is establishing a safety zone on specified waters of the Great Wicomico River in the vicinity of Mila, Virginia. The fireworks will be launched from land adjacent to the Great Wicomico River and the safety zone is intended to protect mariners from any fall out that may enter the water. This safety zone will encompass all navigable waters within 420 feet of the fireworks launching platform located at position 37°50′31″ N/076°19′42″ W (NAD 1983). This safety zone will be established in the interest of public safety during the Wicomico Community Fireworks event and will be enforced from 9 p.m. until 10 p.m. on July 7, 2012. Access to the safety zone will be restricted during the specified date and times. Except for individuals responsible for launching the fireworks and vessels authorized by the Captain of the Port or his Representative, no person or vessel may enter or remain in the regulated area.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. Although this regulation restricts access to the safety zone, the effect of this rule will not be significant because: (i) The safety zone will be in effect for a limited duration; (ii) the zone is of limited size; (iii) mariners may transit the waters in and around this safety zone at the discretion of the Captain of the Port or designated representative; and (iv), the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

2. Impact on Small Entities

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

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

The rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in that portion of the Great Wicomico River from 9 p.m. until 10 p.m. on July 7, 2012.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: (i) The safety zone will only be in place for a limited duration. (ii) Before the enforcement period of July 7, 2012, maritime advisories will be issued allowing mariners to adjust their plans accordingly. (iii) This regulation will only be enforced if inclement weather caused the cancellation of the fireworks display currently scheduled for July 4, 2012.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

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

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

4. Collection of Information

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

5. Federalism

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

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T05–0425, to read as follows:

§ 165.T05–0425 Safety Zone; Wicomico Community Fireworks Rain Date, Great Wicomico River, Mila, VA.

(a) *Regulated Area.* The following area is a safety zone: specified waters of the Great Wicomico River located within a 420 foot radius of the fireworks display at approximate position 37°50′31″ N/076°19′42″ W (NAD 1983) in Mila, VA.

(b) *Definition.* For purposes of enforcement of this section, *Captain of the Port Representative* means any U.S. Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Hampton Roads, Virginia to act on his behalf.

(c) *Regulation.*

(1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, Hampton Roads or his designated representatives.

(2) The operator of any vessel in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on board a vessel displaying a U.S. Coast Guard Ensign; and

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a U.S. Coast Guard Ensign.

(3) The Captain of the Port, Hampton Roads, Virginia can be contacted at telephone number (757) 638–6637.

(4) U.S. Coast Guard vessels enforcing the safety zone can be contacted on VHF–FM marine band radio, channel 13 (156.65 MHz) and channel 16 (156.8 MHz).

(d) *Enforcement period.* This regulation will be enforced from 9 p.m. until 10 p.m. on July 7, 2012, if the event is cancelled on July 4, 2012.

Dated: May 16, 2012.

Mark S. Ogle,

Captain, U.S. Coast Guard, Captain of the Port Hampton Roads.

[FR Doc. 2012–16265 Filed 7–2–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–0584]

RIN 1625–AA00

Safety Zone; Tom Graves Memorial Fireworks, Port Bay, Wolcott, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on Port Bay, Wolcott, NY. This safety zone is intended to restrict vessels from a portion of Port Bay during the Tom Graves Memorial Fireworks display. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with a fireworks display.

DATES: This rule will be effective from 9:30 p.m. until 11:30 p.m. on July 3, 2012.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2012–0584]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type the docket number in the ''SEARCH'' box, and click ''Search.'' You may visit the Docket Management Facility, Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email LT Christopher Mercurio, Chief of Waterways Management, U.S. Coast Guard Sector Buffalo; telephone 716–843–9343, email *SectorBuffaloMarineSafety@uscg.mil*. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR **Federal Register**
NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable and contrary to the public interest. The final details for this event were not known to the Coast Guard until there was insufficient time remaining before the event to publish an NPRM. Thus, delaying the effective date of this rule to wait for a comment period to run would be both impracticable and contrary to the public interest because it would inhibit the Coast Guard's ability to protect spectators and vessels from the hazards associated with a maritime fireworks display, which are discussed further below.

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

B. Basis and Purpose

Between 10:00 p.m. and 11:00 p.m. on July 3, 2012, a fireworks display will be held on Port Bay near Wolcott, NY. The Captain of the Port Buffalo has determined that fireworks launched proximate to a gathering of watercraft pose a significant risk to public safety and property. Such hazards include premature and accidental detonations, dangerous projectiles, and falling or burning debris.

C. Discussion of Rule

With the aforementioned hazards in mind, the Captain of the Port Buffalo has determined that this temporary safety zone is necessary to ensure the safety of spectators and vessels during the Tom Graves Memorial Fireworks. This zone will be effective and enforced from 9:30 p.m. until 11:30 p.m. on July 3, 2012. This zone will encompass all waters of Port Bay, Wolcott, NY within an 840 foot radius of barge position 43°18′13.3″ N and 76°50′16.9″ W (NAD 83).

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule will be relatively small and enforced for relatively short time. Also, the safety zone is designed to minimize its impact on navigable waters. Furthermore, the safety zone has been designed to allow vessels to transit around it. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in a portion of Port Bay on the evening of July 3, 2012.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This safety zone would be activated, and thus subject to enforcement, for only 120 minutes late in the day. Traffic may be allowed to pass through the zone with the permission of the Captain of the Port. The Captain of the Port can be reached via VHF channel 16. Before the activation of the zone, we would issue local Broadcast Notice to Mariners.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

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

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has 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. We have

analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INTFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a safety zone and, therefore it is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T09–0584 to read as follows:

§ 165.T09–0584 Safety Zone; Tom Graves Memorial Fireworks, Port Bay, Wolcott, NY.

(a) *Location.* The safety zone will encompass all waters of Port Bay, Wolcott, NY within an 840 foot radius of barge position 43°18′13.3″ N and 76°50′16.9″ W (NAD 83).

(b) *Effective and Enforcement Period.* This regulation is effective and will be enforced on July 3, 2012 from 9:30 p.m. until 11:30 p.m.

(c) Regulations.

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

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

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

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

Dated: June 20, 2012.

S.M. Wischmann,

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

[FR Doc. 2012–16254 Filed 7–2–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–0554]

RIN 1625–AA00

Safety Zone; Buffalo July 4th Fireworks, Lake Erie, Buffalo, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on Lake Erie, Buffalo, NY. This safety zone is intended to restrict vessels from a portion of Lake Erie during the Buffalo July 4th Fireworks display. This temporary safety zone is necessary to

protect spectators and vessels from the hazards associated with a fireworks display.

DATES: This rule will be effective from 9:00 p.m. until 11:15 p.m. on July 4, 2012.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2012–0554]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box, and click ''Search.'' You may visit the Docket Management Facility, Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email LT Christopher Mercurio, Chief of Waterways Management, U.S. Coast Guard Sector Buffalo; telephone 716–843–9343, email *SectorBuffaloMarineSafety@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR **Federal Register**
NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable. The final details for this event were not known to the Coast Guard until there was insufficient time remaining before the event to publish an NPRM. Thus, delaying the effective date of this rule to wait for a comment period to run would be impracticable as it would inhibit the Coast Guard's ability to protect spectators and vessels from the hazards associated with a maritime fireworks display, which are discussed further below.

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

B. Basis and Purpose

Between 9:30 p.m. and 10:45 p.m. on July 4, 2012, a fireworks display will be held on Lake Erie near Buffalo, NY. The Captain of the Port Buffalo has determined that fireworks launched proximate to a gathering of watercraft pose a significant risk to public safety and property. Such hazards include premature and accidental detonations, dangerous projectiles, and falling or burning debris.

C. Discussion of Rule

With the aforementioned hazards in mind, the Captain of the Port Buffalo has determined that this temporary safety zone is necessary to ensure the safety of spectators and vessels during the Buffalo July 4th Fireworks. This zone will be effective and enforced from 9:00 p.m. until 11:15 p.m. on July 4, 2012. This zone will encompass all waters of Lake Erie, Buffalo, NY within a 1680 foot radius of position 42°52′14.92″ N and 78°52′56.57″ W (NAD 83).

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule will be relatively small and enforced for a relatively short time. Also, the safety zone is designed to minimize its impact on navigable waters. Furthermore, the safety zone has been designed to allow vessels to transit around it. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the Lake Erie on the evening of July 4, 2012.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This safety zone would be activated, and thus subject to enforcement, for only two hours and fifteen minutes late in the day. Traffic may be allowed to pass through the zone with the permission of the Captain of the Port. The Captain of the Port can be reached via VHF channel 16. Before the activation of the zone, we would issue local Broadcast Notice to Mariners.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

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

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has 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. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INTFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a safety zone and, therefore it is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T09–0554 to read as follows:

§ 165.T09–0554 Safety Zone; Buffalo July 4th Fireworks, Lake Erie, Buffalo, NY.

(a) *Location.* This zone will encompass all waters of Lake Erie, Buffalo, NY within a 1680 foot radius of position 42°52′14.92″ N and 78°52′56.57″ W (NAD 83).

(b) *Effective and Enforcement Period.* This regulation is effective and will be enforced on July 4, 2012, from 9:00 p.m. until 11:15 p.m.

(c) *Regulations.*

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

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

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

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

Dated: June 20, 2011.

S.M. Wischmann,

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

[FR Doc. 2012–16262 Filed 7–2–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–0464]

RIN 1625–AA00

Safety Zone; Village of Sackets Harbor, Lake Ontario, Sackets Harbor, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on Lake Ontario, Sackets Harbor, NY. This zone is intended to restrict vessels from a portion of Lake Ontario during the Village of Sackets Harbor Fireworks display. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with a fireworks display.

DATES: This rule will be effective between 9:30 p.m. until 11:30 p.m. on July 4, 2012.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket USCG–2012–0464 and are available online by going to *http://www.regulations.gov,* inserting USCG–2012–0464 in the ''Keyword'' box, and then clicking ''Search.'' This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email LT Christopher Mercurio, Chief of Waterways Management, U.S. Coast Guard Sector Buffalo; telephone 716–843–9343, email *SectorBuffaloMarineSafety@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable and contrary to the public interest. The final details for this event were not known to the Coast Guard until there was insufficient time remaining before the event to publish an NPRM. Thus, delaying the effective date of this rule to wait for a comment period to run would be both impracticable and contrary to the public interest because it would inhibit the Coast Guard's ability to protect spectators and vessels from the hazards associated with a maritime fireworks display, which are discussed further below. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. For the same reasons discussed in the preceding paragraph, waiting for a 30 day notice period to run would be impracticable and contrary to the public interest.

Background and Purpose

Between 9:30 p.m. and 11:30 p.m. on July 4, 2012, a fireworks display will be held on Lake Ontario in Sackets Harbor, NY. The Captain of the Port Buffalo has determined that fireworks launched proximate to a gathering of watercraft pose a significant risk to public safety and property. Such hazards include premature and accidental detonations, dangerous projectiles, and falling or burning debris.

Discussion of Rule

With the aforementioned hazards in mind, the Captain of the Port Buffalo has determined that this temporary safety zone is necessary to ensure the safety of spectators and vessels during the Village of Sackets Harbor Fireworks. This safety zone will be effective and enforced from 9:30 p.m. until 11:30 p.m. on July 4, 2012. This zone will encompass all waters of Lake Ontario, Sackets Harbor, NY within a 420 foot radius of position 43°56′51.87″ N and 76°07′46.98″ W (NAD 83).

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule will be relatively small and enforced for relatively short time. Also, the safety zone is designed to minimize its impact on navigable waters. Furthermore, the safety zone has been designed to allow vessels to transit around it. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port.

Small Entities

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

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

This temporary final rule may affect the following entities, some of which may be small entities: The owners of operators of vessels intending to transit or anchor in a portion of Lake Ontario,

Sackets Harbor, NY between 9:30 p.m. and 11:30 p.m. on July 4, 2012.

This safety zone will not have a significant economic impact on a substantial number of small entities because of the minimal amount of time in which the safety zone will be enforced. This safety zone will only be enforced for 120 minutes in a low commercial vessel traffic area. Vessel traffic can pass safely around the zone. Before the effective period, maritime advisories will be issued, which include a Broadcast Notice to Mariners.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness.

If this rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LT Christopher Mercurio, Chief of Waterways Management, U.S. Coast Guard Sector Buffalo; telephone 716–843–9343, email *SectorBuffaloMarineSafety@uscg.mil.* The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T09–0464 to read as follows:

§ 165.T09–0464 Safety Zone; Village of Sackets Harbor Fireworks, Lake Ontario, Sackets Harbor, NY.

(a) *Location.* The safety zone will encompass all waters of Lake Ontario, Sackets Harbor, NY within a 420 foot radius of position 43°56′51.87″ N and 76°07′46.98″ W (NAD 83).

(b) *Effective and Enforcement Period.* This regulation will be effective and will be enforced on July 4, 2012 from 9:30 p.m. until 11:30 p.m.

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

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

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

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

Dated: June 18, 2012.

S.M. Wischmann,

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

[FR Doc. 2012–16291 Filed 7–2–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–0141]

RIN 1625–AA00

Safety Zone: Crescent City Fourth of July Fireworks Event, Crescent City, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the navigable waters near Crescent City Harbor in Crescent City, CA in support of the Crescent City Fourth of July Fireworks Event on July 4, 2012. This safety zone is established to ensure the safety of mariners and spectators from the dangers associated with the pyrotechnics. Unauthorized persons or vessels are prohibited from entering into, transiting through, or remaining in the safety zone without permission of the Captain of the Port or her designated representative.

DATES: This rule is effective from 9:30 p.m. through 10:15 p.m. on July 4, 2012.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2012–0141 and are available online by going to *http://www.regulations.gov,* inserting USCG–2012–0141 in the ''keyword'' box, and then clicking ''Search''. They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email Ensign William Hawn, U.S. Coast Guard Sector San Francisco; telephone (415) 399–7442 or email at *D11-PF-MarineEvents@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR **Federal Register**
NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.''

Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the event would occur before the rulemaking process would be completed. Because of the dangers posed by the pyrotechnics used in this fireworks display, the safety zone is necessary to provide for the safety of event participants, spectators, spectator craft, and other vessels transiting the event area. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event.

B. Basis and Purpose

The legal basis for the proposed rule is the Ports and Waterways Safety Act which authorizes the Coast Guard to establish safety zones (33 U.S.C sections 1221 et seq.).

Crescent City-Del Norte County Chamber of Commerce will sponsor the Crescent City Fourth of July Fireworks Event on July 4, 2012, in the navigable waters near the West Jetty of Crescent City Harbor off of Crescent City, CA. Upon the commencement of the 30 minute fireworks display, scheduled to take place from 9:30 p.m. to 10 p.m. on July 4, 2012, the safety zone will encompass the navigable waters around and under the fireworks launch site within a radius of 560 feet at position 41°44′41″ N, 124°11′59″ W (NAD 83). The fireworks display is meant for entertainment purposes and the safety zone is issued to establish a temporary restricted area on the waters surrounding the fireworks display. This restricted area around the launch site is necessary to protect spectators, vessels, and other property from the hazards associated with the pyrotechnics. The Coast Guard has granted the event sponsor a marine event permit for the fireworks display.

C. Discussion of the Final Rule

The Coast Guard will enforce a safety zone in navigable waters around and under the fireworks launch site within a radius of 560 feet during fireworks display. Upon the commencement of the 30 minute fireworks display, scheduled to take place from 9:30 p.m. to 10 p.m. on July 4, 2012, the safety zone will

encompass the navigable waters around and under the fireworks launch site within a radius 560 feet at position 41°44′41″ N, 124°11′59″ W (NAD 83) for the Crescent City Fourth of July Fireworks Event. At the conclusion of the fireworks display the safety zone shall terminate.

The effect of the temporary safety zone will be to restrict navigation in the vicinity of the fireworks launch site during the fireworks display. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the restricted area. These regulations are needed to keep spectators and vessels away from the immediate vicinity of the fireworks barge to ensure the safety of participants, spectators, and transiting vessels.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

We expect the economic impact of this rule does not rise to the level of necessitating a full Regulatory Evaluation. The safety zone is limited in duration, and is limited to a narrowly tailored geographic area. In addition, although this rule restricts access to the waters encompassed by the safety zone, the effect of this rule will not be significant because the local waterway users will be notified via public Broadcast Notice to Mariners to ensure the safety zone will result in minimum impact. The entities most likely to be affected are waterfront facilities, commercial vessels, and pleasure craft engaged in recreational activities.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect owners and operators of waterfront facilities, commercial vessels, and pleasure craft engaged in recreational activities and sightseeing. This rule will not have a significant economic impact on a substantial number of small entities for the following reasons: (i) This rule will encompass only a small portion of the waterway for a limited period of time, and (ii) the maritime public will be advised in advance of this safety zone via Broadcast Notice to Mariners.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

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

4. Collection of Information

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

5. Federalism

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

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations

That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone of limited size and duration. This rule is categorically excluded from further review under paragraph 34(g) and 35(b) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T11–500 to read as follows:

§ 165.T11–500 Safety zone; Crescent City Fourth of July Fireworks Event, Crescent City, CA.

(a) *Location.* This temporary safety zone is established for the navigable waters near the West Jetty of Crescent City Harbor in Crescent City, California as depicted in National Oceanic and Atmospheric Administration (NOAA) Chart 18603. The safety zone will extend 560 feet around West Jetty of Crescent City Harbor at position 41°44′41″ N, 124°11′59″ W (NAD 83). From 9:30 p.m. until 10 p.m. on July 4, 2012, the temporary safety zone will encompass the navigable waters around and under the launch site within a radius of 560 feet.

(b) *Enforcement Period.* The zone described in paragraph (a) of this section will be enforced from 9:30 p.m. until 10:15 p.m. on July 4, 2012. The Captain of the Port San Francisco (COTP) will notify the maritime community of periods during which this zone will be enforced via Broadcast Notice to Mariners in accordance with 33 CFR 165.7.

(c) *Definitions.* As used in this section, ''designated representative'' means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer on a Coast Guard vessel or a Federal, State, or local officer designated by or assisting the COTP in the enforcement of the safety zone.

(d) *Regulations.* (1) Under the general regulations in 33 CFR Part 165, Subpart C, entry into, transiting or anchoring within this safety zone is prohibited unless authorized by the COTP or a designated representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP or a designated representative.

(3) Vessel operators desiring to enter or operate within the safety zone must contact the COTP or a designated representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP or a designated representative. Persons and vessels may request permission to enter the safety zone on VHF–23A or through the 24-hour Command Center at telephone (415) 399–3547.

Dated: June 20, 2012.

Cynthia L. Stowe,

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

[FR Doc. 2012–16303 Filed 7–2–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–0419]

RIN 1625–AA00

Safety Zone: Independence Day Fireworks Celebration for the City of Richmond, Richmond Inner Harbor, Richmond, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the navigable waters of Richmond Inner Harbor near Richmond, CA in support of the Independence Day Fireworks Celebration for the City of Richmond on July 3, 2012. This safety zone is established to ensure the safety of participants and spectators from the dangers associated with the pyrotechnics. Unauthorized persons or vessels are prohibited from entering into, transiting through, or remaining in the safety zone without permission of the Captain of the Port or their designated representative.

DATES: This rule is effective on July 3, 2012. This rule will be enforced from 9:30 p.m. to 10 p.m. on July 3, 2012.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2012–0419. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Ensign William Hawn, U.S. Coast Guard Sector San Francisco; telephone (415) 399–7442 or email at D11–PF–MarineEvents@uscg.mil. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR **Federal Register**

NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.''

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard received the information about the fireworks display on May 5, 2012, and the fireworks display would occur before the rulemaking process would be completed. Because of the dangers posed by the pyrotechnics used in this fireworks display, the safety zone is necessary to provide for the safety of event participants, spectators, spectator craft, and other vessels transiting the event area. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event.

B. Basis and Purpose

The legal basis for the proposed rule is 33 U.S.C 1231; 46 U.S.C Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to establish safety zones.

The City of Richmond will sponsor the Independence Day Fireworks Celebration for the City of Richmond on July 3, 2012, on Lucretia Edwards Park near Richmond, CA in position 37°54′34″ N, 122°21′17″ W (NAD 83) as depicted in National Oceanic and Atmospheric Administration (NOAA) Chart 18649. Upon the commencement of the fireworks display, the safety zone will encompass the navigable waters around the launch site within a radius of 420 feet. The fireworks display is meant for entertainment purposes. This restricted area around the launch site is necessary to protect spectators, vessels, and other property from the hazards associated with the pyrotechnics. The Coast Guard has granted the event sponsor a marine event permit for the fireworks display.

C. Discussion of the Final Rule

The Coast Guard will enforce a safety zone in navigable waters around the land based launch site on Lucretia Edwards Park near Richmond, CA. Upon the commencement of the 20 minute fireworks display, scheduled to take place from 9:30 p.m. to 9:50 p.m. on July 3, 2012, the safety zone will encompass the navigable waters around the fireworks launch site within a radius 420 feet from position 37°54′34″ N, 122°21′17″ W (NAD 83) for the Independence Day Fireworks Celebration for the City of Richmond. At the conclusion of the fireworks display the safety zone shall terminate.

The effect of the temporary safety zone will be to restrict navigation in the vicinity of the launch site until the conclusion of the scheduled display. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the restricted area. These regulations are needed to keep spectators and vessels away from the immediate vicinity of the launch site to ensure the safety of participants, spectators, and transiting vessels.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

We expect the economic impact of this rule does not rise to the level of necessitating a full Regulatory Evaluation. The safety zone is limited in duration, and is limited to a narrowly tailored geographic area. In addition, although this rule restricts access to the waters encompassed by the safety zone, the effect of this rule will not be significant because the local waterway users will be notified via public Broadcast Notice to Mariners to ensure the safety zone will result in minimum impact. The entities most likely to be affected are waterfront facilities, commercial vessels, and pleasure craft engaged in recreational activities.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule may affect owners and operators of waterfront facilities, commercial vessels, and pleasure craft engaged in recreational activities and sightseeing. This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons. This safety zone would be activated, and thus subject to enforcement, for a limited duration. When the safety zone is activated, vessel traffic could pass safely around the safety zone. The maritime public will be advised in advance of this safety zone via Broadcast Notice to Mariners.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

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

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has 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. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone of limited size and duration. This rule is categorically excluded from further review under paragraph 34(g) and 35(b) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T11–504 to read as follows:

§ 165.T11–504 Safety zone; Independence Day Fireworks Celebration for the City of Richmond, Richmond Inner Harbor, Richmond, CA.

(a) *Location.* This temporary safety zone is established for the navigable waters of Richmond Inner Harbor near Richmond, CA as depicted in National Oceanic and Atmospheric Administration (NOAA) Chart 18649. From 9:30 p.m. until 9:50 p.m. on July 3, 2012, the temporary safety zone will encompass the navigable waters around the fireworks launch site in position 37°54′34″ N, 122°21′17″ W (NAD 83) within a radius of 420 feet.

(b) *Enforcement Period.* The zone described in paragraph (a) of this section will be enforced from 9:30 p.m. through 10 p.m. on July 3, 2012. The Captain of the Port San Francisco (COTP) will notify the maritime community of periods during which this zone will be enforced via Broadcast Notice to Mariners in accordance with 33 CFR 165.7.

(c) *Definitions.* As used in this section, ''designated representative'' means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer on a Coast Guard vessel or a Federal, State, or local officer designated by or assisting the COTP in the enforcement of the safety zone.

(d) *Regulations.* (1) Under the general regulations in 33 CFR part 165, subpart C, entry into, transiting or anchoring within this safety zone is prohibited unless authorized by the COTP or a designated representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP or a designated representative.

(3) Vessel operators desiring to enter or operate within the safety zone must contact the COTP or a designated representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP or a designated representative. Persons and vessels may request permission to enter the safety zone on VHF–23A or through the 24-hour Command Center at telephone (415) 399–3547.

Dated: June 20, 2012.

Cynthia L. Stowe,

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

[FR Doc. 2012–16299 Filed 7–2–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–0420]

RIN 1625–AA00

Safety Zone: Independence Day Fireworks Celebration for the City of Vallejo, Mare Island Strait, Vallejo, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the navigable waters of Mare Island Strait near Vallejo, CA in support of the Independence Day Fireworks Celebration for the City of Vallejo on July 4, 2012. This safety zone is established to ensure the safety of participants and spectators from the dangers associated with the pyrotechnics. Unauthorized persons or vessels are prohibited from entering into, transiting through, or remaining in the safety zone without permission of the Captain of the Port or their designated representative.

DATES: This rule is effective from 9:30 p.m. to 10 p.m. on July 4, 2012.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2012–0420. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Ensign William Hawn, U.S. Coast Guard Sector San Francisco; telephone (415) 399–7442 or email at *D11-PF-MarineEvents@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR **Federal Register**

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment, pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' The Coast Guard also is issuing this rule fewer than 30 days after publication in the **Federal Register**, pursuant to 5 U.S.C. 553(d)(3). The Coast Guard received the information about the fireworks display on May 7, 2012, and the fireworks display would occur before the rulemaking process would be completed. Because of the dangers posed by the pyrotechnics used in this fireworks display, the safety zone is necessary to provide for the safety of event participants, spectators, spectator craft, and other vessels transiting the event area. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event. Therefore, the Coast Guard finds that good cause exists for making this rule effective without prior notice and comment, and fewer than 30 days after publication in the **Federal Register**.

B. Basis and Purpose

The legal basis for the rule is 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to establish safety zones.

The City of Vallejo will sponsor the Independence Day Fireworks Celebration for the City of Vallejo on July 4, 2012, on Mare Island near Vallejo, CA in position 38°06′09″ N, 122°16′15″ W (NAD 83) as depicted in National Oceanic and Atmospheric Administration (NOAA) Chart 18655. Upon the commencement of the fireworks display, the safety zone will encompass the navigable waters around the launch site within a radius of 420 feet. The fireworks display is meant for entertainment purposes. This restricted area around the launch site is necessary to protect spectators, vessels, and other property from the hazards associated with the pyrotechnics. The Coast Guard has granted the event sponsor a marine event permit for the fireworks display.

C. Discussion of the Final Rule

The Coast Guard will enforce a safety zone in navigable waters around the land based launch site on Mare Island near Vallejo, CA. Upon the commencement of the 20 minute fireworks display, scheduled to take place from 9:30 p.m. to 9:50 p.m. on July 4, 2012, the safety zone will encompass the navigable waters around the fireworks launch site within a radius 420 feet from position 38°06′09″ N, 122°16′15″ W (NAD 83) for the Independence Day Fireworks Celebration for the City of Vallejo. At the conclusion of the fireworks display the safety zone will terminate.

The effect of the temporary safety zone will be to restrict navigation in the vicinity of the launch site until the conclusion of the scheduled display. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the restricted area. These regulations are needed to keep spectators and vessels away from the immediate vicinity of the launch site to ensure the safety of participants, spectators, and transiting vessels.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

The safety zone is not a significant regulatory action because it is limited in duration, and is limited to a narrowly tailored geographic area. In addition, although this rule restricts access to the waters encompassed by the safety zone, the effect of this rule will not be significant because the local waterway users will be notified via public Broadcast Notice to Mariners to ensure the safety zone will result in minimum impact. The entities most likely to be affected are waterfront facilities, commercial vessels, and pleasure craft engaged in recreational activities.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule may affect owners and operators of waterfront facilities, commercial vessels, and pleasure craft engaged in recreational activities and sightseeing. This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons. This safety zone would be activated, and thus subject to enforcement, for a limited duration. When the safety zone is activated, vessel traffic could pass safely around the safety zone. The maritime public will be advised in advance of this safety zone via Broadcast Notice to Mariners.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

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

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has 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. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone of limited size and duration. This rule is categorically excluded from further review under paragraph 34(g) and 35(b) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add temporary § 165.T11–505 to read as follows:

§ 165.T11–505 Safety zone; Independence Day Fireworks Celebration for the City of Vallejo, Mare Island Strait, Vallejo, CA.

(a) *Location.* This temporary safety zone is established for the navigable waters of Mare Island Strait near Vallejo, CA as depicted in National Oceanic and Atmospheric Administration (NOAA) Chart 18655. From 9:30 p.m. until 10 p.m. on July 4, 2012, the temporary safety zone will encompass the navigable waters around the fireworks launch site in position 38°06′09″ N, 122°16′15″ W (NAD 83) within a radius of 420 feet.

(b) *Enforcement Period.* The zone described in paragraph (a) of this section will be enforced from 9:30 p.m. through 10 p.m. on July 4, 2012. The Captain of the Port San Francisco (COTP) will notify the maritime community of periods during which this zone will be enforced via Broadcast Notice to Mariners in accordance with 33 CFR 165.7.

(c) *Definitions.* As used in this section, ''designated representative'' means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer on a Coast Guard vessel or a Federal, State, or local officer designated by or assisting the COTP in the enforcement of the safety zone.

(d) *Regulations.* (1) Under the general regulations in 33 CFR Part 165, Subpart C, entry into, transiting or anchoring within this safety zone is prohibited unless authorized by the COTP or a designated representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP or a designated representative.

(3) Vessel operators desiring to enter or operate within the safety zone must contact the COTP or a designated representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP or a designated representative. Persons and vessels may request permission to enter the safety zone on VHF–23A or through the 24-hour Command Center at telephone (415) 399–3547.

Dated: June 20, 2012.

Cynthia L. Stowe,

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

[FR Doc. 2012–16388 Filed 7–2–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–0553]

RIN 1625–AA00

Safety Zone; Bay Village Independence Day Fireworks, Lake Erie, Bay Village, OH

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on Lake Erie, Bay Village, OH. This safety zone is intended to restrict vessels from a portion of Lake Erie during the Bay Village Independence Day Fireworks display. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with a fireworks display.

DATES: This rule will be effective from 9:30 p.m. to 11:00 p.m. on July 4, 2012.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2012–0553]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box, and click ''Search.'' You may visit the Docket Management Facility, Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email LT Christopher Mercurio, Chief of Waterways Management, U.S. Coast Guard Sector Buffalo; telephone 716–843–9343, email *SectorBuffaloMarineSafety@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR **Federal Register**
NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable and contrary to the public interest. The final details for this event were not known to the Coast Guard until there was insufficient time remaining before the event to publish an NPRM. Thus, delaying the effective date of this rule to wait for a comment period to run would be both impracticable and contrary to the public interest because it would inhibit the Coast Guard's ability to protect spectators and vessels from the hazards associated with a maritime fireworks display, which are discussed further below.

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

B. Basis and Purpose

Between 10:00 p.m. and 10:30 p.m. on July 4, 2012, a fireworks display will be held on Lake Erie near Bay Village, OH. The Captain of the Port Buffalo has determined that fireworks launched proximate to a gathering of watercraft pose a significant risk to public safety and property. Such hazards include premature and accidental detonations, dangerous projectiles, and falling or burning debris.

C. Discussion of Rule

With the aforementioned hazards in mind, the Captain of the Port Buffalo has determined that this temporary safety zone is necessary to ensure the safety of spectators and vessels during the Bay Village Independence Day Fireworks. This zone will be effective and enforced from 9:30 p.m. until 11:00 p.m. on July 4, 2012. This zone will encompass all waters of Lake Erie, Bay Village, OH within an 1120 foot radius of position 41°29′24.4″ N and 81°55′46.8″ W (NAD 83).

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative. The Captain of the Port or his designated on-scene

representative may be contacted via VHF Channel 16.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule will be relatively small and enforced for a relatively short time. Also, the safety zone is designed to minimize its impact on navigable waters. Furthermore, the safety zone has been designed to allow vessels to transit around it. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in a portion of Lake Erie on the evening of July 4, 2012.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This safety zone would be activated, and thus subject to enforcement, for only an hour and a half late in the day. Traffic may be allowed to pass through the zone with the permission of the Captain of the Port. The Captain of the Port can be reached via VHF channel 16. Before the activation of the zone, we would issue local Broadcast Notice to Mariners.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

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

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has 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. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Unfunded Mandates Reform Act

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

7. Taking of Private Property

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

8. Civil Justice Reform

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

9. Protection of Children

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

10. Indian Tribal Governments

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

11. Energy Effects

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

12. Technical Standards

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

13. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one

of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a safety zone and, therefore it is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T09–0553 to read as follows:

§ 165.T09–0553 Safety Zone; Bay Village Independence Day Fireworks, Lake Erie, Bay Village, OH.

(a) Location. The safety zone will encompass all waters of Lake Erie, Bay Village, OH within an 1120 foot radius of position 41°29′24.4″ N and 81°55′46.8″ W (NAD 83).

(b) Effective and Enforcement Period. This regulation is effective and will be enforced on July 4, 2012 from 9:30 p.m. until 11:00 p.m.

(c) Regulations.

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

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

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

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

Dated: June 18, 2012.

S.M. Wischmann,

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

[FR Doc. 2012–16393 Filed 7–2–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–0511]

RIN 1625–AA00

Eighth Coast Guard District Annual Safety Zones; Niceville July 4th Fireworks Show; Boggy Bayou; Niceville, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a Safety Zone for the Niceville July 4th Fireworks Show in Boggy Bayou, Niceville, Florida from 8 p.m. until 9 p.m. on July 4, 2012. This action is necessary for the safeguard of participants and spectators, including all crews, vessels, and persons on navigable waters during the Niceville July 4th Fireworks Show. During the enforcement period, entry into, transiting or anchoring in the Safety Zone is prohibited to all vessels not registered with the sponsor as participants or official patrol vessels, unless specifically authorized by the Captain of the Port (COTP) Mobile or a designated representative.

DATES: The regulations in 33 CFR 165.801 will be enforced from 8 p.m. until 9 p.m. on July 4, 2012.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice of enforcement, call or email LT Lenell J. Carson, Coast Guard Sector Mobile, Waterways Division; telephone 251–441–5940 or email *Lenell.J.Carson@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the Safety Zone for the annual Niceville July 4th Fireworks Show listed in 33 CFR 165.801 Table 1, Table No. 145; Sector Mobile, No. 4 on July 4, 2012 from 8 p.m. until 9 p.m.

Under the provisions of 33 CFR 165.801, entry into the safety zone listed in Table 1, Table No. 145; Sector Mobile, No. 4 is prohibited unless authorized by the Captain of the Port or a designated representative. Persons or vessels desiring to enter into or passage through the Safety Zone must request permission from the Captain of the Port or a designated representative. If permission is granted, all persons and vessels shall comply with the instructions of the Captain of the Port or designated representative.

This notice is issued under authority of 5 U.S.C. 552(a); 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1. In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via Local Notice to Mariners and Marine Information Broadcasts.

If the Captain of the Port Mobile or Patrol Commander determines that the Safety Zone need not be enforced for the full duration stated in this notice of enforcement, he or she may use a Broadcast Notice to Mariners to grant general permission to enter the regulated area.

Dated: June 5, 2012.

D.J. Rose,

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

[FR Doc. 2012–16239 Filed 7–2–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2012–0354]

RIN 1625–AA00

Safety Zone; A Salute to our Heroes Fireworks, Hamlin Beach State Park, Hamlin, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule

SUMMARY: The Coast Guard will establish a temporary safety zone on Hamlin Beach State Park, Hamlin, NY. This safety zone is intended to restrict vessels from a portion of water off Hamlin Beach State Park during the A Salute to our Heroes fireworks on July 7, 2012. The safety zone is necessary to protect participants, spectators, and vessels from the hazards associated with a firework display.

DATES: This regulation will be effective July 7, 2012 from 9:45 p.m. until 11:30 p.m.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket [USCG–2012–0354]. To view documents mentioned in this preamble as being available by going to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' You may visit the Docket Management Facility, Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email LT Christopher Mercurio, Chief of Waterway Management, U.S. Coast Guard Sector Buffalo; telephone 716–843–9343, email *SectorBuffaloMarineSafety@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR **Federal Register**
NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

On May 23, 2012, we published a Notice of Proposed Rulemaking (NPRM) entitled Safety Zone; A Salute to our Heroes, Hamlin Beach State Park, Hamlin, NY in the **Federal Register** (77 FR 30448). We received 0 letters commenting on the proposed rule. No public meeting was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard is issuing this temporary final rule less than 30 days after publication in the **Federal Register**. Under 5 U.S.C. 553(d)(3), an agency may issue a rule less than 30 days before its effective date when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Accordingly, the Coast Guard finds that good cause exists for publishing this temporary final rule less than 30 days before its effective date because delaying the effective date of this temporary final rule would prevent its enforcement on the scheduled night of the event and thus, would preclude the Coast Guard from protecting spectators and vessels from the hazards associated with a maritime fireworks display.

B. Basis and Purpose

Between 10:15 p.m. and 11:00 p.m. on July 7, 2012, a fireworks display will be held on the waters of Hamlin Beach State Park near Hamlin, NY. The Captain of the Port Buffalo has determined that fireworks launched proximate to watercraft pose a significant risk to public safety and property. Such hazards include premature detonations, dangerous detonations, dangerous projectiles, and falling or burning debris.

C. Discussion of Comments, Changes and the Final Rule

As mentioned above, no comments were received from the public in response to the NPRM that preceded this temporary rule. Furthermore, there were no changes made between the proposed rule and this temporary final rule. Thus, there are no comments and no changes to discuss.

Just as was described in the NPRM, the Captain of the Port Buffalo has determined that a temporary safety zone is necessary to ensure the safety of the boating public during the A Salute to Our Heroes Fireworks. The safety zone will be effective and enforced from 9:45 p.m. until 11:30 p.m. on July 7, 2012. The safety zone will encompass all waters off of Hamlin Beach State Park, Hamlin, NY within a 700 FT radius of position 43°21′51.9″ N, 77°56′59.6″ W (DATUM: NAD 83). Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule will be relatively small and enforced for relatively short time. Also, the safety zone is designed to minimize its impact on navigable waters. Furthermore, the safety zone has been designed to allow vessels to transit around it. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard received 0 comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This temporary final rule may affect the following entities, some of which may be small entities: The owners of operators of vessels intending to transit or anchor in a portion of Lake Erie near Hamlin, NY between 9:45 p.m. to 11:30 p.m. on July 7, 2012.

This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons. This safety zone would be activated, and thus subject to enforcement, for only 105 minutes late in the day when vessel traffic is low. Vessel traffic could pass safely around the safety zone. Before the effective period, maritime advisories will be

issued, which include a Broadcast Notice to Mariners.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

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

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has 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. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a safety zone and thus, is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T09–0354 to read as follows:

§ 165.T09–0354 Safety Zone; A Salute to Our Heroes, Hamlin Beach State Park, Hamlin, NY.

(a) *Location.* The safety zone will encompass all waters off of Hamlin Beach State Park, Hamlin, NY within a 700 FT radius of position 43°21′51.9″ N and 77°56′59.6″ W (NAD 83).

(b) *Effective and Enforcement Period.* This regulation is effective and will be enforced on July 7, 2012 from 9:45 p.m. until 11:30 p.m.

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

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

(3) The ''on-scene representative'' of the Captain of the Port Buffalo is any Coast Guard commissioned, warrant or

petty officer who has been designated by the Captain of the Port Buffalo to act on his behalf.

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

Dated: June 15, 2012.

S.M. Wischmann,

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

[FR Doc. 2012–16243 Filed 7–2–12; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2008–0510; FRL–9692–3]

Approval and Promulgation of Implementation Plans; Louisiana; Regional Haze State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is finalizing a partial limited approval and a partial disapproval of a revision to the Louisiana State Implementation Plan (SIP) submitted by the State of Louisiana through the Louisiana Department of Environmental Quality (LDEQ), on June 13, 2008, that addresses regional haze (RH) for the first implementation period. This revision was submitted to address the requirements of the Clean Air Act (CAA) and the EPA's rules that require states to prevent any future and remedy any existing anthropogenic impairment of visibility in mandatory Class I areas (national parks and wilderness areas) caused by emissions of air pollutants from numerous sources located over a wide geographic area (also referred to as the ''regional haze program''). States are required to assure reasonable progress toward the national goal of achieving natural visibility conditions in Class I areas. In a separate action, the EPA has finalized a limited disapproval of the Louisiana RH SIP, along with several other states' regional haze plans, because of deficiencies in the state's regional haze SIP submittal arising from the remand by the U.S. Court of Appeals for the District of Columbia (D.C. Circuit) to the EPA of the Clean Air Interstate Rule (CAIR). In this action, the EPA is finalizing a partial disapproval because of deficiencies in Louisiana's RH SIP submittal that go beyond the issues addressed in the EPA's limited disapproval in that separate action. The EPA is also finalizing a partial limited approval of those elements of this SIP revision not addressed by our partial disapproval. The partial limited approval of the RH requirements for Louisiana is based on the conclusion that the revisions, as a whole, strengthen the Louisiana SIP. This action is being taken under section 110 and part C of the CAA.

DATES: This rule is effective August 6, 2012.

ADDRESSES: The EPA has established a docket for this action under Docket Identification No. EPA–R06–OAR–2008–0510. 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, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section for further information. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Ellen Belk, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone 214–665–2164; fax number 214–665–6762; email address *belk.ellen@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us,'' and ''our'' means the EPA.

Table of Contents

I. Background
II. Final Action
III. Comments Received and Our Responses
IV. Statutory and Executive Order Reviews

I. Background

The EPA is taking action on a revision to Louisiana's SIP submitted on June 13, 2008, that addressed progress toward reducing regional haze for the first implementation period ending in 2018. This revision was submitted to address the requirements of the CAA and the EPA's rules to assure reasonable progress toward the national goal of achieving natural visibility conditions in mandatory Class I areas. As identified by Congress, there is one mandatory Class I area within the State of Louisiana, Breton National Wilderness Area.[1] The initial submittal from Louisiana was supplemented by a May 30, 2012, letter communicating that the State finalized its Smoke Management Plan (SMP). On February 28, 2012, the EPA published a proposed partial limited approval and partial disapproval of Louisiana's SIP revision to address RH. *See* 77 FR 11839.[2]

In that action, the EPA proposed a partial limited approval of Louisiana's June 13, 2008, SIP revision addressing RH under CAA sections 301(a) and 110(k)(3) because certain provisions of the revision strengthen the Louisiana (LA) SIP. The EPA also proposed a partial disapproval of the LA RH SIP submittal because the submittal includes several deficient provisions. The deficiencies identified in the proposal go beyond those identified in the limited disapproval proposed on December 30, 2011 (76 FR 82219) which addressed deficiencies in several states' regional haze plans caused by the remand of the CAIR. The EPA proposed that certain elements of the State's Best Available Retrofit Technology (BART)

[1] It is recognized that at the Breton National Wilderness Area (Breton or Breton NWA), some acres have at times been submerged. However, as a Class I area, Congress has declared as a national goal ''the prevention of any future, and the remedying, of any existing, impairment of visibility'' at the Breton NWA. 42 U.S.C. 7491. Breton was designated by Congress as a national wilderness area on June 3, 1975, under the Wilderness Act. Public Law 93–632 1(f); *see also* 16 U.S.C. 1132. In the August 7, 1977, Clean Air Act Amendment, national wilderness areas that exceeded 5,000 acres in size and were in existence at that time (August 7, 1977), were designated as mandatory Class I areas that may not be redesignated. 42 U.S.C. 7472(a). In accordance with section 169A of the CAA, the EPA, in consultation with the Department of Interior, promulgated a list of 156 areas where visibility is identified as an important value. *See,* 44 FR 69122, November 30, 1979. As required, the EPA lists Breton as a mandatory Class I federal area at 40 CFR 81.412.

[2] For additional details on the EPA's analysis and findings, the reader is referred to the proposal published in the February 28, 2012 **Federal Register** (77 FR 11839), and a more detailed discussion as contained in the Technical Support Document which is available on line at *http://www.regulations.gov,* Docket number EPA–R06–OAR–2008–0510.

evaluations and determinations are not fully adequate to meet the federal requirements. Additionally, as a result of the deficiencies related to BART, the EPA proposed that the Long-Term Strategy (LTS) is not fully adequate to meet federal requirements. Finally, because visibility impacts from smoke are significant in Louisiana, we proposed that Louisiana should finalize its SMP. The EPA proposed a limited approval for portions of the revision because those portions represent an improvement over the current SIP, and make considerable progress in fulfilling the applicable CAA RH program requirements.

The EPA received comments on the Agency's February 28, 2012 proposed action. See section III of this rulemaking for a summary of comments received and the EPA's responses to these comments. Also, the EPA received a final SMP from Louisiana on May 30, 2012.

Following the remand of CAIR, the EPA issued a new rule in 2011 to address the interstate transport of nitrogen oxides (NO_X) and sulfur dioxide (SO_2) in the eastern United States. *See* 76 FR 48208, August 8, 2011 (''the Transport Rule,'' also known as the Cross-State Air Pollution Rule (CSAPR)). On December 30, 2011, the EPA proposed to find that the trading programs in the Transport Rule would achieve greater reasonable progress towards the national visibility goal than would source-specific BART in the states in which the Transport Rule applies. *See* 76 FR 82219. The EPA finalized that rule on May 30, 2012 (77 FR 33642). Based on this finding, the EPA also revised the RH Rule (RHR) to allow states to substitute participation in the trading programs under the Transport Rule for source-specific BART.

Also on December 30, 2011, the U.S. Court of Appeals for the DC Circuit stayed the Transport Rule (including the provisions that would have sunset CAIR and the CAIR Federal Implementation Plans (FIPs)) and instructed the EPA to continue to administer CAIR pending the outcome of the court's decision on the petitions for review challenging the Transport Rule. *EME Homer City* v. *EPA,* No. 11–1302 (Order).

II. Final Action

In this action, the EPA is finalizing a partial limited approval and a partial disapproval of Louisiana's June 13, 2008 RH SIP revision. With one difference, we are finalizing our action as proposed. As discussed below, we are slightly adjusting our action on the LA RH SIP with respect to the LDEQ's BART determination for the Rhodia Sulfuric Acid Plant (Rhodia). We proposed to find the BART evaluation for Rhodia is deficient because the LDEQ's RH submittal does not analyze controls for the subject-to-BART unit using the factors required by 40 CFR 51.308(e). Having considered the public comments, we find that Rhodia's subject-to-BART unit meets the RH requirements specified in 40 CFR 51.308(e)(1)(ii)(A) for an adequate BART evaluation; however the Rhodia BART determination still fails to meet the requirement in 40 CFR 51.308(e) to include the emissions limits in the SIP. See our response to comment 6 in section III for further discussion of our findings for Rhodia. Also, this action acknowledges that Louisiana has satisfied the requirement to consider smoke management techniques, including plans, because Louisiana has finalized its SMP (see the docket for this action, Docket No. EPA–R06–OAR–2008–0510, for Louisiana's SMP).

The EPA is finalizing a partial limited approval of Louisiana's RH SIP revision. This partial limited approval results in approval of all of the remaining elements of Louisiana's RH SIP.[3] The EPA is taking this approach because Louisiana's SIP will be stronger and more protective of the environment with the implementation of those measures by the state and having federal approval and enforceability than it would without those measures being included in Louisiana's SIP.

The EPA is also finalizing a partial disapproval of Louisiana's RH SIP revision insofar as this SIP revision relies on deficient BART evaluations for four non-electric generating unit (non-EGU) subject-to-BART sources. The legal effect of the final partial disapproval for Louisiana's June 13, 2008, SIP revision is to provide the EPA authority to issue a FIP at any time, and to obligate the Agency to take such action no more than two years after the effective date of the EPA's final action. 42 USC 7410(c)(1); CAA 110(c)(1).

Note that in another action, signed May 30, 2012, the EPA finalized its finding that the trading programs in the Transport Rule would achieve greater reasonable progress towards the national goal than would BART in the states in which the Transport Rule applies. *See* 77 FR 33642. In that action, the EPA finalized a limited disapproval[4] of Louisiana's June 13, 2008, RH SIP revision insofar as those revisions rely on the CAIR to address the impact of emissions from the State's electric generating units (EGUs). However, that action did not finalize a FIP for Louisiana. The legal effect of that final limited disapproval for Louisiana's June 13, 2008, SIP revision is to provide the EPA authority to issue a FIP at any time, and to obligate the Agency to take such action no more than two years after the effective date of the EPA's final action.

Specifically, the EPA is finalizing a partial limited approval and a partial disapproval of a revision to the Louisiana SIP submitted by the State of Louisiana on June 13, 2008, as meeting some of the applicable regional haze requirements as set forth in sections 169A and 169B of the CAA and in 40 CFR 51.300–308. In this action, the EPA grants a partial limited approval of the LA RH SIP submittal for meeting the requirements of: 51.308(d), for the core requirements for regional haze SIPs, except for the requirements of 51.308(d)(3); 51.308(f), for the commitment to submit comprehensive periodic revisions of regional haze SIPs; 51.308(g), for the commitment to submit periodic reports describing progress towards the reasonable progress goals (RPGs); 51.308(h), for the commitment to conduct periodic determinations of the adequacy of the existing regional haze SIP; and 51.308(i), for coordination with state and Federal Land Managers. However, in this action the EPA is also partially disapproving the LA RH SIP submittal because it does not include fully approvable measures for meeting the requirements of 40 CFR 51.308(d)(3), long-term strategy for regional haze as it relies on deficient non-EGU BART analyses; and 51.308(e), BART requirements for regional haze visibility impairment with respect to emissions of visibility impairing pollutants from four non-EGUs.

III. Comments Received and Our Responses

The EPA received four sets of comments on the February 28, 2012, rulemaking proposing a partial limited approval and a partial disapproval of Louisiana's June 13, 2008 SIP revision.

[3] Processing of State Implementation Plan (SIP) Revisions, EPA Memorandum from John Calcagni, Director, Air Quality Management Division, OAQPS, to Air Division Directors, EPA Regional Offices I–X (1992 Calcagni Memorandum) located at *http://www.epa.gov/ttn/caaa/t1/memoranda/siproc.pdf*.

[4] As explained in the 1992 Calcagni Memorandum, ''[t]hrough a limited approval, the EPA [will] concurrently, or within a reasonable period of time thereafter, disapprove the rule * * * for not meeting all of the applicable requirements of the Act. * * * [T]he limited disapproval is a rulemaking action, and it is subject to notice and comment.'' Final limited disapproval of a SIP submittal does not affect the federal enforceability of the measures in the subject SIP revision nor prevent state implementation of these measures.

Specifically, the comments were received from the National Parks Service; the LDEQ; Exxon Mobil Corporation; and Tulane Environmental Law Clinic, on behalf of the Gulf Restoration Network. Full sets of the comments provided by all of the aforementioned entities (hereinafter referred to as ''the Commenter'') are provided in the docket for today's final action. The docket for this action is available at *www.regulations.gov* under Docket Identification No. EPA–R06–OAR–2008–0510. A summary of the comments and the EPA's responses are provided below.

Comment 1: The EPA does not have the authority under the CAA to issue a limited approval of Louisiana's RH SIP. The CAA provides that the EPA can approve a SIP submittal in whole or can approve part of a submittal and disapprove the other parts. CAA section 110(k)(3). But the CAA says nothing about allowing the EPA to grant a ''limited approval.''

Response 1: The EPA disagrees with the comment that the EPA lacks the authority to give limited approval of Louisiana's RH SIP. As discussed in the September 7, 1992, EPA memorandum cited in the proposed rulemaking,[5] although section 110(k) of the CAA may not expressly provide authority for limited approvals, the plain language of section 301(a) does provide ''gap-filling'' authority authorizing the Agency to ''prescribe such regulations as are necessary to carry out'' the EPA's CAA functions. The EPA may rely on section 301(a) in conjunction with the Agency's SIP approval authority in section 110(k)(3) to issue limited approvals where it has determined that a submittal strengthens a given state SIP and that the provisions meeting the applicable requirements of the CAA are not separable from the provisions that do not meet the CAA's requirements. The EPA has adopted the limited approval approach numerous times in SIP actions across the nation over the last twenty years. Limited approval is appropriate for part of the SIP submittal here because the EPA has determined that a portion of Louisiana's SIP revisions addressing regional haze, as a whole, strengthen the State's SIP and because the provisions in the SIP revisions that relate to BART for EGUs are not separable. Further, this limited approval complements the national ''Better-than-BART'' action, which proposed a limited disapproval for the LA RH SIP due to its reliance on the remanded CAIR for BART for EGUs. Adopting the Commenter's position would ignore CAA section 301 and violate the '''fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme'. * * * A court must therefore interpret the statute 'as a symmetrical and coherent regulatory scheme,' * * * and 'fit, if possible, all parts into an harmonious whole.''' *FDA* v. *Brown & Williamson Tobacco Corp.,* 529 U.S. 120, 133 (2000) (*quoting Davis* v. *Michigan Dept. of Treasury,* 489 U.S. 803, 809 (1989), *Gustafson* v. *Alloyd Co.,* 513 U.S. 561, 569 (1995), and *FTC* v. *Mandel Brothers, Inc.,* 359 U.S. 385, 389 (1959)).

Comment 2: The EPA cannot partially approve or partially disapprove a RH SIP without evaluating Louisiana's proposed SIP as a whole. The EPA has proposed to issue a FIP to address the deficiencies in Louisiana's SIP associated with the BART requirements for NO_X for EGUs, but did not propose a FIP for the EGU BART requirements for SO_2. Accordingly, Louisiana and the EPA must issue BART determinations for SO_2 at each source subject to BART, including those EGUs subject to the Transport Rule. Because of this bifurcated treatment, the proposed partial SIP violates the CAA and RHR because the EPA failed to evaluate, let alone determine, whether exempting Louisiana EGUs from BART complies with the CAA's reasonable progress mandate. To meet the 2064 goal, a regional haze plan must include two components: BART limits and a long-term strategy to achieve reasonable progress toward that goal. Because BART is a critical component to achieving reasonable progress, neither the states nor the EPA can exempt sources from the RHR's BART requirements without any consideration of how doing so will affect the overarching reasonable progress mandate. All required components of a RH SIP or FIP affect each other, are part of a ''single administrative action,'' and must be evaluated together to determine compliance with the CAA and RHR. The EPA has failed to account for how, in the absence of relied upon SO_2 reductions anticipated under CAIR, it will maintain its uniform rate of progress. The EPA's failure to consider together the proposed alternative BART program, BART for SO_2, the LTS and RPGs in Louisiana's SIP violates the CAA and RHR and is arbitrary and capricious.

Response 2: We have evaluated the LA RH SIP submittal as a whole and at this time we are taking final action on all elements of the LA RH SIP submittal that were not addressed in the national Better-than-BART rule. Louisiana must consider whether EGUs previously covered by the CAIR, whether subject to BART or not, should be controlled to ensure reasonable progress to meet the State's long-term strategies. However, insofar as Louisiana's LTS and RPGs are affected by the remand of CAIR, those issues are addressed in the national Better-than-BART rulemaking and are outside the scope of this action on the remainder of the LA RH SIP. Also, the CAA expressly provides authority to the EPA to partially approve and partially disapprove a SIP revision. 42 U.S.C. 7410(k)(3). The EPA has adopted the partial approval approach numerous times in SIP actions across the nation over the last twenty years. Partial approval and partial disapproval is appropriate here because the EPA has determined that a portion of Louisiana's RH SIP meets regional haze requirements and a portion of it does not. Additionally, the EPA has discretion to issue an immediate FIP for all or part of the deficiencies in the LA RH SIP; however, the EPA is not under an obligation to promulgate a FIP for any part of the LA RH SIP at this time because the FIP clock has not begun yet. See Section II of this action for additional information about the FIP. While the EPA proposed a FIP for Louisiana for NO_X BART for EGUs, the final national Better-than-BART rule does not include a FIP for NO_X BART for EGUs.[6] Without a FIP, the Louisiana RH SIP contains a gap for NO_X BART for EGUs. Additionally, because no FIP was promulgated for SO_2 in Louisiana, the Louisiana RH SIP contains a gap for SO_2 BART for EGUs. Therefore, Louisiana must submit and the EPA must approve a revised SIP submittal to address both NO_X and SO_2 BART for EGUs to cure the deficiencies in the SIP resulting from the remand of CAIR. Louisiana may elect to rely on the Transport Rule for NO_X BART for EGUs in that submittal. However, because Louisiana is not covered under the Transport Rule for SO_2, the State must submit source-specific SO_2 BART evaluations for the subject-to-BART EGUs in Louisiana. As discussed further in our responses to several comments below, Louisiana must also submit revisions sufficient to cure the deficiencies in the non-EGU BART determinations.

Comment 3: The EPA should not finalize a limited disapproval of the LTS in the LA RH SIP based on the

[5] The EPA's 1992 Calcagni Memorandum.

[6] The national proposal proposed a NO_X BART EGU FIP for Louisiana, but as the State did not receive a finding of failure to timely submit a SIP and requested the allowable time to revise and resubmit a SIP, the final action did not include such a FIP.

Transport Rule. The Transport Rule is currently in litigation and has been stayed by the Court. The EPA cannot legally base a SIP action on a regulation that is not effective and that may be vacated and remanded. Limited disapproval of the LA RH SIP submittal will trigger the ''two year sanction clock'' imposed by the CAA. The State will be required to submit a SIP revision, with the EPA review and approval within two years of the denial when the ''applicable standard'' is still unknown at this time. Instead, the CAIR is currently effective and will continue to be implemented by the EPA, the States, and the regulated community indefinitely. Once the question of regional transport of particulate matter (PM) and PM precursors is resolved and a regulation replaces CAIR, the State will submit a SIP revision to implement BART for EGUs in accordance with provisions of the new program. However, until this question is resolved, Louisiana and its regulated entities are obligated to comply with the effective regulation and so is the EPA. The State and its regulated entities are entitled to rely upon the effective regulation as the basis for the EPA action concerning the Louisiana SIP. The EPA is compelled to approve the current LA RH SIP submittal that relies on CAIR and the EPA's prior determination that CAIR is equivalent to BART.

Response 3: In a separate action that revises the RHR and finds that the Transport Rule is better than BART we finalized a limited disapproval of Louisiana's long-term strategy. *See* 77 FR 33642. The docket for that rulemaking (Docket ID No. EPA–HQ–OAR–2011–0729) is available at www.regulations.gov. For that reason, we are not taking action on the long-term strategy in this action insofar as the LA RH SIP relied on the CAIR. Therefore, the comment that the EPA should not disapprove the LA RH LTS based on the State's reliance on the CAIR is outside the scope of this action. Additionally, we clarify that today's final action on the remainder of LA's RH SIP triggers a two-year FIP clock,[7] but does not start a sanctions clock for Louisiana.[8] See Section II of this action for additional information about the FIP.

While the comment is outside the scope of this action, we note that CAIR has been remanded and only remains in place temporarily; therefore, the EPA cannot fully approve the regional haze SIP revisions that have relied on the now-temporary reductions from CAIR. Although CAIR is currently in effect as a result of the December 30, 2011 Order by the U.S. Court of Appeals for the D.C. Circuit staying the Transport Rule, this does not affect the substance of the D.C. Circuit's ruling in 2008 remanding CAIR to the EPA. Additionally, in the Transport Rule, the EPA determined that Louisiana need not be covered for SO_2 controls to prevent impacts on PM nonattainment or maintenance in other states. As a result of the CAIR remand and the SO_2 finding for Louisiana in the Transport Rule, no national rule addresses SO_2 reductions in Louisiana. We recognize that the final outcome of the PM transport requirements that CAIR and the Transport Rule are designed to address is uncertain at this time. However, the applicable standard for BART is certain under the RHR. Thus, notwithstanding the uncertain status of the Transport Rule and the continued implementation of CAIR, Louisiana must address SO_2 BART in order to comply with the RHR. We believe that Louisiana should be working to address SO_2 BART on a source by source basis.

Comment 4: The Commenter opposes the EPA's December 30, 2011, proposed rulemaking to find that the Transport Rule is better than BART and to use the Transport Rule as an alternative to BART for Louisiana and other states subject to the Transport Rule. The Commenter incorporates its comments on that December 30, 2011, rulemaking by reference and outlines several of those comments, including its arguments that the Transport Rule is not better than BART, and that the EPA cannot rely on the Transport Rule as an alternative program or measure to displace BART requirements for those BART-eligible sources in Transport Rule states.

Response 4: These comments are beyond the scope of this rulemaking. In today's rule, the EPA is taking final action on the proposed partial limited approval and partial disapproval of Louisiana's RH SIP. The EPA did not propose to find that participation in the Transport Rule is an alternative to BART in this action. As noted above, EPA made that proposed finding in a separate action on December 30, 2011, and the Commenter is merely reiterating and incorporating its comments on that separate action. EPA addressed these comments concerning the Transport Rule as a BART alternative in a final action that was signed on May 30, 2012. *See* 77 FR 33642. The EPA's response to these comments can be found in Docket ID No. EPA–HQ–OAR–2011–0729 at *www.regulations.gov.*

Comment 5: The commenter objects to the EPA's limited approval of portions of LA's RH SIP because it replaces reliance on CAIR with reliance on the Transport Rule for NO_X emissions from EGUs. 77 FR 11839, 11840–41. The effect of this proposed rule is to exempt Louisiana EGUs from the RHR's requirements for case-by-case, source-specific analyses and installation and operation of BART to reduce NO_X and achieve the RHR's visibility mandates. This exemption is based on the EPA's proposed finding that the Transport Rule would be better than BART at making reasonable progress with regard to NO_X emissions toward achieving the RHR's goal of eliminating human caused visibility impairment at Class I areas by 2064. Id. at 11846; see also 40 CFR 51.308(e)(3) (criteria for determining if an alternative measure is better than BART). But the EPA's proposed Better-than-BART rule as applied to all 28 states covered under the Transport Rule, including Louisiana, is inconsistent with the CAA. The EPA has not complied with the CAA's statutory requirements for a BART exemption, has failed to make a state-by-state demonstration that the Transport Rule is better than BART, and has included fatal methodological flaws in its proposed determination. Additionally, the EPA's determination fails to account for the geographic and temporal uncertainties in emissions reductions under the Transport Rule—uncertainties inherent in a cap-and-trade program. Moreover, Louisiana cannot rely on the Transport Rule to exempt Louisiana's EGUs from the RHR's BART requirements because the D.C. Circuit has indefinitely stayed the rule. The Transport Rule's uncertainties and lack of year round emission reduction requirements make it unsuitable as a BART alternative in Louisiana. Moreover, the application of the Transport Rule as a substitute for source specific BART is uniquely and particularly problematic in Louisiana, and four other states (Florida, Oklahoma, Mississippi, and Arkansas) for which the EPA exempts sources from BART NO_X requirements, because NO_X emissions are only covered by the Transport Rule during the ozone season—less than half the year. Finally, the national rule expressly states that the EPA is taking no action on the RPGs, effectively making it impossible to determine whether the Transport Rule for an ozone season only state could achieve greater reasonable progress than an absent or unconfirmed goal. See 76 FR 82219, at 82221. Absent a uniform rate of progress calculation, LTS, or RPGs, the EPA has no rational basis to determine that the Transport Rule

[7] 42 U.S.C. 7410(c)(1); CAA 110(c)(1).

[8] *See* 42 U.S.C. 7509.

emissions controls are sufficient to comply with the RHR reasonable progress mandate. The commenter also incorporated by reference comments from Earthjustice on the national Better-than-BART proposed rule and comments from National Parks Conservation Association, et al. For the reasons stated above and the reasons provided in the national comments, the Transport Rule does not satisfy the requirements of the RHR, and cannot be approved as a substitute for BART as proposed. Instead, the EPA must promulgate a regional haze plan that contains all aspects of the State's regional haze plan including source-specific NO_X BART limits for the Louisiana EGUs.

Response 5: As discussed above, in today's rule, the EPA is taking final action on the proposed partial limited approval and partial disapproval of Louisiana's RH SIP. These comments are beyond the scope of this rulemaking. EPA addressed these comments concerning the Transport Rule as a BART alternative in a final action that was signed on May 30, 2012. *See* 77 FR 33642. The EPA's response to these comments can be found in Docket ID No. EPA–HQ–OAR–2011–0729 at *www.regulations.gov.* Additionally, insofar as this comment discusses regional haze actions for states other than Louisiana, the comments are outside the scope of this rulemaking.

Comment 6: The EPA proposed that the BART determination for Rhodia is deficient at this time. The SIP includes a BART analysis for Rhodia that the LDEQ feels is complete. The analysis takes into account all available control technologies for removing SO_2 at the affected units. All of the available control technologies provide a control efficiency of approximately 94%. Rhodia considered three abatement alternatives: double absorption, sodium scrubbing (caustic/soda ash), and ammonia scrubbing. Rhodia selected caustic scrubbing as the most effective control option that is also cost effective. This control strategy is currently in place for Unit 2 and will be in place for Unit 1 by May 2012. SO_2 emissions will be reduced from over 8,800 tons per year (tpy) to a permit limit of 1,075 tpy for the units combined. This control not only meets BART but surpasses the control for new facilities under New Source Performance Standards. Modeling results with the SO_2 controls show all impacts of Rhodia to the Breton and Caney Creek Wilderness Areas are below 0.5 deciviews. The LDEQ believes that this source has the most stringent control strategy available and no further BART analysis is necessary as allowed by 40 CFR Part 51 Appendix Y(IV)(D)(1)(9). The LDEQ anticipates that the controls will be installed for Unit 1 prior to the EPA approval of the LA RH SIP submittal. The controls will be required to be diligently maintained and are federally enforceable through Section 905 of the Louisiana Administrative Code (LAC), Title 33, Part III (denoted LAC 33:III.905), which has been approved as part of the Louisiana SIP. The EPA should approve this BART analysis as it fulfills the BART requirements.

Response 6: The LDEQ's RH SIP submittal properly identified Rhodia as a subject-to-BART source and provided information concerning the BART determination for Rhodia. We proposed to find that Rhodia's BART determination was deficient because it does not include a sufficient evaluation under 40 CFR 51.308(e)(1)(ii)(A). The LDEQ has determined that the control strategy selected for implementation by Rhodia is among the most stringent available. The LDEQ's determination is corroborated by the information provided in the LA RH SIP submittal, including a determination that Rhodia's units are subject-to-BART and the demonstration in the LA RH SIP Appendix G that the control strategies at Rhodia have approximately 94% control efficiency.[9] The EPA finds that with the control strategy selected, the Rhodia units meet the BART requirements at 40 CFR 51 Appendix Y.OV.D.1.9[10] with the exception of having enforceable emissions limits for regional haze in the SIP (see also response to Comment 11 in this action). Although the SIP submittal said that, post-control, Rhodia is no longer subject-to-BART, that determination is not approvable because once a unit is determined to be subject to BART, it must meet the requirements of 40 CFR 51.308(e)(1)(ii). However, the LDEQ's comment letter in part addresses this deficiency in its determination that with controls, Rhodia meets BART. As indicated in the proposal, the LDEQ did not submit a complete BART evaluation for the Rhodia units; the submittal did not analyze controls for the units using the factors as required by 40 CFR 51.308(e). However, with the LDEQ's finding that the controls at Rhodia are among the most stringent, the regional haze requirement for a BART analysis has been satisfied (however, the requirement for enforceable emissions limits is still not met).[11] The EPA finds that the LDEQ acted reasonably within its discretion in determining that the controls selected by Rhodia are among the most stringent because the control efficiency for the technology selected is 94%.

However, the emissions limits for Rhodia's subject-to-BART units were not included in the RH SIP, so the LDEQ must include the BART emission limits in the LA RH SIP through a SIP revision.[12] More information about this requirement is provided in response to Comment 7 in this action.

Comment 7: The EPA proposed that the state should have identified the Mosaic facility as being subject to BART and made a BART determination for the source. The LDEQ agrees that Mosaic should be identified as a BART facility. Mosaic has installed or is scheduled to install controls required by a Consent Decree (CD) for Sulfuric Acid Trains A, D, and E. Only Train A is subject to BART, but it should be noted that significant reductions have been made on Trains D and E also. The following is a summary of these controls:

—A scrubber system has been installed on Train A reducing SO_2 emissions by 9,490 tpy.
—SO_2 emissions from Train D have been reduced by 576 tpy.
—SO_2 emissions from Train E have been reduced by 942 tpy.

The LDEQ believes that this source has the most stringent control strategy available and no further BART analysis is necessary as allowed by 40 CFR Part 51 Appendix Y(IV)(D)(1)(9). The scrubber system has been installed on Train A. The controls are required to be diligently maintained and are federally enforceable through LAC 33:III.905, which has been approved by the EPA as

[9] LDEQ Comment Letter, received March 29, 2012.

[10] We acknowledge that compliance with the BART Guidelines in 40 CFR 51 Appendix Y is not mandatory for Rhodia because Rhodia is a non-EGU source. However, following these Guidelines is one option for subject-to-BART non-EGUs to ensure BART determinations are adequate.

[11] The EPA's finding is a logical outgrowth of the proposed rule. ''[A] final rule will be deemed to be the logical outgrowth of a proposed rule if a new round of notice and comment would not provide commentators with their first occasion to offer new and different criticisms which the agency might find convincing.'' *Fertilizer Inst.* v. *EPA,* 935 F.2d 1303, 1311 (D.C. Cir. 1991) (citation and internal quotation marks omitted). In our proposal, we note that ''[t]he LDEQ may be able to find that the controls required under the CD are among the most stringent, and therefore, no additional controls would be required for these units to meet BART.'' As LDEQ has now provided this determination and the LA RH SIP submittal already contains sufficient technical information to support this determination, the controls at Rhodia are sufficient to meet BART, and are therefore approvable in accordance with our proposal. However, as stated in our response, the LA RH SIP for Rhodia is not fully approvable at this time because it does not contain enforceable emissions limits for regional haze.

[12] CAA 169A(b)(2); 40 CFR 51.308(e); and 64 FR 35714, at 35741.

part of the Louisianan SIP. The EPA should approve this BART analysis as it fulfills the BART requirements.

Response 7: The EPA acknowledges the LDEQ's agreement that Mosaic is a subject-to-BART source. However, we cannot approve the BART analysis at this time. The LDEQ did not identify Mosaic as being subject to BART in the submitted SIP and therefore did not perform a BART analysis. Consequently, the EPA cannot act today upon the information in the comments because there is no logical outgrowth. ''A final rule is only a logical outgrowth of the proposed rule if interested parties should have anticipated that the change was possible, and thus reasonably should have filed their comments on the subject during the notice-and-comment period. * * * Notice of the agency's intention is crucial to ensure that agency regulations are tested via exposure to diverse public comment * * * to ensure fairness to affected parties, and * * * to give affected parties an opportunity to develop evidence in the record to support their objections to the rule and thereby enhance the quality of judicial review.'' *Int'l Union, United Mine Workers of America* v. *Mine Safety and Health Admin.,* 626 F.3d 84, 94–95 (D.C. Cir. 2010) (*citing Int'l Union, United Mine Workers of America* v. *Mine Safety and Health Admin.,* 407 F.3d 1250, 1259 (D.C. Cir. 2005)) (internal quotations omitted). With regard to Mosaic, we proposed to disapprove the LA RH SIP submitted June 13, 2008 because the submittal failed to identify Mosaic as a subject-to-BART source. We noted that, once the LDEQ identifies Mosaic as subject to BART, the LDEQ needs to provide a BART evaluation for the EPA's review and action. The LDEQ has not completed the rulemaking and SIP revision process for the determination that Mosaic is subject to BART or for the Mosaic BART evaluation. Based on our proposal, the public could not have anticipated that the EPA would approve the state's identification of Mosaic as subject to BART and approve a BART evaluation for Mosaic. As a result, approval of Mosaic does not meet the standard for logical outgrowth for this final action. The LDEQ will need to revise its SIP after notice and comment to include Mosaic as a subject-to-BART source, and also to provide a determination of BART based on an analysis of the best system of continuous emission control technology available and associated emission reductions achievable for the facility.[13] Although the LDEQ provided a determination in its comment that the control strategies selected for implementation by Mosaic are among the most stringent available, as discussed previously for the EPA to be able to consider this determination, the SIP must be revised after notice and comment to include the identification of Mosaic as a subject-to-BART source, and include a BART evaluation for the facility and be submitted to the EPA. The BART evaluation may include relevant permit information if applicable.

For Mosaic, in addition to including the facility as a subject-to-BART source in the SIP, for the unit subject to BART for each pollutant, there must be sufficient information in the SIP to satisfy the requirement under 40 CFR 50.308(e)(1)(ii)(A): ''The determination of BART must be based on an analysis of the best system of continuous emissions control technology available and associated emissions reductions achievable. In this analysis, the state must take into consideration the technology available, the cost of compliance, the energy and non-air quality environmental impacts of compliance, any pollution control equipment in use at the source, the remaining useful life of the source, and the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology.''

Also, the emissions limits for Mosaic's controls are required to be included in the RH SIP, so the LDEQ must include the BART emission limits in the LA RH SIP through a SIP revision.[14] More information about this requirement is provided in response to Comment 8 in this action.

Comment 8: The EPA proposed that the BART determinations for Sid Richardson are deficient at this time. The LDEQ has determined that while SO_2 controls may be technically feasible, they are not economically feasible. Modeling results for Sid Richardson show that in only 1 of the 3 modeled years did the 98th percentile day show a visibility impact above 0.5 dv. Sid Richardson provided a detailed analysis of the cost associated with implementing the technically feasible control techniques. Because all of the possible controls were deemed economically infeasible, an evaluation of the controls on the visibility impact at Breton is unnecessary. Sid Richardson is currently controlling SO_2 by limiting sulfur content of the feed stock oil. The LDEQ has determined that this control is BART for this facility. The EPA should approve this BART analysis as it fulfills the BART requirements. The EPA is proposing that the NO_X BART determination for Sid Richardson is deficient at this time.

The LDEQ has determined that NO_X controls for Sid Richardson are technically infeasible. Sid Richardson presented detailed information in the BART analysis discussing the infeasibility of NO_X controls aside from good combustion practices. NO_X controls were determined to be infeasible for the following reasons: Reactors: combustion modifications would affect the reaction process and ultimately, the yield and quality of the carbon black produced; selective non-catalytic reduction (SNCR) is infeasible because the reagent (urea or ammonia) would affect the yield and quality of the carbon black produced; selective catalytic reduction (SCR) is infeasible because of particulate loading that could come in contact with the catalyst causing a fire hazard; Absorption control is already in use since the flue gases are already in direct contact with the carbon black; Wet chemical scrubbers are used in a limited number of industrial applications and have not been used in the carbon black industry. Flares: There are no NO_X control options available. Dryers: Combustion modifications would affect the yield and quality of the carbon black produced; SNCR is infeasible because the reagent (urea or ammonia) would affect the yield and quality of the carbon black produced; SCR is infeasible because of particulate loading that could come in contact with the catalyst causing a fire hazard; Absorption control is already in use since the flue gases are already in direct contact with the carbon black. The LDEQ stated that further BART analysis for NO_X control is unnecessary and that the EPA should approve this BART analysis as it fulfills the BART requirements.

Response 8: The EPA disagrees that the information provided in the SIP and comments for SO_2 BART for Sid Richardson satisfies the requirements for a BART determination. The BART Rule provides that for each unit subject to BART, the state must satisfy the requirements under 40 CFR 50.308(e)(1)(ii)(A) by providing a determination of BART which ''must be based on an analysis of the best system of continuous emissions control technology available and associated emissions reductions achievable.'' In this analysis the state must take the following into consideration: ''The technology available, the cost of compliance, the energy and non-air quality environmental impacts of

[13] 40 CFR 51.308(e)(1)(ii)(A).

[14] CAA 169A(b)(2); 40 CFR 51.308(e); and 64 FR 35714, at 35741.

compliance, any pollution control equipment in use at the source, the remaining useful life of the source, and the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology.'' A determination of economic infeasibility is not sufficient information to meet these requirements. States have a duty to evaluate the statutory factors cited above.[15] It is important that, in analyzing the technology, states take into account the most stringent emission control level that the technology is capable of achieving. States should consider the level of control that is currently achievable at the time the BART analysis is conducted.[16] The CAA gives states discretion to make BART determinations; and the BART regulations and the preambles to the proposed and final BART Rule contain examples showing that a state has discretion to choose an alternative control level after considering the five statutory factors. However, section 169A(g) of the CAA requires States to consider these statutory factors in determining BART for affected sources. If a proper evaluation of the five statutory factors demonstrates that an emission limit is BART for the subject-to-BART source in question, then the State must require the source to comply with such emission limit. The EPA agrees that states have considerable discretion in making BART determinations, but in doing so the State must conduct a proper evaluation of the five statutory factors, as required by 40 CFR 51.308(e)(1)(ii)(A) and section 169A(g) of the CAA.

Also, the LDEQ states in the comment that Sid Richardson is currently controlling SO_2 by limiting sulfur content of the feed stock oil, and as indicated in the LA RH SIP Appendix G, the limitation is already reflected in the Addis Plant's emission limits;[17] however, the record does not provide material that supports this conclusion. No enforceable permit conditions or similar restrictions were provided, nor is there an analysis demonstrating that limiting of the sulfur content of the feed stock oil meets BART requirements.

The EPA agrees with the comment that the modeling results show that the Sid Richardson facility has a visibility impact greater than the State's established BART threshold of 0.5 dv in one of the three years considered. As such, Sid Richardson is subject to BART, and a full BART analysis is required. Consistent with 40 CFR 51.308(e)(1)(i) and (ii), the LDEQ chose a 0.5 dv threshold for BART (LA RH SIP Chapter 9); included Sid Richardson in its list of BART-eligible sources within the State, and provided a determination of BART for the facility as required for each source in the State ''that emits any air pollutant which may reasonably be anticipated to cause or contribute to any impairment of visibility in any mandatory Class I Federal Area. All such sources are subject to BART.''[18] The LDEQ determined that Sid Richardson is subject-to-BART because it is a BART-eligible source with visibility impacts on the 98th percentile day above the state's chosen threshold, LA RH SIP Chapter 9, page 53.[19] The EPA disagrees with the comment that an evaluation of the visibility benefits is not necessary. ''CAA section 169A(g)(2) clearly requires an evaluation of the expected degree of improvement in visibility from BART controls. All five statutory factors [required under CAA 169A(g)(2)], including cost-effectiveness and expected visibility improvement, should be reflected in the level of BART control that the State implements.'' 70 FR 39104, at 39129. Sid Richardson was determined to be subject-to-BART and a full BART analysis is required under 40 CFR 51.308(e)(1)(ii)(A).

The EPA disagrees that the information provided in the SIP and comments for NO_X BART for Sid Richardson satisfies the requirements for a BART determination. For Sid Richardson for NO_X, the LDEQ states in its comments that all controls are infeasible, which is consistent with the SIP submittal (LA RH SIP Chapter 9 states that the Sid Richardson engineering analyses included the potential installation of NO_X add-on controls, but it determined that all were infeasible—there were no demonstrated NO_X scrubbing technologies at any carbon black plants). However, there is not sufficient information in the comment letter or in the LA RH SIP submittal to support this conclusion. In particular, we note that SCR has been discounted as technically infeasible because of the potential for particulate matter to contact the catalyst. We believe there are a number of applications where SCR has been used in situations with high particulate loading such as Fluidized Bed Catalytic Cracking Units (FCCU). In fact, as discussed in the Louisiana SIP and in other sections of this action, ConocoPhillips is a subject-to-BART source that has installed SCR on an FCCU. It is not apparent why this technology would not be applicable to carbon black plants, as well, given the similar high particulate matter situations. We do not believe Louisiana provided a sufficient record to justify that SCR is infeasible for the Carbon Black Industry. Therefore, the state must satisfy the requirement for NO_X for Sid Richardson for an ''analysis of the best system of continuous emission control technology available and associated emissions reductions achievable'' as required under 40 CFR 50.308(e)(1)(ii)(A).

Also, the emission limits for Sid Richardson's controls are required to be included in the RH SIP, so the LDEQ must include the BART emission limits in the LA RH SIP through a SIP revision.[20] In addition, we encourage Sid Richardson and the LDEQ to consider achievable emissions reductions in determining emissions limits for this unit to include in the SIP, as required under 40 CFR 50.308(e)(1)(ii)(A). More information about this requirement is provided in response to Comment 9 in this action.

Comment 9: The EPA proposed that the BART determination for ConocoPhillips is deficient at this time. The SIP includes a BART analysis for ConocoPhillips that the LDEQ feels is complete. Conoco has installed or is scheduled to install controls required by a consent decree with the EPA[21] for the FCCU, process refinery flares and the crude unit heater. The following is a summary of these controls.

- A wet gas scrubber was installed on the FCCU in 2009 that reduced SO_2 emissions by 2,500 tpy and PM emissions by 220 tpy. SCR is scheduled to be installed by 2015 that will reduce NO_X emissions by 760 tpy.
- SCR and a NO_X CEMS were installed on the crude unit heater in 2009 that reduced NO_X emissions by 700 tpy.
- Flare gas recovery was installed for the process refinery flares in 2011 that reduced NO_X emissions by 16 tpy and SO_2 emissions by 330 tpy.

The LDEQ believes that the most stringent controls available have been installed or are scheduled to be installed

[15] CAA 169A(g)(2); 40 CFR 51.308(e)(1)(ii)(A).

[16] 70 FR 39104, at 39170–71.

[17] LDEQ Comment Letter, received March 29, 2012.

[18] 40 CFR 51.308(e)(1)(ii).

[19] Note that the use of the 98th percentile of modeled visibility values is appropriate because it excludes roughly seven days per year from consideration. This approach captures ''the sources that contribute to visibility impairment in a Class I area, while minimizing the likelihood that the highest modeled visibility impacts might be caused by unusual meteorology or conservative assumptions in the model.'' 70 FR 39104, at 39121.

[20] CAA 169A(b)(2); 40 CFR 51.308(e); and 64 FR 35714, at 35741.

[21] Civil Action No. H–05–0285, Federal District Court for the Southern District of Texas.

on these sources. According to 40 CFR Part 51 Appendix Y(IV)(D)(1)(9) because the source will have the most stringent controls available, it is not necessary to comprehensively complete each step of the BART analysis. The EPA should approve this BART analysis as it fulfills the BART requirements.

The EPA proposed to accept the BART analysis for remaining sources at the facility. However, most of these sources have a ''D'' which represents proposed disapproval in Table 10 of the TSD. The LDEQ feels that no further BART analysis is necessary for ConocoPhillips and requests that the ''D'' be changed to ''NA.''

Response 9: We disagree with the comment that the BART evaluation for ConocoPhillips is complete for the subject-to-BART units that were included in the 2005 CD. Although some emissions reduction information was provided for some of the units and controls, without information about the year or baseline emissions, the EPA is unable to verify the determination that the control technologies and emission limits for SO_2, NO_X, and PM selected for the crude unit heater, the CO boilers, and the flares are among the most stringent. The submittal did not analyze controls for the units using the factors as required by 40 CFR 51.308(e). Although the LDEQ provided a determination in its comment that the control strategies selected for implementation by ConocoPhillips are among the most stringent available, the record does not provide sufficient material to support the LDEQ's conclusion. The BART evaluation may include relevant permit information if applicable, and also may include a demonstration of emissions reductions achieved by the selected technologies. It is expected that emissions reductions for control technologies which are among the most stringent will be high unless the LDEQ can demonstrate that lower efficiency rates are sufficient to meet BART requirements.

For ConocoPhillips, for the five units under the CD that are subject to BART, for each pollutant, there is not sufficient information in the SIP nor in the comments to satisfy the requirement under 40 CFR 50.308(e)(1)(ii)(A): ''The determination of BART must be based on an analysis of the best system of continuous emissions control technology available and associated emissions reductions achievable. In this analysis the state must take into consideration the technology available, the cost of compliance, the energy and non-air quality environmental impacts of compliance, any pollution control equipment in use at the source, the remaining useful life of the source, and the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology.''

Also, the emissions limits for ConocoPhillips's controls are required to be included in the RH SIP, so the LDEQ must include the BART emission limits in the LA RH SIP through a SIP revision.[22] In addition, we encourage ConocoPhillips and the LDEQ to consider achievable emissions reductions in determining emissions limits for this unit to include in the SIP, as required under 40 CFR 50.308(e)(1)(ii)(A). More information about this requirement is provided in response to Comment 10 in this action.

For the ConocoPhillips units which were not part of the CD, the Commenter is correct that the EPA proposed to accept the BART analysis for those units, and that Table 10 of the TSD is in error for those units. Accordingly, the EPA has revised the table and an updated Table 10 is provided in the docket associated with this action as an amendment to the TSD.

Comment 10: The EPA should provide clarification that the CAA and the RHR both allow states the discretion to make BART determinations for non-EGUs, and states are not required to use the ''5-step'' analysis that is specifically required only for 750 MW+ EGUs. The proposal contains statements such as: ''* * * all subject to BART sources are required to comply with the five BART factors (or steps). 40 CFR 51.308(e)(1)(ii)(A).'' Additionally, the commenter is concerned that the EPA proposed to find that Louisiana's RPGs and LTS contain deficiencies because they are based on BART determinations that are not fully approvable. Louisiana has met the obligation to determine BART for Louisiana refineries if they have documented the rationale for the BART determinations using their state authority. CAA section 169(b)(2)(A); 77 FR 3966, at 3969. Some of the subject-to-BART determinations with a proposed disapproval are not EGUs. Therefore, the LDEQ has the discretion to make BART determinations in a fashion reasonable in the judgment of the LDEQ and supply the rationale to the EPA. The EPA has accepted states' BART determinations for non-EGUs not subject to the ''5-step'' analysis. For example, the EPA proposed to approve Illinois's BART determinations for two petroleum refineries on the basis that the Illinois Environmental Protection Agency found that the emissions limits for the subject-to-BART units established by CDs to meet BACT also satisfy BART. That proposal further states that the CDs are federally enforceable and the emissions limits at issue must be incorporated into federally enforceable permits. 77 FR 3966, at 3973. Therefore, the EPA should approve Louisiana's non-EGU BART determinations, especially the ConocoPhillips Refinery, that rely on emissions limits established by CDs.

Response 10: We agree with the commenter that the five steps in the BART guidelines at 40 CFR 51 Appendix Y.IV.D[23] are mandatory only for subject-to-BART EGUs with a total generating capacity greater than 750 MWs. However, ''all BART determinations must be based on an analysis of the best system of continuous emission control technology available and associated emission reductions achievable for each BART-eligible source that is subject to BART within the state.'' For all BART determinations, including those for non-EGUs, 40 CFR 51.308(e)(1)(ii)(A) requires states to consider the following factors: the technology available; the costs of compliance; the energy and non-air quality environmental impacts of compliance; any pollution control equipment in use at the source; the remaining useful life of the source; and the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology. *See also,* 42 USC 7941(g)(2); CAA 169A(g)(2). The submitted BART analyses should address all of these factors or provide some other basis for ensuring subject-to-BART units meet BART in order to be approvable. The commenter contends that the LDEQ has the discretion to make BART determinations in a fashion reasonable in the judgment of the LDEQ. To clarify, states are free to determine the weight and significance of each of the factors listed above, but they must arrive at a reasoned determination that is supported by an adequate record. We acknowledge that BART-determining authorities presented with equivalent facts and circumstances may arrive at different, but reasoned, BART determinations. For additional information about our final action on these non-EGU BART determinations, please see our discussion of the non-EGU BART determinations and enforceable emissions limits for those

[22] CAA 169A(b)(2); 40 CFR 51.308(e); and 64 FR 35714, at 35741.

[23] Step 1: Identify All Available Retrofit Control Technologies, Step 2: Eliminate Technically Infeasible Options, Step 3: Evaluate Control Effectiveness of Remaining Control Technologies, Step 4: Evaluate Impacts and Document the Results, and Step 5: Evaluate Visibility Impacts. 40 CFR 51 Appendix Y.IV.D.

subject-to-BART units addressed in our responses to Comments 6, 7, 8, and 9 in this action. Finally, we disagree with the comment that the EPA should approve Louisiana's non-EGU BART determinations that rely on emissions limits established by CDs. See the following response to Comment 11.

Comment 11: Emission limits for the subject-to-BART units should not be required to be included in the SIP. The emissions limitations are contained in the permits and are enforceable as required. Furthermore, the LDEQ will rely on the SIP approved provision contained in LAC. 33:111.905, which specifies that "* * * when facilities have been installed on a property, they shall be used and diligently maintained in proper working order whenever any emissions are being made which can be controlled by the facilities, even though the ambient air quality standards in affected areas are not exceeded." If necessary, the LDEQ will include the CDs affected between the EPA and Rhodia, Mosaic and ConocoPhillips, respectively, as evidence of enforceable emissions limitation. However, the LDEQ will not attach the operating permits that are the result of these CDs.

Response 11: We disagree with the comment that emission limits for the subject-to-BART units should not be required to be included in the SIP. 40 CFR 51.308(e) requires the state to "submit an implementation plan containing emissions limits representing BART" for each subject-to-BART unit in the state. For an emissions limit contained in a federal CD to be a federally enforceable component of a RH SIP, the emissions limit itself must be incorporated into the SIP. States do have some flexibility in how this incorporation occurs. For example, a state could list the specific emissions limit for each subject-to-BART unit as part of the regulatory text in the SIP submittal or a state could incorporate these limits into its SIP submittal's regulatory text by referencing the federally enforceable Title I permit that contains the emissions limits for the subject-to-BART units at a facility. *See e.g.,* 77 FR 19, January 3, 2012; 76 FR 80754, December 27, 2011; 76 FR 36329, June 22, 2011; and 76 FR 38997, July 5, 2011. If the state chooses to incorporate emissions limits from a Title I permit into the SIP, the permit conditions must require a RH SIP revision in order for the BART emissions limits to be revised. However, the CDs themselves are not adequate to ensure enforceable emissions limits remain in place for purposes of BART for several reasons. Courts and parties to the litigation can change the terms of CDs without revising the RH SIP or notifying the public that a BART requirement is being altered. Additionally, CDs are not effective forever. The terms of a CD are subsumed into a permit, which could be altered during the permitting process without revising the RH SIP or notifying the public that a BART requirement is being altered. Absent some express correlation to the LA RH SIP, the emissions limits required under the CDs are not adequately enforceable to ensure continued compliance with BART. Moreover, if the emissions limits in a CD are relied upon to meet BART, the RH SIP must contain sufficient technical information to ensure compliance with BART.

Comment 12: The commenter agrees that the LA RH SIP is deficient because elements of the State's BART evaluations and determinations are not fully adequate to meet the federal requirements. Additionally, as a result of the deficiencies related to BART, the LTS and RPGs are not fully adequate to meet federal requirements.

Response 12: We acknowledge the commenter's support for those aspects of this action. We note that, as indicated in the above responses to comments from the LDEQ regarding Rhodia, some but not all of the deficiencies were addressed by the LDEQ's comments although the emissions limits for Rhodia must be included in the SIP.

Comment 13: Insofar as the EPA proposed to find that elements of the SIP submittal fully satisfy the RHR requirements, the commenter supports the EPA's proposal.

Response 13: We acknowledge the commenter's support for those aspects of this action.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to act on state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law.

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 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* because this SIP action under section 110 of the CAA will not in-and-of itself create any new information collection burdens but simply approves or disapproves certain State requirements for inclusion into the SIP. Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements 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 not-for-profit enterprises, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations 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.

After considering the economic impacts of today's rule on small entities, I certify that this action will not have a significant impact on a substantial number of small entities. This rule does not impose any requirements or create impacts on small entities. This SIP action under section 110 of the CAA will not in-and-of itself create any new requirements but simply approves or disapproves certain State requirements for inclusion into the SIP. Accordingly, it affords no opportunity for the EPA to fashion for small entities less burdensome compliance or reporting requirements or timetables or exemptions from all or part of the rule. The fact that the CAA prescribes that various consequences (*i.e.,* emission limitations) may or will flow from this action does not mean that the EPA either can or must conduct a regulatory flexibility analysis for this action. Therefore, this action will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector. The EPA has determined that the disapproval action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This action merely approves or disapproves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires the EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.''

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, because it merely approves or disapproves certain State requirements for inclusion into the SIP and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175, Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP submittals the EPA is approving or disapproving would not apply in Indian country located in the state, and the EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 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 Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 . This SIP action under section 110 of the CAA will not in-and-of itself create any new regulations but simply approves or disapproves certain State requirements for inclusion into the SIP.

H. Executive Order 13211, Actions 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, section 12(d) (15 U.S.C. 272 note) directs the 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 the EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The EPA believes that this action is not subject to requirements of Section 12(d) of NTTAA because application of those requirements would be inconsistent with the CAA.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 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.

The EPA lacks the discretionary authority to address environmental justice in this action. In reviewing SIP submissions, the EPA's role is to approve or disapprove state choices, based on the criteria of the CAA. Accordingly, this action merely approves or disapproves certain State requirements for inclusion into the SIP under section 110 of the CAA and will not in-and-of itself create any new requirements. Accordingly, it does not provide the 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.

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. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective on August 6, 2012.

L. Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 4, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See CAA section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Regional haze, Reporting and recordkeeping requirements, Sulfur oxides, Visibility.

Dated: June 15, 2012.

Samuel Coleman,

Acting Regional Administrator, Region 6.

Therefore, 40 CFR part 52, as amended June 7, 2012, at 77 FR 33657 and effective August 6, 2012, is further amended as follows:

PART 52—[AMENDED]

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

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

■ 2. Amend § 52.985 by adding paragraphs (b) and (c) to read as follows:

§ 52.985 Visibility protection.

* * * * *

(b) The regional haze plan submitted by Louisiana on June 13, 2008, includes measures for meeting the requirements of: 40 CFR 51.308(d), for the core requirements for regional haze plans, except for the requirements of 40 CFR 51.308(d)(3); 40 CFR 51.308(f), for the commitment to submit comprehensive periodic revisions of regional haze plans; 40 CFR 51.308(g), for the commitment to submit periodic reports describing progress towards the reasonable progress goals; 40 CFR 51.308(h), for the commitment to conduct periodic determinations of the adequacy of the existing regional haze plan; and 40 CFR 51.308(i), for coordination with state and Federal Land Managers. EPA has given partial limited approval to the plan provisions addressing these requirements.

(c) The regional haze plan submitted by Louisiana on June 13, 2008, does not include fully approvable measures for meeting the requirements of 40 CFR 51.308(d)(3), long-term strategy for regional haze as it relies on deficient non-electric generating units Best Available Retrofit

Technology (BART) analyses; and 40 CFR 51.308(e), BART requirements for regional haze visibility impairment with respect to emissions of visibility impairing pollutants from four non-electric generating units. EPA has given partial disapproval to the plan provisions addressing these requirements.

[FR Doc. 2012–15729 Filed 7–2–12; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket Nos. 10–90, 07–135, 05–337, 03–109; GN Docket No. 09–51; CC Docket Nos. 01–92, 96–45; WT Docket No. 10–208; FCC 12–70]

Connect America Fund, A National Broadband Plan for Our Future, Universal Service Reform—Mobility Fund

AGENCY: Federal Communications Commission.

ACTION: Final rule: limited forbearance.

SUMMARY: In this document, the Federal Communications Commission (Commission) adopts a limited forbearance from requiring that the service area of an eligible telecommunications carrier (ETC) conform to the service area of any rural telephone company serving the same area for the Mobility Fund Phase I auction 901. This forbearance applies only with respect to conditional ETC designations for participating in Auction 901.

DATES: Effective July 3, 2012.

FOR FURTHER INFORMATION CONTACT: *Wireless Telecommunications Bureau, Auctions and Spectrum Access Division:* call Sayuri Rajapakse, Scott Mackoul or Stephen Johnson at (202) 418–0660.

SUPPLEMENTARY INFORMATION: This is a summary of the *CAF/ICC Second Report and Order* released on June 27, 2012. The *CAF/ICC Second Report and Order* and related Commission documents may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone 202–488–5300, fax 202–488–5563, or you may contact BCPI at its Web site: *http://www.BCPIWEB.com.* When ordering documents from BCPI, please provide the appropriate FCC document number, for example, FCC 12–70. The *CAF/ICC Second Report and Order* and related documents also are available on the Internet at the Commission's Web site: *http://wireless.fcc.gov* or by using the search function for WT Docket No. 10–208 on the Commission's Electronic Comment Filing System (ECFS) Web page at *http://www.fcc.gov/cgb/ecfs/.*

I. Introduction

1. The Commission adopts a limited forbearance pursuant to section 10 of the Communications Act of 1934, as amended (the Act), 47 U.S.C. 160, from requiring that the service area of an eligible telecommunications carrier (ETC) conform to the service area of any rural telephone company serving the same area, pursuant to 47 U.S.C. 214(e)(5) and 47 CFR 54.207(b). In particular, this forbearance applies only with respect to conditional ETC designations for participating in the Mobility Fund Phase I auction, ETC designations conditioned on receipt of Mobility Fund Phase I support. Such conditional ETC designations, and thus this forbearance, are also limited to the specific areas in which such an ETC becomes authorized to receive Mobility Fund Phase I support.

2. The Commission concludes that forbearance in these limited circumstances furthers the public interest, advancing the Act's and the Commission's goals of promoting access to mobile service over current and next generation wireless networks in areas currently without such service by reducing barriers to participation in Phase I of the Mobility Fund. The Commission finds that application of the service area conformance requirements set forth in 47 U.S.C. 214(e)(5) and 47 CFR 54.207(b) in these limited circumstances is not necessary to ensure that rates remain just and reasonable or to protect consumers. The Commission emphasizes that the forbearance it is granting is limited to petitioners seeking conditional designation as ETCs in areas eligible for Mobility Fund Phase I support in order to participate in the Mobility Fund Phase I auction and receive support. Parties petitioning for designation as an ETC for this purpose must satisfy all of the other statutory requirements applicable to ETCs under the Act. The forbearance order does not apply with respect to petitions for designation as an ETC for other purposes. In light of the requirement that, with one exception for Tribal entities, an applicant for the Mobility Fund Phase I auction, Auction 901, must be designated as an ETC in every geographic area on which it wishes to bid by the time it applies to participate and in light of the short time remaining before the July 11, 2012 deadline for filing Auction 901 applications, the Commission finds that case-by-case forbearance is not feasible and grant blanket forbearance for this limited purpose.

II. Background

3. In the recent *USF/ICC Transformation Order,* 76 FR 73830, November 29, 2011 and 76 FR 81562, December 28, 2011, the Commission comprehensively reformed and modernized the universal service system to ensure that robust, affordable voice and broadband service, both fixed

and mobile, are available to Americans throughout the nation. As part of this comprehensive reform effort, the Commission adopted the goal of ensuring universal availability of modern networks capable of providing advanced mobile voice and broadband service. To further achievement of that goal, the Commission created the Mobility Fund to ensure availability of mobile broadband networks in areas where a private-sector business case for those networks is lacking. In particular, the Commission provided that in Phase I of the Mobility Fund, it would award by reverse auction up to $300 million in one-time support to immediately accelerate deployment of current and next generation networks providing mobile voice and broadband services in areas not presently covered by such networks.

4. Auction 901 is scheduled to take place on September 27, 2012, and those wishing to participate must file an auction application by July 11, 2012. The Wireless Telecommunications and the Wireline Competition Bureaus (Bureaus) have identified, pursuant to the Commission's criteria, particular census blocks that are eligible for Mobility Fund Phase I support in Auction 901. In Auction 901, applicants will bid for the amount of support they need to meet the Mobility Fund Phase I service and other public interest obligations in the eligible census blocks covered by the geographic area on which they bid. Applicants, except for Tribally-owned and controlled entities, must be designated as ETCs in the areas on which they wish to bid prior to filing their auction applications. The designation may be conditional subject to the receipt of Mobility Fund Phase I support. The Commission currently has pending three petitions for conditional designation as an ETC for purposes of participating in Auction 901.

5. Congress directed the Commission to establish policies to help ensure that quality services are available at just, reasonable, and affordable rates and access to advanced telecommunications and information services are provided in all regions of the Nation. The Commission's Mobility Fund Phase I will help achieve this goal by providing support for the expansion of current and next generation wireless networks in areas currently unserved by such networks. 47 U.S.C. 254(e) provides that only an entity designated as an eligible telecommunications carrier shall be eligible for universal service high-cost and low-income support. To become an ETC, a carrier must offer and advertise the services supported by the federal universal service support mechanisms throughout its designated service area.

6. The Act and the Commission's rules define the term *service area* and how it is established for each ETC. An ETC's *service area* is a geographic area within which an ETC has universal service obligations and may receive universal service support. A carrier seeking to become an ETC typically requests designation in a specific service area, but it is the commission designating that carrier that establishes the ETC's service area. When a competitive carrier seeks to serve an area already served by a rural telephone company, 47 U.S.C. 214(e)(5) requires that the competitive ETC's service area must conform to the rural telephone company's service area. Accordingly, if a commission wishes to designate a competitive ETC for an area that differs from a rural telephone company's existing service area, that rural service area must first be redefined under the process set forth under the Act.

7. The Act defines the *service area* of each rural telephone company's to be that company's study area unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board establish a different definition of *service area* for such company. The Commission has interpreted this language to mean that neither the Commission nor the states may act alone to alter the definition of service areas served by rural carriers. In reviewing a potential redefinition of a rural service area in evaluating a request for ETC designation, the Commission and the states have traditionally taken into account the three factors recommended by the Federal-State Joint Board on Universal Service: Cream skimming, the Act's special treatment of rural telephone companies, and the administrative burdens of redefinition. The Commission's rules set forth the procedures for considering redefinition petitions and allow either the state commission or the Commission to propose to redefine a rural telephone company's service area. A proposed redefinition, however, does not take effect until the Commission and the appropriate state commission agrees upon a new definition.

8. In the *Mobility Fund NPRM,* 75 FR 67060, November 1, 2010, the Commission sought comment generally on the ETC designation requirements of 47 U.S.C. 214(e) and on how best to interpret the provisions of that section so as to achieve the objectives of the Mobility Fund. A commenter suggested that the Commission should forbear altogether from the requirements of 47 U.S.C. 214(e) for purposes of participating in the Mobility Fund. The same commenter also noted that the service area conformance requirement of 47 U.S.C. 214(e)(5) could create uncertainty for potential Mobility Fund applicants and discourage participation, and suggested that the Commission take steps to prevent this from happening. Another commenter suggested that the Commission streamline the process of ETC designation to facilitate participation in the Mobility Fund, making the ETC designation process part of the application for Mobility Fund support, such that designation would occur upon award of support by the Commission. That commenter filed a petition for reconsideration of the *USF/ICC Transformation Order* that proposed, for those seeking Mobility Fund Phase I support, blanket forbearance from the requirement that a competitive ETC's service area conform to any underlying rural telephone carrier's study area.

III. Discussion

9. The Act allows the Commission to forbear from applying any requirement of the Act or of its regulations to a telecommunications carrier if the Commission determines that: (1) Enforcement of the requirement is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier are just and reasonable and are not unjustly or unreasonably discriminatory; (2) enforcement of that requirement is not necessary for the protection of consumers; and (3) forbearance from applying that requirement is consistent with the public interest.

10. The Commission considers whether it should forbear from applying 47 U.S.C. 214(e)(5) service area conformance requirement to parties petitioning for ETC conditional designation in areas eligible for Mobility Fund Phase I support in order to participate in the Mobility Fund Phase I auction and receive such support. The Commission concludes that forbearance is appropriate and in the public interest under these limited circumstances. Accordingly, for the limited purpose of conditional designation as an ETC in areas eligible for Mobility Fund Phase I support in order to participate in the Mobility Fund Phase I auction, the Commission forbears from applying 47 U.S.C. 214(e)(5) and 47 CFR 54.207(b) insofar as those sections require that the service area of such an ETC conform to the service area of any rural telephone company. The Commission notes that forbearing from the conformance

requirements eliminates the need for redefinition of any rural telephone company service areas in the context of Mobility Fund Phase I. The Commission emphasizes that this decision does not change the requirements that apply if a party petitions to be an ETC for other purposes in part of a service area served by a rural telephone company.

11. The Commission concludes that blanket forbearance from the service area conformance requirement is warranted in these limited circumstances. The Mobility Fund Phase I rules require that most applicants must be designated as ETCs in every geographic area on which they wish to bid for support, prior to filing an Auction 901 application. Those rules also provide that a conditional designation is sufficient to meet the requirement, i.e., a designation effective only for the areas, if any, in which the ETC becomes authorized to receive Mobility Fund Phase I support. The Commission finds that case-by-case forbearance is not feasible in the short time available before the filing deadline.

12. The Commission takes this action after considering the record it received in response to the *Mobility Fund NPRM,* where the Commission sought comment on how to assure that the provisions of 47 U.S.C. 214(e) would align with the objectives of this new mechanism for providing high-cost universal service support. The record identified the possibility that the service area provisions of 47 U.S.C. 214(e), including the service area conformance requirement of that section could discourage participation in the Mobility Fund Phase I auction. By granting blanket forbearance of the conformance requirement for the limited purpose of petitions for conditional designation to participate in the auction, the Commission seeks to prevent that requirement from creating an obstacle to participation by any carrier considering it. Removing such disincentives to participation may increase competition in the auction resulting in lower bids for support and enabling greater coverage within the Mobility Fund Phase I budget. The Commission notes that by granting forbearance in these limited circumstances, it is allowing new ETCs, and those existing ETCs that wish to conditionally expand their service areas for Auction 901, to match their specific new and additional service areas to the geographic area for which they will incur obligations under Mobility Fund Phase I. The Commission does not address relinquishment or redefinition with respect to the service areas of existing ETCs with respect to new targeted support mechanisms other than Mobility Fund Phase I. To the extent that an existing ETC seeks Mobility Fund Phase I support for areas within its existing service area, the new obligations will apply only to the portion of their existing service area for which they win such support and will not have any impact on pre-existing obligations and support mechanisms with respect to the existing service area.

13. *Just and Reasonable.* 47 U.S.C. 10(a)(1) requires that the Commission consider whether enforcement of the provisions from which forbearance is sought is necessary to ensure that the charges, practices, classifications, or regulations are just and reasonable and not unjustly or unreasonably discriminatory. The Commission concludes that compliance with the service area conformance requirement of 47 U.S.C. 214(e)(5) and 47 CFR 54.207(b) is not necessary to ensure that the charges, practices, and classifications of carriers conditionally designated as ETCs in areas eligible for Mobility Fund Phase I support for purposes of participation in Mobility Fund Phase I auction and receiving such support are just and reasonable and not unjustly or unreasonably discriminatory. The Commission finds that the three factors traditionally taken into account by the Commission and the states when reviewing a potential redefinition of a rural service area pursuant to 47 U.S.C. 214(e)(5) no longer apply in the context of conditionally designating ETCs in areas eligible for Mobility Fund Phase I support for purposes of participation in the Mobility Fund Phase I auction. Forbearance from the service area conformance requirement would not prevent the Commission from enforcing 47 U.S.C. 201 or 202, which require all carriers to charge just, reasonable, and non-discriminatory rates. Moreover, all ETCs—whether rural ETCs or carriers designated as ETCs in areas eligible for Mobility Fund Phase I support for purposes of participation in Mobility Fund Phase I auction and receiving such support—will continue to be subject to the requirements of the Act and of the Commission's rules that consumers have access to reasonably comparable services at reasonably comparable rates. In fact, the expansion of current and next generation wireless networks supported by Mobility Fund Phase I will expand the choice of telecommunications services for consumers in the relevant area. The resulting competition is likely to help ensure just, reasonable, and nondiscriminatory offerings of services. For these reasons, the Commission finds that the first prong of 47 U.S.C. 10(a) is met.

14. *Consumer Protection.* 47 U.S.C. 10(a)(2) requires that the Commission consider whether applying the service area conformance requirement to a mobile wireless voice service provider that seeks a conditional ETC designation in areas eligible for Mobility Fund Phase I support is necessary for the protection of consumers. Forbearance from the conformance requirement in these limited circumstances will not harm consumers currently served by the rural telephone companies in the relevant service areas. To the contrary, these consumers will benefit from the use of Mobility Fund Phase I support to expand current and next generation mobile services. Indeed, as the Commission has noted, the national goal of ubiquitous mobile broadband depends in part on offering targeted and efficient support for mobile services through the Mobility Fund. Finally, every ETC, including any party receiving Mobility Fund Phase I support, must certify that it will satisfy applicable consumer protection and service quality standards in its service area. For these reasons, the Commission finds that the second prong of 47 U.S.C. 10(a) is met.

15. *Public Interest.* 47 U.S.C. 10(a)(3) requires that the Commission consider whether applying the service area conformance requirement to a facilities-based mobile wireless carrier that seeks conditional ETC designation in areas eligible for Mobility Fund Phase I support in order to participate in Mobility Fund Phase I and receive such support is in the public interest. Absent forbearance, the Commission finds that parties seeking support may be required to take on unsupported ETC obligations in portions of rural carriers' study areas—areas that may not be eligible for support or for which they may not win support—and that this is likely to discourage participation in Mobility Fund Phase I. Geographic eligibility for Mobility Fund Phase I support is based on whether specific census blocks are presently served by current or next generation wireless networks, a definition that is unrelated to the boundaries of rural carrier service areas. Moreover, the Commission's current rules to redefine service areas require concurring decisions by both the Commission and the related state commission, a process not likely to be completed before parties seeking Mobility Fund Phase I support will have to apply to participate in Auction 901. Hence, the Commission finds that forbearing from the conformance requirement will encourage

participation by assuring that obligations of new ETCs will not extend to portions of rural service areas for which a new ETC may not receive support. By providing this assurance, the Commission reduces the cost of auction participation, encourage lower bids, and improve auction outcomes.

16. Enabling new ETC service areas to be defined in a more targeted manner for Mobility Fund Phase I is consistent with the Commission's approach of targeting support to areas with a specific need for the support, helps preserve those efficiencies, and thus serves the public interest. As set out in the *USF/ICC Transformation Order,* Mobility Fund Phase I support will be determined by a competitive bidding process in which ETCs will bid for the support they need to serve a specific area, rather than any larger area such as an underlying rural telephone company study area. This targeted and efficient provision of support is critical to furthering the public interest goal of ubiquitous mobile service in a fiscally responsible manner. To require Mobility Fund Phase I support recipients to serve a wider area runs counter to the Commission's recent and ongoing efforts to serve the public interest by focusing USF resources on defined areas of need.

17. The public interest benefits go beyond efficiently expanding current and next generation wireless networks to expanding access to such services by consumers. An ETC with a conditional designation will have the obligations of any other ETC receiving Mobility Fund Phase I support for the areas in which the condition is satisfied, including an obligation to make available Lifeline service to eligible for low income consumers. Thus, an ETC expanding advanced wireless networks to new areas as part of the Mobility Fund Phase I also will be making their networks available to low-income consumers who may qualify to receive reduced charges for these next generation services.

18. In addition, the Commission finds that in these limited circumstances requiring conformance is not essential to protect the ability of rural telephone companies to continue to provide service. Past concerns that an ETC serving only a relatively low cost portion of a rural carrier's service area might cream skim by receiving per line support based on the rural carrier's costs of serving the entire area do not apply to Mobility Fund Phase I support. Unlike the legacy identical support rule, under which a competitive ETC received the same per-line support as an incumbent calculated based on the incumbent's cost of serving its entire service area, the amount of Mobility Fund Phase I support is not linked to the support received by an overlapping rural carrier but is determined by the results of competitive bidding for support. Consequently, cream skimming concerns that arose under the identical support rule are not relevant in considering the conditional designation of an ETC for purposes of seeking Mobility Fund Phase I support. Moreover, the Commission notes that it decided in the *USF/ICC Transformation Order* that universal service would support both mobile and fixed services in a given area. Consequently, the Commission sees no inherent conflict between a mobile provider receiving support to offer previously unavailable service in a portion of a rural telephone company's study area and the rural telephone company continuing to provide its pre-existing service.

19. For similar reasons, the Commission concludes that forbearance in these circumstances will not harm competitive market conditions. The Commission expects forbearance to enhance competition by introducing new service providers and not to eliminate any existing market participants or to introduce concerns about cream skimming.

20. The Commission further notes that forbearance from the conformance requirement and redefinition process for these limited purposes should not affect rural carriers' abilities to serve the entire rural service territories. Moreover, the Act contains safeguards to address any such potential concerns. The Act already requires designating commissions to affirmatively determine that designating a carrier as an ETC within a rural service area is in the public interest, and this is not affected by this grant of forbearance.

21. Finally, forbearance in these limited circumstances preserves the role of states in ETC designation. State commissions are still required to consider the public interest, convenience and necessity of designating an ETC in a rural area already served by a rural telephone company. The Commission action does not disturb the roles of state commissions and of the Commission in the ETC designation process or in the redefinition process in other circumstances when redefinition is required.

IV. Procedural Matters

A. Paperwork Reduction Act

22. The *CAF/ICC Second Report and Order* does not contain new or modified information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

B. Final Regulatory Flexibility Act Certification

23. The Regulatory Flexibility Act (RFA) requires that agencies prepare a regulatory flexibility analysis for notice-and-comment rulemaking proceedings, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The RFA generally defines small entity as having the same meaning as the terms small business, small organization, and small governmental jurisdiction. In addition, the term small business has the same meaning as the term small business concern under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

24. The Commission certifies that forbearance decision in the *CAF/ICC Second Report and Order* will not have a significant economic impact on a substantial number of small entities. In the *CAF/ICC Second Report and Order,* the Commission eases the regulatory compliance burden on ETCs by forbearing from the requirement that the service area of an ETC conform to the service area of any rural telephone company serving the same area. The *CAF/ICC Second Report and Order* does not modify any of the Commission's reporting requirements. The Commission will send a copy of the *CAF/ICC Second Report and Order,* including the certification, to the Chief Counsel for Advocacy of the Small Business Administration.

C. Congressional Review Act

25. The Commission will send a copy of the *CAF/ICC Second Report and Order* to Congress and the Government Accountability Office pursuant to the Congressional Review Act.

D. Effective Date

26. The Commission concludes that good cause exists to make the forbearance adopted in the *CAF/ICC Second Report and Order* effective immediately upon publication in the **Federal Register** pursuant to 47 U.S.C. 553(d)(3) of the Administrative Procedure Act and 47 CFR 1.103(a) and

1.427(b). The grant of forbearance applies only to those seeking conditional ETC designation for areas eligible for Mobility Fund Phase I support in order to participate in the Mobility Fund Phase I auction, and, given the short time remaining before the July 11, 2012, deadline for filing an auction application, may promote wider participation and generate more competitive bids. In turn, this increases the chances that the Mobility Fund Phase I budget will provide greater benefits in the form of expanded coverage of mobile voice and broadband service. The Commission finds there is good cause to make the changes it implements with the *CAF/ICC Second Report and Order* effective upon **Federal Register** publication, without the usual 30-day period.

V. Ordering Clause

27. Accordingly, *it is ordered* that, pursuant to the authority contained in 47 U.S.C. 4(i), 4(j), 10, 214, and 254 as well as 47 U.S.C. 154(i), 154(j), 160, 214, 254, the Commission forbears from applying the conformance requirement of 47 U.S.C. 214(e)(5) and 47 CFR 54.207(b) to petitions for conditional designation as an eligible telecommunications carrier in areas eligible for Mobility Fund Phase I support in order to participate in the Mobility Fund Phase I auction and receive such support to the extent discussed herein.

28. *It is further ordered* that, pursuant to 5 U.S.C. 553(d) and 47 CFR 1.103(a) and 1.427(b) the order shall be effective upon publication in the **Federal Register.**

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2012–16279 Filed 7–2–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket Nos. 00–168 and 00–44; FCC 12–44]

Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations; Extension of the Filing Requirement for Children's Television Programming Report (FCC Form 398)

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Commission announces that the Office of Management and Budget (OMB) has approved, for a period of three years, the information collection associated with the Commission's *Enhanced Disclosure Requirements,* Second Report and Order (''Order''), FCC 12–44. This notice is consistent with the *Order,* which stated that the Commission would publish a document in the **Federal Register** announcing the effective date of those rules.

DATES: The amendments to 47 CFR 73.1212, 73.1943, 73.3526, 73.3527 and 73.3580, published at 77 FR 27631, May 11, 2012, are effective August 2, 2012.

FOR FURTHER INFORMATION CONTACT: Cathy Williams on (202) 418–2918, or email: *cathy.williams@fcc.gov.*

SUPPLEMENTARY INFORMATION: This document announces that, on June 21, 2012, OMB approved, for a period of three years, the information collection requirements relating to the enhanced disclosure requirement rules contained in the Commission's *Order,* FCC 12–44, published at 77 FR 27631, May 11, 2012. The OMB Control Numbers are 3060–0174 and 3060–0214. The Commission publishes this notice as an announcement of the effective date of the rules.

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received final OMB approval on June 21, 2012, for the information collection requirements contained in the modifications to the Commission's rules in 47 CFR part 73.

Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number. The OMB Control Numbers are 3060–0174 and 3060–0214.

The foregoing notice is required by the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, and 44 U.S.C. 3507.

The total annual reporting burdens and costs for the respondents are as follows:

OMB Control Number: 3060–0214.

OMB Approval Date: June 21, 2012.

OMB Expiration Date: June 30, 2015.

Title: Sections 73.3526 and 73.3527, Local Public Inspection Files; Sections 76.1701 and 73.1943, Political Files.

Respondents/Affected Parties: Business or other for-profit entities; not for-profit institutions; individuals or households.

Number of Respondents and Responses: 24,558 respondents; 59,056 responses.

Estimated Time per Response: 1 hour to 104 hours.

Frequency of Response: On occasion reporting requirement; Recordkeeping requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in 47 U.S.C. 151, 152, 154(i), 303, 307 and 308.

Total Annual Burden: 2,158,080 hours.

Total Annual Costs: $882,236.00.

Privacy Act Impact Assessment: The FCC is preparing a PIA.

Nature and Extent of Confidentiality: The FCC is preparing a system of records, FCC/MB–2, ''Broadcast Station Public Inspection Files,'' to cover the personally identifiable information (PII) that may be included in the broadcast station public inspection files. Respondents may request materials or information submitted to the Commission be withheld from public inspection under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Commission received final approval of the information collection requirements that were adopted in FCC 12–44 and contained in collection 3060–0214 from the Office of Management and Budget (OMB). On April 27, 2012, the Commission released a Second Report and Order, MB Docket Nos. 00–168 and 00–44; FCC 12–44. This Order adopted information collection requirements that support the Commission's public file rules that are codified at 47 CFR 73.3526 and 73.3527. 47 CFR 73.3526 and 73.3527 require that licensees and permittees of commercial and noncommercial AM, FM and TV stations maintain a file for public inspection at its main studio or at another accessible location in its community of license. The contents of the file vary according to type of service and status. The contents include, but are not limited to, copies of certain applications tendered for filing, a statement concerning petitions to deny filed against such applications, copies of ownership reports, statements certifying compliance with filing announcements in connection with renewal applications, a list of donors supporting

specific programs, and a list of community issues addressed by the station's programming.

These rules also specify the length of time, which varies by document type, that each record must be retained in the public file. The public and FCC use the data to evaluate information about the licensee's performance and to ensure that station is addressing issues concerning the community to which it is licensed to serve.

The information collection requirements consist of:

Pursuant to 47 CFR 73.1943(d), television station licensees or applicants must place the contents of its political file on the Commission's Web site on a going-forward basis. Pursuant to 47 CFR 73.3526(b), commercial television station licensees or applicants must place the contents of their public inspection file as required by 47 CFR 73.3526(e) on the Commission's Web site, with the exception of letters and emails from the public as required by 47 CFR 73.3526(e)(9), which will be retained at the station. A station must also link to the public inspection file hosted on the Commission's Web site from the home page of its own Web site, if the station has a Web site. The Commission will automatically link the following items to the electronic version of all licensee and applicant public inspection files, to the extent that the Commission has these items electronically: Authorizations, applications, contour maps; ownership reports and related materials; portions of the Equal Employment Opportunity file held by the Commission; the public and broadcasting; Children's television programming reports; and DTV transition education reports.

Pursuant to 47 CFR 73.3527(b) non-commercial educational television station licensees or applicants must place the contents of their public inspection file as required by 47 CFR 73.3527(e) on the Commission's Web site. A station must also link to the public inspection file hosted on the Commission's Web site from the home page of its own Web site, if the station has a Web site. The Commission will automatically link the following items to the electronic version of all licensee and applicant public inspection files, to the extent that the Commission has these items electronically: Contour maps; ownership reports and related materials; portions of the Equal Employment Opportunity file held by the Commission; and the public and broadcasting.

OMB Control Number: 3060–0174.

OMB Approval Date: June 21, 2012.

OMB Expiration Date: June 30, 2015.

Title: Sections 73.1212, 76.1615 and 76.1715, Sponsorship Identification.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents/Affected Parties: Business or other for profit entities; individuals or households.

Number of Respondents and Responses: 22,761 respondents and 1,831,610 responses.

Estimated Time per Response: .0011 to .2011 hours.

Frequency of Response: Recordkeeping requirement; third party disclosure; on occasion reporting requirement.

Total Annual Burden: 242,633 hours.

Total Annual Costs: $33,828.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in sections 4(i), 317 and 507 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: The FCC is preparing a system of records, FCC/MB–2, ''Broadcast Station Public Inspection Files,'' to cover the personally identifiable information (PII) that may be included in the broadcast station public inspection files. Respondents may request materials or information submitted to the Commission be withheld from public inspection under 47 CFR 0.459 of the Commission's rules.

Privacy Impact Assessment(s): The FCC is preparing a PIA.

Needs and Uses: The Commission received final approval of the information collection requirements that were adopted in FCC 12–44 and contained in collection 3060–0174 from the Office of Management and Budget (OMB). On April 27, 2012, the Commission released a Second Report and Order, MB Docket Nos. 00–168 and 00–44; FCC 12–44. This Second Report and Order adopted information collection requirements that will change the availability of record disclosures under 47 CFR 73.1212. 47 CFR 73.1212(e) states that, when an entity rather than an individual sponsors the broadcast of matter that is of a political or controversial nature, the licensee is required to retain a list of the executive officers, or board of directors, or executive committee, etc., of the organization paying for such matter in its public file.

The information collection requirements consist of:

Pursuant to the changes contained in 47 CFR 73.1212(e), this list, which could contain personally identifiable information, would be located in a public file to be located on the Commission's Web site instead of being maintained in the public file at the station. Burden estimates for this change are included in OMB Control Number 3060–0214.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2012–16246 Filed 7–2–12; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 111213751–2102–02]

RIN 0648–XC085

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Central Aleutian District of the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific ocean perch in the Central Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI) by vessels participating in the BSAI trawl limited access fishery. This action is necessary to prevent exceeding the 2012 allocation of Pacific ocean perch in this area allocated to vessels participating in the BSAI trawl limited access fishery.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), June 28, 2012, through 2400 hrs, A.l.t., December 31, 2012.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7269.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The allocation of Pacific ocean perch, in the Central Aleutian District, allocated as a directed fishing allowance

to vessels participating in the BSAI trawl limited access fishery was established as 438 metric tons (mt) by the final 2012 and 2013 harvest specifications for groundfish in the BSAI (77 FR 10669, February 23, 2012).

In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the Central Aleutian District by vessels participating in the BSAI trawl limited access fishery.

After the effective dates of this closure, the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Acting Assistant Administrator for Fisheries, NOAA, (AA) finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the directed fishing closure of the Pacific ocean perch fishery in the Central Aleutian District by vessels participating in the BSAI trawl limited access fishery. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of June 27, 2012. The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: June 28, 2012.

James P. Burgess,

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

[FR Doc. 2012–16287 Filed 6–28–12; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 111213751–2102–02]

RIN 0648–XC083

Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Atka mackerel in the Central Aleutian district (CAI) of the Bering Sea and Aleutian Islands management area (BSAI) by vessels participating in the BSAI trawl limited access fishery. This action is necessary to prevent exceeding the 2012 total allowable catch (TAC) of Atka mackerel in this area allocated to vessels participating in the BSAI trawl limited access fishery.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), June 28, 2012, through 2400 hrs, A.l.t., December 31, 2012.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7269.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2012 TAC of Atka mackerel, in the CAI, allocated to vessels participating in the BSAI trawl limited access fishery was established as a directed fishing allowance of 951 metric tons by the final 2012 and 2013 harvest specifications for groundfish in the BSAI (77 FR 10669, February 23, 2012).

In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Atka mackerel in the CAI by vessels participating in the BSAI trawl limited access fishery.

After the effective dates of this closure, the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Acting Assistant Administrator for Fisheries, NOAA, (AA) finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of the Atka mackerel directed fishery in the CAI for vessels participating in the BSAI trawl limited access fishery. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of June 27, 2012. The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: June 28, 2012.

James P. Burgess,

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

[FR Doc. 2012–16288 Filed 6–28–12; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 77, No. 128
Tuesday, July 3, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2 and 171

RIN 3150–AJ14

[NRC–2012–0062]

Receipts-Based, Small Business Size Standard

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is proposing to amend the size standard that it uses to qualify an NRC licensee as a ''small entity'' under the Regulatory Flexibility Act of 1980, as amended. The NRC is proposing to increase its receipts-based, small business size standard from $6.5 million to $7 million to conform to the standard set by the Small Business Administration (SBA). This size standard reflects the most commonly used SBA size standard for nonmanufacturing industries. The SBA adjusted this standard on July 18, 2008 (73 FR 41237), to account for inflation.

DATES: Submit comments by August 2, 2012. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: You may access information and comment submissions related to this proposed rule, which the NRC possesses and are publicly available, by searching on *http://www.regulations.gov* under Docket ID NRC–2012–0062. You may submit comments related to this proposed rule by any of the following methods:

- *Federal rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0062. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: Carol.Gallagher@nrc.gov.
- *Email comments to: Rulemaking.Comments@nrc.gov*. If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.
- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.
- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.
- *Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. (Eastern Time) Federal workdays; telephone: 301–415–1677.

For additional direction on accessing information and submitting comments, see ''Accessing Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Theresa Barczy, Regulations Specialist, Rules, Announcements, and Directives Branch, Division of Administrative Services, Office of Administration, telephone: 301–492–3667, email: *Theresa.Barczy@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2012–0062 when contacting the NRC about the availability of information for this proposed rule. You may access information related to this proposed rule, which the NRC possesses and are publicly available, by any of the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0062.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly-available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. To begin the search, select ''ADAMS Public Documents'' and then select ''*Begin Web-based ADAMS Search*.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*. The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2012–0062 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS, and the NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Procedural Background

Because the NRC considers this action noncontroversial and routine, the NRC is publishing this proposed rule concurrently as a direct final rule in the Rules and Regulations section of this issue of the **Federal Register**. The amendments, which are administrative in nature, include updating the receipts-based, small business size standard from $6.5 million to $7.0 million. Adequate protection of public health and safety continues to be ensured. The direct final rule will become effective on August 22, 2012. However, if the NRC receives significant adverse comments on the direct final rule by August 2, 2012, then the NRC will publish a document that withdraws the direct final rule. If the direct final rule is withdrawn, the NRC will address the comments received in response to the proposed revisions in a subsequent final rule. Absent significant modifications to the proposed revisions

requiring republication, the NRC will not initiate a second comment period on this action in the event the direct final rule is withdrawn.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC staff to make a change (other than editorial) to the rule.

For additional procedural information, see the direct final rule published in the Rules and Regulations section of this issue of the **Federal Register**.

List of Subjects

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 171

Annual charges, Byproduct material, Holders of certificates, registrations, approvals, Intergovernmental relations, Nonpayment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

For the reasons set forth in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR parts 2 and 171.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS AND ISSUANCE OF ORDERS

1. The authority citation for part 2 is revised to read as follows:

Authority: Atomic Energy Act secs.161, 181, 191 (42 U.S.C. 2201, 2231, 2241); Energy Reorganization Act sec. 201 (42 U.S.C. 5841); FOIA 5 U.S.C. 552; Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note).

Section 2.101 also issued under Atomic Energy Act secs. 53, 62, 63, 81, 103, 104 (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); Nuclear Waste Policy Act sec. 114(f) (42 U.S.C. 10143(f)); National Environmental Protection Act sec. 102 (42 U.S.C. 4332); Energy Reorganization Act sec. 301 (42 U.S.C. 5871).

Sections 2.102, 2.103, 2.104, 2.105, 2.321 also issued under Atomic Energy Act secs. 102, 103, 104, 105, 183i, 189 (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Sections 2.200–2.206 also issued under Atomic Energy Act secs. 161, 186, 234 (42 U.S.C. 2201 (b), (i), (o), 2236, 2282); sec. 206 (42 U.S.C. 5846). Section 2.205(j) also issued under Pub. L. 101–410, as amended by section 3100(s), Pub. L. 104–134 (28 U.S.C. 2461 note). Subpart C also issued under Atomic Energy Act sec. 189 (42 U.S.C. 2239). Section 2.301 also issued under 5 U.S.C. 554. Sections 2.343, 2.346, 2.712 also issued under 5 U.S.C. 557. Section 2.340 also issued under Nuclear Waste Policy Act secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.390 also issued under 5 U.S.C. 552. Sections 2.600–2.606 also issued under sec. 102 (42 U.S.C. 4332). Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553; AEA sec. 29 (42 U.S.C. 2039). Subpart K also issued under Atomic Energy Act sec. 189 (42 U.S.C. 2239); Nuclear Waste Policy Act sec. 134 (42 U.S.C. 10154). Subpart L also issued under Atomic Energy Act sec. 189 (42 U.S.C. 2239). Subpart M also issued under Atomic Energy Act sec. 184, 189 (42 U.S.C. 2234, 2239). Subpart N also issued under Atomic Energy Act sec. 189 (42 U.S.C. 2239).

§ 2.810 [Amended]

2. In § 2.810, paragraphs (a)(1) and (b) are amended by removing ''$6.5'' and adding in its place ''$7.0.''

PART 171—ANNUAL FEES FOR REACTOR LICENSES AND FUEL CYCLE LICENSES AND MATERIALS LICENSES, INCLUDING HOLDERS OF CERTIFICATES OF COMPLIANCE, REGISTRATIONS, AND QUALITY ASSURANCE PROGRAM APPROVALS AND GOVERNMENT AGENCIES LICENSED BY THE NRC

3. The authority citation for part 171 is revised to read as follows:

Authority: Consolidated Omnibus Budget Reconciliation Act sec. 6101 Pub. L. 99–272, as amended by sec. 5601, Pub. L. 100–203, as amended by sec. 3201, Pub. L. 101–239, as amended by sec. 6101, Pub. L. 101–508, as amended by sec. 2903a, Pub. L. 102–486 (42 U.S.C. 2213, 2214), and as amended by Title IV, Pub. L. 109–103 (42 U.S.C. 2214); Atomic Energy Act secs. 161(w), 223, 234 (42 U.S.C. 2201(w), 2273, 2282); Energy Reorganization Act sec. 201 (42 U.S.C. 5841); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005 sec. 651(e), Pub. L. 109–58 (42 U.S.C. 2014, 2021, 2021b, 2111).

4. In § 171.16, paragraph (c) is revised to read as follows:

§ 171.16 Annual fees: Materials licensees, holders of certificates of compliance, holders of sealed source and device registrations, holders of quality assurance program approvals, and government agencies licensed by the NRC.

* * * * *

(c) A licensee who is required to pay an annual fee under this section may qualify as a small entity. If a licensee qualifies as a small entity and provides the Commission with the proper certification along with its annual fee payment, then the licensee may a pay reduced annual fee as shown in the following table. Failure to file small entity certification in a timely manner could result in the receipt of a delinquent invoice requesting the outstanding balance due and/or denial of any refund that might otherwise be due. The small entity fees are as follows:

	Maximum annual fee per licensed category
Small businesses not engaged in manufacturing (Average gross receipts over last 3 completed fiscal years):	
$450,000 to $7.0 million	$2,300
Less than $450,000	500
Small not-for-profit organizations (Annual gross receipts):	
$450,000 to $7.0 million	2,300
Less than $450,000	500
Manufacturing entities that have an average of 500 employees or fewer:	

	Maximum annual fee per licensed category
35 to 500 employees	2,300
Fewer than 35 employees	500
Small governmental jurisdictions (Including publicly supported educational institutions) (Population):	
20,000 to 50,000	2,300
Fewer than 20,000	500
Educational institutions that are not State or publicly supported, and have 500 employees or fewer:	
35 to 500 employees	2,300
Fewer than 35 employees	500

* * * * *

Dated at Rockville, Maryland, this 20th day of June 2012.

For the Nuclear Regulatory Commission.

R.W. Borchardt,

Executive Director for Operations.

[FR Doc. 2012–16258 Filed 7–2–12; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0695; Directorate Identifier 2011–SW–031–AD]

RIN 2120–AA64

Airworthiness Directives; Agusta S.p.A. Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede an existing airworthiness directive (AD) for Agusta S.p.A. (Agusta) Model A119 and AW119 MKII helicopters. The existing AD currently requires inspecting the pilot and copilot engine rotary variable differential transformer (RVDT) control box assemblies to determine if the control gear locking pin is in its proper position. Since we issued that AD, Agusta has developed a terminating action for this inspection. The proposed actions are intended to prevent failure of an RVDT control box assembly, loss of manual control of the engine throttle, and subsequent loss of control of the helicopter.

DATES: We must receive comments on this proposed AD by September 4, 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 proposed AD, the economic 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 service information identified in this proposed AD, contact Agusta Westland, Customer Support & Services, Via Per Tornavento 15, 21019 Somma Lombardo (VA) Italy, ATTN: Giovanni Cecchelli; telephone 39 0331711133; fax 39 0331 711180; or at *http://www.agustawestland.com/technical-bullettins.* You may review a copy of the 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: Jim Grigg, Manager, FAA, Rotorcraft Directorate, Safety Management Group, 2601 Meacham Blvd., Fort Worth, TX 76137, telephone (817) 222–5126, email *jim.grigg@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

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 might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, 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 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 proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

Discussion

On July 16, 2010, we issued Emergency AD 2010–15–51, and on August 4, 2010, we issued the Final Rule, Request for Comment, for that AD as amendment 39–16397 (75 FR 50863, August 18, 2010) for all Agusta model A119 and AW119 MKII helicopters. That AD requires inspecting the pilot and co-pilot control box assemblies for the proper positioning of the locking pins, and if the locking pin is recessed or extended in excess of 2.0 millimeters from the face of the pin bore, or missing, replacing the control box assembly. That AD was prompted by a report that an RVDT locking pin that was installed on an AW119 MKII helicopter moved from its proper position, resulting in disconnect between the pilot and co-pilot throttle controls.

Actions Since Existing AD Was Issued

Since we issued AD 2010–15–51, the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2011–0095–E, dated May 24, 2011, to permanently correct this unsafe condition for the Agusta A119 and AW

MKII helicopters. EASA advises that Agusta has developed a modification to the pilot and co-pilot control box assemblies that will ''remedy the problem and prevent recurrence.'' This EASA AD requires repetitive inspections of the affected pilot and co-pilot control box assemblies until a terminating action modification is made within 8 calendar months of the effective date of the EASA AD.

FAA's Determination

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

Related Service Information

We reviewed Agusta Alert Bollettino Tecnico (ABT) No. 119–39 Revision A, dated May 23, 2011 (ABT 119–39). The ABT 119–39 describes procedures for repetitively inspecting the pilot and co-pilot control box assemblies for correct positioning of the engine RVDT control gear locking pin and provides instructions on how to modify the pilot and co-pilot control box assemblies to terminate the repetitive inspections. The EASA classified this ABT as mandatory and issued EAD No. 2011–0095–E, dated May 24, 2011, to ensure the continued airworthiness of these helicopters.

Proposed AD Requirements

This proposed AD would retain the inspection requirements of AD 2010–15–51, which requires a repetitive inspection of the pilot and copilot RVDT control box assembly locking pins for proper position, until both assemblies are modified. Additionally, we are proposing to require, within 8 months, modifying the pilot control box assembly, P/N 109–0010–81–103, and the co-pilot control box assembly, P/N 109–0010–81–107, in accordance with specified procedures contained in the ABT to terminate the requirements for the repetitive inspections.

Costs of Compliance

We estimate that this proposed AD would affect 49 helicopters of U.S. Registry. We estimate that operators may incur the following costs in order to comply with this AD. Inspecting the two RVDT control box assemblies would require about 1.5 hours at an average labor rate of $85 per work hour, for a cost per helicopter of about $128 and a cost to the U.S. fleet of about $6,272 per inspection cycle.

Modification of the pilot and co-pilot RVDT control box assemblies would require about 8 hours at an average labor rate of $85 per work hour, and required parts would cost about $8, for a total cost per helicopter of $688 and a cost to the U.S. fleet of $33,712.

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, 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 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 proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39–16397 (75 FR 50863, dated August 18, 2010), and adding the following new AD:

Agusta S.P.A. Helicopters: Docket No. FAA–2012–0695; Directorate Identifier 2011–SW–031–AD.

(a) Applicability

This AD applies to Agusta Model A119 and AW119 MKII helicopters, with pilot control box assembly (control box), part number (P/N) 109–0010–81–103, and co-pilot control box, P/N 109–0010–81–107, installed, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as a rotary variable differential transformer (RVDT) locking pin, which could move out of position and result in loss of manual throttle control of the engine and subsequent loss of control of the helicopter.

(c) Other Affected ADs

This AD supersedes AD 2010–15–51, Amendment 39–16397 (75 FR 50863, dated August 18, 2010).

(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) Within 5 hours time-in-service (TIS), and thereafter at intervals not to exceed 50 hours TIS, remove the cover of the pilot and co-pilot RVDT control box assemblies and inspect the locking pins for proper position by following the Compliance Instructions, Parts I and II, paragraphs 2. through 4.1 for the pilot control box assembly and paragraphs 5. through 7.1 for the co-pilot control box assembly, of Agusta Bollettino Tecnico No. 119–39, Revision A, dated May 23, 2011.

(2) If during the inspection the locking pin is recessed or extended in excess of 2.0 millimeters from the face of the pin bore, or missing, before further flight, replace the RVDT control box with an airworthy RVDT control box that has been modified in accordance with paragraph (e)(3) of this AD.

(3) Within 8 months,

(i) Modify the pilot RVDT control box assembly, P/N 109–0010–81–103, by reference to Figures 1 through 7 and in accordance with the Compliance Instructions, Part III, paragraphs 5.1 through 5.16 of Agusta Bollettino Tecnico No. 119–39 Revision A, dated May 23, 2011; and

(ii) Modify the co-pilot RVDT control box assembly, P/N 109–0010–81–107, by reference to Figures 1 through 7 and in accordance with the Compliance Instructions, Part III, paragraphs 3.1 through 3.16 of Agusta Bollettino Tecnico No. 119–39, Revision A, dated May 23, 2011.

(4) Modifying the pilot and copilot RVDT control box assemblies in accordance with paragraph (e)(3) of this AD constitutes terminating action for the requirements of this AD.

(f) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: Jim Grigg, Manager, FAA, Rotorcraft Directorate, Safety Management Group, 2601 Meacham Blvd., Fort Worth, TX 76137, telephone (817) 222–5126, email *jim.grigg@faa.gov.*

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR 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

(1) For service information identified in this AD, contact Agusta Westland, Customer Support & Services, Via Per Tornavento 15, 21019 Somma Lombardo (VA) Italy, ATTN: Giovanni Cecchelli; telephone 39–0331–711133; fax 39 0331 711180; or at *http://www.agustawestland.com/technical-bullettins.* You may review a copy of the 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 European Aviation Safety Agency AD 2011–0095–E, dated May 24, 2011.

(h) Subject

Joint Aircraft Service Component (JASC) Code: 6700: Rotors Flight Control.

Issued in Fort Worth, Texas, on June 22, 2012.

M. Monica Merritt,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2012–16314 Filed 7–2–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 139

Draft Parachute Landing Area Standards

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for comment.

SUMMARY: The Federal Aviation Administration (FAA), U.S. Department of Transportation (DOT), invites the United States Parachute Association, skydiving businesses, airport operators, airport consultants, industry representatives and all other interested parties to review and comment on the draft ''Parachute Landing Area Standards'' contained in Change 19 to the Airport Design Advisory Circular (''AC''), AC 150/5300–13. This change establishes new standards and recommendations for parachute landing areas on airports. This action proposes to clarify the FAA policies and standards concerning access to federally obligated airports for parachute landing activities. It also proposes to clarify Grant Assurance No. 22, ''Economic Nondiscrimination,'' which is required of a sponsor as a condition of receiving a grant under the Airport Improvement Program (AIP), to incorporate these standards.

DATES: Comments must be received on or before August 17, 2012.

ADDRESSES: Comments must be submitted by:

- *Hand Delivery/Courier:* Federal Aviation Administration, 800 Independence Avenue SW., AAS–100, Room 621, Washington, DC 20590.
- *Fax:* (202) 267–3688.

FOR FURTHER INFORMATION CONTACT: Khalil Elias Kodsi, P.E. PMP, Airport Engineering Division, (AAS–100), Federal Aviation Administration, 800 Independence Ave. SW., Washington, DC 20591; telephone (202) 267–7553.

SUPPLEMENTARY INFORMATION: The FAA has posted Change 19 for the Advisory Circular on the Internet at: *http://www.faa.gov/airports/resources/advisory_circulars/*

Pursuant to 49 U.S.C. 47107(h), the Secretary of Transportation is required to provide notice and comment in the **Federal Register** and an opportunity for the public to comment upon proposals to modify the assurances or add new assurances.

The purpose of this document is twofold: (1) To provide notice of the proposed modification of Grant Assurance No. 22 and to provide an opportunity to comment consistent with 49 U.S.C. 47107(h), and (2) to invite interested parties to review and comment on the draft ''Parachute Landing Area Standards'' contained in Change 19 to the Airport Design Advisory Circular, AC 150/5300–13. The FAA interprets 49 U.S.C. 47107(a)(1), and the corollary grant assurance No. 22, ''Economic Nondiscrimination,'' to require airports obligated under AIP grants (which includes sponsors that are holders of Airport Operating Certificates issued under 14 CFR part 139) to comply with new PLA Standards set forth in Change 19 to AC 150/5300–13, ''Airport Design,'' which address hazards, PLA size and location, and recommended markings. The FAA proposes to use these standards; along with changes in its safety assessment review process, to provide a more consistent and objective examination of requests for parachute landing areas on federally obligated airports. The new standards and the updated review process will ensure that airport sponsors are able to implement new PLAs safely and efficiently. The PLA Standards will apply at the time airports enter into new grant agreements with the FAA subsequent to the effective date of Change 19 to AC No. 150/5300–13, ''Airport Design.''

The FAA proposes to modify AIP Grant Assurance No. 22, ''Economic Nondiscrimination,'' to clarify that sponsor must comply with Parachute Landing Area (PLA) Standards set forth in Change 19 to AC 150/5300–13, ''Airport Design,'' which address hazards, PLA size and location, and recommended markings. These standards are designed to provide a more consistent and objective examination of requests for parachute landing areas on federally obligated airports. The standards will ensure that sponsors are able to implement new PLAs safely and efficiently.

Title 49 of the United States Code, section 47108(a), provides that the Secretary may impose terms on the offer of Federal funds for AIP funded airport development projects that the Secretary considers necessary. Uniform design standards for airports can be found in FAA advisory circulars and mandatory use is generally required on all AIP projects. In exchange for AIP grant funds, an airport sponsor is required by 49 U.S.C. 47107(a) to certify to the Secretary that it will comply with a number of Federal laws, policies, and grant assurances. Grant Assurance No. 22, ''Economic Nondiscrimination,'' requires an airport sponsor to ''make the airport available as an airport for public

use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.''

Parachuting is an aeronautical activity. See AC–105.2D. For several years, airport sponsors, skydiving operators and airport users have expressed concerns to the FAA about the safety assessment process the FAA uses to evaluate parachute operations and the siting of Parachute Landing Areas on federally obligated airports. These concerns include the amount of time required from airport sponsors, skydiving operators, and the FAA to conduct safety assessments, and the resulting access delays that can occur for skydiving operators. The PLA standards and safety risk assessment procedures are an attempt to address these issues. With these standards, along with changes to the safety assessment review process, the FAA also seeks to gain greater national coordination and consistency in its safety assessments and to ensure that these standards are applied objectively and uniformly across the country. Some airport sponsors have cited reasons of safety and/or efficiency and have been generally reluctant to allow the establishment of on-airport parachute landing areas. Airport sponsors generally do not object to the takeoff and landing of aircraft that are used to transport skydivers, but argue that having the skydivers land on the airport property creates safety and/or efficiency concerns when combined with other aeronautical users.

Change 19 of AC 150/5300–13, ''Airport Design,'' establishes new standards for on-airport PLAs, including size, location and recommended markings. The FAA proposes to use these standards; along with changes in its safety assessment review process, to provide a more consistent and objective examination of requests for parachute landing areas on federally obligated airports. This new standard, combined with the new request review process, will ensure that airport sponsors are able to implement new PLAs safely and efficiently.

Reviewers will also have access, via the FAA listed web link above, to the FAA William J. Hughes Technical Center Report entitled, ''Development of Criteria for Parachute Landing Areas on Airports,'' as well as to a database report of accidents and incidents related to parachute operations from the Aviation System Information Analysis and Sharing (ASIAS) database.

As required under 49 U.S.C. 47107(h), the FAA is providing notice that it interprets 49 U.S.C. 47107(a) (1), and the corollary grant assurance No. 22, ''Economic Nondiscrimination,'' to require airports that accept new AIP grants (which would include sponsors that are holders of Airport Operating Certificates issued under 14 CFR part 139) to comply with new PLA Standards set forth in Change 19 to AC 150/5300–13, ''Airport Design.'' The new standards address hazards, PLA size and location, and recommended markings. In consideration of the above, the FAA proposes to modify the current version of Grant Assurance No.22, ''Economic Nondiscrimination,'' to add new paragraph (j) to read as follows:

C. Sponsor Certification. The sponsor hereby assures and certifies, with respect to this grant, that:

22. Economic Nondiscrimination

j. It will comply with Parachute Landing Area (PLA) Standards set forth to 150–5300 series AC ''Airport Design,'' which addresses hazards, PLA size and location, and recommended markings.

The PLA Standards will take effect at the time airports enter into new grant agreements with the FAA subsequent to the effective date of Change 19 to AC No. 150/5300–13, ''Airport Design.'' For an airport that has an existing parachute landing area, the airport will have 60 months from the date it enters into the grant agreement to come into compliance with the new PLA standards. If an airport is not able to modify its existing parachute landing area to comply within this timeframe, the airport must provide the FAA with a plan prior to the end of the 60 months. This plan must be submitted to the local FAA Airports District Office or Regional Airports Office (where applicable) for approval, and must include a timetable describing how the airport will meet the PLA Standards within a timeframe acceptable to the Administrator. For other airports, the Standards are recommended.

It should be noted that in Change 19, the FAA has modified paragraph 3, ''Application,'' to reflect that the standards in the Airport Design AC may be used by certificated airports as a means of satisfying specific requirements in subparts C and D of 14 CFR part 139. This text was inadvertently removed from the prior version of the Airport Design AC. The next text reads,

The standards and recommendations contained in this AC may be used by certificated airports to satisfy specific requirements of Federal Aviation Regulations (FAR) part 139, ''Certification of Airports,'' subparts C (Airport Certification Manual) and D (Operations).

Issued in Washington, DC, on June 22, 2012.

Michael J. O'Donnell,

Director, Office of Airport Safety and Standards.

[FR Doc. 2012–15912 Filed 6–29–12; 4:15 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

Revisions to Electric Quarterly Report Filing Process

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) proposes to amend a Rule which governs the filing of Electric Quarterly Reports (EQRs), to change the process for filing EQRs. Currently, EQRs are filed by downloading EQR software from the Commission's Web site, installing it on the filer's Microsoft Windows-based computer, entering the EQR data into the software, and then submitting the EQR data to the Commission. The EQR software is designed in Microsoft Visual FoxPro. Technological changes and limitations will render the current filing process outmoded, ineffective, and unsustainable. Microsoft has discontinued Visual FoxPro and will not support the software after 2015. Visual FoxPro also is constrained by data size limitations that will soon restrict the Commission's ability to add data fields in the EQR. Therefore, the Commission proposes a new filing system that will provide EQR filers with two new options for filing EQRs.

One option would allow an EQR filer to use a web interface on the Commission's Web site to file its EQR. This web interface would look and operate like the current EQR software that uses Visual FoxPro. However, an EQR filer would not need to download and install software from the Commission's Web site to file because the data would be filed directly with the Commission through the web interface. The other option would allow an EQR filer to file its EQR in an Extensible Mark-Up Language (XML) format via the Commission's Web site. By proposing a process with two options for filing

EQRs, the Commission seeks to provide the flexibility needed to accommodate EQR filers' technical preferences. Under both options, the Commission proposes to require EQR filers to use the company identification number (Company Identifier) assigned through the Commission's Company Registration System, which was developed for the Commission's eTariff system. The Company Identifier would replace the personal identification numbers that are currently used and that are unique to the existing EQR filing process. The Commission also proposes that implementation of any changes to the process for filing EQRs will apply to EQR filings beginning with the third quarter 2013 EQR, providing data for July through September 2013.

The Commission will convene a staff-led public conference on Wednesday, July 11, 2012 to demonstrate the two new options for filing EQRs to industry participants and assist participants in preparing their comments to this Notice of Proposed Rulemaking.

DATES: Comments are due September 4, 2012.

ADDRESSES: Comments, identified by docket number, may be filed in the following ways:

• *Electronic Filing through http://www.ferc.gov.* Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format.

• *Mail/Hand Delivery:* Those unable to file electronically may mail or hand-deliver comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Comment Procedures Section of this document.

FOR FURTHER INFORMATION CONTACT:

Connie Caldwell, Office of Enforcement, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–6208, *Connie.Caldwell@ferc.gov.*

Christina Switzer, Office of General Counsel, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–6379, *Christina.Switzer@ferc.gov.*

SUPPLEMENTARY INFORMATION:

[Docket No. RM12–3–000]

June 21, 2012.

1. The Federal Energy Regulatory Commission (Commission) proposes changes to the method for filing Electric Quarterly Reports (EQRs). Due to technological changes that will render the current filing process outmoded, ineffective, and unsustainable, the Commission proposes to discontinue the use of Commission software to file an EQR. Instead, the Commission proposes to allow an EQR filer to file EQR data directly through the Commission's Web site, either through a web interface or by submitting an Extensible Mark-Up Language (XML)-formatted [1] file. The Commission also proposes to require the EQR filer to identify itself with a company identification number (Company Identifier) rather than the existing software-based EQR identifiers.

I. Background

2. Prior to the issuance of Order No. 2001,[2] the Commission required public utilities to file in paper format all short-term and long-term service agreements for market-based sales of electric energy and service agreements for generally applicable services (such as point-to-point transmission service), in Quarterly Transaction Reports. In Order No. 2001, the Commission replaced the paper filing requirement with an electronic filing requirement. The Commission stated that the purpose of the EQR filing requirements is to:

> make available for public inspection, in a convenient form and place all relevant information relating to public utility rates, terms, and conditions of service; ensure that information is available in a standardized, user friendly format; and meet the Commission's electronic filing option obligation. [Footnote omitted.] These actions also will allow the public to better participate in and obtain the full benefits of wholesale electric power markets while minimizing the reporting burden on public utilities.[3]

In addition, the Commission noted that the EQR allows public utilities to better fulfill their responsibility under section 205(c) of the Federal Power Act (FPA) to have rates on file in a convenient form and place.[4] An EQR file must include, for the most recent calendar quarter: (1) a summary of the terms and conditions in all agreements to provide jurisdictional services (including market-based and cost-based power sales, as well as transmission service); and (2) transaction information for all short-term and long-term market-based and cost-based power sales.[5]

3. In Order No. 2001, the Commission promulgated 18 CFR 35.10b (2011), which reads, in pertinent part: "* * * Electric Quarterly Reports must be prepared in conformance with the Commission's software and guidance posted and available for downloading from the FERC Web site (*http://www.ferc.gov*)." [6] Consistent with this portion of the regulation, the Commission's Web site provides public utilities with software and guidance for filing an EQR.

II. Discussion

4. Pursuant to section 35.10b of the Commission's Regulations,[7] EQR filers must first download the EQR software application that is available on the Commission's Web site. The EQR software application was built with Visual FoxPro development tools and must be installed on a Windows-based computer. This software has certain disadvantages. Microsoft, the Visual FoxPro vendor, announced in 2007 that it would no longer sell or issue new versions of Visual FoxPro and would provide support for it only through 2015. Also, over time, the Commission

[1] XML is a set of standards for describing and communicating data.

[2] *Revised Public Utility Filing Requirements,* Order No. 2001, 67 FR 31043 (May 8, 2002), FERC Stats. & Regs. ¶ 31,127, *reh'g denied,* Order No. 2001–A, 100 FERC ¶ 61,074, *reh'g denied,* Order No. 2001–B, 100 FERC ¶ 61,342, *order directing filing,* Order No. 2001–C, 101 FERC ¶ 61,314 (2002), *order directing filing,* Order No. 2001–D, 102 FERC ¶ 61,334, *order refining filing requirements,* Order No. 2001–E, 105 FERC ¶ 61,352 (2003), *order on clarification,* Order No. 2001–F, 106 FERC ¶ 61,060 (2004), *order revising filing requirements,* Order No. 2001–G, 72 FR 56735 (Oct. 4, 2007), 120 FERC ¶ 61,270, *order on reh'g and clarification,* Order No. 2001–H, 73 FR 1876 (Jan. 10, 2008), 121 FERC ¶ 61,289 (2007), *order revising filing requirements,* Order No. 2001–I, 73 FR 65526 (Nov. 4, 2008), FERC Stats. & Regs. ¶ 32,282 (2008).

[3] Order No. 2001, FERC Stats. & Regs. ¶ 31,127 at 30,116.

[4] 16 U.S.C. 824d(c).

[5] Since the Commission issued Order No. 2001, it has refined and clarified the EQR filing requirements in response to changes in the industry and the Commission's rules and regulations. For example, the Commission has required EQR filers to report all transmission capacity reassignments and proposed to revise the EQR Data Dictionary to add "Simultaneous Exchange" to the list of available product names. *See Preventing Undue Discrimination and Preference in Transmission Service,* Order No. 890, 72 FR 12266 (Mar. 15, 2007), FERC Stats. & Regs. ¶ 31,241, at P 817, *order on reh'g,* Order No. 890–A, 73 FR 2984 (Jan. 16, 2008), FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g and clarification,* Order No. 890–B, 73 FR 39092 (July 8, 2008), 123 FERC ¶ 61,299 (2008), *order on reh'g,* Order No. 890–C, 74 FR 12540 (Mar. 25, 2009),126 FERC ¶ 61,228 (2009), *order on clarification,* Order No. 890–D, 74 FR 61511 (Nov. 25, 2009), 129 FERC ¶ 61,126 (2009); *Revised Public Utility Filing Requirements for Electric Quarterly Reports,* Notice of Proposed Rulemaking, 77 FR 16494 (Mar. 21, 2012), FERC Stats. & Regs. ¶ 32,687 (2012). The Commission has also proposed new filing requirements for all EQR filers and extending the EQR filing requirements to non-public utilities above a *de minimis* market presence threshold. *Electricity Market Transparency Provisions of Section 220 of the Federal Power Act,* Notice of Proposed Rulemaking, 76 FR 24188 (Apr. 29, 2011), FERC Stats. & Regs. ¶ 32,676 (2011).

[6] 18 CFR 35.10b.

[7] 18 CFR 35.10b.

has found that it is difficult to maintain quarterly transactions in a single table in the face of changes in the Commission's jurisdictional markets because Visual FoxPro does not allow data tables to exceed two gigabytes. These data size limitations will soon restrict the Commission's ability to add data fields in the EQR. These limitations make the EQR software application outmoded, ineffective, and unsustainable.

5. To ensure an ongoing, reliable mechanism for filing EQR data, the Commission proposes to replace the Visual FoxPro-based EQR software with two new filing options. The Commission recognizes the need to facilitate a smooth transition to these new filing options. In addition, on July 11, 2011, the President issued Executive Order 13579, requesting that independent agencies issue public plans for periodic retrospective analysis of existing regulations.[8] Retrospective analysis should identify regulations that may be outmoded, ineffective, insufficient, or excessively burdensome and to modify, streamline, expand, or repeal them in order to achieve the agency's regulatory objective. The Commission believes that the changes proposed in this Notice of Proposed Rulemaking (NOPR) support the goals of this Executive Order by modifying a filing process that has become outmoded, ineffective and unsustainable.

6. Under the proposed process, the first new filing option that the Commission proposes builds upon the automated systems that EQR filers have developed to enter data into the current EQR software. The EQR software application allows EQR filers to enter quarterly data by hand or by importing the data in comma-delimited text files. EQR filers have built automated systems to generate the comma-delimited text files. Therefore, the Commission proposes to offer a web interface on the Commission's Web site that allows EQR filers to continue to enter data in the comma-delimited text format but without the need to download software. This option would minimize the changes for an EQR filer and streamline the filing process by eliminating the need for filers to enter or import the data into a software application. The proposed web interface will be device-independent; therefore, this method would eliminate the need for the EQR filer to use a Windows-based computer.

7. Under the proposed new filing process, EQR filers can elect a second option if they prefer, which allows them to file EQR data via XML-formatted files. This proposed method has various advantages. An XML schema includes rules and data checks that are unavailable in a comma-delimited file. For example, an EQR filer using XML would be able to tag each data element to ensure that it reaches the Commission with an accurate description; a comma-delimited file does not provide that assurance. Therefore, this proposed filing option allows EQR filers to test the consistency of their data with the Commission's filing standards, improving the ability to comply with the EQR filing requirement and increasing confidence that the Commission receives the intended information. However, as discussed above, use of the XML format is optional, and filers are free to choose to file via the web-based interface option.

8. The Commission also proposes to change the manner in which an EQR filer is identified. In the current EQR software, an EQR filer applies for a ''PIN'' number when it first contacts the Commission about filing an EQR. To receive a PIN number, a representative of the filer must confirm via email that the request is made via the EQR filer's email address. Once it receives the PIN number, the EQR filer identifies itself in its filing by ''retrieving'' its listing, downloading the applicable files (including past filings), and entering the ''PIN'' number when ready to submit the filing to the Commission. This PIN number system is part of the EQR software application. Therefore, as part of the transition away from this software application, the Commission must provide a new manner to identify EQR filers.

9. To assure consistency and the ability to cross-reference Commission filings, the Commission proposes to replace the PIN number identification system with the Company Registration System used for eTariff filings. As part of the development of the eTariff system,[9] the Commission directed each publicly regulated company to file its tariffs, rate schedules, jurisdictional contracts, and other jurisdictional agreements with a ''Company Identifier.'' The Commission developed a registration system to permit a publicly regulated company to request a Company Identifier, modify information associated with an existing Company Identifier, and request a new password.''[10] The data is used by the Commission to identify the company making a tariff filing, to notify the publicly regulated company that a filing has been made in its name, and to create a list of publicly regulated companies. The Commission proposes to require EQR filers to use these Company Identifiers to identify themselves.[11] Because the publicly regulated companies that file their Commission-jurisdictional tariffs and agreements have Company Identifiers, the Commission does not anticipate that the use of a Company Identifier in the EQR filing process will create an undue burden for these companies. Rather, it provides publicly regulated companies that file an EQR a consistent and, therefore, more controllable method to demonstrate that it is the appropriate EQR filer. We also anticipate that the use of the Company Identifier will not be unduly burdensome for an EQR filer that does not have an existing Company Identifier because the registration process on the Commission's Web site is straightforward and no more difficult than the current filer identification process.[12] The use of the Company Identifier for EQR filings will allow the Commission to make filer identification consistent across all Commission filings.

10. The Commission will convene a staff-led public conference on Wednesday, July 11, 2012 to demonstrate the two new options for filing EQRs to industry participants. The demonstration will assist participants in preparing their comments to this NOPR. The conference will be available by webcast.

11. The Commission also proposes that implementation of any changes to the process for filing EQRs will apply to EQR filings beginning with the third quarter (Q3) 2013 EQR, providing data for July through September 2013. Implementing the changes within that time period should provide EQR filers with sufficient time to weigh the two options and file their Q3 2013 report in a timely manner.

III. Information Collection Statement

12. The Office of Management and Budget (OMB) regulations require

[8] *Regulation and Independent Regulatory Agencies,* Exec. Order 13579, 76 FR 41587 (2011).

[9] *Electronic Tariff Filings,* Order No. 714, 73 FR 57515 (Oct. 3, 2008), FERC Stats. & Regs. ¶ 31,276 (2008).

[10] *See* Implementation Guide for Electronic Filing of Parts 35, 154, 284, 300, and 341 Tariff Filings (Jan. 23, 2012 version), *available at http://www.ferc.gov/docs-filing/company-reg.asp.*

[11] The Commission recognizes that there are instances when a company uses an agent to file on its behalf. If the Commission adopts the proposal to require EQR filers to identify themselves using the Company Identifier system, then the Commission proposes to ensure that the new filing process continues to allow an agent to file on behalf of a company.

[12] *Id.*

approval of certain information collection requirements imposed by agency rules.[13] Upon approval of a collection(s) of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of an agency rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number. The Paperwork Reduction Act (PRA)[14] requires each federal agency to seek and obtain OMB approval before undertaking a collection of information directed to ten or more persons or contained in a rule of general applicability.[15]

13. The Commission is submitting these reporting and recordkeeping requirements to OMB for its review and approval under section 3507(d) of the PRA. The subject of this NOPR is FERC's proposed changes to the method for filing EQRs and how an EQR filer identifies itself. The Commission solicits comments on these modifications, the accuracy of burden estimates, ways to enhance quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing respondents' burden

14. The Commission's estimates of the average public reporting burden and cost related to the proposed rule in Docket RM12–3–000 follow:

NOPR IN RM12–3–000 ON ELECTRIC QUARTERLY REPORT

	Number of respondents	Number of responses per respondent per year	Implementing (one-time) burden per respondent		Recurring operating burden per respondent per response [16]		Average annual burden per respondent (implementation averaged over Years 1–3)	
			Burden hours	Cost ($)	Burden hours [17]	Cost ($)	Burden hours	Cost ($)
Companies within non-California RTO, and large cos. within Cal. RTO.	405	4	20	$1,434.50	no change	no change	6.67	$478.17
Medium/small companies within Cal. RTO.	20	4	20	1,434.50	no change	no change	6.67	478.17
Companies not within RTO.	663	4	20	1,434.50	no change	no change	6.67	478.17
Companies with no transactions.	695	4	20	1,434.50	no change	no change	6.67	478.17

15. The one-time implementation burden and cost for all 1,783 respondents are 35,660 hours (1,783 × 20 hours), and $2,557,713.50 (1,783 × $1,434.50). Averaging this one-time implementation burden and cost over Years 1–3 yields an annual total burden of 11,892.61 hours (1,783 × 6.67) and an annual total cost of $852,577.11 (1,783 × $478.17)

16. The Commission recognizes that there will be an initial implementation burden associated with reviewing the instructions, revising the filing process, adding the agent to the respondent's eRegistration data, obtaining a Company Identifier, and filing EQR data through the new system. The Commission estimates a burden of 20 hours per respondent for the one-time implementation. To help with this initial implementation, the Commission will convene a staff-led technical conference to demonstrate the two new options for filing EQRs to industry participants. The conference will be available by webcast, which should minimize travel and other costs associated with participation in the conference. The Commission also proposes to direct staff to assist in transitioning to the new process. The demonstration and staff assistance should minimize the initial implementation burden.

17. For the recurring effort involved in electronically submitting EQR data on a quarterly basis to the Commission, the Commission anticipates that there will be no change or a slight burden reduction, when compared to the burden of making quarterly filings under the current system. The Commission seeks comments on the burden estimates related to the recurring quarterly filings.

Information Collection Costs: The Commission has estimated the cost of compliance per respondent to be $1,434.50, for one-time implementation of the changes proposed in this NOPR. The Commission has estimated the implementation cost as follows:[18]

- Legal staff (at $250/hour), for 2 hours, costing $500
- Senior accountant (at $51.38/hr.), financial analyst (at $68.12/hr.), and/or support staff (at $35.99/hr.), averaged at $51.83/hr., for a total of 2 hours, costing $103.66
- Information technology analyst (at $57.24/hour), for 12 hours, costing $686.88
- Support staff (at $35.99/hr), for 4 hours, costing $143.96.

Title: FERC–516,[19] Electric Rate Schedules and Tariff Filings.

[13] 5 CFR 1320.8.

[14] 44 U.S.C. 3501–3520.

[15] OMB's regulations at 5 CFR 1320.3(c)(4)(i) require that ''[a]ny recordkeeping, reporting, or disclosure requirement contained in a rule of general applicability is deemed to involve ten or more persons.''

[16] The Commission expects no change or a slight decrease in the Recurring Operating Burden per Respondent per Response under the new filing system (when compared to quarterly filings under the existing system).

[17] For the existing EQR system, the Commission estimates the average burden per respondent per quarterly filing to be: 32 hours for Companies within non-California RTO, and large companies within the California RTO; 80 hours for medium/small Companies within the California RTO; 3 hours for Companies not within an RTO; and 0.083 hours [5 minutes] for Companies with no transactions.

[18] Hourly average wage is an average and was calculated using Bureau of Labor Statistics (BLS), Occupational Employment Statistics data for May 2011 (for NAICS 221100—Electric Power Generation, Transmission and Distribution, at *http://bls.gov/oes/current/naics4_221100.htm#00–0000*) for the senior accountant, financial analyst, information technology analyst, and support staff. The average hourly figure for legal staff is a composite from BLS and other resources.

[19] The Commission plans to separate the EQR reporting requirements from the remaining

Action: Proposed new EQR filing system and associated additional reporting requirements.

Respondents: Electric utilities

Frequency of Responses: Initial implementation and quarterly filings (beginning Q3 of 2013).

Need for Information: The Commission proposes changes to the method for filing EQRs. The Commission proposes to replace a filing system that requires an EQR filer to download Commission software with a system that would allow an EQR filer to file EQR data directly through the Commission's Web site, either through a web interface or by submitting an XML-formatted file. The Commission also proposes to require the EQR filer to identify itself with a Company Identifier. The Company Identifiers would be assigned through the Commission's Company Registration System.

Internal Review: The Commission has reviewed the proposed changes and has determined that the changes are necessary. These requirements conform to the Commission's need for efficient information collection, communication, and management within the energy industry. The Commission has assured itself, by means of internal review, that there is specific, objective support for the burden estimates associated with the information collection requirements.

18. Interested persons may obtain information on the reporting requirements by contacting: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 [Attention: Ellen Brown, Office of the Executive Director, email: *DataClearance@ferc.gov*, Phone: (202) 502–8663, fax: (202) 273–0873]. Comments on the requirements of this rule may also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission]. For security reasons, comments should be sent by email to OMB at *oira_submission@omb.eop.gov*. Please reference OMB Control No. 1902–0096, FERC–516, and Docket No. RM12–3 in your submission.

IV. Environmental Analysis

19. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[20] The actions taken here fall within categorical exclusions in the Commission's regulations for information gathering, analysis, and dissemination.[21] Therefore, an environmental assessment is unnecessary and has not been prepared in this rulemaking.

V. Regulatory Flexibility Act Certification

20. The Regulatory Flexibility Act of 1980 (RFA)[22] generally requires a description and analysis of proposed rules that will have significant economic impact on a substantial number of small entities. The RFA mandates consideration of regulatory alternatives that accomplish the stated objectives of a proposed rule and that minimize any significant economic impact on a substantial number of small entities. The Small Business Administration's (SBA) Office of Size Standards develops the numerical definition of a small business.[23] The SBA has established a size standard for electric utilities, stating that a firm is small if, including its affiliates, it is primarily engaged in the transmission, generation and/or distribution of electric energy for sale and its total electric output for the preceding twelve months did not exceed four million MWh.[24]

21. Of the 1,783 filers,[25] approximately 1,194 filers had total electric output for the preceding twelve months that did not exceed four million MWh. However, when combined with their affiliates, 414 of those 1,194 filers no longer meet the definition of ''small.'' The Commission estimates that the remaining 780 filers are ''small.''

22. To ease the burden of implementation for all filers, the Commission is minimizing the changes which respondents will experience and giving two options for filing (using either comma-separated values or XML). The estimated one-time implementation cost per respondent is $1,434.50.

23. The Commission anticipates no change or a slight reduction in the burden for the recurring quarterly filings. In addition, small entities generally have few or no transactions and corresponding minimal recurring burden. Furthermore, we note that public utilities may request, on an individual basis, waiver from the EQR reporting requirements.[26] Thus, the Commission certifies that this proposed rule will not have a significant impact on a substantial number of small entities.

VI. Comment Procedures

24. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due September 4, 2012. Comments must refer to Docket No. RM12–3–000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments.

25. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's web site at *http://www.ferc.gov*. The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

26. Commenters that are not able to file comments electronically must send an original of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

27. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

VII. Document Availability

28. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

reporting requirements under FERC–516 (OMB Control No. 1902–0096). The Commission expects to move the EQR reporting requirements to the new FERC–920 (OMB Control No. 1902–0255) at the final rule stage.

[20] *Regulations Implementing the National Environmental Policy Act of 1969*, Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,783 (1987).

[21] 18 CFR 380.4(a)(5).

[22] 5 U.S.C. 601–612.

[23] 13 CFR 121.101.

[24] 13 CFR 121.201, Sector 22, Utilities & n.1.

[25] Of the 1,783 respondents, approximately 695 submit filings showing they had no transactions. The burden for these filings is minimal.

[26] The Commission has granted requests for waiver of the EQR filing requirements. *See Bridger Valley Elect. Assoc., Inc.*, 101 FERC ¶ 61,146 (2002). Entities with a waiver will continue to have a waiver and will not need to file a new request for waiver.

29. From the Commission's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

30. User assistance is available for eLibrary and the Commission's Web site during normal business hours from the Commission's Online Support at 202–502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov*, or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov*.

List of Subjects in 18 CFR Part 35

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

By direction of the Commission. Commissioner Clark voting present.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

In consideration of the foregoing, the Commission proposes to amend 18 CFR part 35, Chapter I, Title 18,as follows:

1. The authority citation for part 35 continues to read as follows:

Authority. 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

2. § 35.10b is revised to read as follows:

§ 35.10b Electric Quarterly Reports.

* * * Electric Quarterly Reports must be prepared in conformance with the Commission's guidance posted on the FERC Web site (*http://www.ferc.gov*) or as otherwise provided to the public.

[FR Doc. 2012–15734 Filed 7–2–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Chapter IX

[Docket No. FR–5650–N–01]

Native American Housing Assistance and Self-Determination Act of 1996: Notice of Intent To Initiate Negotiated Rulemaking

AGENCY: Office of Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of intent to initiate Negotiated Rulemaking.

SUMMARY: This document announces HUD's intention to initiate Negotiated Rulemaking under the Negotiated Rulemaking Act for the purpose of developing regulatory changes to the funding formula for the Indian Housing Block Grant (IHBG) program authorized under the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA). This document provides background information on the NAHASDA program and describes the steps in the negotiated rulemaking process.

FOR FURTHER INFORMATION CONTACT: Rodger J. Boyd, Deputy Assistant Secretary for Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 4126, Washington, DC 20410–5000, telephone at 202–401–7914 (this is not a toll-free number). Persons with hearing or speech impediments may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

The Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*) (NAHASDA) changed the way that housing assistance is provided to Native Americans. NAHASDA eliminated several separate assistance programs and replaced them with a single block grant program, known as the Indian Housing Block Grant (IHBG) program. The regulations governing the IHBG formula allocation are codified in subpart D of part 1000 of HUD's regulations in title 24 of the Code of Federal Regulations. In accordance with section 106 of NAHASDA, HUD developed the regulations with active tribal participation and using the procedures of the Negotiated Rulemaking Act of 1990 (5 U.S.C. 561–570).

Under the IHBG program, HUD makes assistance available to eligible Indian tribes for affordable housing activities. The amount of assistance made available to each Indian tribe is determined using a formula that was developed as part of the NAHASDA negotiated rulemaking process. Based on the amount of funding appropriated for the IHBG program, HUD calculates the annual grant for each Indian tribe and provides this information to the Indian tribes. An Indian Housing Plan for the Indian tribe is then submitted to HUD. If the Indian Housing Plan is found to be in compliance with statutory and regulatory requirements, the grant is made.

Through this document, HUD announces its intent to initiate Negotiated Rulemaking to review the IHBG formula as required by program regulations. This document also provides an overview of the next steps in the negotiated rulemaking process.

II. Negotiated Rulemaking

The basic concept of negotiated rulemaking is to have the agency that is developing a regulation bring together representatives of affected interests for face-to-face negotiations. The give-and-take of the negotiation process is expected to foster constructive, creative and acceptable solutions to difficult problems.

Section 564 of the Negotiated Rulemaking Act of 1990 requires that an agency publish document(s) in the **Federal Register** to do the following: announce its intent to establish a negotiated rulemaking committee; to solicit nominations for selection to the committee; to provide a list of the proposed committee membership, and to provide certain other information regarding the formation of the committee. HUD intends to publish such documents in the near future.

Dated: June 26, 2012.

Sandra Henriquez,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 2012–16146 Filed 7–2–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–107889–12]

RIN 1545–BK85

Substantial Business Activities; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to a notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document corrects a notice of proposed rulemaking by cross-reference to temporary regulations (REG–107889–12) that was published in the **Federal Register** on Tuesday, June 12, 2012 (77 FR 34887) regarding whether a foreign corporation has substantial business activities in a foreign country.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations,

Mary W. Lyons, (202) 622–3860; and David A. Levine, (202) 622–3860, and regarding the submission of public comments and the public hearing, Ms. Oluwafunmilayo (Funmi) Taylor, at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking by cross-reference to temporary regulations (REG–107889–12) that is the subject of this correction is under section 7874 of the Internal Revenue Code.

Need for Correction

As published, REG–107889–12, contains an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the correction to a notice of proposed rulemaking by cross-reference to temporary regulations (REG–107889–12), which was the subject of FR. Doc. 2012–14238, is corrected as follows:

On page 34887, column 3, in the preamble, under the paragraph heading ''Special Analyses:'', the paragraph is replaced in its entirety, and is corrected to read ''It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. 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 the regulations, and because the regulations do not impose a collection of information on small entities, the requirements of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply. Accordingly, a regulatory flexibility analysis is not required. Pursuant to section 7805(f) of the Code, the regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.''

LaNita Van Dyke,

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

[FR Doc. 2012–16236 Filed 7–2–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2012–0109]

RIN 1625—AA08

Special Local Regulations for Marine Events; Temporary Change of Dates for Recurring Marine Events in the Fifth Coast Guard District, Bogue Sound; Morehead City, NC

AGENCY: Coast Guard, DHS.

ACTION: Proposed rule; withdrawal.

SUMMARY: The Coast Guard is withdrawing its proposed rule concerning a temporary change of the enforcement period for a special local regulation of a recurring marine event in the Fifth Coast Guard District. The proposed rule was initiated to alter the date of the ''Crystal Coast Super Boat Grand Prix,'' conducted on the waters of Bogue Sound near Morehead City, North Carolina. No new rulemaking will be initiated on this matter; rather, the event will be held as detailed in the existing regulation.

DATES: The proposed rule is withdrawn on July 3, 2012.

ADDRESSES: The docket for this withdrawn rulemaking is available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to *http://www.regulations.gov,* inserting USCG–2012–0109 in the ''Keyword'' box, and then clicking ''Search.''

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice, call or email BOSN3 Joseph M. Edge, Coast Guard Sector North Carolina, Coast Guard; telephone 252–247–4525, email *Joseph.M.Edge@uscg.mil.* If you have questions on viewing material in the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Background

On March 15, 2012, we published a notice of proposed rulemaking entitled ''Special Local Regulations for Marine Events; Temporary Change of Dates for Recurring Marine Events in the Fifth Coast Guard District, Bogue Sound; Morehead City, NC'' in the **Federal Register** (77 FR 15320). The proposed rulemaking would have altered the period of enforcement of the Special Local Regulation listed in 33 CFR 100.501(d)(3). The subject event was going to be rescheduled from the fourth or last Sunday in September to the third Saturday and Sunday in September. The proposed regulation would have closed a portion of the waters of Bogue Sound to vessel traffic during the boat race during the altered period of enforcement. No other changes to the underlying regulation were proposed.

Withdrawal

The sponsor of the ''Crystal Coast Super Boat Grand Prix'' has informed the Coast Guard that he will hold the event on a date within the limitations published and listed in 33 CFR 100.501(d)(3).

Authority

We issue this notice of withdrawal under the authority of 5 U.S.C. 552(a), 44 U.S.C. 1505(a)(3), and 33 CFR 1.05–1.

Dated: June 11, 2012.

A. Popiel,

Captain, U.S. Coast Guard, Captain of the Port North Carolina.

[FR Doc. 2012–16293 Filed 7–2–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2012–0569]

RIN 1625–AA00

Safety Zone; Head of the Cuyahoga and U.S. Rowing Masters Head Race National Championship, Cuyahoga River, Cleveland, OH

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone on the Cuyahoga River, Cleveland, OH. This proposed rule is intended to restrict vessels from a portion of the Cuyahoga River during the Head of the Cuyahoga and the U.S. Rowing Masters Head Race International Championship. The safety zone established by this proposed rule is necessary to protect spectators, participants, and vessels from the hazards associated with rowing regattas.

DATES: Comments and related material must be received by the Coast Guard on or before August 2, 2012.

ADDRESSES: You may submit comments identified by docket number using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail or Delivery:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LT Christopher Mercurio, Chief of Waterway Management, U.S. Coast Guard Sector Buffalo; telephone 716–843–9343, email *SectorBuffaloMarineSafety@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR **Federal Register**
NPRM Notice of Proposed Rulemaking
HOTC Head of the Cuyahoga

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

1. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at *http://www.regulations.gov,* or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* type the docket number (USCG–2012–0569) in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number (USCG–2012–0569) in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

4. Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one, using one of the methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

B. Regulatory History and Information

The Head of the Cuyahoga (HOTC) rowing regatta has occurred annually for over a decade. In response to past years' events, the Coast Guard has established a temporary safety zone to protect the boating public. For example, in 2011, the Captain of the Port Buffalo published a temporary final rule (76 FR 56638) to ensure the safety of spectators and vessels during the rowing event. The safety zone proposed in this Notice of Proposed Rulemaking (NPRM) is identical in size, location, and effect as that established by the 2011 TFR. This NPRM was not preceded by an Advance Notice of Proposed Rulemaking (ANPRM), and thus no public comments have yet to be received.

C. Basis and Purpose

As mentioned in the ''Regulatory History and Information'' section, the HOTC is an annual rowing regatta that has taken place for over a decade. The HOTC takes place on the Cuyahoga River along a 4800 meter course and attracts numerous rowing clubs and programs from across the U.S. Typically, the event occurs on the third Saturday of September between the hours of 7:00 a.m. and 4:00 p.m. In 2012, for instance, the HOTC will occur between 7:00 a.m. and 4:00 p.m. on September 15, 2012.

Following the HOTC on the 15th of September, the U.S. Rowing Masters Head Race National Championship will take place on September 16th along the same portion of the Cuyahoga River. The National Championship will feature racing in both sweep and sculling events.

The Captain of the Port Buffalo has determined that the HOTC and the U.S. Rowing Masters Head Race National Championship rowing events present significant hazards to public spectators and participants.

D. Discussion of Proposed Rule

With the aforementioned hazards in mind, the Captain of the Port Buffalo proposes to establish a temporary safety zone that will ensure the safety of spectators and vessels during the HOTC and during the U.S. Rowing Masters Head Race National Championship. The proposed safety zone would be effective and enforced from 6:30 a.m. until 4:30 p.m. on September 15 and 16, 2012.

The proposed safety zone will encompass all waters of the Cuyahoga River, Cleveland, OH from a line drawn

perpendicular from position 41°28′32″ N, 081°40′16″ W (NAD 83) just south of the Interstate 490 bridge, north to the Detroit-Superior Viaduct bridge.

Entry into, transiting, or anchoring within the proposed safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his on-scene representative. The Captain of the Port or his on-scene representative may be contacted via VHF Channel 16.

E. Regulatory Analyses

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

1. Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this proposed rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this proposed rule will be relatively small and enforced for relatively short time. Also, the safety zone is designed to minimize its impact on navigable waters. Furthermore, the safety zone has been designed to allow vessels to transit around it. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port.

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this proposed rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule may affect the following entities, some of which might be small entities: The owners of operators of vessels intending to transit or anchor in a portion of the Cuyahoga River near Cleveland, Ohio between 6:30 a.m. to 4:30 p.m. on September 15 and 16, 2012.

This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons. This safety zone would be activated, and thus subject to enforcement, for only 9 and a half hours each day for two days. Although the safety zone would apply to the entire width of the river, traffic would be allowed to pass through the zone with the permission of the Captain of the Port. Before the activation of the zone, we would issue maritime advisories widely available to users of the river.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

This proposed rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has 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. We have analyzed this proposed rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

6. Unfunded Mandates Reform Act

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

7. Taking of Private Property

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

8. Civil Justice Reform

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

9. Protection of Children From Environmental Health Risks

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

10. Indian Tribal Governments

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

11. Energy Effects

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

12. Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

13. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves the establishment of a safety zone and, therefore it is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. A preliminary environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add § 165.T09–0569 to read as follows:

§ 165.T09–0569 Safety Zone; Head of the Cuyahoga and U.S. Rowing Masters Head Race National Championship, Cuyahoga River, Cleveland, OH.

(a) *Location.* The proposed safety zone will encompass all waters of the Cuyahoga River, Cleveland, OH from a line drawn perpendicular from position 41°28′32″ N, 081°40′16″ W (NAD 83) just south of the Interstate 490 bridge, north to the Detroit-Superior Viaduct bridge.

(b) *Effective and enforcement period.* This regulation is effective and will be enforced on September 15 and 16, 2012 from 6:30 a.m. until 4:30 p.m.

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

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

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

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

Dated: June 20, 2012.

S.M. Wischmann,

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

[FR Doc. 2012–16259 Filed 7–2–12; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2012–0376; FRL–9696–6]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Section 110(a)(2) Infrastructure Requirements for the 2008 Lead National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a submittal from the State of Delaware pursuant to the Clean Air Act (CAA). This submittal addresses the infrastructure elements of the CAA, necessary to implement, maintain, and enforce the 2008 lead national ambient air quality standards (NAAQS).

DATES: Written comments must be received on or before August 2, 2012.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2012–0376 by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *Email: mastro.donna@epa.gov.*

C. *Mail:* EPA–R03–OAR–2012–0376, Donna Mastro, Acting Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2012–0376. 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 electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Delaware Department of Natural Resources and Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by email at *quinto.rose@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On October 15, 2008, EPA revised the primary and secondary lead NAAQS from 1.5 micrograms per cubic meter (μg/m^3) to 0.15 μg/m^3. Section 110(a) of the CAA requires states to submit SIPs that provide for the implementation, maintenance, and enforcement of new or revised NAAQS within three years following the promulgation of such NAAQS. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS. For the 2008 lead NAAQS, states typically have met many of the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with previous lead standards. Section 110(a)(2) lists specific elements that states must meet or continue to meet in these SIP submissions. The requirements include SIP infrastructure elements such as requirements for modeling, monitoring, and emissions inventories that are designed to assure attainment and maintenance of the NAAQS. Section 110(a)(2) infrastructure elements (A) through (M) are listed in EPA's memorandum from Stephen D. Page, Director, Office of Air Quality Planning and Standards to the Regional Air Directors, Regions 1—10, ''*Guidance on Infrastructure State Implementation Plan (SIP) Elements Required Under Sections 110(a)(1) and 110(a)(2) for the 2008 Lead (Pb) National Ambient Air Quality Standards (NAAQS),*'' October 14, 2011.

II. Summary of State Submittal

On October 17, 2011, Delaware provided a submittal to satisfy section 110(a)(2) of the CAA requirements that are the subject of this proposed rule for the 2008 lead NAAQS. This submittal addressed the following infrastructure elements: Section 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (I), (J), (K), (L), and (M), or portions thereof.

EPA has analyzed the above identified submissions and is proposing to make a determination that such submittals meet the requirements of section 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (I), (J), (K), (L), and (M) of the CAA, or portions thereof. A detailed summary of EPA's review of and rationale for approving Delaware's submittals may be found in the Technical Support Document (TSD) for this action which is available on line at *www.regulations.gov,* Docket number EPA–R03–OAR–2012–0376.

III. Proposed Action

EPA is proposing to approve Delaware's submittals that provide the basic program elements specified in the CAA section 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (I), (J), (K), (L), and (M), or portions thereof, necessary to implement, maintain, and enforce the 2008 lead NAAQS. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Statutory and Executive Order Reviews

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

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

In addition, this proposed rule, pertaining to Delaware's section 110(a)(2) infrastructure requirements for the 2008 lead NAAQS, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that

it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, lead, Reporting and recordkeeping requirements.

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

Dated: June 21, 2012.

W.C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2012–16294 Filed 7–2–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2012–0436; FRL–9696–7]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Section 110(a)(2) Infrastructure Requirements for the 2008 Lead National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by West Virginia. This SIP revision provides the basic program elements specified in Clean Air Act (CAA) section 110(a)(2) necessary to implement, maintain, and enforce the 2008 lead national ambient air quality standards (NAAQS).

DATES: Written comments must be received on or August 2, 2012.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2012–0436 by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *Email: mastro.donna@epa.gov.*

C. *Mail:* EPA–R03–OAR–2012–0436, Donna Mastro, Acting Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2012–0436. 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 electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the West Virginia Department of Environmental Protection, Division of Air Quality, 601 57th Street SE., Charleston, West Virginia 25304.

FOR FURTHER INFORMATION CONTACT: Emlyn Vélez-Rosa, (215) 814–2038, or by email at *velez-rosa.emlyn@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

I. Background

On October 15, 2008, EPA substantially strengthened the primary and secondary lead NAAQS (hereafter the ''2008 lead NAAQS''), revising the level of the primary (health-based) standard from 1.5 micrograms per cubic meter (μg/m3) to 0.15 μg/m3, measured as total suspended particles (TSP), not to be exceeded with an averaging time of a rolling 3-month period. EPA also revised the secondary (welfare-based) standard to be identical to the primary standard, as well as the associated ambient air monitoring requirements. *See* 40 CFR 50.16.

Section 110(a) of the CAA requires states to submit SIP revisions that provide for the implementation, maintenance, and enforcement of new or revised NAAQS within 3 years following the promulgation of such NAAQS. Section 110(a)(2) of the CAA lists specific elements that states must meet or continue to meet in these SIP submissions. Under this section, the CAA directs all states to develop and maintain an air quality management infrastructure that includes enforceable emission limitations, an ambient monitoring program, an enforcement program, air quality modeling capabilities, and adequate personnel, resources, and legal authority.

For the 2008 lead NAAQS, states typically have met many of the basic program elements required in CAA section 110(a)(2) through earlier SIP submissions in connection with previous lead NAAQS. Nevertheless, pursuant to CAA section 110(a)(1), states will have to review and revise, as appropriate, their existing lead NAAQS SIPs to ensure that the SIPs are adequate to address the 2008 lead NAAQS. States must provide SIP submissions, or provide a certification that the SIP addresses the elements in section 110(a)(2)(A) through (M) of the CAA. To assist states in meeting this statutory requirement, EPA issued a guidance on October 14, 2011, entitled, ''Guidance on Infrastructure State Implementation Plan (SIP) Elements Required Under sections 110(a)(1) and 110(a) (2) for the 2008 Lead (Pb) National Ambient Air Quality Standards (NAAQS)'' (hereafter the ''2011 Lead Infrastructure Guidance''), which lists the basic elements that states must include in their SIPs for the 2008 lead NAAQS.

II. Summary of State Submittal

On October 26, 2011, the West Virginia Department of Environmental Protection (WVDEP) provided a submittal to satisfy the requirements of section 110(a)(2) of the CAA for the

2008 lead NAAQS. This submittal addressed the following infrastructure elements, which EPA is proposing to approve: CAA section 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M), or portions thereof. A detailed summary of EPA's review and rationale for approving West Virginia's submittal may be found in the Technical Support Document (TSD) for this proposed rulemaking action, which is available online at *www.regulations.gov,* Docket number EPA–R03–OAR–2012–0436.

III. Proposed Action

EPA is proposing to approve West Virginia's SIP revision that provides the basic program elements specified in CAA section 110(a)(2) necessary to implement, maintain, and enforce the 2008 lead NAAQS. This SIP revision was submitted on October 26, 2011. This action does not include the sections, or portions thereof, of 110(a)(2)(C) and 110(a)(2)(I) of the CAA which pertain to the nonattainment requirements of part D, Title I of the CAA, since these two elements are not required to be submitted by the 3-year submission deadline of CAA section 110(a)(1), and will be addressed in a separate process. Additionally, EPA is taking separate action on the portions of CAA section 110(a)(2) infrastructure elements for the 2008 lead NAAQS as they relate to West Virginia's PSD program, as required by part C of Title I of the CAA. This includes portions of the following infrastructure elements: CAA section 110(a)(2)(C), (D) and (J). EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Statutory and Executive Order Reviews

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

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Reporting and recordkeeping requirements.

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

Dated: June 21, 2012.

W.C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2012–16301 Filed 7–2–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 120425420–2420–01]

RIN 0648–BB92

Fisheries of the United States; National Standard 1 Guidelines; Extension of Public Comment Period

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

ACTION: Advance notice of proposed rulemaking; extension of public comment period.

SUMMARY: NMFS is extending the date by which public comments are due in response to the Advance Notice of Proposed Rulemaking (ANPR) published on May 3, 2012, on potential adjustments to the National Standard 1 Guidelines, one of 10 national standards for fishery conservation and management contained in Section 301 of the Magnuson-Stevens Fishery Conservation and Management Act. NMFS has received a request to extend the comment period for the ANPR beyond its current 90-day comment period, originally scheduled to end on August 1, 2012. With this notice, NMFS is extending the comment period to September 15, 2012, to ensure there is adequate time for stakeholders and members of the public to comment on the ANPR.

DATES: The deadline for receipt of comments on the ANPR published on May 3, 2012 (77 FR 26238), is extended to September 15, 2012.

ADDRESSES: You may submit comments on the referenced ANPR, identified by ''NOAA–NMFS–2012–0059'', by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal: *www.regulations.gov.* To submit comments via the e-Rulemaking Portal, first click the ''submit a comment'' icon, then enter ''NOAA–NMFS–2012–0059'' 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.
- *Fax:* 301–713–1193, Attn: Wesley Patrick.
- *Mail:* Wesley Patrick; National Marine Fisheries Service, NOAA; 1315 East-West Highway, Room 13436; Silver Spring, MD 20910.

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 another address or individual, or received after the end of the comment period, may not be considered. All comments received are 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, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Wesley Patrick, Fisheries Policy Analyst, National Marine Fisheries Service, 301–427–8566.

SUPPLEMENTARY INFORMATION:

Background

On May 3, 2012, NMFS published an ANPR (77 FR 26238) to provide background information and to request public comment on potential adjustments to the National Standard 1 Guidelines. The ANPR provides the public with a formal opportunity to comment on the specific ideas mentioned in the ANPR, as well as any additional ideas and solutions that could improve provisions of the National Standard 1 Guidelines.

NMFS received a request from the Western Pacific Regional Fishery Management Council on behalf of all eight regional councils, to extend the comment period on the ANPR to September 15, 2012, to give the Councils more time to discuss the issues in the ANPR with their advisors, fishing industries and among themselves, in order to provide NMFS with comprehensive and significant comments on the ANPR. NMFS has considered this request and concludes that a 45-day extension is appropriate.

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

Dated: June 27, 2012.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, Performing the Functions and Duties of the Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 2012–16343 Filed 7–2–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

RIN 0648–BB97

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendment 35

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

ACTION: Notice of availability; request for comments.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) has submitted Amendment 35 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP) for review, approval, and implementation by NMFS. Amendment 35 proposes to modify the greater amberjack rebuilding plan; establish greater amberjack sector annual catch limits (ACLs) and sector annual catch targets (ACTs); establish a commercial trip limit for greater amberjack; and revise the sector accountability measures (AMs) for greater amberjack. The intent of Amendment 35 is to end overfishing of greater amberjack, modify the greater amberjack rebuilding plan and help achieve optimum yield (OY) for the greater amberjack resource in accordance with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Written comments must be received on or before September 4, 2012.

ADDRESSES: You may submit comments on the amendment identified by ''NOAA–NMFS–2012–0107'' by any of the following methods:

- *Electronic submissions:* Submit electronic comments via the Federal e-Rulemaking Portal: *http://www.regulations.gov.* Follow the ''Instructions'' for submitting comments.
- *Mail:* Rich Malinowski, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, *etc.*) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter N/A in the required field if you wish to remain anonymous).

To submit comments through the Federal e-Rulemaking Portal: *http://www.regulations.gov,* enter ''NOAA–NMFS–2012–0107'' in the search field and click on ''search.'' After you locate the document ''Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendment 35,'' click the ''Submit a Comment'' link in that row. This will display the comment Web form. You can then enter your submitter information (unless you prefer to remain anonymous), and type your comment on the Web form. You can also attach additional files (up to 10MB) in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Comments received through means not specified in this notice will not be considered.

For further assistance with submitting a comment, see the ''Commenting'' section at *http://www.regulations.gov/#!faqs* or the Help section at *http://www.regulations.gov.*

Electronic copies of the amendment may be obtained from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Rich Malinowski, Southeast Regional Office, NMFS, telephone 727–824–5305; email: *rich.malinowski@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Reef fish fishery of the Gulf of Mexico (Gulf) is managed under the FMP. The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Act. The Magnuson-Stevens Act also requires that NMFS, upon receiving a plan or amendment, publish an announcement in the **Federal Register** notifying the public that the plan or amendment is available for review and comment. All greater amberjack weights discussed in this notice are in round weight.

Background

The Magnuson-Stevens Act requires NMFS and regional fishery management councils to prevent overfishing and achieve, on a continuing basis, the OY from federally managed fish stocks. These mandates are intended to ensure fishery resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, and protecting marine ecosystems. To further this goal, the

Magnuson-Stevens Act requires fishery managers to specify their strategy to rebuild overfished stocks to a sustainable level within a certain time frame, to minimize bycatch and bycatch mortality to the extent practicable, and to establish AMs for a stock to ensure ACLs are not exceeded. Amendment 35 addresses these issues for greater amberjack.

Since 1990, the Council and NMFS have implemented a series of management measures to prevent overfishing of the greater amberjack stock and achieve OY. Amendment 1 to the FMP added greater amberjack to the list of species in the FMP, set a recreational minimum size limit of 28 inches (71 cm), established a three-fish recreational bag limit, and set a commercial minimum size limit of 36 inches (91 cm)(55 FR 2079, January 22, 1990). Amendment 12 to the FMP reduced the greater amberjack recreational bag limit to one fish per person per day (61 FR 65983, December 16, 1996).

Greater amberjack were first determined to be overfished and undergoing overfishing in 2000. Secretarial Amendment 2 established a rebuilding plan for greater amberjack, starting in 2003, based on a stock assessment conducted in 2000 (68 FR 39898, July 3, 2003). A 2006 SEDAR benchmark stock assessment (SEDAR 9 2006c) determined that the greater amberjack stock was still overfished and undergoing overfishing. Amendment 30A to the FMP set the greater amberjack stock total allowable catch at 1,871,000 lb (848,671 kg), for the 2008 through 2010 fishing years. Using an allocation of 73 percent for the recreational sector and 27 percent for the commercial sector, Amendment 30A to the FMP established a recreational quota of 1,368,000 lb (620,514 kg), and a commercial quota of 503,000 lb (228,157 kg)(73 FR 38139, July 3, 2008). Amendment 30A also established greater amberjack AMs. These AMs state that if a sector's landings reach, or are projected to reach the applicable quota, the sector would be closed for the remainder of the fishing year. Additionally, in the event of a quota overage, the respective sector's quota will be reduced in the following fishing year by the amount of the respective sector's quota overage in the prior fishing year.

Status of Stock

In 2010, the Southeast Data, Assessment, and Review (SEDAR) stock assessment update (SEDAR 9 Update) was conducted for greater amberjack. The SEDAR 9 Update indicated that the greater amberjack stock was both overfished and undergoing overfishing. In January 2011, the Council's Science and Statistical Committee (SSC) reviewed the update assessment, determined the assessment to be the best scientific information available, and accepted its conclusions that the stock was undergoing overfishing and is overfished. However, the SSC rejected as unreliable the absolute values that resulted in the conclusions and rejected the assessment's yield projections. Therefore, instead of relying on assessment projections to set the greater amberjack overfishing limit (OFL) and acceptable biological catch (ABC), the SSC used the ABC control rule adopted by the Council in the Generic Annual Catch Limit/Accountability Measure Amendment (Generic ACL Amendment (76 FR 82044, December 29, 2011)). The SSC recommended that the greater amberjack ABC for the next 3 years (2011–2013) be set at 1,780,000 lb (807,394 kg), which is 75 percent of the 2000–2009 commercial and recreational landings mean. The Council was notified of the greater amberjack stock status determination in October of 2011. A new benchmark assessment for greater amberjack is scheduled to occur in 2013.

Actions Contained in Amendment 35

Amendment 35 proposes to modify the greater amberjack rebuilding plan, establish greater amberjack sector ACLs and ACTs (which are expressed as quotas in the regulatory text), revise the greater amberjack sector AMs, and establish a greater amberjack commercial trip limit.

Modifications to the Greater Amberjack Rebuilding Plan

The 10-year greater amberjack rebuilding plan ends in 2012. This action would modify the rebuilding plan in response to the results from the SEDAR 9 Update (2010), subsequent SSC review and SSC recommendations for the greater amberjack ABC.

After reviewing the SEDAR 9 Update (2010) and to emphasize the need for a new benchmark stock assessment, the SSC recommended a constant ABC of 1,780,000 lb (807,394 kg), for a 3-year time period starting in 2011. The new stock ACL that would be established in Amendment 35 would equal the ABC and remain in effect unless changed in a subsequent amendment or framework action, but not prior to the next assessment which occurs in 2013. NMFS believes that ABC recommendation and management measures implemented by the Council will provide the reduction in greater amberjack fishing mortality necessary to end overfishing and rebuild the greater amberjack stock. When the new stock assessment is completed NMFS and the Council will be able to confirm that the greater amberjack stock has met its rebuilding schedule.

ACLs and ACTs

An ACT is a management target established for a fishery to account for management uncertainty in controlling the actual catch at or below the ACL and is used to assist in the ACL not being exceeded. Therefore, a sector ACT should be set with a buffer below the sector ACL, so that the appropriate sector may be closed when the ACT is projected to be reached.

Amendment 35 would establish the greater amberjack ACL equal to the ABC, and set the ACT less than the ACL to account for management uncertainty. The greater amberjack stock ACL would be set at 1,780,000 lb (807,394 kg), and the stock ACT would be set at 1,539,000 lb (698,079 kg). Based on a 27 percent commercial and a 73 percent recreational allocation, the commercial sector ACL would be set at 481,000 lb (218,178 kg), and the recreational sector ACL would be set at 1,299,000 lb (589,116 kg), respectively. The commercial ACT would be set at 409,000 lb (185,519 kg), based on a 15 percent reduction of the ACL to account for management uncertainty. The recreational ACT would be set at 1,130,000 lb (512,559 kg), based upon a 13 percent reduction of the ACL to account for management uncertainty.

AMs

Amendment 35 proposes to modify the greater amberjack AMs, based on the sector ACLs and ACTs. Through Amendment 35, if the sector ACT is reached or projected to be reached, the appropriate sector would be closed to fishing for the remainder of the fishing year. Post-season AMs, such as overage adjustments, would only occur if the respective sector ACL was exceeded. Any ACL overage by a sector would then reduce both the respective sector's ACL and ACT the following year by the amount of the sector ACL overage in the prior fishing year.

Other Recreational Management Measures

Amendment 35 also contains actions to consider a modification to the greater amberjack recreational minimum size limit and recreational sector's closed season. As decided by the Council, the current greater amberjack recreational sector minimum size limit of 30 inches (76 cm) and the recreational sector

closed season of June through July would not be modified in Amendment 35.

Other Commercial Management Measures

Amendment 35 contains actions to modify the commercial closed season and establish a commercial trip limit. In Amendment 35, the Council decided not to modify the current March through May commercial seasonal closure that was established to protect spawning aggregations of greater amberjack. However, Amendment 35 would establish a 2,000-lb (907–kg), commercial trip limit to help extend the commercial sector fishing season.

Proposed Rule for Amendment 35

A proposed rule that would implement Amendment 35 has been drafted. In accordance with the Magnuson-Stevens Act, NMFS is evaluating Amendment 35 to determine whether it is consistent with the FMP, the Magnuson-Stevens Act, and other applicable law. If the determination is affirmative, NMFS will publish the proposed rule in the **Federal Register** for public review and comment.

Consideration of Public Comments

The Council submitted Amendment 35 for Secretarial review, approval, and implementation. NMFS' decision to approve, partially approve, or disapprove Amendment 35 will be based, in part, on consideration of comments, recommendations, and information received during the comment period on this notice of availability.

Public comments received by 5 p.m. eastern time, on September 4, 2012, will be considered by NMFS in the approval/disapproval decision regarding Amendment 35.

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

Dated: June 28, 2012.

James P. Burgess,

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

[FR Doc. 2012–16341 Filed 7–2–12; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 77, No. 128
Tuesday, July 3, 2012

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.

AFRICAN DEVELOPMENT FOUNDATION

Board of Directors Meeting

Meeting: African Development Foundation, Board of Directors Meeting.

Time: Tuesday, July 17, 2012, 8:45 a.m. to 1:00 p.m.

Place: African Development Foundation, Conference Room, 1400 I Street NW., Suite 1000, Washington, DC 20005.

Date: Tuesday, July 17, 2012.

Status:

1. Open session, Tuesday, July 17, 2012, *8:45 a.m. to 11:45 a.m.;* and
2. Closed session, Tuesday, July 17, 2012, *12:00 p.m. to 1:00 p.m.*

Due to security requirements and limited seating, all individuals wishing to attend the open session of the meeting must notify Sarah Conway at (202) 233–8811 or *sconway@usadf.gov* of your request to attend by 5:00 p.m. on Thursday, July 12, 2012.

Lloyd O. Pierson,

President & CEO, USADF.

[FR Doc. 2012–16200 Filed 7–2–12; 8:45 am]

BILLING CODE 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: Application and Reports for Scientific Research and Enhancement Permits Under the Endangered Species Act.

OMB Control Number: 0648–0402.

Form Number(s): NA.

Type of Request: Regular submission (extension of a current information collection).

Number of Respondents: 115.

Average Hours per Response: Applications, 12 hours; modification requests, 6 hours; annual and final reports, 2 hours.

Burden Hours: 840.

Needs and Uses: This request is for an extension of a currently approved information collection.

The Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*) imposed prohibitions against the taking of endangered species. Section 10 of the ESA allows permits authorizing the taking of endangered species for research/enhancement purposes. The corresponding regulations established procedures for persons to apply for such permits. In addition, the regulations set forth specific reporting requirements for such permit holders. The regulations contain two sets of information collections: (1) Applications for research/enhancement permits, and (2) reporting requirements for permits issued.

The required information is used to evaluate the impacts of the proposed activity on endangered species, to make the determinations required by the ESA prior to issuing a permit, and to establish appropriate permit conditions. To issue permits under ESA Section 10(a)(1)(A), the National Marine Fisheries Service (NMFS) must determine that (1) such exceptions were applied for in good faith, (2) if granted and exercised, will not operate to the disadvantage of such endangered species, and (3) will be consistent with the purposes and policy set forth in Section 2 of the ESA.

The currently approved application and reporting requirements apply to Pacific marine and anadromous fish species; requirements regarding other species are being addressed in a separate information collection.

Affected Public: Business or other for-profit organizations.

Frequency: Annually and on occasion.

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: June 27, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–16210 Filed 7–2–12; 8:45 am]

BILLING CODE 3510–22–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 of the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Telecommunications and Information Administration (NTIA).

Title: State Broadband Data and Development (SDBB) Grant Program Progress Report.

OMB Control Number: 0660–0034.

Form Number(s): None.

Type of Request: Regular submission (revision of a currently approved information collection).

Number of Respondents: 56.

Average Hours per Response: 4 hours.

Burden Hours: 896.

Needs and Uses: The American Recovery and Reinvestment Act of 2009 (Recovery Act), Public Law 111–5 (2009), required the Assistant Secretary of Commerce for Communications and Information to develop and maintain a comprehensive, interactive, and searchable nationwide inventory map of existing broadband service capability and availability in the United States that depicts the geographic extent to which broadband service capability is deployed and available from a commercial or public provider throughout each state.

NTIA developed the State Broadband Data and Development (SBDD) Grant Program (74 FR 32545), a competitive,

merit-based matching grant program funding projects that collect comprehensive and accurate State-level broadband mapping data, develop State-level broadband maps, aid in the development and maintenance of a national broadband map, and fund statewide initiatives directed at broadband planning and capacity building.

NTIA requires quarterly performance progress reports (PPRs) in order to gauge the progress of grantees in meeting their project goals.

NTIA has identified a need to modify its existing PPR format by making minor changes to existing questions and adding new questions to improve clarity, reduce the frequency with which some information is reported, and delete certain items that are not necessary for effective performance monitoring. This modification will improve the quality of recipients' responses and enable NTIA to better monitor and assess the extent to which the recipients are meeting program goals and milestones.

Affected Public: State government; not-for-profit institutions.

Frequency: Quarterly.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Nicholas Fraser, (202) 395–5887.

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 Nicholas Fraser, OMB Desk Officer, Fax number (202) 395–7285, or via the Internet at *Nicholas_A._Fraser@omb.eop.gov*).

Dated: June 27, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–16226 Filed 7–2–12; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

[Docket Number 120530127–2127–01]

American Indian and Alaska Native Consultation and Coordination Policy

AGENCY: Department of Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce (Department) requests public comments on a draft ''Consultation and Coordination Policy of the U.S. Department of Commerce.'' This proposed policy establishes the manner in which the Department works with federally-recognized Indian tribes when developing Department policies that have tribal implications. The policy reaffirms the unique government-to-government relationship that exists between Indian tribes and the Department of Commerce to support Tribes in the development of strong and stable economies able to participate in today's national and global marketplace.

DATES: Written Comments must be submitted on or before October 1, 2012.

ADDRESSES: You may submit comments on this document, identified by DOC–2012–002, by and of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking Portal, at *http://www.regulations.gov*. To submit comments via the e-Rulemaking Portal, first click the ''submit a comment'' icon, then enter DOC–2012–0002 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.
- *Fax:* 206–482–4420; Attn: Dee Alexander.
- *Regular Mail, express delivery, hand (courier) delivery or messenger service:* Submit comments to Dee Alexander, Senior Advisor on Native American Affairs Office of Legislative and Intergovernmental Affairs, U.S. Department of Commerce, Room 5422, 1401Constitution Ave., NW., Washington, DC 20230.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. The Department will accept anonymous comments (if submitting comments via the Federal e-Rulemaking portal, enter ''N/A'' in the relevant required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

Background

Executive Order (E.O.) Number 13175, ''Consultation and Coordination with Indian Tribal Governments,'' (November 6, 2000) requires Federal agencies to have an accountable process to ensure meaningful and timely input by tribal officials in developing policies that have tribal implications.

President Barack Obama reaffirmed the government-to-government relationship between the Federal Government and Indian tribal governments in a White House Memorandum, ''Tribal Consultation,'' 2009 Daily Comp. Press Docs.87 (November 5, 2009). Among other things, this memorandum acknowledges that Indian tribes exercise inherent sovereign powers over their members and territory. The memorandum also acknowledges that the United States continues to work with Indian tribes on a government-to-government basis to address issues concerning Indian tribal self-government, tribal trust resources, and Indian tribal treaty and other rights.

This proposed policy is part of the Department's response to President Obama's memorandum. The Policy builds upon and expands the principles expressed in the Department's previous policy, ''American Indian and Alaska Native Policy of the Department of Commerce,'' promulgated on March 30, 1995. The Policy incorporates the requirements of E.O. No. 13175, and the Office of Management and Budget Memorandum, ''Guidance for Implementing E.O. 13175, ''Consultation and Coordination with Indian Tribal Governments.''

The Department will work with tribes on developing the final policy by sending this draft policy directly to the tribes and by conducting several webinars with Tribes on the policy and how to improve it. We will announce these webinars in future notices posted in the **Federal Register**.

The statements in the draft document are intended solely to provide internal Department guidance. This document is designed to implement E.O. 13175; the draft document does not, however, substitute for requirements in federal statutes or regulations, nor is it a requirement itself. This document is not intended, nor can it be relied upon, to create any right or trust responsibility enforceable in any cause of action by any party against the United States, its agencies, officers or any other person. It does not impose legally binding requirements on the Department or anyone else, and may not apply to a particular situation based upon the circumstances. The Department may

change this Guidance in the future, as needed or appropriate.

Request for Comments

Comments are invited on: Sections 1–7. These sections provide guidance to the Department and all its operating units and its employees on when and how to coordinate consultation with federally recognized Indian tribes on a government-to-government basis, in recognizing their sovereignty, when developing policies that have tribal implications.

Proposed Tribal Consultation and Coordination Policy for the U.S. Department of Commerce.

Section 1. Introduction

01. This ''Tribal Consultation and Coordination Policy of the U.S. Department of Commerce'' (''Tribal Consultation Policy'' or ''Policy'') establishes the manner in which the Department of Commerce (''Department'') works with Indian tribes on a government-to-government basis to build a durable relationship and address issues concerning tribal self-government, tribal trust resources, and tribal treaty and other rights, as well as support tribes in developing strong and stable economies able to participate in the national and global marketplace.

02. The Department recognizes the Federal Government's trust responsibility, as established in the Constitution, statutes, treaties and federal court decisions, which together define the unique legal relationship between Tribal governments and the Federal Government.

03. The Department and operating units will seek and promote cooperation within the Department and with other agencies that have related responsibilities. The Department's mission encompasses many complex issues where cooperation and mutual consideration among governments (federal, state, tribal, and local) are essential. The Department and operating units will promote intradepartmental and interagency coordination and cooperation to assist Tribal governments in resolving issues requiring mutual effort.

04. Executive Order (E.O.) No. 13175, ''Consultation and Coordination with Indian Tribal Governments,'' requires federal agencies to have an accountable process to ensure meaningful and timely input by tribal officials in developing policies that have tribal implications. This Policy provides uniform standards and methodology outlining consultation procedures for all Department personnel working with Tribal governments regarding policies that have tribal implications.

Section 2. Background

01. This Policy builds upon and expands the principles expressed in the ''American Indian and Alaska Native Policy of the Department of Commerce,'' promulgated by the Department on March 30, 1995. The Tribal Consultation Policy incorporates the requirements of E.O. No. 13175; Presidential Memorandum, ''Tribal Consultation,'' 2009 Daily Comp. Pres. Docs. 887 (November 5, 2009); and the Office of Management and Budget Memorandum, ''Guidance for Implementing E.O. 13175, 'Consultation and Coordination with Indian Tribal Governments'.''

02. This Policy is for internal management only and shall not be construed to grant or vest any right to any party not otherwise granted or vested by existing law or regulations.

Section 3. Authority

This Tribal Consultation Policy is issued pursuant to the authority of 5 U.S.C. 301 and Department Administrative Order (DAO) 218–8, ''Consultation and Coordination with Indian Tribal Governments.'' This Policy shall have the same force and effect as a DAO. Amendments (substantive changes) or revisions (corrections or updates) to this Policy may be developed and issued by the Department of Commerce Tribal Consultation Official or the Secretary's designee in consultation with Tribal governments.

Section 4. Definitions

01. ''Consultation,'' as defined in Section 5 of E.O. No. 13175, refers to an accountable process ensuring meaningful and timely input from tribal officials on Department policies that have tribal implications.

02. ''Indian tribe (or Tribe),'' as defined in Section 1(b) of E.O. No. 13175, means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

03. ''Operating units,'' as defined in Section 3.c.1 of Department Organization Order 1–1, are organizational entities outside the Office of the Secretary charged with carrying out specified substantive functions (i.e., programs) of the Department. The operating units are the components of the Department through which most of its substantive functions are carried out.

04. ''Policies that have tribal implications,'' as defined in Section 1(a) of E.O. No. 13175, refers to regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects 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.

05. ''Tribal Consultation Official,'' as defined in Section 5(a) of E.O. No. 13175, means the designee of the Secretary with principal responsibility for the implementation of this Policy.

06. ''Tribal officials,'' as defined in Section 1(d) of E.O. No. 13175, means elected or duly appointed officials of Indian tribal governments or authorized intertribal organizations.

Section 5. Roles and Responsibilities for Consultations

01. Department of Commerce Tribal Consultation Official

a. The Tribal Consultation Official is an individual in the Office of Legislative and Intergovernmental Affairs (OLIA) within the Office of the Secretary who is duly appointed to act as a liaison between the Secretary of Commerce and Tribal officials. The Tribal Consultation Official may delegate authority, as necessary, to the head of each operating unit. The Tribal Consultation Official has primary responsibility for ensuring compliance with DAO 218–8, this Policy, and E.O. No. 13175, and is responsible for tribal consultations and coordination for the Office of the Secretary programs.

b. The Tribal Consultation Official has responsibility for coordinating the implementation of this Policy and DAO 218–8 within the Department and all operating units.

c. The Tribal Consultation Official will engage tribal officials in periodic dialogue to discuss the Department's implementation of this Policy. The dialogue will provide an opportunity for tribal officials to assess policy implementation, program delivery, and discuss outreach and communication efforts, and other issues.

02. Head of Operating Unit Responsibilities

a. The head of each operating unit will designate an official in the headquarters office who has primary responsibility for ensuring compliance with this Policy within the operating unit. Each operating unit's designated official will work with the Department Tribal Consultation Official to ensure coordination of tribal consultations, as necessary. The designated official is

responsible for the development, maintenance and internal distribution of any guidance produced by the operating unit in compliance with the requirements of this Policy.

b. The head of each operating unit or the designated official may delegate authority to appropriate individuals within the operating unit.

Section 6. Training and Guidance

01. The Tribal Consultation Official and the head of each operating unit will ensure that personnel assisting with tribal consultations have appropriate training.

02. Each operating unit may develop and issue tribal consultation guidance to assist staff in preparing, reviewing and managing the consultation process within their respective operating units, so long as:

a. The guidance is consistent with DAO 218–8, and

b. The Department's Tribal Consultation Official reviews the guidance.

Section 7. Consultation

01. The Consultation Process. Consultation may take a variety of forms. Implementing this Policy may require a range of formal and informal planning activities. The Department and operating units' consultation processes may include one or more of the following: formal meetings, informal meetings, letters, conference calls, webinars, on-site visits, or participation in regional and national events. The Tribal Consultation Official or the head of each operating unit, as applicable, will make a reasonable effort to accommodate a tribal request for consultation.

02. Elements of the Consultation Process.

a. Ongoing communication shall be a regular part of the government-to-government relationship with tribal governments. The Department and operating units will engage in meaningful dialogue with Tribes regarding all policies that have tribal implications.

b. Exchange of Information. The Department and operating units will make a reasonable effort to identify and provide timely and accurate information for consultation.

c. Notification. The Department and operating units will notify Tribes of policies that have tribal implications. Follow-up may be necessary to ensure the appropriate tribal official has received the consultation notification and accompanying documents. These notifications do not replace or supersede any notifications that are required by statute or E.O. regarding tribal consultations.

d. Consultation Planning. The Department and operating units will coordinate with tribal officials to plan logistical considerations for the consultation. The Department and operating units will, when practical, allow Tribes a reasonable amount of time to prepare for consultation and submit their views on policies that have tribal implications.

e. Written Communication and Record-Keeping. When a consultation occurs between the Department or its operating units and Tribal officials, the Department or operating unit will provide the Tribal officials with a formal, written communication that summarizes the consultation, and responds to the issues and concerns, if any, identified during consultation. The Tribal Consultation Official or head of each operating unit conducting a consultation will maintain documentation addressing the consultation, tribal concerns, and recommendations in conformance with applicable records retention schedules.

Section 8. Implementation

01. The Tribal Consultation Official, located in OLIA within the Office of the Secretary, is responsible for ensuring implementation of this Policy. This responsibility may be delegated as appropriate. This Policy does not alter or affect any existing duty or authority of any individual operating unit.

02. This Policy is not intended to, and does not, grant, expand, create or diminish any legally enforceable rights, benefits, or trust responsibilities, substantive or procedural, not otherwise granted or created under existing law. Nor shall this Policy be construed to alter, amend, repeal, interpret, or modify tribal sovereignty, any treaty rights of any Indian tribes, or to preempt, modify, or limit the exercise of any such rights.

03. This Policy is intended to improve the Department's management of its relations and cooperative activities with Indian tribes. The Department and operating units have no obligation to engage in any consultation activities under this policy unless they are practicable and permitted by law. Nothing in this policy requires any budgetary obligation or creates a right of action against the Department for failure to comply with this policy nor creates any right, substantive or procedural, enforceable at law by a party against the United States, its agencies, or any person.

04. This Policy shall be updated as necessary.

Section 9. Effective Date

01. This Policy is effective beginning with the date of this memorandum and will remain in effect until it is amended, superseded by a Departmental Administrative Order, or revoked.

Dated: June 26, 2012.

Dee Alexander,

Senior Advisor on Native American Affairs.

[FR Doc. 2012–16004 Filed 7–2–12; 8:45 am]

BILLING CODE 3510–17–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–48–2012]

Foreign-Trade Zone 241—Fort Lauderdale, FL, Application for Reorganization/Expansion Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the City of Fort Lauderdale, grantee of FTZ 241, requesting authority to reorganize and expand the zone under the alternative site framework (ASF) adopted by the Board (15 CFR Sec. 400.2(c)). The ASF is an option for grantees for the establishment or reorganization of general-purpose zones and can permit significantly greater flexibility in the designation of new subzones or ''usage-driven'' FTZ sites for operators/users located within a grantee's ''service area'' in the context of the Board's standard 2,000-acre activation limit for a general-purpose zone project. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on June 27, 2012.

FTZ 241 was approved by the Board on April 6, 2000 (Board Order 1081, 65 FR 20948, 04/19/2000). The current zone project includes the following sites: *Site 1* (915 acres)—Fort Lauderdale Executive Airport complex, Commercial Boulevard, Fort Lauderdale; *Site 2* (11 acres)—CenterPort Industrial Park, NW 8th Avenue, Fort Lauderdale; *Site 3* (278 acres)—Bergeron Park of Commerce & Industry, 19612 SW 69th Place, Fort Lauderdale; *Site 4* (8 acres)—Meridian Business Park, 3335 Enterprise Avenue, Weston; and, *Site 5* (7 acres)—Horst Dorner, 2900 SW. 42nd Street, Fort Lauderdale.

The grantee's proposed service area under the ASF would be portions of Broward County, as described in the application. If approved, the grantee would be able to serve sites throughout

the service area based on companies' needs for FTZ designation. The proposed service area is adjacent to the Port Everglades Customs and Border Protection port of entry.

The applicant is requesting authority to reorganize and expand its existing zone project under the ASF as follows: Modify Site 1 by removing 68 acres due to changed circumstances (new acreage—847 acres); expand Site 2 to include an additional 9 acres (new acreage—20 acres); remove Site 3 due to changed circumstances; and, expand Site 4 to include an additional 36 acres (new acreage—44 acres). Sites 1, 2 and 4 would become ''magnet'' sites and Site 5 would become a ''usage-driven'' site. The ASF allows for the possible exemption of one magnet site from the ''sunset'' time limits that generally apply to sites under the ASF, and the applicant proposes that Site 1 be so exempted.

In accordance with the Board's regulations, Camille Evans of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is September 4, 2012. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to September 17, 2012.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible *via www.trade.gov/ftz.* For further information, contact Camille Evans at *Camille.Evans@trade.gov* or (202) 482–2350.

Dated: June 27, 2012.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2012–16344 Filed 7–2–12; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–810]

Stainless Steel Bar From India: Final Results of the Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On March 6, 2012, the Department of Commerce (Department) published the preliminary results of the administrative review of the antidumping duty order on stainless steel bar from India. The review covers shipments of subject merchandise to the United States for the period February 1, 2010, through January 31, 2011, by Mukand Ltd. (Mukand) and Chandan Steel Limited (Chandan). The final results do not differ from the preliminary results. The final dumping margins are listed in the ''Final Results of the Review'' section below.

DATES: *Effective Date:* July 3, 2012.

FOR FURTHER INFORMATION CONTACT: Joseph Shuler or Yasmin Nair, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington DC 20230; telephone (202) 482–1293, or (202) 482–3813, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 6, 2012, the Department published *Stainless Steel Bar From India: Preliminary Results and Partial Rescission of the Antidumping Duty Administrative Review,* 77 FR 13270 (March 6, 2012) (*Preliminary Results*).

We invited parties to comment on the *Preliminary Results.* On May 4, 2012, we received case briefs from Mukand and Chandan. On May 9, 2012, we received Petitioners' rebuttal brief.[1]

Scope of the Order

Imports covered by the order are shipments of stainless steel bar. Stainless steel bar means articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. Stainless steel bar includes cold-finished stainless steel bars that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi-finished products, cut-to-length flat-rolled products (*i.e.,* cut-to-length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), wire (*i.e.,* cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes, and sections.

The stainless steel bar subject to this review is currently classifiable under subheadings 7222.10.00, 7222.11.00, 7222.19.00, 7222.20.00, 7222.30.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

Analysis of Comments Received

All issues raised in the case briefs are addressed in the ''Issues and Decision Memorandum for the 2010–2011 Administrative Review of Stainless Steel Bar from India'' (Issues and Decision Memorandum), which is dated concurrently with and hereby adopted by this notice. A list of the issues which parties raised and to which we responded in the Issues and Decision Memorandum is attached to this notice as an Appendix. The Issues and Decision Memorandum is a public document which is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). Access to IA ACCESS is available in the Central Records Unit (CRU), Room 7046 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Internet at *http://www.trade.gov/ia/.* The signed Issues and Decision Memorandum and the electronic versions of the Issues and Decision Memorandum are identical in content.

[1] Carpenter Technology Corp.; Electralloy Co., (a division of G.O. Carlson, Inc.); Outokumpu Stainless Bar, Inc.; Universal Stainless & Alloy Products, Inc.; and Valbruna Slater Stainless, Inc. (collectively, Petitioners).

Final Results of the Review

We determine that the following weighted-average dumping margins exist for Mukand and Chandan for the period February 1, 2010, through January 31, 2011.

Exporter/manufacturer	Margin (percent)
Mukand, Ltd	30.92
Chandan Steel Limited	30.92

Our normal practice for the rate applicable to non-reviewed respondents is to base this rate on the margins calculated for those companies that were selected for individual review, excluding *de minimis* margins or margins based entirely on adverse facts available.[2] In this review, we only have a single calculated margin for the company selected for individual review, namely, Mukand. Accordingly, we determine that the most appropriate margin available for us to use for the non-selected company in this review, Chandan, is the margin calculated for Mukand. Therefore, the margin we have assigned to Chandan for the final results of this administrative review is 30.92 percent. *See Certain Lined Paper Products from India: Notice of Final Results of Antidumping Duty Administrative Review,* 75 FR 7563 (February 22, 2010). This margin will apply to Chandan as both its assessment rate for this period of review (POR) and its cash deposit rate.

Assessment Rates

The Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries, in accordance with 19 CFR 351.212(b)(1). The Department intends to issue appropriate assessment instructions for the companies subject to this review to CBP 15 days after the date of publication of these final results.

Mukand reported that it was the importer of record for all of its U.S. sales of subject merchandise. Pursuant to 19 CFR 351.212(b)(1), we have calculated importer-specific assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of those sales.

To determine whether the duty assessment rates were *de minimis* (*i.e.,* less than 0.50 percent) in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer-specific *ad valorem* rates based on reported and estimated entered values (when no entered value was reported). Where the assessment rate is above *de minimis,* we will instruct CBP to assess duties on all entries of subject merchandise by that importer. Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis.*

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003) (*Assessment Policy Notice*). This clarification will apply to entries of subject merchandise during the POR produced by companies included in these final results of review for which the reviewed companies did not know their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate un-reviewed entries at the all-others rate established in the less-than-fair-value (LTFV) investigation if there is no rate for the intermediate company(ies) involved in the transaction. *See Assessment Policy Notice.*

Cash Deposit Requirements

The following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of stainless steel bar from India entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) For companies covered by this review, the cash deposit rate will be the rates listed above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent final results in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the producer is, the cash deposit rate will be the rate established for the most recent final results for the manufacturer of the merchandise; and (4) if neither the exporter nor the producer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 12.45 percent, the ''all others'' rate established in the LTFV investigation. *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar from India,* 59 FR 66915 (December 28, 1994). These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Order

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These final results of review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 26, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

Appendix—Issues in Decision Memorandum

Comment 1: Whether to Use Zeroing Methodology in this Administrative Review

Comment 2: Whether the Department Should Have Selected Chandan as a Mandatory Respondent

[FR Doc. 2012–16329 Filed 7–2–12; 8:45 am]

BILLING CODE 3510–DS–P

[2] *See* Issues and Decision Memorandum for a discussion of Chandan's rate.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Capital Construction Fund—Deposit/Withdrawal Report

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing

effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before September 4, 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 Richard VanGorder at (301) 427–8784 or *Richard.VanGorder@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for an extension of a currently approved information collection. Respondents will be commercial fishing industry individuals, partnerships, and corporations which entered into Capital Construction Fund agreements with the Secretary of Commerce allowing deferral of Federal taxation on fishing vessel income deposited into the fund for use in the acquisition, construction, or reconstruction of fishing vessels. Deferred taxes are recaptured by reducing an agreement vessel's basis for depreciation by the amount withdrawn from the fund for its acquisition, construction, or reconstruction. The deposit/withdrawal information collected from agreement holders is required pursuant to 50 CFR part 259.35 and Public Law 99–514 (The Tax Reform Act, 1986). The information collected is required to ensure that agreement holders are complying with fund deposit/withdrawal requirements established in program regulations and properly accounting for fund activity on their Federal income tax returns. The information collected must also be reported semi-annually to the Secretary of Treasury in accordance with the Tax Reform Act.

II. Method of Collection

The paper forms are currently required to be signed and mailed.

III. Data

OMB Control Number: 0648–0041.
Form Number: NOAA Form 34–82.
Type of Review: Regular submission (extension of a current information collection).
Affected Public: Business or other for-profit organizations.
Estimated Number of Respondents: 2,000.
Estimated Time per Response: 20 minutes.
Estimated Total Annual Burden Hours: 667.
Estimated Total Annual Cost to Public: $11,700 in recordkeeping/reporting costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 27, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–16175 Filed 7–2–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Drivers' Awareness of and Response to Significant Weather Events and the Correlation of Weather to Road Impacts

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before September 4, 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 Kevin Barjenbruch, 801–524–5113, or *Kevin.Barjenbruch@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for a reinstatement of a previously approved information collection. Due to an unusually dry winter, this survey could not be conducted during the OMB approval period.

This project is a joint effort of the University of Utah, NOAA's National Weather Service (NWS), the Utah Department of Transportation (UDOT), and NorthWest Weathernet (NWN) to investigate and understand the relationship between meteorological phenomena and road conditions, as well as public understanding and response to available forecast information. The events which impact the Salt Lake City metro area during the winter of 2012–2013 will be examined. Through the administration of a targeted survey, important details will be gathered regarding: (a) The information that drivers possessed prior to and during a storm, including knowledge of observed and forecast weather conditions; (b) sources of weather and road information; (c) any modification of travel and/or commute plans, based on event information; (d) anticipation and perception of storm impacts and severity; and (e) perception and behavioral response to messages conveyed by the NWS and UDOT, along with their satisfaction of information provided. Analyses of the information gathered will focus on driver knowledge, perceptions, and decision making. Ultimately, the results of this survey will provide insight on how the Weather Enterprise may more effectively communicate hazard information to the public in a manner which leads to improved response (i.e., change travel times, modes, etc.). With a sufficient level of behavior change, it should be possible to improve safety

and reduce the costs associated with weather related congestion and associated delays. Additionally, the project will shed light upon the interrelationship between meteorological phenomena, road conditions, and their combined impact on travel.

II. Method of Collection

PEGUS Research, a professional firm, will gather responses via random digit dialing, with survey participants providing responses via landline or cell phone communication.

III. Data

OMB Control Number: 0648–0624.

Form Number: None.

Type of Review: Regular submission (reinstatement of a previously approved collection).

Affected Public: Individuals or households.

Estimated Number of Respondents: 1,200.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 200.

Estimated Total Annual Cost to Public: $0 in recordkeeping/reporting costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 27, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–16189 Filed 7–2–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Modification to Gulf of Maine/Georges Bank Herring Letter of Authorization

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before September 4, 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 Allison Murphy, 978–281–9122 or *Allison.murphy@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for extension of a current information collection.

Under the Magnuson-Stevens Fishery Conservation and Management Act, the Secretary of Commerce has the responsibility for the conservation and management of marine fishery resources. We, NOAA's National Marine Fisheries Service, and the Regional Fishery Management Councils are delegated the majority of this responsibility. The New England Fishery Management Council (Council) develops management plans for fishery resources in New England.

In 2009, we implemented modifications to the requirements for midwater trawl vessels issued an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit that fish in Northeast (NE) multispecies Closed Area I (CA I). Affected vessels intending to fish in CA I at any point during a trip are required to declare their intention when scheduling a NMFS-approved at-sea observer. To ensure 100–percent observer coverage, midwater trawl vessels are not permitted to fish in CA I without an observer.

Midwater trawl vessels in the directed herring fishery that have been assigned a NMFS-approved at-sea observer and that are fishing in CA I, are prohibited, unless specific conditions are met (see below), from releasing fish from the codend of the net, transferring fish to another vessel that is not carrying a NMFS-approved observer, or discarding fish at sea, unless the fish have first been brought aboard the vessel and made available for sampling and inspection by the observer.

We recognize that there are certain conditions under which fish must be released from the codend without being sampled. Therefore, fish that have not been pumped aboard the vessel may be released if the vessel operator finds that: Pumping the catch could compromise the safety of the vessel; mechanical failure precludes bringing some or all of a catch aboard the vessel; or spiny dogfish have clogged the pump and consequently prevent pumping of the rest of the catch. If a net is released for any of these three reasons, the vessel operator must complete and sign a CA I Midwater Trawl Released Codend Affidavit detailing where, when, and why the net was released as well as a good-faith estimate of both the total weight of fish caught on that tow and the weight of fish released (if the tow had been partially pumped). The completed affidavit form must be submitted to us within 48 hr of the completion of the trip.

Following the release of a net for one of the three exemptions specified above, the vessel is required to exit CA I. The vessel may continue to fish, but may not fish in CA I for the remainder of the trip.

II. Method of Collection

Respondents must submit paper forms via postal service.

III. Data

OMB Control Number: 0648–0602.

Form Number: None.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 46.

Estimated Time per Response: 5 minutes.

Estimated Total Annual Burden Hours: 12.

Estimated Total Annual Cost to Public: $75.

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: June 27, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–16168 Filed 7–2–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB041

Small Takes of Marine Mammals Incidental to Specified Activities; Pile Driving in Port Townsend Bay, WA

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

ACTION: Notice; proposed incidental harassment authorization; request for comments.

SUMMARY: NMFS has received a complete and adequate application from the Washington State Department of Transportation/Ferries Division (WSF) for an Incidental Harassment Authorization (IHA) to take marine mammals, by harassment, incidental to pile driving during replacement of the Port Townsend Ferry Terminal Transfer Span. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS proposes to issue an IHA to incidentally harass, by Level B harassment only, 11 species of marine mammals during the specified activity within a specific geographic area and requests comments on its proposal.

DATES: Comments and information must be received no later than August 2, 2012.

ADDRESSES: Comments on the application and this proposal should be addressed to Michael Payne, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225. The mailbox address for providing email comments is *ITP.Hopper@noaa.gov.* NMFS is not responsible for email comments sent to addresses other than the one provided here. Comments sent via email, including all attachments, must not exceed a 10-megabyte file size.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.nmfs.noaa.gov/pr/permits/incidental.htm* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

An electronic copy of the application containing a list of the references used in this document may be obtained by writing to the address specified above, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Brian D. Hopper, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specific geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as '' * * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) further established a 45-day time limit for NMFS' review of an application, followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny the authorization.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Summary of Request

In August 2011, NMFS received an application from WSF, requesting an IHA for the take, by Level B harassment, of small numbers of harbor porpoises (*Phocoena phocoena*), Dall's porpoises (*Phocoenoides dalli*), Pacific white-sided dolphins (*Lagenorhynchus obliquidens*), killer whales (*Orcinus orca*), gray whales (*Eschrichtius robustus*), humpback whales (*Megaptera novaeangliae*), minke whales (*Balaenoptera acutorostrata*), Pacific harbor seals (*Phoca vitulina richardii*), California sea lions (*Zalophus californianus*), northern elephant seals (*Mirounga angustirostris*) and Steller sea lions (*Eumatopius jubatus*) incidental to pile driving activities conducted during the replacement of a transfer span at the Port Townsend ferry terminal, which is located inside Port Townsend Bay in northern Puget Sound (see Figure 1–9 in the WSF IHA application). Upon receipt of additional information and a revised application (submitted October 2011), NMFS determined the application

complete and adequate on January 5, 2012.

The applicant proposes to replace the current cable-lift transfer span at Slip 1 of the Port Townsend ferry terminal with a hydraulic lift H span (see Figure 1–3 in the WSF IHA application). The proposed project would include removal of the existing transfer span, lift towers, tower foundations, and a portion of the bridge seat and replace them with a new transfer span, bridge seat, and lift cylinder shafts. During the proposed project, up to 56 piles will be removed (40 timber and 16 steel), and require installation of up to 26 piles (16 steel, 8 temporary H-piles, and 2 cylinder shaft casings). Because elevated sound levels from pile driving have the potential to result in marine mammal harassment, NMFS proposes to issue an IHA for take incidental to the specified activity.

Description of the Specified Activity

The proposed project would replace an aging cable-lift transfer span with a new hydraulic lift span at the Port Townsend ferry terminal in northern Puget Sound, Washington. Transfer spans are moveable traffic bridges that connect ferries with the terminal dock, allowing the transfer span to be raised or lowered depending on the daily tide levels (see Figure 1–2 in WSF's IHA application). The new hydraulic lifts, or H-spans, would be operated vertically by two hydraulic cylinders located under the offshore ends of the transfer span. The proposed project would involve the removal of the existing transfer span, lift towers, tower foundations, and a portion of the bridge seat. Once the old structures are removed, they would be replaced with a new transfer span, bridge seat, and lift cylinder shafts (see Appendix A of the IHA application).

To replace the aging transfer span, 40 timber piles and 16 steel piles (four 30-inch and four 24-inch wingwall steel piles, and eight temporary piles) will be removed using a vibratory hammer. The vibratory hammer will then be used to install up to 8 steel piles (five 30-inch and up to three 24-inch), up to 8 temporary steel piles, up to 8 piles for the new wingwall fender panels and reaction frames (up to four 24-inch and up to four 30-inch), and two 80-inch cylinder shafts that will house the hydraulic lifts. The use of an impact hammer will be limited to the ''proofing'' of five 30-inch piles and three 24-inch piles in order to drive them the last two feet into the substrate. A breakdown of pile types and associated activity are shown in Table 1.

TABLE 1—SUMMARY OF TOTAL PILE REMOVAL AND INSTALLATION ACTIVITIES

Activity	Number of piles (maximum)	Total time to remove/install	Days to complete
Removal of timber piles	40	10 hours	2
Removal of steel wingwall piles	16	4 hours	4
Install steel piles	8 (5 30-inch and up to 3 24-inch)	2 hours 40 minutes	3
Install temporary piles	8	2 hours	2
Install wingwall piles	8	2 hours 40 minutes	3
Install cylinder shaft casing	2 (80-inch)	40 minutes	2
Proofing of steel piles	8	1 hour 20 minuntes	2

Of the eight 24- and 30-inch steel piles, three 24-inch piles would be installed to support the platform for the new Hydraulic Power Unit (HPU) and five 30-inch piles would be installed for the new bridge seat. Up to eight temporary steel piles would be installed using a vibratory hammer to support a template for construction of the cylinder shafts. The vibratory hammer would then be used to install the two 80-inch hollow steel cylinder shafts. The final eight 24- and 30-inch steel piles would be installed using a vibratory hammer for the new wingwall reaction frames and wingwall fender panels at the terminus of the transfer span.

Although the exact duration of pile driving would vary depending on the installation procedures and geotechnical conditions, the applicant estimates that the 16 24-to 30-inch permanent piles would each require 20 minutes of vibratory installation. Five 30-inch piles and up to three 24-inch piles would each require 10 minutes of impact driving or ''proofing'' to verify capacity. The vibratory driving of eight temporary piles that support the template for the hydraulic cylinder shafts would each require 15 minutes to install because it would not be necessary to drive these piles as deep as the permanent piles. The two 80-inch cylinder shaft casing would take approximately 20 minutes each to install using a vibratory hammer. All piles would be installed with an APE Model 400 (or equivalent) vibratory hammer; however, it will be necessary to proof the five 30-inch bridge seat piles and three 24-inch HPU support piles using an impact hammer. Proofing would require 10 minutes of impact pile driving for each of these eight piles to verify load-bearing capcity. Sound attenuation devices, such as a bubble curtain, would be used during impact hammering. The wingwall temporary piles and the 80-inch cylinder shafts would be driven solely with a vibratory hammer.

In addition to pile installation, a total of 56 piles would also be removed using vibratory extraction or a crane. These consist of the 16 steel piles and 40 old timber piles. If a timber pile breaks below the mudline—something older timber piles are prone to do—pile stubs will be removed with a clamshell bucket, but noise associated with this activity is expected to be negligible. Once piles and fragments of piles are removed, they will be loaded onto a barge or container and disposed of at an approved offsite location. There could be barges in the water to support these pile removal activities; however, these would be concentrated in the direct vicinity of the ferry terminal. Because direct pull and clamshell pile removal, and use of barges do not release loud sounds into the environment, marine mammal harassment from these activities is not anticipated.

Region of Activity

The proposed activity would occur at the Port Townsend ferry terminal located in northern Puget Sound inside Port Townsend Bay.

Dates and Duration of Activity

The Washington Department of Fish and Wildlife's recommended in-water work window for this area is July 16 through February 15. Timing restrictions such as this are used to avoid in-water work when ESA-listed salmonid species are most likely to be present. Proposed pile installation and removal activities are scheduled to occur between December 2012 and February 15, 2013, in agreement with the state's recommendation. The on-site

work will last approximately 16 weeks with actual pile removal and driving activities taking place approximately 25 percent of that time (approximately 4 weeks).

Sound Propagation

Sound is a mechanical disturbance consisting of minute vibrations that travel through a medium, such as air or water, and is generally characterized by several variables. Frequency describes the sound's pitch and is measured in hertz (Hz) or kilohertz (kHz), while sound level describes the sound's loudness and is measured in decibels (dB). Sound level increases or decreases exponentially with each dB of change. For example, 10 dB yields a sound level 10 times more intense than 1 dB, while a 20 dB level equates to 100 times more intense, and a 30 dB level is 1,000 times more intense. Sound levels are compared to a reference sound pressure (micro-Pascal) to identify the medium. For air and water, these reference pressures are ''re: 20 μPa'' and ''re: 1 μPa,'' respectively. Root mean square (RMS) is the quadratic mean sound pressure over the duration of an impulse. RMS is calculated by squaring all of the sound amplitudes, averaging the squares, and then taking the square root of the average (Urick, 1975). RMS accounts for both positive and negative values; squaring the pressures makes all values positive so that they may be accounted for in the summation of pressure levels (Hastings and Popper, 2005). This measurement is often used in the context of discussing behavioral effects, in part because behavioral effects, which often result from auditory cues, may be better expressed through averaged units rather than by peak pressures.

Data from other Washington State Ferries projects were used for the noise analysis of vibratory removal of 12-inch timber piles as well as the vibratory removal and driving of 30-inch and 24-inch hollow steel piles (Laughlin, 2005; Laughlin, 2010; Laughlin, 2011). Due to the lack of information related to the vibratory driving of 80-inch hollow steel cylinder shafts, noise levels recorded for a project using similar equipment in Richmond, California were used to estimate sound levels (CalTrans, 2007). For impact pile driving, WSF relied on measurements for steel piles at other Puget Sound ferry terminal locations (Laughlin, 2005). Sound levels for impact and vibratory pile driving are shown in Table 2. Ambient underwater sound levels in the vicinity of Port Townsend were measured in April 2010 (Stockham *et al.,* 2010). These data show that local background levels are below 120 dB (50th percentile between 100 and 104 dB), at least during April; therefore, the Level B harassment threshold for continuous sound sources (120 dB) was not adjusted for this location. WSF conducted a site specific vibratory test pile project in coordination with NMFS at the Port Townsend Ferry Terminal to determine the distances at which vibratory pile removal or driving attenuate down to the 120 dB threshold (i.e., the threshold level used to measure Level B harassment for continuous sounds). The site specific test allowed physical factors in Port Townsend Bay that can influence sound attenuation rates to be taken into account, such as absorption in seawater, absorption in the sub-bottom, scattering from inhomogeneities (lack of uniformity) in the water column and from surface and bottom roughness and water depth (bathymetry). During the test, two hollow steel piles, one 36-inch and one 30-inch, were driven and removed using a vibratory hammer. An array of hydrophones measured in-water noise during the test project. Vibratory driving of the 36-inch steel pile generated 159 to 177 dB rms at 10 m, and vibratory driving of the 30-inch steel pile generated 164 to 174 dB rms at 10 m. Vibratory removal of the 30-inch steel pile generated 171 dB rms at 10 m. Based on these results, the sound generated from vibratory installation and removal of 30-inch piles may take up to 4.2 miles (6.8 km) to attenuate to below 120 dB. Because of the project area's location on a river bend and across from Hayden Island, sound transmission will be stopped by land masses much earlier in certain directions. In-air sound from pile driving also has the potential to affect marine mammals. However, in-air sound is not a concern here because there are no pinniped haul-out sites near the project area.

TABLE 2—DISTANCES TO HARASSMENT THRESHOLDS

[Vibratory hammer]

Pile type and size	Hammer type	Sound levels (rms)			
		190 dB	180 dB	160 dB	120 dB
Timber (removal)	Vibratory	n/a	n/a	n/a	2.2 km (1.4 miles).
24-inch steel (removal)	Vibratory	n/a	n/a	n/a	4 km (2.4 miles).
24-inch steel (install)	Vibratory	n/a	n/a	n/a	6.3 km (3.9 miles).
30-inch steel (removal)	Vibratory	n/a	n/a	n/a	18.5 km (15.6 miles).
30-inch steel (install)	Vibratory	n/a	n/a	n/a	39.8 km (24.7 miles).
80-inch steel (install)	Vibratory	n/a	n/a	n/a	50 km (31 miles).

TABLE 3—DISTANCES TO HARASSMENT THRESHOLDS WITHOUT MITIGATION

[Impact hammer]

Pile type and size	Hammer type	Sound levels (rms)		
		190 dB	180 dB	160 dB
30-inch steel	Impact	5 m	22 m	465 m.

Description of Marine Mammals in the Area of the Specified Activity

Due to Port Townsend's location on the boundary between two inland water regions, 11 marine mammal species may occur at some time of year in the vicinity of the ferry terminal: Harbor porpoise, Dall's porpoise, Pacific white-sided dolphin, killer whale, gray whale, humpback whale, minke whale, Pacific harbor seal, California sea lion, northern elephant seal, and Steller sea lion.

Harbor Porpoise

Harbor porpoise on the west coast are divided into two stocks: (1) The Washington Inland Waters Stock; and (2) the Oregon/Washington Coast Stock (Carretta *et al.,* 2007b). Neither stock is listed as ''endangered'' or ''threatened'' under the ESA or as ''depleted'' under the MMPA. The Washington Inland Waters Stock occurs in waters east of Cape Flattery (Strait of Juan de Fuca, San Juan Island Region, and Puget Sound) and has a mean abundance estimate of 10,682 (J. Laake, unpubl. data as cited in Carretta *et al.,* 2007b). Abundance estimates of harbor porpoise for the Strait of Juan de Fuca and the San Juan Islands in 1991 were approximately 3,300 animals (Calambokidis *et al.,* 1993). Harbor porpoise were once considered common in southern Puget Sound (Scheffer and Slipp, 1948); however, there has been a significant decline in sightings within southern Puget Sound since the 1940s (Everitt *et al.,* 1980, Calambokidis *et al.,* 1985, 1992, Carretta *et al.,* 2007b). They are found in coastal and inland waters of the eastern North Pacific Ocean from Point Barrow, Alaska, south to Point Conception, California (Gaskin, 1984). Although harbor porpoises have been spotted in deep water, they tend to remain in shallower shelf waters (<150 meters) where they are most often observed in small groups of 1 to 8 animals (Baird, 2003). Harbor porpoises are high-frequency cetaceans with an estimated auditory bandwidth of 200 Hz to 180 kHz (Southall *et al.,* 2007) with a maximum sensitivity between 16 and 140 kHz (73 FR 41318).

Dall's Porpoise

Dall's porpoise occur in the North Pacific Ocean and is divided into two stocks: (1) California, Oregon, and Washington; and (2) Alaska (Carretta *et al.,* 2007). Neither stock is listed as ''endangered'' or ''threatened'' under the ESA or as ''depleted'' under the MMPA. The California, Oregon, and Washington stock mean abundance estimate of Dall's porpoises is 57,549 (Barlow, 2003; Forney, 2007). In 1994, Calambokidis and Baird (1994) estimated the Juan de Fuca population at 3,015 animals and the San Juan Island population at about 133 animals. More recently, the segment of the population within Washington's inland waters was last assessed by aerial surveys in 1996 and estimated that 900 animals annually inhabit Washington's inland waters (Calambokidis *et al.,* 1997). During a ship line-transect survey conducted in 2005, Dall's porpoise was the most abundant cetacean species off the Oregon and Washington coast (Forney, 2007). Dall's porpoise are migratory and appear to have predictable seasonal movements associated with changes in oceanographic conditions (Green *et al.,* 1992, 1993). This species is commonly found in shelf, slope, and offshore waters (Carretta *et al.,* 2007). Like harbor porpoises, Dall's porpoises are high-frequency cetaceans with an estimated auditory bandwidth of 200 Hz to 180 kHz (Southall *et al.,* 2007).

Pacific White-Sided Dolphin

Pacific white-sided dolphins are divided into northern and southern stocks comprising two discrete, non-contiguous areas: (1) Waters off California, Oregon, and Washington; and (2) Alaskan waters (Carretta *et al.,* 2007). Neither stock is listed as ''endangered'' or ''threatened'' under the ESA or as ''depleted'' under the MMPA. The California, Oregon, and Washington stock mean abundance estimate is 25,233 Pacific white-sided dolphins (Forney, 2007). Surveys in Oregon and Washington coastal waters resulted in an estimated abundance of 7,645 animals (Forney, 2007). Fine-scale surveys in Olympic Coast slope waters and the Olympic Coast National Marine Sanctuary resulted in an estimated abundance of 1,196 and 1,432 animals, respectively (Forney, 2007), but there are no population estimates for Washington's inland waters. Aerial surveys conducted by Washington Department of Fish and Wildlife between 1992 and 2008 only reported a single group of three Pacific white-sided dolphins in the Strait of Juan de Fuca. Pacific white-sided dolphins are occasionally reported in the northernmost part of the Strait of Georgia and in western Strait of Juan de Fuca, but are generally only rarely seen in Puget Sound (Calambokidis and Baird, 1994). Pacific white-sided dolphins have been documented primarily in deep, offshore areas (Green *et al.,* 1992, 1993; Calambokidis *et al.,* 2004). Pacific white-sided dolphins are mid-frequency cetaceans with an estimated auditory bandwidth of 150 Hz to 160 kHz (Southall *et al.,* 2007).

Killer Whale

Two distinct forms, or ecotypes, of killer whales—''residents'' and ''transients''—are found in the greater Puget Sound. These two ecotypes are different populations of killer whales that vary in morphology, ecology, behavior, and genetics. Although the range of transient and resident killer whales overlaps, the two ecotypes do not interact or interbreed with one another. Killer whales of both ecotypes are mid-frequency cetaceans (Southall *et al.,* 2007) with an estimated auditory bandwidth of 50 Hz to 100 kHz and peak sensitivity around 15 kHz (73 FR 41318, July 18, 2008).

The ''resident'' population that could occur in the proposed project area is the Southern Resident killer whale (SRKW). This population contains three pods (or stable family-related groups)—J pod, K pod, and L pod—and is considered a stock under the MMPA. The Southern Resident killer whale population is currently estimated at about 86 whales (Center for Whale Research, 2011). In 2005, NMFS listed this population as endangered under the ESA (70 FR 69903, November 18, 2005). This population is also listed as depleted under the MMPA. Their range during the spring, summer, and fall includes the inland waterways of Puget Sound, Strait of Juan de Fuca, and Southern Georgia Strait. Their occurrence in the coastal waters off Oregon, Washington, Vancouver Island, and more recently off the coast of central California in the south and off the Queen Charlotte Islands to the north has been documented. Little is known about the winter movements and range of the Southern Resident stock. Resident killer whales feed exclusively on fish such as salmon (Calambokidis and Baird, 1994).

Southern resident killer whale presence is possible but unlikely in the proposed project area. Based on the sighting records kept by The Whale Museum in Friday Harbor, between 1990 and 2005 an average of 1.75 killer whale group sightings were annually reported in the quadrant that includes Port Townsend. Most sightings (primarily J Pod) occurred between September and December, and March; therefore, encountering killer whales during the project work window is very low, although encountering a single group is possible.

Transient killer whales occur throughout the eastern North Pacific, primarily in coastal waters. Individual transient killer whales have been documented as traveling great distances, reflecting a large home range. Pod structure is small (e.g., fewer than 10 whales) and dynamic in nature. Transient killer whales feed exclusively on other marine mammals such as dolphins, sea lions, and seals.

The transient killer whale population that could occur in the proposed project area is the West Coast transient stock. This stock of killer whale is not designated as ''depleted'' under the MMPA nor is it listed under the ESA. It is a trans-boundary stock, which includes killer whales from British Columbia. In the proposed activity area,

small groups of one to five individuals are sighted intermittently throughout the year. Within inland water, transient killer whales may frequent areas near seal rookeries when pups are weaned (Baird and Dill, 1995).

Preliminary analysis of photographic data results in a minimum of 314 killer whales belonging to the West Coast transient stock (Angliss and Allen, 2009). This number is also considered the minimum population estimate of the population since no correction factor is available to provide a best estimate of the population. At present, reliable data on trends in population abundance for the West Coast transient stock of killer whales are unavailable (Angliss and Allen, 2009).

Gray Whale

Gray whales migrate within 5 to 43 km of the Washington cast during their annual north/south migrations (Green *et al.,* 1995). Small numbers of gray whales have been observed in Northern Puget Sound between the months of September and January, with peak numbers reported from March through May (J. Calambokidis pers. comm. 2007). The North Pacific gray whale stock is divided into two distinct geographically isolated stocks: Eastern and western (Rice *et al.,* 1984; Angliss and Outlaw, 2007). Individuals in the Pacific Northwest are part of the Eastern North Pacific stock. Population surveys estimate that the Eastern North Pacific stock is at or just below its carrying capacity (~26,000 individuals) (Rugh *et al.,* 1999; Calambokidis *et al.,* 1994; Angliss and Outlaw, 2007). Abundance estimates calculated for the area between Oregon and southern Vancouver Island, including the San Juan Islands and Puget Sound, suggest there were 137 to 153 individual gray whales from 2001 through 2003 (Calambokidis *et al.,* 2004). In 1994, the Eastern North Pacific stock of gray whales was removed from listing under the ESA and are no longer considered depleted under the MMPA (Angliss and Outlaw, 2007).

Humpback Whale

Few humpback whales have been seen in Puget Sound, but more frequent sightings occur in the Strait of Juan de Fuca and near the San Juan Islands. These whales are members of the Eastern North Pacific stock, which is one of three distinct stocks of humpback whale recognized in the North Pacific. Recent estimates of the Eastern North Pacific stock indicate that the population is between 1,100 and 1,300 individuals (Caretta *et al.,* 2007; Calambokidis *et al.,* 2008). Abundance estimates for Washington and southern British Columbia are less than 500 (Calambokidis *et al.,* 2008). Humpback whales are listed as endangered under the ESA and the Eastern North Pacific stock is listed as depleted and strategic under the MMPA.

Minke Whale

Worldwide, minke whales are one of the most abundant whales (Calambokidis and Baird, 1994). The northern minke whale is separated into two distinct subspecies: The Northern Pacific and the Northern Atlantic. Within U.S. waters, the North Pacific stock is divided into three separate stocks for management purposes: (1) The Alaskan stock; (2) the California/Oregon/Washington stock; and (3) the Hawaiian stock (NMFS, 2008). Minke whales within the inland Washington waters of Puget Sound and the San Juan Islands are part of the California/Oregon/Washington stock (Dorsey *et al.,* 1990; Carretta *et al.,* 2007). The total population size for the entire North Pacific population is unknown (Calambokidis and Baird, 1994; Carretta *et al.,* 2007). Some estimates indicate as many as 9,000 individuals in the North Pacific (Wade, 1976; Green *et al.,* 1992), but this number is uncertain (Calambokidis and Baird, 1994). The number of minke whales in the California/Oregon/Washington stock is estimated between 500 and 1,015 individuals (Barlow, 2003; Carretta *et al.,* 2007; NMFS, 2008). Minke whales are not listed under the ESA nor considered depleted under the MMPA.

Minke whales are reported in Washington inland waters year-round, although few are reported in the winter (Calambokidis and Baird, 1994). Minke whales are more common in the San Juan Islands and Strait of Juan de Fuca (especially around several of the banks in both the central and eastern Strait), but are relatively rare in Puget Sound. Infrequent observations occur in Puget Sound south of Admiralty Inlet (Orca Network, 2011). There have been no reported sightings of minke whales in Puget Sound in the months of December and January. Although the likelihood of encountering a minke whale is remote, based on the sighting records, it is possible that minke whales could occur in Port Townsend during the proposed work window.

Like other baleen whales, gray whales, humpback whales, and minke whales are low-frequency cetaceans. Although no direct measurements of auditory capacity have been conducted for these large whales, hearing sensitivity has been estimated by Southall *et al.* (2007) from various studies or observations of behavioral responses, vocalization frequencies used most, body size, ambient noise levels, and cochlear morphometry (Southall *et al.,* 2007). A generalized auditory bandwidth of 7 Hz to 22 kHz has been estimated for all baleen whales, including gray whales, humpback whales, and minke whales (Southall *et al.,* 2007).

Pacific Harbor Seals

Pacific harbor seals reside in coastal and estuarine waters off Baja, California, north to British Columbia, west through the Gulf of Alaska, and in the Bering Sea. Harbor seals in Puget Sound are part of the Oregon/Washington coastal stock. The most recent NMFS stock assessment report estimated this stock to be at least 22,380 individuals and the population is likely at carrying capacity and no longer increasing (NMFS, 2007). The Oregon/Washington stock is not listed under the Endangered Species Act (ESA) nor considered depleted under the MMPA.

Harbor seals are the most numerous marine mammal within the proposed action area. 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, 1983).

Harbor seals haul out on rocks, reefs, beaches, and drifting glacial ice and feed in marine, estuarine, and occasionally fresh waters. Harbor seals display strong fidelity for haulout sites (Pitcher and Calkins, 1979; Pitcher and McAllister, 1981). Within the region of activity, there are numerous harbor seal haulout sites located on intertidal rocks, reefs, and islands. Nearest known haulout sites to the ferry terminals and number of haulout sites within 5 miles of terminals are listed in Table 3–2 of the application.

Group sizes range from small numbers of animals on intertidal rocks to several thousand animals found seasonally in coastal estuaries. Numerous haulouts in the region of activity have between 100 and 500 individuals, while others have 100 or less (Jeffries *et al.,* 2000) (see Figure 3–1 in the application).

Pinniped hearing is measured for two mediums, air and water. In water hearing ranges from 1–180 kHz with peak sensitivity around 32kHz. In air, hearing capabilities are greatly reduced

to 1–22kHz with peak sensitivity at 12kHz. This in-air hearing range is comparable to human hearing (0.02 to 20 kHz). Harbor seals have the potential to be affected by in-air and in-water noise associated with construction activities.

California Sea Lions

California sea lions reside throughout the Eastern North Pacific Ocean in shallow coastal and estuarine waters, ranging from Central Mexico to British Columbia, Canada. Their primary breeding range extends from Central Mexico to the Channel Islands in Southern California. The U.S. stock abundance is estimated at 238,000 sea lions (NMFS, 2007). This stock is approaching carrying capacity and is reaching ''optimum sustainable population'' limits, as defined by the MMPA. California sea lions are not listed under the ESA nor considered depleted under the MMPA. It is estimated that approximately 1,000 California sea lions occur in Puget Sound (P. Gearin pers. comm. 2008).

In Washington, California sea lions use haul-out sites within all inland water regions (Jeffries *et al.,* 2000). The nearest California sea lion haul-out to the action area is a channel buoy (used by less than 10 animals) located off Bush Point 12.9 km southeast of the ferry terminal. The nearest large (100–500 animals) haul-out is located 42 km to the southeast at the Everett Harbor log boom. California sea lions may also be seen resting in the water (rafting) together in Puget Sound (Jeffries *et al.,* 2000).

Northern Elephant Seals

Northern elephant seals present in the proposed action area are considered part of the California breeding stock, which is considered an isolated population from the Mexican stock (Carretta *et al.,* 2007a). Northern elephant seals are not listed as ''endangered'' or ''threatened'' under the ESA nor as ''depleted'' under the MMPA. By 2001, the California breeding stock was estimated at 101,000 individuals based on pup counts (Carretta *et al.,* 2007a; Carretta *et al.,* 2002) Pup estimates in California indicate that the population of northern elephant seals in 2005 was 124,000 (Carretta *et al.,* 2007b). Based on current trends and pup counts in California, the population of northern elephant seals appears to be stable (Carretta *et al.,* 2007b). Current estimates indicate that the minimum population would be 74,193 or twice the current pup count (Carretta *et al.,* 2005). Abundance estimates for inland Washington waters are not available due to the infrequency of sightings and the low numbers encountered incidentally (Calambokidis pers. comm. 2008). Rough estimates suggest less than 100 individuals (Jeffries pers. comm. 2008a).

Inland Washington waters primarily in the Strait of Juan de Fuca are used by elephant seals to feed, haulout, and pup. Small numbers of juveniles haul out throughout this area for periods of over a month to molt (Calambokidis and Baird, 1994). Rat Island across the bay from the Port Townsend ferry terminal is occasionally used by juvenile elephant seals (Jeffries pers. comm. 2008a).

Haulout areas are not as predictable as for the other species of pinnipeds found there. In recent years pups have been seen at beaches at Destruction, Protection, and Smith/Minor Islands in the Strait of Juan de Fuca (Jeffries *et al.,* 2000). WDFW has identified seven haulout sites in inland Washington waters. There are regular haulout sites at Smith and Minor Islands, Dungeness Spit, Protection Island, and Race Rocks in the Strait of Juan de Fuca (Jeffries pers. comm. 2008a; Figure 3–3 in the application). Typically these sites have only two to ten adult males and females, but pupping has been reported at all of these sites of the past ten years (Jeffries pers. comm. 2008a).

Steller Sea Lions

Steller sea lions reside along the North Pacific Rim from northern Japan to California, with centers of abundance and distribution in the Gulf of Alaska and Aleutian Islands, respectively. Steller sea lions in Puget Sound are part of the eastern distinct population segment, which is listed as threatened under the ESA, but currently the subject of a proposed rule to delist (77 FR 23209, April 18, 2012), and designated as depleted under the MMPA. Based on pup counts conducted between 2002 and 2005, the eastern stock of Steller sea lions is estimated to be between 48,519 and 54,989 individuals. The estimate for Washington, including the outer coast, is 651 individuals (non-pups only) (Pitcher *et al.,* 2007).

For Washington inland waters, Steller sea lion abundances vary seasonally with a minimum estimate of 1,000 to 2,000 individuals present or passing through the Strait of Juan de Fuca in fall and winter months (S. Jeffries pers. comm. 2008). However, the number of haul-out sites has increased in recent years and includes most navigation buoys in Admiralty Inlet, and the Craven Rock haul-out site east of Marrowstone Island, approximately 7 km southeast of the ferry terminal. There are no Steller sea lion rookeries in Washington.

All pinniped species produce a wide range of social signals, most occurring at relatively low frequencies (Southall *et al.,* 2007), suggesting that hearing is keenest at these frequencies. Pinnipeds communicate acoustically both on land and underwater, but have different hearing capabilities dependent upon the medium (air or water). Based on numerous studies, as summarized in Southall *et al.* (2007), pinnipeds are more sensitive to a broader range of sound frequencies underwater than in air. Underwater, pinnipeds can hear frequencies from 75 Hz to 75 kHz. In air, pinnipeds can hear frequencies from 75 Hz to 30 kHz (Southall *et al.,* 2007).

Potential Effects on Marine Mammals

Impact and vibratory pile driving are the construction activities associated with the proposed action with the potential to take marine mammals. Elevated in-water sound levels from pile driving in the proposed project area may temporarily impact marine mammal behavior. However, elevated in-air sound levels are not expected to affect marine mammals because the nearest pinniped haul-out is approximately 3 km away.

Marine Mammals and Sound

Marine mammals are continually exposed to many sources of sound. For example, lightning, rain, sub-sea earthquakes, and animals are natural sound sources throughout the marine environment. Marine mammals also produce sounds in various contexts and use sound for various biological functions including, but not limited to, (1) social interactions; (2) foraging; (3) orientation; and (4) predator detection. Exposure to sound can affect marine mammal hearing or cause changes in behavior. 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 (13 species of mysticetes): Functional hearing is estimated to occur between approximately 7 Hz and 22 kHz;
- Mid-frequency cetaceans (32 species of dolphins, six species of larger toothed whales, and 19 species of beaked and bottlenose whales): Functional hearing is estimated to occur between approximately 150 Hz and 160 kHz;
- High frequency cetaceans (six species of true porpoises, four species of river dolphins, two members of the genus *Kogia,* and four dolphin species of the genus *Cephalorhynchus*): 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, four pinniped and seven cetacean species may occur in the proposed project area during the project timeframe. Harbor porpoise and Dall's porpoise are classified as high frequency cetaceans (Southall *et al.,* 2007). Pacific white-sided dolphin and killer whale are classified as mid frequency cetaceans (Southall *et al.,* 2007). Gray whale, humpback whale, and minke whale are classified as low frequency cetaceans (Southall *et al.,* 2007).

Potential Effects of Pile Driving Sound

The effects of sounds from pile driving might generally result in one or more of the following: Temporary or permanent hearing impairment, non-auditory physical or physiological effects, behavioral disturbance, and masking (Richardson *et al.,* 1995; Gordon *et al.,* 2004; Nowacek *et al.,* 2007; Southall *et al.,* 2007). The effects of pile driving on marine mammals are dependent on several factors, including the size, type, and depth of the animal; the depth, intensity, and duration of the pile driving sound; the depth of the water column; the substrate of the habitat; the standoff distance between the pile and the animal; and the sound propagation properties of the environment. Impacts to marine mammals from pile driving activities are expected to result primarily from acoustic pathways. As such, the degree of effect is intrinsically related to the received level and duration of the sound exposure, which are in turn influenced by the distance between the animal and the source. The further away from the source, the less intense the exposure should be. The substrate and depth of the habitat affect the sound propagation properties of the environment. Shallow environments are typically more structurally complex, which leads to rapid sound attenuation. In addition, substrates that are soft (e.g., sand) would absorb or attenuate the sound more readily than hard substrates (e.g., rock) which may reflect the acoustic wave. Soft porous substrates would also likely require less time to drive the pile, and possibly less forceful equipment, which would ultimately decrease the intensity of the acoustic source.

In the absence of mitigation, impacts to marine species would be expected to result from physiological and behavioral responses to both the type and strength of the acoustic signature (Viada *et al.,* 2008). The type and severity of behavioral impacts are more difficult to define due to limited studies addressing the behavioral effects of sound on marine mammals. Potential effects from impulsive sound sources can range in severity, ranging from effects such as behavioral disturbance, tactile perception, physical discomfort, slight injury of the internal organs and the auditory system, to mortality (Yelverton *et al.,* 1973; O'Keefe and Young, 1984; DoN, 2001b).

Hearing Impairment and Other Physical Effects

Marine mammals exposed to high intensity sound repeatedly or for prolonged periods can experience hearing threshold shift (TS), which is the loss of hearing sensitivity at certain frequency ranges (Kastak *et al.,* 1999; Schlundt *et al.,* 2000; Finneran *et al.,* 2002, 2005). TS can be permanent (PTS), in which case the loss of hearing sensitivity is not recoverable, or temporary (TTS), in which case the animal's hearing threshold would recover over time (Southall *et al.,* 2007). Marine mammals depend on acoustic cues for vital biological functions, (e.g., orientation, communication, finding prey, avoiding predators); thus, TTS may result in reduced fitness in survival and reproduction, either permanently or temporarily. However, this depends on the frequency and duration of TTS, as well as the biological context in which it occurs. TTS of limited duration, occurring in a frequency range that does not coincide with that used for recognition of important acoustic cues, would have little to no effect on an animal's fitness. Repeated sound exposure that leads to TTS could cause PTS. PTS, in the unlikely event that it occurred, would constitute injury, but TTS is not considered injury (Southall *et al.,* 2007). It is unlikely that the project would result in any cases of temporary or especially permanent hearing impairment or any significant non-auditory physical or physiological effects for reasons discussed later in this document. Some behavioral disturbance is expected, but it is likely that this would be localized and short-term because of the short project duration.

Several aspects of the planned monitoring and mitigation measures for this project (see the ''Proposed Mitigation'' and ''Proposed Monitoring and Reporting'' sections later in this document) are designed to detect marine mammals occurring near the pile driving to avoid exposing them to sound pulses that might, in theory, cause hearing impairment. In addition, many cetaceans are likely to show some avoidance of the area where received levels of pile driving sound are high enough that hearing impairment could potentially occur. In those cases, the avoidance responses of the animals themselves would reduce or (most likely) avoid any possibility of hearing impairment. Non-auditory physical effects may also occur in marine mammals exposed to strong underwater pulsed sound. It is especially unlikely that any effects of these types would occur during the present project given the brief duration of exposure for any given individual and the planned monitoring and mitigation measures. The following subsections discuss in somewhat more detail the possibilities of TTS, PTS, and non-auditory physical effects.

Temporary Threshold Shift (TTS)

TTS is the mildest form of hearing impairment that can occur during exposure to a loud sound (Kryter, 1985). While experiencing TTS, the hearing threshold rises and a sound must be louder in order to be heard. TTS can last from minutes or hours to days, occurs in specific frequency ranges (e.g., an animal might only have a temporary loss of hearing sensitivity between the frequencies of 1 and 10 kHz), and can occur to varying degrees (e.g., an animal's hearing sensitivity might be reduced by 6 dB or by 30 dB). For sound exposures at or somewhat above the TTS-onset threshold, hearing sensitivity recovers rapidly after exposure to the sound ends. Few data on sound levels and durations necessary to elicit mild TTS have been obtained for marine mammals. Southall *et al.* (2007) considers a 6 dB TTS (i.e., baseline thresholds are elevated by 6 dB) sufficient to be recognized as an unequivocal deviation and thus a sufficient definition of TTS-onset. Because it is non-injurious, NMFS

considers TTS as Level B harassment that is mediated by physiological effects on the auditory system; however, NMFS does not consider onset TTS to be the lowest level at which Level B harassment may occur. Southall *et al.* (2007) summarizes underwater pinniped data from Kastak *et al.* (2005), indicating that a tested harbor seal showed a TTS of around 6 dB when exposed to a non-pulse noise at SPL 152 dB re: 1 μPa for 25 minutes. In contrast, a tested sea lion exhibited TTS-onset at 174 dB re: 1 μPa under the same conditions as the harbor seal. Data from a single study on underwater pulses found no signs of TTS-onset in sea lions at exposures up to 183 dB re: 1 μPa (peak-to-peak) (Finneran *et al.,* 2003).

Vibratory pile driving emits low-frequency broadband noise, which may be detectable by marine mammals within the proposed project area. There are limited data available on the effects of non-pulse noise (for example, vibratory pile driving) on pinnipeds while underwater; however, field and captive studies to date collectively suggest that pinnipeds do not react strongly to exposures between 90 and 140 dB re: 1 μPa; no data exist from exposures at higher levels. Jacobs and Terhune (2002) observed wild harbor seal reactions to high-frequency acoustic harassment devices around nine sites. Seals came within 44 m of the active acoustic harassment devices and failed to demonstrate any behavioral response when received SPLs were estimated at 120–130 dB. In a captive study (Kastelein, 2006), scientists subjected a group of seals to non-pulse sounds between 8 and 16 kHz. Exposures between 80 and 107 dB did not induce strong behavioral responses; however, a single observation from 100 to 110 dB indicated an avoidance response. The seals returned to baseline conditions shortly following exposure. Southall *et al.* (2007) notes contextual differences between these two studies; the captive animals were not reinforced with food for remaining in the noise fields, whereas free-ranging animals may have been more tolerant of exposures because of motivation to return to a safe location or approach enclosures holding prey items. While most of the pile driving at the proposed project site would be vibratory, an impact hammer (pulse noise) may be used to complete installation of seven piles (five 30-inch and two 24-inch). Vibratory and impact pile driving may result in anticipated hydroacoustic levels between 159 and 195 dB rms at 10 m (unattenuated). Southall *et al.* (2007) reviewed relevant data from studies involving pinnipeds exposed to pulse noise and concluded that exposures to 150 to 180 dB generally have limited potential to induce avoidance behavior.

The proposed action includes vibratory removal of 12-inch timber piles, vibratory removal and driving of 30-inch and 24-inch hollow steel piles, and vibratory installation of 72-inch hollow steel cylindrical shafts. Based on previous in-water measurements at the Port Townsend ferry terminal, removal of the 12-inch timber piles generated 149 to 152 dB rms, with an overall average rms value of 150 dB, at 16 m. In-water measurements conducted during another test pile project at the Port Townsend ferry terminal indicated that vibratory pile removal of a 30-inch steel pile generated 171 dB rms at 10 m, and vibratory pile driving of a 30-inch steel pile generated 170 dB rms at 10 m with the highest measured sound of 174 dB rms at 10 m (Laughlin, 2010). Based on in-water measurements at the WSF Friday Harbor ferry terminal, vibratory pile driving of 24-inch steel piles generated 162 dB rms at 10 m (Laughlin, 2005). Vibratory pile removal data for 24-inch steel piles is not available, so a reduction of 3 dB rms will be assumed, which is the same reduction as the 30-inch vibratory removal at Port Townsend. The average value of 174 dB rms from a Washington State Department of Transportation monitoring project of vibratory installation of a 36-inch steel pipe pile at Port Townsend was used in the noise analysis for vibratory pile installation (WSDOT, 2010). There is also a lack of information available for the 80-inch cylinders. The closest in-water measurement available were for 72-inch cylinders from the California Pile Driving Compendium (Caltrans, 2007), which generated 180 dB rms at 5 m and equals 175.5 dB rms at 10 m (Laughlin, 2011). The Caltrans report is considered to be the best available data for estimating the sound source levels for installing 80-inch cylinders with a vibratory hammer; therefore, this source level will be applied.

Permanent Threshold Shift

When PTS occurs, there is physical damage to the sound receptors in the ear. In severe cases, there can be total or partial deafness, while in other cases the animal has an impaired ability to hear sounds in specific frequency ranges (Kryter, 1985). There is no specific evidence that exposure to pulses of sound can cause PTS in any marine mammal. However, given the possibility that mammals close to pile driving activity might incur TTS, there has been further speculation about the possibility that some individuals occurring very close to pile driving might incur PTS. Single or occasional occurrences of mild TTS are not indicative of permanent auditory damage, but repeated or (in some cases) single exposures to a level well above that causing TTS onset might elicit PTS.

Relationships between TTS and PTS thresholds have not been studied in marine mammals but are assumed to be similar to those in humans and other terrestrial mammals. PTS might occur at a received sound level at least several decibels above that inducing mild TTS if the animal were exposed to strong sound pulses with rapid rise time. Based on data from terrestrial mammals, a precautionary assumption is that the PTS threshold for impulse sounds (such as pile driving pulses as received close to the source) is at least 6 dB higher than the TTS threshold on a peak-pressure basis and probably greater than 6 dB (Southall *et al.,* 2007). On an SEL basis, Southall *et al.* (2007) estimated that received levels would need to exceed the TTS threshold by at least 15 dB for there to be risk of PTS. Thus, for cetaceans, Southall *et al.* (2007) estimate that the PTS threshold might be an M-weighted SEL (for the sequence of received pulses) of approximately 198 dB re 1 μPa^2-s (15 dB higher than the TTS threshold for an impulse). Given the higher level of sound necessary to cause PTS as compared with TTS, it is considerably less likely that PTS could occur.

Non-Auditory Physiological Effects

Non-auditory physiological effects or injuries that theoretically might occur in marine mammals exposed to strong underwater sound include stress, neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage (Cox *et al.,* 2006; Southall *et al.,* 2007). Studies examining such effects are limited. In general, little is known about the potential for pile driving to cause auditory impairment or other physical effects in marine mammals. Available data suggest that such effects, if they occur at all, would presumably be limited to short distances from the sound source and to activities that extend over a prolonged period. The available data do not allow identification of a specific exposure level above which non-auditory effects can be expected (Southall *et al.,* 2007) or any meaningful quantitative predictions of the numbers (if any) of marine mammals that might be affected in those ways. Marine mammals that show behavioral avoidance of pile driving, including some odontocetes and some pinnipeds, are especially

unlikely to incur auditory impairment or non-auditory physical effects.

Measured source levels from impact pile driving can be as high as 214 dB re 1 μPa at 1 m (3.3 ft). Although no marine mammals have been shown to experience TTS or PTS as a result of being exposed to pile driving activities, captive bottlenose dolphins and beluga whales exhibited changes in behavior when exposed to strong pulsed sounds (Finneran *et al.,* 2000, 2002, 2005). The animals tolerated high received levels of sound before exhibiting aversive behaviors. Experiments on a beluga whale showed that exposure to a single watergun impulse at a received level of 207 kPa (30 psi) p-p, which is equivalent to 228 dB p-p re 1 μPa, resulted in a 7 and 6 dB TTS in the beluga whale at 0.4 and 30 kHz, respectively. Thresholds returned to within 2 dB of the pre-exposure level within four minutes of the exposure (Finneran *et al.,* 2002). Although the source level of pile driving from one hammer strike is expected to be much lower than the single watergun impulse cited here, animals being exposed for a prolonged period to repeated hammer strikes could receive more sound exposure in terms of SEL than from the single watergun impulse (estimated at 188 dB re 1 μPa^2-s) in the aforementioned experiment (Finneran *et al.,* 2002). However, in order for marine mammals to experience TTS or PTS, the animals have to be close enough to be exposed to high intensity sound levels for a prolonged period of time. Based on the best scientific information available, these SPLs are far below the thresholds that could cause TTS or the onset of PTS.

Disturbance Reactions

Disturbance includes a variety of effects, including subtle changes in behavior, more conspicuous changes in activities, and displacement. Reactions to sound, if any, depend on species, state of maturity, experience, current activity, reproductive state, time of day, and many other factors (Richardson *et al.,* 1995; Wartzok *et al.,* 2004; Southall *et al.,* 2007; Weilgart, 2007). Behavioral responses to sound are highly variable and context-specific. For each potential behavioral change, the magnitude of the change ultimately determines the severity of the response. A number of factors may influence an animal's response to sound, including its previous experience, its auditory sensitivity, its biological and social status (including age and sex), and its behavioral state and activity at the time of exposure.

Habituation can occur when an animal's response to a stimulus wanes with repeated exposure, usually in the absence of unpleasant associated events (Wartzok *et al.,* 2003/04). Animals are most likely to habituate to sounds that are predictable and unvarying. The opposite process is sensitization, when an unpleasant experience leads to subsequent responses, often in the form of avoidance, at a lower level of exposure. Behavioral state may affect the type of response as well. For example, animals that are resting may show greater behavioral change in response to disturbing sound levels than animals that are highly motivated to remain in an area for feeding (Richardson *et al.,* 1995; NRC, 2003; Wartzok *et al.,* 2003/04).

Controlled experiments with captive marine mammals showed pronounced behavioral reactions, including avoidance of loud sound sources (Ridgway *et al.,* 1997; Finneran *et al.,* 2003). Observed responses of wild marine mammals to loud pulsed sound sources (typically seismic guns or acoustic harassment devices, but also including pile driving) have been varied but often consist of avoidance behavior or other behavioral changes suggesting discomfort (Morton and Symonds, 2002; Caltrans, 2001, 2006; see also Gordon *et al.,* 2004; Wartzok *et al.,* 2003/04; Nowacek *et al.,* 2007). Responses to continuous sound, such as vibratory pile installation, have not been documented as well as responses to pulsed sounds.

With both types of pile driving, it is likely that the onset of pile driving could result in temporary, short term changes in an animal's typical behavior and/or avoidance of the affected area. These behavioral changes may include (Richardson *et al.,* 1995): Changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); avoidance of areas where sound sources are located; and/or flight responses (e.g., pinnipeds flushing into water from haul-outs or rookeries). Pinnipeds may increase their haul-out time, possibly to avoid in-water disturbance (Caltrans, 2001, 2006). Since pile driving typically occurs for short periods of time, and because marine mammals present at the ferry terminal are likely acclimated to a loud environment and heavy urban and industrial usage of the area, it is unlikely to result in permanent displacement. Any potential impacts from pile driving activities could be experienced by individual marine mammals, but would not be likely to cause population level impacts, or affect the long-term fitness of the species.

The biological significance of many of these behavioral disturbances is difficult to predict, especially if the detected disturbances appear minor. However, the consequences of behavioral modification could be expected to be biologically significant if the change affects growth, survival, or reproduction. Significant behavioral modifications that could potentially lead to effects on growth, survival, or reproduction include:

- Drastic changes in diving/surfacing patterns (such as those thought to be causing beaked whale stranding due to exposure to military mid-frequency tactical sonar);
- Habitat abandonment due to loss of desirable acoustic environment; and
- Cessation of feeding or social interaction.

The onset of behavioral disturbance from anthropogenic sound depends on both external factors (characteristics of sound sources and their paths) and the specific characteristics of the receiving animals (hearing, motivation, experience, demography) and is difficult to predict (Southall *et al.,* 2007).

Auditory Masking

Natural and artificial sounds can disrupt behavior by masking, or interfering with, a marine mammal's ability to hear other sounds. Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher levels. Chronic exposure to excessive, though not high-intensity, sound could cause masking at particular frequencies for marine mammals that utilize sound for vital biological functions. Masking can interfere with detection of acoustic signals such as communication calls, echolocation sounds, and environmental sounds important to marine mammals. Therefore, under certain circumstances, marine mammals whose acoustical sensors or environment are being severely masked could also be impaired from maximizing their performance fitness in survival and reproduction. If the coincident (masking) sound were man-made, it could be potentially harassing if it disrupted hearing-related behavior. It is important to distinguish TTS and PTS, which persist after the sound exposure, from masking, which occurs during the sound exposure. Because masking (without resulting in TS) is not

associated with abnormal physiological function, it is not considered a physiological effect, but rather a potential behavioral effect.

The frequency range of the potentially masking sound is important in determining any potential behavioral impacts. Because sound generated from in-water pile driving is mostly concentrated at low frequency ranges, it may have less effect on high frequency echolocation sounds made by porpoises. However, lower frequency man-made sounds are more likely to affect detection of communication calls and other potentially important natural sounds such as surf and prey sound. It may also affect communication signals when they occur near the sound band and thus reduce the communication space of animals (e.g., Clark *et al.,* 2009) and cause increased stress levels (e.g., Foote *et al.,* 2004; Holt *et al.,* 2009).

Masking has the potential to impact species at population, community, or even ecosystem levels, as well as at individual levels. Masking affects both senders and receivers of the signals and can potentially have long-term chronic effects on marine mammal species and populations. Recent research suggests that low frequency ambient sound levels have increased by as much as 20 dB (more than three times in terms of SPL) in the world's ocean from pre-industrial periods, and that most of these increases are from distant shipping (Hildebrand, 2009). All anthropogenic sound sources, such as those from vessel traffic, pile driving, and dredging activities, contribute to the elevated ambient sound levels, thus intensifying masking. However, the sum of sound from the proposed activities is confined in an area of inland waters that is bounded by landmass; therefore, the sound generated is not expected to contribute to increased ocean ambient sound. The most intense underwater sounds in the proposed action are those produced by impact pile driving, although the proposed activity involves the striking of only relatively small diameter piles, meaning that source levels would be much lower than are typically produced by impact pile driving. Given that the energy distribution of pile driving covers a broad frequency spectrum, sound from these sources would likely be within the audible range of animals in the vicinity. Impact pile driving activity is relatively short-term, with rapid pulses occurring for short periods of time. The probability for impact pile driving resulting from this proposed action masking acoustic signals important to the behavior and survival of marine mammal species is likely to be negligible. Vibratory pile driving is also relatively short-term, producing sound from rapid oscillations. It is possible that vibratory pile driving resulting from this proposed action may mask acoustic signals important to the behavior and survival of marine mammal species, but the short-term duration and limited affected area, coupled with high levels of ambient noise in the action area, would result in a negligible impact from masking.

Airborne Sound Effects

Marine mammals that occur in the project area could be exposed to airborne sounds associated with pile driving that have the potential to cause harassment, depending on their distance from pile driving activities. Airborne pile driving sound would have less impact on cetaceans than pinnipeds because sound from atmospheric sources does not transmit well underwater (Richardson *et al.,* 1995); thus, airborne sound would only be an issue for hauled-out pinnipeds in the project area or those pinnipeds in the water but with their heads above water. Given the busy and loud environment within which the proposed activities would occur and the distance to the nearest pinniped haul-out site, it is unlikely that airborne sound from pile driving would cause behavioral responses similar to those discussed above in relation to underwater sound. However, anthropogenic sound could potentially cause pinnipeds to exhibit changes in their normal behavior, such as reduction in vocalizations, or cause them to temporarily abandon their habitat and move further from the source. Studies by Blackwell *et al.* (2004) and Moulton *et al.* (2005) indicate a tolerance or lack of response to unweighted airborne sounds as high as 112 dB peak and 96 dB rms.

Based on the available information, NMFS expects any impacts to marine mammal behavior to be temporary, Level B harassment, for two reasons: First, animals may avoid the area around the hammer, thereby reducing their exposure to elevated sound levels; and second, pile removal and driving does not occur continuously throughout the day. Depending on the size of the pile, the vibratory hammer would operate for about 15–20 minutes per pile and the impact hammer would operate for about 10 minutes per pile. The applicant anticipates about 6 days of pile removal and approximately 9 total hours of pile driving activity, averaging about two hours of active pile driving for each construction day. Disturbance to marine mammal behavior may be in the form of temporary avoidance of the pile driving location. In addition, because a vibratory hammer would be used for the majority of pile removal and installation, and the distance to the Level A harassment isopleth for the impact hammer is 22 m for cetaceans (180 dB) and 5 m for pinnipeds (190 dB), marine mammal injury or mortality is not likely. Impact pile driving would cease if a marine mammal (including pinnipeds) is observed nearing or within the 180 dB isopleth. For these reasons, NMFS expects any changes to marine mammal behavior to be temporary, site-specific, and has preliminarily determined will result in a negligible impact to affected species and stocks.

Anticipated Effects on Habitat

WSF has run the state ferry system since the 1950s. Since acquiring control of the most used ferry system in the world, WSF has developed and routinely uses the best guidance available (e.g., best management practices (BMPs) and mitigation measures) to avoid and minimize (to the greatest extent possible) impacts to the environment, ESA species, designated critical habitats, and species protected under the MMPA. To protect habitat, WSF must adhere to the measures outlined in the Implementing Agreement (IA) with the Washington State Department of Ecology (Ecology)/ WSDOT dated February 13, 1998 (to be superseded by any agreement that is more current that the 1998 IA). Precautionary measures such as using bubble curtains to protect salmonids from injurious noise levels, protecting eelgrass beds, preparation and implementation of a Spill Prevention, Control, and Countermeasures (SPCC) plan, compliance with appropriate water quality standards, ensuring no leakage of petroleum products, fresh cement, lime or concrete, chemicals, or other toxic or deleterious materials into terminal waters, proper disposal of wash water resulting from washdown of equipment or work areas, and minimizing and confining use of equipment to defined corridors where beach access is required will aid in minimizing direct and indirect impacts to marine mammal habitat. More information on habitat related protection measures can be found in WSF's application.

Marine mammals in the action area primarily feed on salmonids and other fishes present in Puget Sound. Use of a bubble curtain will prevent injurious level sounds from entering into the aquatic environment. Popper *et al.* (2006) recommend a dual criterion of 208 dB (peak) and 187 dB re: 1 microPa^2-s as interim guidance to

protect fish from physical injury and mortality for a single pile driving impact. During a test pile study at the Mukilteo ferry terminal, none of the single strike SEL values calculated on the absolute peak pile strike exceeded the proposed threshold of 187 dB SEL and none of the calculated cumulative SEL values exceeded the benchmark of 220 dB SEL based on the total number of pile strikes for each individual pile and total pile strikes for the entire day (Laughlin, 2007). Mitigation measures also reduce noise pollution released into marine mammal habitat. In addition, pile driving is not occurring continuously and at each site would occur for only 2 hours per day for a maximum of 11 days. Based on the intermittent nature of pile driving, limited pile driving days/hours, and mitigation measures employed by WSF, NMFS has preliminarily determined that pile driving for ferry terminal repair and maintenance will not adversely impact marine mammal habitat.

Installation and removal of piles will result in short-term, site-specific increase in turbidity. In general, turbidity is the amount of particulate matter suspended in the water. High levels of turbidity can reduce the amount of light reaching lower depth, which can inhibit the growth of aquatic plants, and affect the ability of fish gills to absorb dissolved oxygen. Cetaceans are not expected to be close enough to the ferry terminal to experience turbidity and any pinnipeds that use the area as a transit corridor could detect in-water activities that create turbidity and avoid the area. Removal of the 40 creosote-treated wood piles will result in the temporary re-suspension of sediment containing contaminants often associated with creosote, such as polycyclic aromatic hydrocarbons (PAHs) that cause cancers and mutations. However, the actual removal of the wood piles from the marine environment has long-term benefits due to improvements in water and sediment quality.

In conclusion, the impacts on marine mammal habitat from the proposed project are likely to be in the form of underwater noise, temporary increase in turbidity levels, and changes in prey species distribution. The impact of habitat loss during construction due to noise or water quality (turbidity) is expected to be minimal. Marine mammals that utilize habitat in the vicinity of the ferry terminal are primarily transiting through the area; however, a harbor seal haul-out site is located 3 km away. Any impacts to prey species during construction will be short-term and localized. Given the large numbers of fish and other prey species in Puget Sound, the short-term and localized effects on fish species, the mitigation measures employed, and the BMPs designed to protect salmonids, the proposed project is not expected to have measurable effects on the distribution or abundance of marine mammal prey species.

Proposed Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses.

The applicant has proposed the following mitigation measures to minimize adverse impacts to marine mammals:

Temporal Restrictions

The Washington Department of Fish and Wildlife recommends an in-water work window of July 16 through February 15, annually. This work window was designed to avoid in-water work when ESA-listed salmonids are most likely to be present, but may also be beneficial to marine mammals that prey on salmon. Actual construction activities are planned to take place from December 2012 through February 15, which would ensure these activities do not coincide with salmonid use of the action area.

Use of Noise Attenuation During Pile Driving With Impact Hammer

To the extent possible, a vibratory hammer would be used to drive all piles. It is anticipated that an impact hammer will be necessary to ''proof'' five 30-inch hollow steel piles. During impact pile driving, a bubble curtain will be used as an attenuation device to reduce hydroacoustic sound levels and avoid the potential for injury. In the event that hydroacoustic monitoring during in-water construction activities involving impact pile driving indicates that the proper attenuation is not being achieved, the proposed harassment and exclusion zones (described next) will be modified to account for the reduced attenuation.

Establishment of an Exclusion Zone

During impact pile driving, WSF would establish a marine mammal exclusion zone of 22m around each pile to avoid exposure to sounds at or above 180 dB. The 190 dB (pinniped) injury isopleth is contained within the 22m exclusion zone. The exclusion zone would be monitored during all impact pile driving to ensure that no marine mammals enter the 22m radius. The purpose of this area is to prevent Level A harassment (injury) of any marine mammal species. An exclusion zone for vibratory pile driving is unnecessary to prevent Level A harassment, as source levels would not exceed the Level A harassment threshold.

Pile Driving Shut Down and Delay Procedures

Monitoring will be initiated 30 minutes prior to the commencement of pile driving activities. If a protected species observer sees a marine mammal within or approaching the exclusion zone prior to start of impact pile driving, the observer would notify the on-site construction manager (or other authorized individual), who would then be required to delay pile driving until the marine mammal has moved outside of the exclusion zone or if the animal has not been resighted within 15 minutes. If a marine mammal is sighted within or on a path toward the exclusion zone during pile driving, pile driving would cease until that animal has cleared and is on a path away from the exclusion zone or 15 minutes has lapsed since the last sighting.

Soft-Start Procedures

A ''soft-start'' technique would be used at the beginning of each pile installation to allow any marine mammal that may be in the immediate area to leave before the pile hammer reaches full energy. For vibratory pile driving, the soft-start procedure requires contractors to initiate noise from the vibratory hammer for 15 seconds at 40–60 percent reduced energy followed by a 1-minute waiting period. The procedure would be repeated two additional times before full energy may be achieved. For impact hammering, contractors would be required to provide an initial set of three strikes from the impact hammer at 40 percent energy, followed by a 1-minute waiting period, then two subsequent three-strike sets.

Each pile will take approximately 20 minutes to install, followed by 20 minutes of monitoring for the presence of marine mammals. Marine mammal monitoring will also be required for 30 minutes before installing subsequent piles. During pile driving activities, these time periods will overlap; therefore, if the driving of a new pile begins before the 50-minute (or less) total observation periods is complete,

and no marine mammals are observed within the exclusion zone, a soft-start will not be required. However, if the total 50-minute observation period has lapsed before beginning the next pile, a soft-start will be required.

In-Water Pile Driving Weather Delays

Should environmental conditions (e.g., fog, high sea state, poor lighting) obscure the harassment zone, pile driving will be suspended until visibility returns.

NMFS has carefully evaluated the applicant's proposed mitigation measures and considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another: (1) The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals; (2) the proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and (3) the practicability of the measure for applicant implementation, including consideration of personnel safety, and practicality of implementation.

Based on our evaluation of the applicant's proposed measures, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable adverse impacts on marine mammals species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth ''requirements pertaining to the monitoring and reporting of such taking''. The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for IHAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present.

WSF has developed a monitoring plan that includes monitoring the harassment and exclusion zones during pile driving and collecting sighting data for each marine mammal species observed during in-water construction activities. To implement this plan, qualified marine mammals observers will be on-site at all times during pile removal and installation. WSF must designate at least one biologically-trained, on-site individual, approved in advance by NMFS, to monitor the area for marine mammals 30 minutes before, during, and 20 minutes after all impact pile driving activities and call for shut down if any marine mammal is observed within or approaching the designated exclusion zone (preliminarily set at 22m). In addition, at least two NMFS-approved protected species observers would conduct behavioral monitoring at least two days per week to estimate take and evaluate the behavioral impacts pile driving has on marine mammals out to the Level B harassment isopleths. Note that for impact hammering, this distance is about 465 m. For vibratory hammering, this estimated distance is about 6.8 km. Protected species observers would be provided with the equipment necessary to effectively monitor for marine mammals (for example, high-quality binoculars, spotting scopes, compass, and range-finder) in order to determine if animals have entered into the exclusion zone or Level B harassment isopleth and to record species, behaviors, and responses to pile driving.

WSF also plans to conduct acoustic monitoring during vibratory pile installation of 24-inch and 80-inch steel piles. Acoustic monitoring during timber pile removal and installation and removal of 30-inch steel piles will not be conducted because data from these activities was collected in 2010 during the Port Townsend test pile driving project (Laughlin, 2010; Stockham *et al.,* 2010) and during a 2010 dolphin replacement project in Port Townsend.

Protected species observers would be required to submit a report to NMFS within 120 days of expiration of the IHA or completion of pile driving, whichever comes first. The report would include data from marine mammal sightings (such as species, group size, and behavior), any observed reactions to construction, distance to operating pile hammer, and construction activities occurring at time of sighting.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Based on the application and subsequent analysis, the impact of the described pile driving operations may result in, at most, short-term modification of behavior by small numbers of marine mammals within the action area. Marine mammals may avoid the area or temporarily alter their behavior at time of exposure.

Current NMFS practice regarding exposure of marine mammals to anthropogenic noise is that in order to avoid the potential for injury (PTS), cetaceans and pinnipeds should not be exposed to impulsive sounds of 180 and 190 dB or above, respectively. This level is considered precautionary as it is likely that more intense sounds would be required before injury would actually occur (Southall *et al.,* 2007). Potential for behavioral harassment (Level B) is considered to have occurred when marine mammals are exposed to sounds at or above 160 dB for impulse sounds (such as impact pile driving) and 120 dB for non-pulse noise (such as vibratory pile driving), but below the aforementioned thresholds. These levels are also considered precautionary.

Based on empirical measurements taken by WSDOT and Caltrans (which are presented in the *Description of Specified Activities* section above), estimated distances to NMFS' current threshold sound levels from pile driving during the proposed construction activities are presented in Table 4. The 22 m distance to the Level A harassment threshold provides protected species observers a reasonably sized area to monitor during impact pile driving. Monitoring this zone would prevent marine mammals from being exposed to sound levels that reach the Level A harassment threshold.

TABLE 4—DISTANCES TO NMFS' MARINE MAMMAL HARASSMENT THRESHOLDS

[Without attenuation]

	Level A (190/180 dB)	Level B harassment (160 dB)	Level B harassment (120 dB)
Impact hammering	22 m	465 m	n/a
Vibratory hammering	n/a	n/a	6.8 km

For each of the 11 marine mammal species that may occur within the proposed action area, incidental take was determined by estimating the likelihood of a marine mammal being present with the Zone of Influence (ZOI) during pile driving activities (Table 5). Typically, incidental take is estimated by multiplying the area of the ZOI by the local animal density. This provides an estimate of the number of animals that might occupy the ZOI at any time; however, there are no density estimates for marine mammal populations in Puget Sound. Therefore, the take requests were estimated using local marine mammal data sets (e.g., Orca Network, state and federal agencies), opinions from state and federal agencies, and incidental observations from WSF biologists. Expected marine mammal presence was determined by past observation and general abundance near the Port Townsend ferry terminal during the construction work window. Distances to the applicable NMFS thresholds for Level A and Level B harassment take for each type of pile (vibratory and impact) were presented in Section 1.6.6 in the IHA application. These distances were used to calculate the various ZOIs or area ensonified by sounds at or greater than threshold. For example, for the Level A threshold, the estimated distance to the 180 dB isopleth was 22 m for impact pile driving, which equates to a 1,520 square meter ZOI. The distance to the 160 dB isopleths during impact pile driving was estimated at 465 m, which equates to a 0.45 square km (only half the area is water). The distance to the 120 dB threshold for vibratory pile driving was estimated at 6.8 km, which equates to a ZOI of approximately 42 square km in water. Both of these areas will be monitored during construction to report actual marine mammal takes by Level B harassment.

TABLE 5—POPULATION ABUNDANCE ESTIMATES, TOTAL PROPOSED TAKE, AND THE PERCENTAGE OF THE POPULATION OR STOCK THAT MAY BE EXPOSED TO SOUNDS RESULTING IN LEVEL B HARASSMENT DURING THE PROPOSED FERRY TERMINAL REPLACEMENT PROJECT

Species	Abundance	Proposed take authorization	Percentage of population or stock
Gray Whale	20,000	2	0.01
Humpback Whale	1,100	2	0.18
Minke Whale	1,000	2	0.2
Killer Whale	[1] 314	30	[1] 9.5
	[2] 86		[2] 35
Harbor Porpoise	10,682	50	0.5
Dall's Porpoise	57,000	9	0.02
Pacific White-sided Dolphin	25,233	10	0.04
Harbor Seal	14,612	45	0.3
California Sea Lion	3,000–5,000	18	0.6–.36
Northern Elephant Seal	101,000	5	0.005
Steller Sea Lion	1,000–2,000	35	3.5–1.75

[1] (Transient).
[2] (Southern Resident).

Airborne noises can affect pinnipeds, especially resting seals hauled out on rocks or sand spits. The airborne 90 dB Level B threshold for hauled out harbor seals was estimated at 81 m, and the airborne 100 dB Level B threshold for other pinnipeds was estimated at 17 m. No haulout sites are within the disturbance threshold distances; the nearest harbor seal haulout is approximately 3 km from the ferry terminal. In addition, the airborne noise harassment ZOI is smaller than both the impact and vibratory hammer underwater noise harassment ZOIs, and therefore is encompassed in the underwater noise take estimates.

Surveys conducted during the fall/winter of 2009/2010 by biologists contracted by the Snohomish Public Utility District recorded about 10 harbor seals per day (Tollit *et al.,* 2010). The applicant estimates that the total number of pile driving and removal hours would not exceed 21.5 hours, or about 3 eight-hour work days; therefore, the estimated number of seals that could be harassed would be 30. For conservative purposes, based on their predilection for embayments like Port Townsend Bay, WSF requests authorization to harass 45 harbor seals. The survey conducted by Tollit *et al.* (2010) also recorded sightings of California sea lions passing Admiralty Head (located directly across Admiralty Inlet from Port Townsend) and reported six animals over the course of 88 days between October 2009 and February 2010. Similarly, the Washington Department of Fish and Wildlife recorded eight California sea lions in Admiralty Inlet during vessel-based surveys in Puget Sound between 1992 and 2004. Based on the results from these surveys, WSF estimates that up to six California sea lions could enter the 160 dB harassment zone per day, or a total of 18 during the 3 eight-hour work days that would involve in-water pile installation and removal activities.

These surveys did not, however, report any sightings of northern elephant seals in Admiralty Inlet. Wintering elephant seals haul out on Protection Island, which is 12 km to the west of Port Townsend, and Smith and Minor Islands 24 km to the north, but may forage as far south as Admiralty Inlet. Therefore, it is possible that elephant seals could enter Port Townsend Bay during the proposed activity at the ferry terminal, and WSF believes that a couple northern elephant seals could be exposed to sound from pile driving and removal activities each day, especially since they are capable of spending prolonged periods below the water where they cannot be detected. Based on these considerations, WSF requests a total of 5 northern elephant seal takes by Level B harassment during for the three eight-hour work days that involve pile driving and removal. Among pinnipeds, Steller sea lions are relatively common in Admiralty Inlet during the winter as they move between the Strait of Juan de Fuca and Puget Sound; hauling out at Craven Rock east of Marrowstone Island, or on channel buoys. The survey conducted by Tollit *et al.* (2010) recorded nearly 800 Steller sea lions over 88 days, or about 9 Steller sea lions per day. Considering that pile driving activities are expected to take about three work days to complete, WSF estimates that 27 Steller sea lions could be exposed to sound resulting in Level B harassment. However, for conservative purposes, WSF requests authorization for 35 Steller sea lion takes by Level B harassment to account for variations in Steller sea lion distribution.

Take estimates for cetaceans also relied on recent survey data because density estimates for the inland waters of Washington are not available. Harbor porpoises are frequently observed in Admiralty Inlet, Tollit *et al.* (2010) recorded over 1,500 harbor porpoises during 88 survey days between October 2009 and February 2010, or approximately 17 per day. WSF estimates that 21.5 hours of pile driving equates to about three work days, and approximately 50 harbor porpoises may be exposed to sound levels resulting in Level B harassment during this period. The survey by Tollit *et al.* (2010) did not positively identify any Dall's porpoises, and their preference for deeper waters and spatial distribution in Puget Sound make it unlikely that Dall's porpoises transiting through Admiralty Inlet would regularly enter the shallow waters of Port Townsend Bay; however, it is possible for Dall's porpoises to approach close enough to the proposed pile-driving activity to be exposed to sound resulting in Level B harassment. Therefore, based on an average winter group size of three animals (PSAMP data), WSF estimates that three Dall's porpoise may enter the Level B harassment zone three times during pile driving activities, and request a total of nine Dall's porpoise takes by Level B harassment. The inland distribution of Pacific white-sided dolphins is largely limited to the Strait of Juan de Fuca and Haro Strait on the west side of the San Juan Islands. Because these dolphins appear confined to the deeper channels of the inland waters of Washington State, they may occur in Admiralty Inlet, but are unlikely to enter the shallower waters of Port Townsend Bay. In addition, these animals move to warmer waters in the fall and winter and may be entirely absent from the area during the proposed ferry terminal replacement project. Without better evidence on the reports of Pacific white-sided dolphins sighted in Admiralty Inlet during the winter or on the likelihood of these dolphins occurring in the vicinity of the ferry terminal, WSF requests 10 takes of Pacific white-sided dolphins by Level B harassment, which is based on their average group size exposed to one day of pile driving activity. Similar to Pacific white-sided dolphins, killer whales are not expected to be present near Port Townsend during the proposed fall/winter activity period. Transient killer whale rarely occur in Puget Sound, and Southern Resident killer whales spend much of the winter in the vicinity of the Fraser River; however, based on the unpredictable nature of transient movements and past records of Southern Resident sightings, it is possible that a pod of killer whales could pass through Admiralty Inlet and be within the Level B harassment zone. For example, Tollit *et al.* (2010) did report three sightings of Southern Resident killer whales passing Admiralty Head in October 2009, and one group of transients passed by in December 2009 (neither group entered Port Townsend Bay). Therefore, WSF requests 30 killer whale takes by Level B harassment, which equates to one group of three transients plus the 27 animals that comprise J pod—the Southern Resident pod most likely to occur in Puget Sound during the proposed activity period.

The IHA application also request takes of three species of baleen whale—gray whale, humpback whale, and minke whale. Gray whales generally enter the inland waters of Washington from March through May and sightings during the fall and winter are infrequent. However, because gray whales that enter Puget Sound tend to localize around Admiralty Inlet and Possession Sound, the possibility of a gray whale occurring in the vicinity of Port Townsend Bay during the proposed pile driving activity cannot be discounted. Therefore, based on the average gray whale group size, WSF requests two gray whale takes by Level B harassment. Humpback whales are also occasionally observed in Puget Sound, but most sightings occur during the summer months and nearly all recent winter and fall sightings have been confined to the vicinity of the San Juan Islands. Although humpback whales are not expected in the vicinity of Port Townsend Bay during the proposed action, the possibility of a sighting cannot be fully discounted. Based on the average group size, WSF requests two humpback whale takes by Level B harassment. Minke whales are also very rare in Puget Sound during the winter; however, of the few reported sightings in Puget Sound, most have occurred in the vicinity of Admiralty Inlet. Given the rarity of these animals in winter, WSF only anticipates that minke whales would make an occasional transit, if any, of Admiralty Inlet during the proposed activity with the remote possibility of one or two whales entering Port Townsend Bay. Therefore, based on these considerations, WSF requests two minke whale takes by Level B harassment.

To summarize, WSF requests takes of 45 harbor seals, 18 California sea lions, 5 northern elephant seals, 35 Steller sea lions, 50 harbor porpoises, 9 Dall's porpoises, 10 Pacific white-sided dolphins, 30 killer whales, 2 gray whales, 2 humpback whales, and 2 minke whales. These numbers do not take the proposed mitigation measures into consideration, and are likely overestimates representing the maximum number of animals expected to occur within the Level B harassment isopleth. The actual number of animals that may be harassed is likely to be less.

Negligible Impact and Small Numbers Analysis 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 number of factors which

include, but are not limited to, number of anticipated injuries or mortalities (none of which would be authorized here), number, nature, intensity, and duration of Level B harassment, and the context in which takes occur.

Marine mammals would not be exposed to activities or sound levels which would result in injury (PTS), serious injury, or mortality. Pile driving would occur in shallow coastal waters of Port Townsend Bay. The action area (waters around the ferry terminal) is not considered significant feeding or reproductive habitat for pinnipeds. The closest haul-out is 3 km away, which is outside the project area's largest harassment zone for airborne noise. Any marine mammals—most likely pinnipeds—approaching the action area would likely be traveling or opportunistically foraging. The amount of take WSF requested for each species, and NMFS proposes to authorize, is considered small (less than five percent) relative to the estimated populations or stocks of 14,612 Pacific harbor seals, 238,000 California sea lions, 101,000 northern elephant seals, 48,500 Steller sea lions, 10,632 harbor porpoises, 57,000 Dall's porpoises, 25,233 Pacific white-sided dolphins, 20,000 gray whales, 1,100 humpback whales, and 1,000 minke whales. The request of up to 30 takes of killer whales by Level B harassment represents a larger percentage of the local killer whale population; this number was estimated because Southern Resident killer whales travel in large groups. Although killer whales are unlikely to occur in the vicinity of the ferry terminal during pile driving, if they were to appear, it may be as a full group or pod, which necessitates the need for a larger number of takes requested. Marine mammals may be temporarily impacted by pile driving noise. However, marine mammals are expected to avoid the area to some degree, thereby potentially reducing exposure and impacts. Pile driving activities are expected to occur for approximately 4 weeks. Although marine mammal prey species may be affected by pile driving activities, any impacts would be short in duration and limited to the immediate vicinity of the ferry terminal. NMFS expect that any fish that exhibit behavioral responses (i.e., avoidance) while in-water construction activities occur would resume normal behavior following the cessation of the activity. Furthermore, Puget Sound is a highly populated and industrialized area, so animals are likely tolerant or habituated to anthropogenic disturbance, including low level vibratory pile driving operations, and noise from other anthropogenic sources (such as vessels) may mask construction related sounds. There are no known areas within Port Townsend Bay where any of these species concentrate specifically for breeding or feeding. Based on all the information considered, there is no anticipated effect on annual rates of recruitment or survival of affected marine mammals.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS preliminarily determines that the proposed pile removal and installation would result in the incidental take of small numbers of marine mammals, by Level B harassment only, and that the total taking would have a negligible impact on the affected species or stocks.

Impact on Availability of Affected Species for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action.

Endangered Species Act (ESA)

The Southern Resident killer whale is listed as endangered under the ESA and the eastern stock of Steller sea lion is listed as threatened. Both species may occur within the action area. NMFS is in the process of consulting internally on the issuance of an IHA under section 101(a)(5)(A) of the MMPA for the takes of Southern Resident killer whales and Steller sea lions incidental to the proposed activity. ESA consultation will be concluded prior to a determination on the issuance of a final IHA.

National Environmental Policy Act (NEPA)

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), as implemented by the regulations published by the Council on Environmental Quality (40 CFR parts 1500–1508), and NOAA Administrative Order 216–6, NMFS is preparing an Environmental Assessment (EA) to consider the direct, indirect, and cumulative effects to marine mammals and other applicable environmental resources resulting from issuance of a one-year IHA and the potential issuance of additional authorizations for incidental harassment for the ongoing project. Upon completion, this EA will be available on the NMFS Web site listed in the beginning of this document.

Dated: June 27, 2012.

Helen M. Golde,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC063

Incidental Taking of Marine Mammals; Taking of Marine Mammals Incidental to the Explosive Removal of Offshore Structures in the Gulf of Mexico

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

ACTION: Notice; issuance of a Letter of Authorization (LOA).

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) and implementing regulations, notification is hereby given that NMFS has issued a one-year LOA to take marine mammals incidental to the explosive removal of offshore oil and gas structures (EROS) in the Gulf of Mexico.

DATES: This authorization is effective from July 1, 2012 through June 30, 2013.

ADDRESSES: The application and LOAs are available for review by writing to Tammy Adams, Acting Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3235 or by telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**), or online at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Howard Goldstein or Jolie Harrison, Office of Protected Resources, NMFS, 301–427–8401.

SUPPLEMENTARY INFORMATION: Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce (who has delegated the authority to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by United States citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region, if certain findings are made and

regulations are issued. Under the MMPA, the term ''take'' means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture, or kill any marine mammal.

Authorization for incidental taking, in the form of annual LOAs, may be granted by NMFS for periods up to five years if NMFS finds, after notice and opportunity for public comment, that the total taking over the five-year period will have a negligible impact on the species or stock(s) of marine mammals, and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). In addition, NMFS must prescribe regulations that include permissible methods of taking and other means of effecting the least practicable adverse impact on the species and its habitat (i.e., mitigation), and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating rounds, and areas of similar significance. The regulations also must include requirements pertaining to the monitoring and reporting of such taking.

Regulations governing the taking of marine mammals incidental to EROS were published on June 19, 2008 (73 FR 34875), and remain in effect through July 19, 2013. For detailed information on this action, please refer to that **Federal Register** notice. The species that applicants may take in small numbers during EROS activities are bottlenose dolphins (*Tursiops truncatus*), Atlantic spotted dolphins (*Stenella frontalis*), pantropical spotted dolphins (*Stenella attenuata*), Clymene dolphins (*Stenella clymene*), striped dolphins (*Stenella coeruleoalba*), spinner dolphins (*Stenella longirostris*), rough-toothed dolphins (*Steno bredanensis*), Risso's dolphins (*Grampus griseus*), melon-headed whales (*Peponocephala electra*), short-finned pilot whales (*Globicephala macrorhynchus*), and sperm whales (*Physeter macrocephalus*). NMFS received requests for a LOA from ExxonMobil Production Company (ExxonMobil) for activities covered by EROS regulations.

Reporting

ExxonMobil has not used explosives for any rig structure removal operations under the 2011 to 2012 LOA.

Pursuant to these regulations, NMFS has issued an LOA to ExxonMobil. Issuance of the LOA is based on a finding made in the preamble to the final rule that the total taking over the five-year period (with monitoring, mitigation, and reporting measures) will have a negligible impact on the affected species or stock(s) of marine mammals and will not have an unmitigable adverse impact on subsistence uses. NMFS will review reports to ensure that the applicant is in compliance with meeting the requirements contained in the implementing regulations and LOA, including monitoring, mitigation, and reporting requirements.

Dated: June 25, 2012.

Helen M. Golde,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–16148 Filed 7–2–12; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Agency Information Collection Activities; Proposed Information Collection; Comment Request

ACTION: Submission for OMB Review; Comment Request.

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

SUMMARY: The Committee is submitting to the Office of Management and Budget for their review the following collection as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Committee Form 403—Annual Certification—Qualified Nonprofit Agency Serving People Who Are Blind.

Committee From 404—Annual Certification—Qualified Nonprofit Agency Serving People Who Are Severely Disabled.

DATES: Interested persons are invited to submit comments about the collection on or before July 28, 2009. The agency's 60-day notice informing the public of the intent to renew this form with no changes was published in the **Federal Register** on March 7, 2012 on page 13563–13564.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Jasmeet K. Seehra, OMB Desk Officer, by any of the following two methods within 30 days from the date of publication in the **Federal Register**: (1) By fax to: (202) 395–6974, Attention: Ms. Jasmeet K. Seehra, OMB Desk Office; and (2) Electronically by email to: *Jasmeet_K._Seehra@omb.eop.gov.*

Requests for copies of documents pertaining to the collection should be addressed to Committee for Purchase From People Who Are Blind or Severely Disabled, Attention: Louis Bartalot, Director of Compliance, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway Arlington, VA 22202–3259 or emailed to *lbartalot@abilityone.gov*.

SUPPLEMENTARY INFORMATION: The Committee has two annual certification forms, one for nonprofit agencies serving people who are blind (Committee Form 403, OMB Control Number 3037–0001) and one for nonprofit agencies primarily serving people who have other severe disabilities (Committee Form 404, OMB Control Number 3037–0002). The information included on the forms is required to ensure that nonprofit agencies that participate in the Committee's program meet the requirements of the Javits-Wagner-O'Day Act (JWOD), 41 U.S.C. 8105–8506. No comments were received in response to the agency's 60-day notice informing the public of the intent to renew this form with minor changes, which was published in the **Federal Register** on March 7, 2012 on page 13563–13564.

Title: Annual Certification—Qualified Nonprofit Agency Serving People Who Are Blind, Committee Form 403.

OMB Number: 3037–0001.

Agency Number: 3037.

Frequency: Annually.

Affected Public: Nonprofit agencies serving people who are blind that participate in the AbilityOne Program.

Number of Respondents: 70.

Estimated Time per Respondent: 6 hours.

Total Burden Hours: 420.

Total Annual Costs: $12,600.

Title: Annual Certification—Qualified Nonprofit Agency Serving People Who

Are Severely Disabled, Committee Form 404.

OMB Number: 3037–0002.

Agency Number: 3037.

Frequency: Annually.

Affected Public: Nonprofit agencies serving people with severe disabilities that participate in the AbilityOne Program.

Number of Respondents: 538.

Estimated Time per Respondent: 6 hours.

Total Burden Hours: 3,228.

Total Annual costs: $96,840.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2012–16192 Filed 7–2–12; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2012–OS–0080]

Proposed Collection; Comment Request

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Defense Logistics Agency (DLA) announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the reinstated information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by September 4, 2012.

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

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

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

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Defense Logistics Agency Headquarters, Attn: Mr. Thomas Reinard, DLA Installation Support, 8725 John J. Kingman Rd., Ft. Belvoir, VA 22060–6221; or call (703)767–5419.

Title; Associated Form; and OMB Number: Defense Logistics Agency Police Record Management System; OMB Control Number 0704–TBD.

Needs and Uses: DLA police require an integrated police records management system, PoliceCenter (POLC), to automate and standardize all of the common record keeping functions of DLA police. POLC shall provide records management of police operations, including property, incident reports, blotters, qualifications, dispatching, and other police information management considerations. The tool will allow authorized users the capability to collect, store, and access sensitive law enforcement information gathered by Police Officers. The tool will allow DLA Police to automate many police operational functions and assist with crime rate and trend analysis.

Affected Public: Persons who are involved in any law enforcement or security matter on DLA property, which requires DLA Police response or contact.

Annual Burden Hours: 225.

Number of Respondents: 450.

Responses per Respondent: 1.

Average Burden per Response: 30 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

This system contains information on persons who are involved in any law enforcement or security matter on DLA property, which requires DLA Police response or contact. Law Enforcement matters include, but are not limited to: Traffic accidents, illegal parking, suspicious activity, response to calls for service, criminal activity, alarm activations, medical emergencies, witnesses, victims, or suspect in a police matter, or any other situation which warrants police contact as outlined in DoD Directives and DLA Policy.

This system contains the following categories of records: Individuals name, address and telephone number, social security number (not in all matters), driver's license number, Reports of Preliminary Inquiry, Criminal Information Reports, Reports of Investigation, Police Incident Reports, Crime Vulnerability Assessments, statements of witnesses, subjects, and victims, photographs, data collection reports, and other related papers by DLA Police Officers, Federal, State, and local law enforcement and investigative agencies.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To Federal, State, and local agencies having jurisdiction over or investigative interest in the substance of the investigation, for corrective action, debarment, or reporting purposes.

To Government contractors employing individuals who are subjects of an investigation.

To DLA contractors or vendors when the investigation pertains to a person they employ or to a product or service they provide to DoD when disclosure is necessary to accomplish or support corrective action.

Dated: June 27, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–16145 Filed 7–2–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Business Board (DBB); Notice of Meeting

AGENCY: Department of Defense, 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 the following Federal advisory committee meeting of the Defense Business Board (DBB).

DATES: The public meeting of the Defense Business Board (hereafter referred to as ''the Board'') will be held on Thursday, July 19, 2012. The meeting will begin at 9:45 a.m. and end at 11:00 a.m. (Escort required; See guidance in **SUPPLEMENTARY INFORMATION**, ''Public's Accessibility to the Meeting.'')

ADDRESSES: Room 3E863 in the Pentagon, Washington, DC (escort required; See guidance in **SUPPLEMENTARY INFORMATION**, ''Public's Accessibility to the Meeting.'')

FOR FURTHER INFORMATION CONTACT: *Committee's Designated Federal Officer:* The Board's Designated Federal Officer is Phyllis Ferguson, Defense Business Board, 1155 Defense Pentagon, Room 5B1088A, Washington, DC 20301–1155, Phyllis.Ferguson@osd.mil, 703–695–7563. For meeting information please

contact Ms. Debora Duffy, Defense Business Board, 1155 Defense Pentagon, Room 5B1088A, Washington, DC 20301–1155, *Debora.Duffy@osd.mil,* (703) 697–2168.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: At this meeting, the Board will deliberate the findings and draft recommendations from the ''Leveraging Public-Private Collaboration to Augment the Department of Defense's Mission'' Task Group Study.'' The mission of the Board is to examine and advise the Secretary of Defense on overall DoD management and governance. The Board provides independent advice which reflects an outside private sector perspective on proven and effective best business practices that can be applied to DoD.

Meeting Agenda:

9:45 a.m.–11:00 a.m.

Task Group Outbrief and Board Deliberations on *''Leveraging Public-Private Collaboration to Augment the Department of Defense's Mission''*

Availability of Materials for the Meeting: A copy of the agenda and the terms of reference for the Task Group study may be obtained from the Board's Web site at *http://dbb.defense.gov/meetings.shtml.* Copies will also be available at the meeting.

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. Seating is limited and is on a first-come basis. All members of the public who wish to attend the public meeting must contact Ms. Debora Duffy at the number listed in this notice no later than noon on Wednesday, July 11 to register and make arrangements for a Pentagon escort, if necessary. Public attendees requiring escort should arrive at the Pentagon Metro Entrance with sufficient time to complete security screening no later than 9:15 a.m. on July 19. To complete security screening, please come prepared to present two forms of identification and one must be a pictured identification card.

Special Accommodations: Individuals requiring special accommodations to access the public meeting should contact Ms. Duffy at least five (5) business days prior to the meeting so that appropriate arrangements can be made.

Procedures for Providing Public Comments

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written comments to the Board about its mission and topics pertaining to this public meeting.

Written comments should be received by the DFO at least five (5) business days prior to the meeting date so that the comments may be made available to the Board for their consideration prior to the meeting. Written comments should be submitted via email to the address for the DFO given in this notice in either Adobe Acrobat or Microsoft Word format. Please note that since the Board operates under the provisions of the Federal Advisory Committee Act, as amended, all submitted comments and public presentations will be treated as public documents and will be made available for public inspection, including, but not limited to, being posted on the Board's Web site.

Dated: June 27, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–16161 Filed 7–2–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2012–OS–0081]

Privacy Act of 1974; System of Records

AGENCY: Defense Intelligence Agency, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Defense Intelligence Agency proposes to alter a system in its existing inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective on August 2, 2012 unless comments are received which result in a contrary determination.

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

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

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

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

FOR FURTHER INFORMATION CONTACT: Ms. Theresa Lowery at Defense Intelligence Agency, DAN 1–C, 600 McDill Blvd., Washington, DC 20340–0001, or by phone at (202) 231–1193.

SUPPLEMENTARY INFORMATION: The Defense Intelligence Agency notices for systems of records subject to the Privacy Act of 1974, 5 U.S.C. 552a, as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**. The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on June 1, 2012, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals, ''dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: June 28, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

LDIA 0140

SYSTEM NAME:

Passports and Visas (October 13, 2009, 74 FR 52462).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with ''Defense Intelligence Agency, 200 MacDill Blvd., Washington, DC 20340–0001.''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''Civilian employees, active duty military assignees and contractors assigned to DIA who require a passport or Visa for official travel.''

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Name, address, phone number, place of birth, date of birth, Social Security Number (SSN), full address, hair color, eye color, height, weight, parents names, parents dates of birth, parents places of birth, employer and emergency contact as

required by the U.S. Department of State for obtaining passports, passports themselves and visa applications.''

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Operations Management Branch, Attn: DAL–2B, Defense Intelligence Agency, 200 MacDill Blvd., Washington, DC 20340–0001.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Freedom of Information Act Office (DAN–1A/FOIA), Defense Intelligence Agency, 200 MacDill Blvd., Washington, DC 20340–0001. Individuals should provide their full name, current address, and telephone number.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Freedom of Information Act Office (DAN–1A/FOIA), Defense Intelligence Agency, 200 MacDill Blvd., Washington, DC 20340–0001.

Individuals should provide their full name, current address, and telephone number.''

* * * * *

[FR Doc. 2012–16264 Filed 7–2–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Public Meetings for the Naval Air Station Key West Airfield Operations Draft Environmental Impact Statement

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969 and regulations implemented by the Council on Environmental Quality Regulations (40 Code of Federal Regulations parts 1500–1508), the Department of the Navy (DoN) has prepared and filed with the U.S. Environmental Protection Agency a Draft Environmental Impact Statement (EIS) evaluating the potential environmental effects associated with supporting and conducting continued airfield operations at Naval Air Station (NAS) Key West. Specifically, the Draft EIS addresses the environmental effects of maintaining current/baseline training operations, supporting airfield operations by new types of aircraft, and modifying airfield operations as necessary in support of the Fleet Response Training Plan.

With the filing of the Draft EIS, the DoN is initiating a 45-day public comment period beginning on June 29, 2012 and ending on August 13, 2012. During this period, the DoN will conduct two public meetings to receive oral and written comments on the Draft EIS. This notice announces the dates and locations of the public meetings and provides supplementary information about the environmental planning effort.

Dates and Addresses: Public information and comment meetings will be held in Key West, Florida between 5 p.m. and 8 p.m. on the following dates and at the following locations:

1. Wednesday, August 1, 2012, Doubletree Grand Key Resort Conference Room, 3990 South Roosevelt Boulevard, Key West, Florida 33040.

2. Thursday, August 2, 2012, Tennessee Williams Theater at Florida Keys Community College, 5901 College Road, Key West (Stock Island), Florida.

Federal, state, and local agencies and officials, and interested groups and individuals, are encouraged to provide comments in person at the public meetings or in writing anytime during the public comment period. At the public meetings, attendees will be able to submit comments orally or in writing. Equal weight will be given to oral and written statements. Comments may also be submitted via the U.S. Postal Service to Naval Facilities Engineering Command Southeast, NAS Key West Air Operations EIS Project Manager, P.O. Box 30, Building 903, NAS Jacksonville, FL 32212 or electronically via the project Web site (*http://www.keywesteis.com*). All statements, oral or written, submitted during the public review period will become part of the public record on the Draft EIS and will be responded to in the Final EIS. All written comments must be post marked or received (online) by August 13, 2012, to ensure they become part of the official record.

FOR FURTHER INFORMATION CONTACT: Naval Facilities Engineering Command Southeast, NAS Key West Air Operations EIS Project Manager, P.O. Box 30, Building 903, NAS Jacksonville, FL 32212.

SUPPLEMENTARY INFORMATION: A Notice of Intent to prepare this Draft EIS was published in the **Federal Register** on May 12, 2010 (75 FR 26739). The DoN's proposed action is to support and conduct aircraft training operations and capabilities at NAS Key West by maintaining current/baseline training operations, supporting airfield operations by introducing new types of aircraft, and modifying airfield operations as necessary in support of the Fleet Response Training Plan. The purpose of the proposed action is to sustain fleet training at and associated with NAS Key West airfield for Navy tactical aviation and for use by other Department of Defense and federal agencies. The proposed action is needed in order to maintain the level of readiness mandated in Title 10 United States Code Part 5062.

The Draft EIS evaluates the potential environmental effects of the No Action Alternative and three action alternatives. Under the No Action Alternative, annual airfield operations would continue to occur at a level similar to present (approximately 47,500 annual operations); support of existing capabilities would continue; no new aircraft would be introduced; and, no facilities would be altered to support next generation aircraft training operations. Under Alternative 1, annual airfield operations would continue at a level similar to present (approximately 47,500 annual operations), plus legacy aircraft would gradually transition to next generation aircraft and existing facilities would be altered to meet requirements for next generation aircraft. Alternative 2 would be the same as Alternative 1, plus provide the flexibility to accommodate additional carrier air wing Field Carrier Landing Practice (FCLP) training at NAS Key West when primary carrier air wing training locations around the United States are unavailable. Additional carrier air wing FCLP operations would vary annually based on availability of the primary training locations, but could total up to 4,500 additional operations (2,250 patterns). Total annual airfield operations under Alternative 2 could equal approximately 52,000 operations. Alternative 3 would be the same as Alternative 2, plus provide operational capacity and flexibility to effectively meet DoN training requirements under the Fleet Response Training Plan with an approximate ten percent increase in other annual airfield operations. Total annual airfield operations under this alternative could equal approximately 57,000 operations. A preferred alternative has not been selected or identified by the DoN. The DoN seeks comment from the public or interested parties regarding selection of a preferred alternative.

Environmental resource topics evaluated in the Draft EIS include noise,

air quality, safety, land use, transportation, infrastructure, socioeconomics (including environmental justice and protection of children), cultural resources, geology, topography, and soils, water resources, biological resources, and hazardous materials, hazardous waste, toxic substances, and contaminated sites.

The Draft EIS was distributed to Federal, state, and local agencies, elected officials, and other interested individuals and organizations. Copies of the Draft EIS are available for public review at the following libraries:

1. Key West Public Library, 700 Fleming Street, Key West, Florida 33040.

2. Florida Keys Community College Library, 5901 College Road, Building A (2nd Floor), Key West, Florida 33040.

Copies of the Draft EIS are available for electronic viewing or download at *http://www.keywesteis.com.* A paper copy of the Executive Summary or a single compact disc of the Draft EIS will be made available upon written request by contacting: Naval Facilities Engineering Command Southeast, NAS Key West Air Operations EIS Project Manager, P.O. Box 30, Bldg 903, NAS Jacksonville, Florida 32212.

Dated: June 26, 2012.

L.R. Almand,

Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 2012–16326 Filed 7–2–12; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Naval Research Advisory Committee

AGENCY: Department of the Navy, Department of Defense (DoD).

ACTION: Notice of open meeting.

SUMMARY: The Naval Research Advisory Committee (NRAC) will meet August 20 through August 24 and August 27 through August 30, 2012 to discuss materials in support of two studies: How Autonomy Can Transform Naval Operations (USN) and Lightening the Information Load (USMC). All sessions on August 20 through August 24 and August 27 through August 30 will be open to the public.

DATES: Monday, August 20 through Friday, August 24 and Monday, August 27 through Thursday, August 30, from 8 a.m. to 4 p.m. each day.

ADDRESSES: The NRAC study meeting will take place in the Cloud Room and Conference Center, Space and Naval Warfare Center, San Diego, CA SPAWARSYSCEN PACIFIC, 53605 Hull Street, San Diego CA 92152–5410.

FOR FURTHER INFORMATION CONTACT: Mr. William H. Ellis, Jr., Program Director, Naval Research Advisory Committee, 875 North Randolph Street, Room 1251, Arlington, VA 22203–1955, phone: 703–696–5775, email: *william.h.ellis@navy.mil.*

SUPPLEMENTARY INFORMATION:

Access instructions for the public:

All guests must notify the NRAC office of their intention of attending one or more days of the meeting. Please submit the following information via Fax to the NRAC office no later than Friday, August 10, 2012: Full name, last four digits of your Social Security Number (SSN), contact address, contact telephone, citizenship.

Please forward this information to the following NRAC staff: Mr. William Ellis, NRAC Program Director, Fax: 703–696–4837 or Mr. Miguel Becerril, NRAC Program Manager, Fax: 703–696–4837.

A list of potential visitors will be provided to the security personnel at the Space and Naval Warfare Systems Center (SPAWARS). Please present two forms of identification and request the security officer to search for your name on the visitor access roster for the NRAC meeting. All guests must have at least two forms of government issued identification. All guests will be limited to only those areas related to the study meeting activities. All guests will be required to leave SPAWARS upon completion of the NRAC activities open to the public, unless otherwise authorized to remain aboard military installations (Active duty, Retirees, etc.).

Dated: June 28, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–16274 Filed 7–2–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests; Office of Planning, Evaluation and Policy Development; Evaluation of the Carol M. White Physical Education Program

SUMMARY: The Carol M. White Physical Education Program (PEP) supports a variety of projects that encourage fitness and healthy lifestyle choices among K–12 students. The U.S. Department of Education (ED) is interested in gaining a thorough understanding of what PEP projects experience related to two new program competitive preference priorities: The establishment of official partnerships and the collection and use of body mass index (BMI) measurements.

DATES: Interested persons are invited to submit comments on or before September 4, 2012.

ADDRESSES: Written comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 04878. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Evaluation of the Carol M. White Physical Education Program.

OMB Control Number: 1875–0258.

Type of Review: Revision.

Total Estimated Number of Annual Responses: 25.

Total Estimated Number of Annual Burden Hours: 77.

Abstract: To answer the evaluation questions put forth by the U.S. Department of Education (ED) on how Carol M. White Physical Education Program grantees formed and used partnerships and collection and used BMI data, five case studies will be conducted. Findings will provide feedback to both ED and grantees and will inform future improvements to the program.

Dated: June 28, 2012.

Darrin A. King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2012–16305 Filed 7–2–12; 8:45 am]

BILLING CODE 4000–01–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: RP12–819–000.

Applicants: Freebird Gas Storage, LLC.

Description: Change to FERC Gas Tariff to be effective 6/25/2012.

Filed Date: 6/25/12.

Accession Number: 20120625–5179.

Comments Due: 5 p.m. ET 7/9/12.

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: RP10–1013–001.

Applicants: Mississippi Canyon Gas Pipeline, LLC.

Description: Mississippi Canyon Gas Pipeline, LLC submits tariff filing per 154.203: Baseline refile to be effective 8/31/2010.

Filed Date: 10/14/10.

Accession Number: 20101014–5069.

Comments Due: 5 p.m. ET 7/9/12.

Any person desiring to protest in any 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: June 26, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–16229 Filed 7–2–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG12–80–000.

Applicants: Flat Ridge 2 Wind Energy LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Flat Ridge 2 Wind Energy LLC.

Filed Date: 6/26/12.

Accession Number: 20120626–5029.

Comments Due: 5 p.m. ET 7/17/12.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER12–1799–001.

Applicants: Cleco Evangeline LLC.

Description: Compliance Filing to be effective 5/2/2012.

Filed Date: 6/26/12.

Accession Number: 20120626–5001.

Comments Due: 5 p.m. ET 7/17/12.

Docket Numbers: ER12–1825–001.

Applicants: EDF Industrial Power Services (CA), LLC.

Description: Supplement to MBR Filing to be effective 5/22/2012.

Filed Date: 6/26/12.

Accession Number: 20120626–5114.

Comments Due: 5 p.m. ET 7/17/12.

Docket Numbers: ER12–2111–000.

Applicants: Southwest Power Pool, Inc.

Description: 1313R5 Oklahoma Gas and Electric Co. NITSA NOA to be effective 6/1/2012.

Filed Date: 6/26/12.

Accession Number: 20120626–5105.

Comments Due: 5 p.m. ET 7/17/12.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH12–16–000.

Applicants: Anbaric Holding, LLC, EIF Management, LLC, PowerBridge, LLC, Starwood Energy Group Global, LLC, Hudson Power Ventures, LLC.

Description: Form FERC–65B of Hudson Power Ventures, LLC, *et al.*

Filed Date: 6/26/12.

Accession Number: 20120626–5059.

Comments Due: 5 p.m. ET 7/17/12.

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: June 26, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–16231 Filed 7–2–12; 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: ER10–2016–002; *ER10–2011–004.*

Applicants: PPL Montana, LLC, PPL EnergyPlus, LLC.

Description: The PPL Northwest Companies submit a Supplement to Notice of Change in Status Regarding Market-Based Rate Authority.

Filed Date: 6/25/12.

Accession Number: 20120625–5198.

Comments Due: 5 p.m. ET 7/16/12.

Docket Numbers: ER10–2474–002; *ER10–2475–002.*

Applicants: Sierra Pacific Power Company, Nevada Power Company.

Description: Notice of Non-Material Change in Status of Sierra Pacific Power Company, *et al.*

Filed Date: 6/25/12.

Accession Number: 20120625–5196.

Comments Due: 5 p.m. ET 7/16/12.

Docket Numbers: ER10–2719–007; *ER10–2718–007; ER10–2578–009; ER10–2633–007; ER10–2570–007; ER10–2717–007; ER10–3140–006.*

Applicants: East Coast Power Linden Holding, LLC, Cogen Technologies Linden Venture, L.P., Fox Energy Company, LLC, Birchwood Power Partners, L.P., Shady Hills Power Company LLC, EFS Parlin Holidngs, LLC, Inland Empire Energy Center, LLC.

Description: Notice of Non-Material Change in Status of East Coast Power Linden Holding, LLC, *et al.* under ER10–2719, *et. al.*

Filed Date: 6/25/12.

Accession Number: 20120625–5197.

Comments Due: 5 p.m. ET 7/16/12.

Docket Numbers: ER11–3736–001.

Applicants: Pocahontas Prairie Wind, LLC.

Description: Updated Market Power Analysis for the Central Region of Pocahontas Prairie Wind, LLC.

Filed Date: 6/25/12.

Accession Number: 20120625–5194.

Comments Due: 5 p.m. ET 8/24/12.

Docket Numbers: ER12–1566–000, *ER12–1566–001.*

Applicants: Copper Mountain Solar 2, LLC.

Description: Copper Mountain Solar 2, LLC MBR Application Second Supplement.

Filed Date: 6/18/12.

Accession Number: 20120618–5125.

Comments Due: 5 p.m. ET 7/9/12.

Docket Numbers: ER12–1633–003.

Applicants: U.S. Energy Partners, LLC.

Description: U.S. Energy MBR Compliance Filing to be effective 6/15/2012.

Filed Date: 6/25/12.

Accession Number: 20120625–5061.

Comments Due: 5 p.m. ET 7/16/12.

Docket Numbers: ER12–2071–001.

Applicants: Verde Energy USA New York, LLC.

Description: Amended MBR Application to be effective 8/20/2012.

Filed Date: 6/25/12.

Accession Number: 20120625–5135.

Comments Due: 5 p.m. ET 7/16/12.

Docket Numbers: ER12–2095–000.

Applicants: ITC Midwest LLC.

Description: Filing of a Common Use Agreement to be effective 8/27/2012.

Filed Date: 6/25/12.

Accession Number: 20120625–5053.

Comments Due: 5 p.m. ET 7/16/12.

Docket Numbers: ER12–2096–000.

Applicants: Southern California Edison Company.

Description: Amendment to Blythe Energy, LLC LGIA to be effective 8/25/2012.

Filed Date: 6/25/12.

Accession Number: 20120625–5054.

Comments Due: 5 p.m. ET 7/16/12.

Docket Numbers: ER12–2097–000.

Applicants: Moraine Wind LLC.

Description: Tariff Revisions to be effective 6/30/2012.

Filed Date: 6/25/12.

Accession Number: 20120625–5055.

Comments Due: 5 p.m. ET 7/16/12.

Docket Numbers: ER12–2098–000.

Applicants: New York Independent System Operator, Inc.

Description: Amended Restated Agreement No. 1744 Among NYISO, NYPA, and Marble River to be effective 6/13/2012.

Filed Date: 6/25/12.

Accession Number: 20120625–5059.

Comments Due: 5 p.m. ET 7/16/12.

Docket Numbers: ER12–2099–000.

Applicants: Southwest Power Pool, Inc.

Description: 607R15 Westar Energy, Inc. NITSA and NOA to be effective 6/1/2012.

Filed Date: 6/25/12.

Accession Number: 20120625–5093.

Comments Due: 5 p.m. ET 7/16/12.

Docket Numbers: ER12–2100–000.

Applicants: Vermont Transco, LLC.

Description: Vermont Transco LLC Updated Exhibit A for the 1991 Transmission Agreement to be effective 7/1/2012.

Filed Date: 6/25/12.

Accession Number: 20120625–5094.

Comments Due: 5 p.m. ET 7/16/12.

Docket Numbers: ER12–2101–000.

Applicants: Moraine Wind II LLC.

Description: Tariff Revisions to be effective 6/30/2012.

Filed Date: 6/25/12.

Accession Number: 20120625–5098.

Comments Due: 5 p.m. ET 7/16/12.

Docket Numbers: ER12–2102–000.

Applicants: New Harvest Wind Project LLC.

Description: Tariff Revisions to be effective 6/30/2012.

Filed Date: 6/25/12.

Accession Number: 20120625–5105.

Comments Due: 5 p.m. ET 7/16/12.

Docket Numbers: ER12–2104–000.

Applicants: Michigan Electric Transmission Company, LLC.

Description: METC Filing of Facilities Agreement to be effective 8/27/2012.

Filed Date: 6/25/12.

Accession Number: 20120625–5134.

Comments Due: 5 p.m. ET 7/16/12.

Docket Numbers: ER12–2105–000.

Applicants: New York State Electric & Gas Corporation.

Description: Attachment C—O&M Annual Update to be effective 9/1/2012.

Filed Date: 6/25/12.

Accession Number: 20120625–5136.

Comments Due: 5 p.m. ET 7/16/12.

Docket Numbers: ER12–2106–000.

Applicants: Rugby Wind LLC.

Description: Tariff Revisions to be effective 6/30/2012.

Filed Date: 6/25/12.

Accession Number: 20120625–5140.

Comments Due: 5 p.m. ET 7/16/12.

Docket Numbers: ER12–2107–000.

Applicants: Trimont Wind I LLC.

Description: Tariff Revisions to be effective 6/30/2012.

Filed Date: 6/25/12.

Accession Number: 20120625–5153.

Comments Due: 5 p.m. ET 7/16/12.

Docket Numbers: ER12–2108–000.

Applicants: MinnDakota Wind LLC.

Description: Tariff Revisions to be effective 6/30/2012.

Filed Date: 6/25/12.

Accession Number: 20120625–5159.

Comments Due: 5 p.m. ET 7/16/12.

Docket Numbers: ER12–2109–000.

Applicants: Northern Iowa Windpower II LLC.

Description: Tariff Revisions to be effective 6/30/2012.

Filed Date: 6/25/12.

Accession Number: 20120625–5160.

Comments Due: 5 p.m. ET 7/16/12.

Docket Numbers: ER12–2110–000.

Applicants: Florida Power & Light Company.

Description: FPL Revisions to FKEC Rate Schedule FERC No. 322 to be effective 5/1/2011.

Filed Date: 6/25/12.

Accession Number: 20120625–5177.

Comments Due: 5 p.m. ET 7/16/12.

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: June 26, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–16230 Filed 7–2–12; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9696–5]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (''CAA''), notice is hereby given of a proposed consent decree, to address a lawsuit filed by Sierra Club in the United States District Court for the District of Columbia: *Sierra Club* v. *Jackson,* No. 1: 12–cv–00012 (CKK). On March 2, 2012, the Plaintiff filed a First Amended Complaint alleging that EPA failed to perform nondiscretionary duties under the Clean Air Act related to the attainment of National Ambient Air Quality Standards (NAAQS) for ozone in the Houston-Galveston-Brazoria area. Specifically, the Plaintiff alleged that EPA failed to take timely action to approve, disapprove, or approve in part and disapprove in part, pursuant to CAA, portions of the State of Texas' State Implementation Plan (SIP) submittals for the 1997 8-hour ozone NAAQS, including an ozone attainment demonstration, contingency provisions, reasonably available control technology requirements, reasonable further progress provisions, and transportation control measures and demonstrations in the Houston-Galveston-Brazoria area. The proposed consent decree establishes deadlines for EPA to take action on the SIP submittals listed in the consent decree. The proposed consent decree also provides that once EPA has completed the actions specified in the decree the case will be dismissed with prejudice.

DATES: Written comments on the proposed consent decree must be received by August 2, 2012.

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OGC–2012–0516, online at *www.regulations.gov* (EPA's preferred method); by email to *oei.docket@epa.gov;* mailed to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Kaytrue Ting, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone: (202) 564–6380; fax number (202) 564–5601; email address: *ting.kaytrue@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Consent Decree

The proposed consent decree would resolve a lawsuit filed by the Sierra Club seeking to compel the Administrator to take final action under sections 110(k)(2) and (3) of the CAA, 42 U.S.C. 7410(k)(2) and (3), on portions of the State of Texas' State Implementation Plan (SIP) submittals for the 1997 8-hour ozone NAAQS. Specifically, the lawsuit seeks to compel the Administrator to take final action, pursuant to section 110(k) of the CAA, 42 U.S.C. 7410(k), on several SIP submittals related to 1997 8-hour ozone NAAQS nonattainment area requirements in the Houston-Galveston-Brazoria area, including: an ozone attainment demonstration submitted to EPA on or about April 6, 2010; contingency provisions submitted to EPA on or about April 1, 2010; reasonably available control technology requirements submitted to EPA on or about June 13, 2007; reasonable further progress provisions submitted to EPA on or about April 1, 2010; and transportation control measures and demonstrations submitted to EPA on or about April 6, 2010.

The proposed consent decree provides various dates by which EPA must take proposed and final action on the SIP submittals at issue. Following signature of each proposed and final rule described in the proposed consent decree, EPA is required to send the notice to the Office of the Federal Register promptly for review and publication in the **Federal Register**. The proposed consent decree also states that after EPA fulfills its obligations under the consent decree, this case shall be dismissed with prejudice.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed consent decree from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines, based on any comment submitted, that consent to this consent decree should be withdrawn, the terms of the decree will be affirmed.

II. Additional Information About Commenting on the Proposed Consent Decree

A. How can I get a copy of the consent decree?

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC- 2012–0516) contains a copy of the proposed consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *www.regulations.gov.* You may use the *www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select ''search''.

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at *www.regulations.gov* without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is

restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and to whom do I submit comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an email address or other contact information in the body of your comment and with any disk or CD–ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the *www.regulations.gov* Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, email address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (email) system is not an ''anonymous access'' system. If you send an email comment directly to the Docket without going through *www.regulations.gov,* your email address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: June 26, 2012.

Lorie J. Schmidt,

Associate General Counsel.

[FR Doc. 2012–16304 Filed 7–2–12; 8:45 am]

BILLING CODE 6560–50–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 July 30, 2012.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02210–2204:

1. *Independent Bank Corp,* Rockland, Massachusetts, to acquire Central Bancorp, Inc., and thereby acquire Central Co-operative Bank, both in Somerville, Massachusetts.

Board of Governors of the Federal Reserve System, June 28, 2012.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2012–16261 Filed 7–2–12; 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 July 19, 2012.

A. Federal Reserve Bank of San Francisco (Kenneth Binning, Vice President, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. *Grandpoint Capital, Inc.,* Los Angeles, California; to acquire Peoria Holdings, LLC, Vancouver, Washington, and thereby engage in extending credit and servicing loans, pursuant to section 225.28 (b)(1) and (b)(2).

Board of Governors of the Federal Reserve System, June 28, 2012.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2012–16260 Filed 7–2–12; 8:45 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0112; Docket 2012–0001; Sequence 2]

Submission for OMB Review; Federal Management Regulation; GSA Form 3040, State Agency Monthly Donation Report of Surplus Property

AGENCY: Federal Acquisition Service, GSA.

ACTION: Notice of request for comments regarding a renewal to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement regarding GSA Form 3040, State Agency Monthly Donation Report of Surplus Property. A notice was published in the **Federal Register** at 77 FR 15759, on March 16, 2012. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate and based on valid assumptions and methodology; and ways to enhance the quality, utility, and clarity of the information to be collected.

DATES: Submit comments on or before: August 2, 2012.

FOR FURTHER INFORMATION CONTACT: Joyce Spalding, Federal Acquisition Service, GSA at telephone (703) 605–2888 or via email to *joyce.spalding@gsa.gov.*

ADDRESSES: Submit comments identified by Information Collection 3090–0112, State Agency Monthly Donation Report of Surplus Personal Property by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting ''Information Collection 3090–0112, State Agency Monthly Donation Report of Surplus Personal Property'' under the heading ''Enter Keyword or ID'' and selecting ''Search''. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 3090–0112, State Agency Monthly Donation Report of Surplus Personal Property''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 3090–0112, State Agency Monthly Donation Report of Surplus Personal Property'' on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417. Attn: Hada Flowers/IC 3090–0112, State Agency Monthly Donation Report of Surplus Personal Property.

Instructions: Please submit comments only and cite Information Collection 3090–0112, State Agency Monthly Donation Report of Surplus Personal Property, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

SUPPLEMENTARY INFORMATION:

A. Purpose

This report complies with Public Law 94–519, which requires annual reports of donations of personal property to public agencies for use in carrying out such purposes as conservation, economic development, education, parks and recreation, public health, and public safety.

B. Annual Reporting Burden

Respondents: 55.
Responses per Respondent: 4.
Total Responses: 220.
Hours per Response: 1.5.
Total Burden Hours: 330.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417, telephone (202) 501–4755. Please cite OMB Control No. 3090–0112, GSA Form 3040, State Agency Monthly Donation Report of Surplus Personal Property, in all correspondence.

Dated: June 21, 2012.

Casey Coleman,

Chief Information Officer.

[FR Doc. 2012–16270 Filed 7–2–12; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Advisory Committee on Minority Health

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of the Assistant Secretary for Health, Office of Minority Health.

ACTION: Notice of meeting.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the Department of Health and Human Services (DHHS) is hereby giving notice that the Advisory Committee on Minority Health (ACMH) will hold a meeting. This meeting is open to the public. Preregistration is required for both public attendance and comment. Any individual who wishes to attend the meeting and/or participate in the public comment session should email *acmh@osophs.dhhs.gov*.

DATES: The meeting will be held on Thursday, August 9, 2012 from 9 a.m. to 5 p.m. and Friday, August 10, 2012 from 9 a.m. to 1 p.m.

ADDRESSES: The meeting will be held at the Doubletree Hotel, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

FOR FURTHER INFORMATION CONTACT: Ms. Monica A. Baltimore, Tower Building, 1101 Wootton Parkway, Suite 600, Rockville, Maryland 20852. Phone: 240–453–2882 Fax: 240–453–2883.

SUPPLEMENTARY INFORMATION: In accordance with Public Law 105–392, the ACMH was established to provide advice to the Deputy Assistant Secretary for Minority Health in improving the health of each racial and ethnic minority group and on the development of goals and specific program activities of the Office of Minority Health.

Topics to be discussed during this meeting will include strategies to improve the health of racial and ethnic minority populations through the development of health policies and programs that will help eliminate health disparities, as well as other related issues.

Public attendance at the meeting is 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 designated contact person at least fourteen (14) business days prior to the meeting. Members of the public will have an opportunity to provide comments at the meeting. Public comments will be limited to three minutes per speaker. Individuals who would like to submit written statements should mail or fax their comments to the Executive Director, ACMH, Office of Minority Health, at least seven (7) business days prior to the meeting. Any members of the public who wish to have printed material distributed to ACMH committee members should submit their materials to the Executive Director, ACMH, Tower Building, 1101 Wootton Parkway, Suite 600, Rockville, Maryland 20852, prior to close of business August 1, 2012.

Dated: June 21, 2012.

Monica A. Baltimore,

Executive Director, Advisory Committee on Minority Health, Office of Minority Health, Office of the Assistant Secretary for Health, Office of the Secretary, U.S. Department of Health and Human Services.

[FR Doc. 2012–16251 Filed 7–2–12; 8:45 am]

BILLING CODE 4150–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[OMB No. 0970–0036]

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: ORR Requirements for Refugee Cash Assistance; and Refugee Medical Assistance.

Description: As required by section 412(e) of the Immigration and Nationality Act, the Administration for Children and Families (ACF), Office of Refugee Resettlement (ORR), is requesting the information from Form ORR–6 to determine the effectiveness of the State cash and medical assistance, social services, and targeted assistance programs. State-by-State Refugee Cash Assistance (RCA) and Refugee Medical Assistance (RMA) utilization rates derived from Form ORR–6 are calculated for use in formulating program initiatives, priorities, standards, budget requests, and assistance policies. ORR regulations require that State Refugee Resettlement and Wilson-Fish agencies, and local and Tribal governments complete Form ORR–6 in order to participate in the above-mentioned programs.

Respondents: State Refugee Resettlement and Wilson-Fish Agencies, local, and Tribal governments.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ORR–6	50	3	3.88	582

Estimated Total Annual Burden Hours: 582.

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. Email address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2012–16234 Filed 7–2–12; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Performance Measurement On-Line Tool (PMOTOOL).

OMB No.: New Collection.

Description: The Performance Measurement On-Line Tool (PMOTOOL) was designed by the Children's Bureau to collect data, in an automated format, from specified discretionary grants funded by the Children's Bureau. The data collected by this instrument will be submitted by individual discretionary grantees funded under the following programs: Abandoned Infants Assistance Program, Infant Adoption Awareness Program, Adoption Opportunities Program, Child Abuse and Neglect Program and the Child Welfare Training Program. Grantees will submit this information on semi-annual basis in conjunction with their semi-annual program progress report.

The purpose of this data collection is to assist the Children's Bureau in responding to the government wide performance effort to collect aggregate data over time to assess program progress on discretionary funded programs. The Performance Measurement ON-Line Tool (PMOTOOL) will focus on quantifiable outcome measures that are directly related to the expected social impact or public benefit of each federal program. These measurable outcomes will serve as evidence that the federally funded programs are making progress toward achieving broad, legislated program goals.

Respondents: Selected clusters of competitive grant program funded by the Children's Bureau.

ANNUAL BURDEN ESTIMATED

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Performance Measurement On-Line Tool.	Abandoned Infants Assistance Program Estimate 20.	2 per fiscal year	One hour per response field	Estimate 40.
Performance Measurement On-Line Tool.	Infant Adoption Awareness Program Estimate 6.	2 per fiscal year	One hour per response field	Estimate 12.

ANNUAL BURDEN ESTIMATED—Continued

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Performance Measurement On-Line Tool.	Adoption Opportunities Program Estimate 45.	2 per fiscal year	One hour per response field	Estimate 90.
Performance Measurement On-Line Tool.	Child Abuse and Neglect Program Estimate 30.	2 per fiscal year	One hour per response field	Estimate 60.
Performance Measurement On-Line Tool.	Child Welfare Training Program Estimate 40.	2 per fiscal year	One hour per response field	Estimate 80.

Estimated Total Annual Burden Hours: 282.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collections 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 should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–6974, Attn: Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2012–16235 Filed 7–2–12; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

The meeting announced below concerns Special Interest Projects (SIPs): Nutrition and Obesity Policy Research and Evaluation Network (NOPREN)—Coordinating Center, SIP12–061 and Nutrition and Obesity Policy Research and Evaluation Network (NOPREN)—Collaborating Centers, SIP12–062, Panel H, initial review.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Time and Date: 11:00 a.m.–6:00 p.m., July 27, 2012 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the initial review, discussion, and evaluation of applications received in response to ''Nutrition and Obesity Policy Research and Evaluation Network (NOPREN)—Coordinating Center, SIP12–061 and Nutrition and Obesity Policy Research and Evaluation Network (NOPREN)—Collaborating Centers, SIP12–062, Panel H, initial review.''

Contact Person for More Information: M. Chris Langub, Ph.D., Scientific Review Officer, CDC, 4770 Buford Highway NE., Mailstop F–46, Atlanta, Georgia 30341, Telephone: (770) 488–3583.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: June 22, 2012.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2012–16327 Filed 7–2–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

The meeting announced below concerns Special Interest Project (SIP): Evaluation of School Salad Bars as a Public Health Intervention to Increase Fruit and Vegetable Intake in Middle and High School Students, SIP12–063, Panel F, initial review.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Time and Date: 1:30 p.m.–5:30 p.m., July 26, 2012 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the initial review, discussion, and evaluation of applications received in response to ''Evaluation of School Salad Bars as a Public Health Intervention to Increase Fruit and Vegetable Intake in Middle and High School Students, SIP12–063, Panel F, initial review.''

Contact Person for More Information: M. Chris Langub, Ph.D., Scientific Review Officer, CDC, 4770 Buford Highway NE., Mailstop F–46, Atlanta, Georgia 30341, Telephone: (770) 488–3583.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: June 22, 2012.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2012–16321 Filed 7–2–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

The meeting announced below concerns Special Interest Project (SIP): Assessing the Pregnancy Prevention Needs of HIV-Infected Young Women of Reproductive Age and Effects of Contraception, SIP12–064, Panel G, initial review.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Time and Date: 9:00 a.m.–12:30 p.m., July 26, 2012 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the initial review, discussion, and evaluation of applications received in response to ''Assessing the Pregnancy Prevention Needs of HIV-Infected Young Women of Reproductive Age and Effects of Contraception, SIP12–064, Panel G, initial review.''

Contact Person for More Information: M. Chris Langub, Ph.D., Scientific Review Officer, CDC, 4770 Buford Highway NE., Mailstop F–46, Atlanta, Georgia 30341, Telephone: (770) 488–3583.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: June 22, 2012.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2012–16346 Filed 7–2–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–D–0503]

Guidances for Industry and Food and Drug Administration Staff: Computer-Assisted Detection Devices Applied to Radiology Images and Radiology Device Data—Premarket Notification (510(k)) Submissions; and Clinical Performance Assessment: Considerations for Computer-Assisted Detection Devices Applied to Radiology Images and Radiology Device Data—Premarket Approval and Premarket Notification (510(k)) Submissions; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of two related guidance documents. The first guidance, entitled ''Computer-Assisted Detection Devices Applied to Radiology Images and Radiology Device Data—Premarket Notification (510(k)) Submissions'' (CADe 510(k) guidance), provides recommendations regarding premarket notification (510(k)) submissions of certain computer-assisted detection (CADe)[1] devices applied to radiology images and radiology device data. The second guidance, entitled ''Clinical Performance Assessment: Considerations for Computer-Assisted Detection Devices Applied to Radiology Images and Radiology Device Data—Premarket Approval (PMA) and Premarket Notification (510(k)) Submissions'' (CADe clinical performance assessment guidance), provides recommendations on the design and conduct of clinical performance studies for CADe devices applied to radiology images and radiology device data.

DATES: Submit either electronic or written comments on this guidance at any time. General comments on Agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the guidance document entitled ''Computer-Assisted Detection Devices Applied to Radiology Images and Radiology Device Data—Premarket Notification (510(k)) Submissions'' or the guidance document entitled ''Clinical Performance Assessment: Considerations for Computer-Assisted Detection Devices Applied to Radiology Images and Radiology Device Data—Premarket Approval (PMA) and Premarket Notification (510(k)) Submissions'' to the Division of Small Manufacturers, International, and Consumer Assistance, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 4613, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–847–8149. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to these guidances.

Submit electronic comments on the guidances to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Nicholas Petrick, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 62, rm. 4118, Silver Spring, MD 20993, 301–796–2563, and Mary Pastel, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. G310, Silver Spring, MD 20993, 301–796–6887.

SUPPLEMENTARY INFORMATION:

I. Background

CADe devices are computerized systems that incorporate pattern recognition and data analysis capabilities (*i.e.,* combine values, measurements, or features extracted from the patient radiological data) intended to identify, mark, highlight, or in any other manner direct attention to portions of an image, or aspects of radiology device data, that may reveal abnormalities during interpretation of patient radiology images or patient radiology device data by the intended user (*i.e.,* a physician or other health care professional).

The CADe 510(k) guidance provides recommendations on documentation and performance testing to be part of a 510(k) submission for class II CADe devices applied to radiology images and radiology device data. The CADe clinical performance assessment guidance provides recommendations regarding clinical performance studies

[1] The use of the acronym CADe for computer-assisted detection may not be a generally recognized acronym in the community at large. It is used here to identify the specific type of devices discussed in this document.

for both class II and class III CADe devices applied to radiology images and radiology device data. These clinical performance studies may be part of a premarket submission to FDA, whether it is a 510(k) submission, an application for PMA, an application for a humanitarian device exemption, or an application for an investigational device exemption.

In the **Federal Register** of October 21, 2009 (74 FR 54053), FDA announced the availability of the draft guidance documents. Interested persons were invited to comment by January 19, 2010. Six comments were received with multiple recommendations about changes to the content of the documents. FDA also received comments during the public meetings of the Radiology Devices Panel, an FDA advisory committee, on March 4–5, 2008, and November 17–18, 2009. In response to all of these comments, FDA revised both guidance documents to clarify the level of detail the Agency would like to see regarding the description and operation of the CADe device and about test data reuse. In response to the comments, the new guidance documents also clarify that digitized film is within the scope of radiological data and that FDA intends to create new product codes as necessary to identify and track new types of CADe products.

FDA's revisions, based on comments on the CADe 510(k) guidance, also include updated recommendations on the scoring process and when a clinical performance assessment may be necessary. The Generalizability Testing subsection was extensively modified, including removing recommendations on algorithm stability testing. In response to comments on the CADe clinical performance assessment guidance, FDA limited the postmarket section to outlining the basic postapproval study process.

II. Significance of Guidance

These guidances are being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidances represent the Agency's current thinking on premarket notification (510(k)) submissions of certain CADe devices applied to radiology images and radiology device data and on clinical performance studies for CADe devices applied to radiology images and radiology device data. The guidance documents do not create or confer any rights for or on any person and do not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

Persons interested in obtaining a copy of either guidance may do so by using the Internet. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* Guidance documents are also available at *http://www.regulations.gov.* To receive ''Computer-Assisted Detection Devices Applied to Radiology Images and Radiology Device Data—Premarket Notification (510(k)) Submissions,'' or ''Clinical Performance Assessment: Considerations for Computer-Assisted Detection Devices Applied to Radiology Images and Radiology Device Data—Premarket Approval (PMA) and Premarket Notification (510(k)) Submissions,'' you may either send an email request to *dsmica@fda.hhs.gov* to receive an electronic copy of the document or send a fax request to 301–847–8149 to receive a hard copy. Please use the document number (1697) to identify the CADe 510(k) guidance or the document number (1698) to identify the CADe clinical performance assessment guidance.

IV. Paperwork Reduction Act of 1995

These guidance documents refer to currently approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 801 have been approved under OMB control number 0910–0485; the collections of information in 21 CFR part 807, subpart E, have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 812 have been approved under OMB control number 0910–0078; and the collections of information in 21 CFR part 814 have been approved under OMB control numbers 0910–0231 and 0910–0332.

V. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**), either electronic or written comments regarding this document. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 27, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–16227 Filed 7–2–12; 8:45 am]

BILLING CODE 4160–01–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 Revisions on the Protections for Human Subjects Study Section.

Date: July 30, 2012.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Lorien Hotel and Spa, 1600 King Street, Alexandria, VA 22314.

Contact Person: Karin F. Helmers, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7770, Bethesda, MD 20892, 301–254–9975, *helmersk@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Motor Function, Speech and Rehabilitation.

Date: July 30, 2012.

Time: 1:00 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Weijia Ni, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892, (301) 237–9918, *niw@csr.nih.gov.*

Name of Committee: Biology of Development and Aging Integrated Review Group, International and Cooperative Projects—1 Study Section.

Date: August 2, 2012.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Hilary D. Sigmon, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7852, Bethesda, MD 20892, (301) 594–6377, *sigmonh@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Biobehavioral and Behavioral Processes.

Date: August 2, 2012.

Time: 11:00 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Melissa Gerald, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, MSC 7848, Bethesda, MD 20892, (301) 408–9107, *geraldmel@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 27, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–16194 Filed 7–2–12; 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 Program Project: Support of NIGMS.

Date: July 23–24, 2012.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Noni Byrnes, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5130, MSC 7840, Bethesda, MD 20892, (301) 435–1023, *byrnesn@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Cognitive Neuroscience.

Date: July 24–25, 2012.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Wei-Qin Zhao, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5181, MSC 7846, Bethesda, MD 20892–7846,(301) 435–1236, *zhaow@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Cell Biology.

Date: July 24, 2012.

Time: 2:00 p.m. to 5:00 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: Rass M. Shayiq, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892, (301) 435–2359, *shayiqr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, PAR12–017: Shared NMR Spectrometers.

Date: July 25–26, 2012.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: David R. Jollie, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4150, MSC 7806, Bethesda, MD 20892, (301) 435–1722, *jollieda@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, PAR12–010: Research Relevant to the Family Smoking Prevention and, Tobacco Control Act.

Date: July 25, 2012.

Time: 4:00 p.m. to 6:00 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: Everett E. Sinnett, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2178, MSC 7818, Bethesda, MD 20892, (301) 435–1016, *sinnett@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: June 27, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–16193 Filed 7–2–12; 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: AIDS and AIDS Related Research.

Date: July 20, 2012.

Time: 12:30 p.m. to 7:30 p.m.

Agenda: To review and evaluate grant applications.

Place: St Gregory Hotel and Suites, 2033 M Street NW., Washington, DC 20817, (Telephone Conference Call).

Contact Person: Jose H. Guerrier, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301–435–1137, *guerriej@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Program Project: Neurobiology of Behavior in Model Organisms.

Date: July 30–31, 2012.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Elena Smirnova, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5187, MSC 7840, Bethesda, MD 20892, 301–435–1236, *smirnove@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine;

93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 26, 2012

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–16159 Filed 7–2–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories and Instrumented Initial Testing Facilities Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies Federal agencies of the Laboratories and Instrumented Initial Testing Facilities (IITF) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines). The Mandatory Guidelines were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908); September 30, 1997 (62 FR 51118); April 13, 2004 (69 FR 19644); November 25, 2008 (73 FR 71858); December 10, 2008 (73 FR 75122); and on April 30, 2010 (75 FR 22809).

A notice listing all currently certified Laboratories and Instrumented Initial Testing Facilities (IITF) is published in the **Federal Register** during the first week of each month. If any Laboratory/IITF's certification is suspended or revoked, the Laboratory/IITF will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any Laboratory/IITF has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end and will be omitted from the monthly listing thereafter.

This notice is also available on the Internet at *http://www.workplace.samhsa.gov* and *http://www.drugfreeworkplace.gov.*

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh, Division of Workplace Programs, SAMHSA/CSAP, Room 2–1042, One Choke Cherry Road, Rockville, Maryland 20857; 240–276–2600 (voice), 240–276–2610 (fax).

SUPPLEMENTARY INFORMATION: The Mandatory Guidelines were initially developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. The ''Mandatory Guidelines for Federal Workplace Drug Testing Programs'', as amended in the revisions listed above, requires strict standards that Laboratories and Instrumented Initial Testing Facilities (IITF) must meet in order to conduct drug and specimen validity tests on urine specimens for Federal agencies.

To become certified, an applicant Laboratory/IITF must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a Laboratory/IITF must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories and Instrumented Initial Testing Facilities (IITF) in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines. A Laboratory/IITF must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with the Mandatory Guidelines dated November 25, 2008 (73 FR 71858), the following Laboratories and Instrumented Initial Testing Facilities (IITF) meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

Instrumented Initial Testing Facilities (IITF)

None.

Laboratories

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840/800–877–7016 (Formerly: Bayshore Clinical Laboratory)

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, 585–429–2264

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, 901–794–5770/888–290–1150

Aegis Analytical Laboratories, 345 Hill Ave., Nashville, TN 37210, 615–255–2400, (Formerly: Aegis Sciences Corporation, Aegis Analytical Laboratories, Inc.)

Alere Toxicology Services, 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823, (Formerly: Kroll Laboratory Specialists, Inc., Laboratory Specialists, Inc.)

Alere Toxicology Services, 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130, (Formerly: Kroll Laboratory Specialists, Inc., Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.)

Baptist Medical Center-Toxicology Laboratory, 11401 I–30, Little Rock, AR 72209–7056, 501–202–2783, (Formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Clinical Reference Lab, 8433 Quivira Road, Lenexa, KS 66215–2802, 800–445–6917

Doctors Laboratory, Inc., 2906 Julia Drive, Valdosta, GA 31602, 229–671–2281

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Road, Warminster, PA 18974, 215–674–9310

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662–236–2609

Gamma-Dynacare Medical Laboratories*, A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519–679–1630

Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986 (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984 (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866–827–8042/800–233–6339 (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center)

LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845 (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.,)

Maxxam Analytics*, 6740 Campobello Road, Mississauga, ON, Canada L5N 2L8, 905–817–5700 (Formerly: Maxxam Analytics Inc., NOVAMANN (Ontario), Inc.)

MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 651–636–7466/800–832–3244
MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295
Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612–725–2088
National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250/800–350–3515
One Source Toxicology Laboratory, Inc., 1213 Genoa-Red Bluff, Pasadena, TX 77504, 888–747–3774 (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory)
Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942 (Formerly: Centinela Hospital Airport Toxicology Laboratory)
Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204, 509–755–8991/800–541–7891x7
Phamatech, Inc., 10151 Barnes Canyon Road, San Diego, CA 92121, 858–643–5555
Quest Diagnostics Incorporated, 5601 Office Blvd., Albuquerque, NM 87109, 505–727–6300/800–999–5227 (Formerly: S.E.D. Medical Laboratories)
Quest Diagnostics Incorporated, 1777 Montreal Circle, Tucker, GA 30084, 800–729–6432 (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)
Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, 610–631–4600/877–642–2216 (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)
Quest Diagnostics Incorporated, 8401 Fallbrook Ave., West Hills, CA 91304, 818–737–6370 (Formerly: SmithKline Beecham Clinical Laboratories)
South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 574–234–4176 x1276
Southwest Laboratories, 4625 E. Cotton Center Boulevard, Suite 177, Phoenix, AZ 85040, 602–438–8507/800–279–0027
STERLING Reference Laboratories, 2617 East L Street, Tacoma, Washington 98421, 800–442–0438
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 573–882–1273
U.S. Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on April 30, 2010 (75 FR 22809). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

Janine Denis Cook,

Chemist, Division of Workplace Programs, Center for Substance Abuse Prevention, SAMHSA.

[FR Doc. 2012–16228 Filed 7–2–12; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

New Date for the October 2012 Customs Broker License Examination

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

ACTION: General notice.

SUMMARY: This document announces that U.S. Customs and Border Protection (CBP) has changed the date on which the semi-annual written examination for an individual broker's license will be held in October 2012.

DATES: The customs broker's license examination scheduled for October 2012 will be held on Wednesday, October 3.

FOR FURTHER INFORMATION CONTACT: Russell Morris, Broker Compliance Branch, Office of International Trade, (202) 863–6543.

SUPPLEMENTARY INFORMATION:

Background

Section 641 of the Tariff Act of 1930, as amended (19 U.S.C. 1641), provides that a person (an individual, corporation, association, or partnership) must hold a valid customs broker's license and permit in order to transact customs business on behalf of others, sets forth standards for the issuance of broker's licenses and permits, and provides for the taking of disciplinary action against brokers that have engaged in specified types of infractions. This section also provides that an examination may be conducted to assess an applicant's qualifications for a license.

The regulations issued under the authority of section 641 are set forth in Title 19 of the Code of Federal Regulations, part 111 (19 CFR 111). Part 111 sets forth the regulations regarding the licensing of, and granting of permits to, persons desiring to transact customs business as customs brokers. These regulations also include the qualifications required of applicants and the procedures for applying for licenses and permits. 19 CFR 111.11 sets forth the basic requirements for a broker's license and, 19 CFR 111.11(a)(4), provides that an applicant for an individual broker's license must attain a passing grade (75 percent or higher) on a written examination.

19 CFR 111.13 sets forth the requirements and procedures for the written examination for an individual broker's license. The written customs broker license examinations will be given on the first Monday in April and October unless the regularly scheduled examination date conflicts with a national holiday, religious observance, or other foreseeable event.

CBP recognizes that the first Monday in October 2012 coincides with the observance of the religious holiday, Sukkot. In consideration of this conflict, CBP has decided to change the established date of the examination. This document announces that CBP has scheduled the October 2012 broker license examination to be held on Wednesday, October 3, 2012.

Dated: June 21, 2012.

Richard F. DiNucci,

Acting Assistant Commissioner, Office of International Trade.

[FR Doc. 2012–16289 Filed 7–2–12; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWYL03000 L51010000.FX0000 LVRWK09K1030; WYW–167155]

Notice of Availability of the Final Environmental Impact Statement, Proposed Rawlins Resource Management Plan Amendment, and Segregation of Public Lands for the Chokecherry and Sierra Madre Wind Farm Project

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) has prepared a Proposed Rawlins Resource Management Plan (RMP) Amendment (Volume I) and Chokecherry and Sierra Madre (CCSM) Wind Energy Project (Volume II) Final Environmental Impact Statement (EIS), and by this notice is announcing its availability. This notice will also segregate 2,560 acres of public lands located within the CCSM right-of-way (ROW) application area from appropriation under the public land laws including the 1872 Mining Law, but not the Mineral Leasing or Mineral Material Acts, for a period of 2 years from the date of publication of this notice.

DATES: BLM planning regulations state that any person who meets the conditions as described in the regulations may protest the BLM's Proposed RMP Amendment/Final EIS. A person who meets the conditions and files a protest must file the protest within 30 days of the date that the Environmental Protection Agency publishes its notice in the **Federal Register.**

ADDRESSES: Copies of the Proposed RMP Amendment/Final EIS have been sent to affected Federal, State, and local government agencies and to other stakeholders. Copies of the Proposed RMP Amendment/Final EIS are available for public inspection at the BLM Rawlins Field Office, 1300 North Third Street, Rawlins, Wyoming; the BLM Rock Springs Field Office, 280 Highway 191 North, Rock Springs, Wyoming; and the BLM Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming. The Proposed RMP Amendment/Final EIS is also available on the Internet at *www.blm.gov/wy/st/en/info/NEPA/documents/rfo/Chokecherry.html.*

All protests must be in writing and mailed to one of the following addresses:

Regular Mail: BLM Director (210), Attention: Brenda Williams, P.O. Box 71383, Washington, DC 20024–1383.

Overnight Mail: BLM Director (210), Attention: Brenda Williams, 20 M Street SE., Room 2134LM, Washington, DC 20003.

FOR FURTHER INFORMATION CONTACT: Pamela Murdock, Project Manager, telephone 307–775–6259; address 5353 Yellowstone Road, Cheyenne, WY 82007; email *pmurdock@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The BLM proposes to amend the 2008 Rawlins RMP for visual resources management (VRM) class designations (Final EIS Volume I). The Power Company of Wyoming, LLC (PCW) proposes to construct and operate a wind energy project south of Rawlins in Carbon County, Wyoming (Final EIS Volume II. The proposed project consists of two areas located approximately 9 miles apart within the Wind Site Testing and Monitoring Application Area—the Chokecherry site and the Sierra Madre site—totaling 227,638 acres of Federal, private and State lands. Only a portion of the total land area would be used for, or disturbed by, the project. The project proposal includes up to 1,000 wind turbine generators (WTG) and associated infrastructure, each turbine capable of producing 1.5 to 3 megawatts (MW) with a total nameplate capacity of 1,500 to 3,000 MW of electrical power.

On July 22, 2011 (76 FR 44039), the BLM segregated approximately 107,175 acres of public lands within the proposed project area. Through this notice, additional public lands within the CCSM project area would be segregated under the authority contained in 43 CFR 2091.3–1(e) and 43 CFR 2804.25(e) for a period of 2 years, in order to process the ROW application filed on the described lands; this 2-year segregation period will commence on July 3, 2012. It has been determined that this segregation is necessary for the orderly administration of the public lands.

The temporary segregation period will terminate and the lands will automatically re-open to appropriation under the public land laws, including the mining laws, if one of the following events occurs: (1) Upon the BLM's decision regarding whether to issue a ROW authorization for the wind energy generation proposal; (2) Upon publication in the **Federal Register** of a notice of termination of the segregation; or (3) Without further administrative action at the end of the segregation provided for in the **Federal Register** notice initiating the segregation, whichever occurs first. Any segregation made under this authority would be effective only for a period of up to 2 years, without the possibility of extension.

In accordance with 43 CFR 2091.3–1(e) and 2804.25(e), the following described public lands within the proposed project area are hereby segregated for a period of up to 2 years, subject to valid existing rights, from all forms of appropriation under the public land laws, including location and entry under the United States mining laws, but not from leasing under the mineral leasing laws or disposal under the mineral material laws:

Sixth Principal Meridian, Wyoming

T. 18 N., R. 85 W.,
Sec. 8.
T. 18 N., R. 86 W.,
Sec. 32, N½;
Sec. 35, N½.
T. 21 N., R. 87 W.,
Sec. 32;
Sec. 34.

The areas described aggregate 2,560 acres, according to the official plats of the surveys of the said lands, on file with the BLM.

The BLM Rawlins Field Office has been designated as the lead Federal agency for the Proposed RMP Amendment/Final EIS. Cooperating agencies include the U.S. Forest Service, the State of Wyoming, the Saratoga-Encampment-Rawlins Conservation District, the Little Snake River Conservation District, the Medicine Bow Conservation District, Carbon County, and the City of Rawlins.

The Draft RMP Amendment/Draft EIS was made available on July 22, 2011, for a 90-day public review and comment period. The Draft RMP Amendment/Draft EIS described and analyzed four VRM planning alternatives for the management of the public lands administered by the BLM Rawlins Field Office within the planning area, which includes and extends 30 miles beyond the CCSM project boundary, comprising approximately 3.6 million acres in Carbon County, south-central Wyoming.

Within this area, the BLM administers approximately 1.3 million acres of public land surface and Federal mineral estate and an additional 100,000 acres of mineral estate under State and privately owned surface. The BLM decisions would apply only to public lands and to BLM-administered Federal mineral estate. Comments on the Draft RMP Amendment/Draft EIS received from the public and from internal BLM review were considered and incorporated as appropriate into the proposed plan amendment. Public comments resulted in the addition of clarifying text, but did not significantly change the proposed land use planning decisions.

Volume I of the Proposed RMP Amendment/Final EIS analyzes in detail four RMP Amendment alternatives:

Alternative 1 (No Action Alternative): Continue existing management direction;

Alternative 2: Provide for development and use opportunities while minimizing adverse impacts to visual resources;

Alternative 3: Provide for compatible development and use while maintaining focus on greater conservation of visual resources; and

Alternative 4 (BLM Preferred Alternative): Provide for development opportunities while protecting visual resources.

Volume II of the Proposed RMP Amendment/Final EIS analyzes the direct, indirect and cumulative environmental impacts of constructing and operating the CCSM wind generation facility (proposed action) and whether the application area is suitable for development of the proposed project or for an alternative development strategy. The impact analysis is based on resource-specific assumptions, estimated project disturbance, and appropriate project-specific stipulations. Alternatives to the proposed action were developed in response to issues and concerns raised during the NEPA scoping and comment periods. All alternatives conform to the preferred planning alternative identified in Volume I of the Proposed RMP Amendment/Final EIS. The BLM will identify requirements for future wind development in the area and decide whether the area identified in PCW's proposal would be acceptable for development of a wind farm.

Alternative 1 (No Action Alternative): Determine that the proposed project area is unsuitable for wind development, deny PCW's request to develop wind energy on public lands, and deny any request to provide access to private lands for wind development within the application area.

Alternative 1R (BLM Preferred Alternative with modifications): Determine that the application area is suitable for wind development and can accommodate up to 1,000 WTGs. This alternative, a revision of PCW's original proposed action, was submitted by the applicant in response to issues raised during scoping and developed in consideration of a comprehensive review of information pertaining to wildlife issues in the project area. This alternative would require amending the VRM decisions in the 2008 Rawlins RMP.

Alternative 2: Determine that the application area to the north of T. 18 N. is suitable for wind development and can accommodate up to 1,000 WTGs. This alternative would keep development primarily within the checkerboard land ownership pattern and was developed in response to concerns regarding visual impacts to areas with high recreational values. More restrictive Greater Sage-grouse stipulations would apply to public lands in this alternative compared to the other alternatives. This alternative would require amending the VRM decisions in the 2008 Rawlins RMP.

Alternative 3: Determine that the Chokecherry portion and the area from the eastern half of T. 18 N., R. 88. W. to the east of the Sierra Madre portion of PCW's application area is suitable for wind development and can accommodate up to 1,000 WTGs. All lands would be excluded to the south of T. 18. N. and the western half of T. 18. N., R. 88 W. This alternative was developed in response to concerns regarding existing VRM Class II areas as well as areas with wildlife concerns. This alternative would require amending the VRM decisions in the 2008 Rawlins RMP.

Alternative 4: No placement of WTGs on public lands within either the Chokecherry or Sierra Madre sites. Instead, the BLM would provide ROW grants to allow PCW to develop wind energy facilities on privately held lands. The BLM would apply required restrictions and timing stipulations to public lands for requested access points. This alternative was developed in response to overall concerns regarding developing a wind farm on public lands and the associated impacts. This alternative would not require amending the VRM decisions in the 2008 Rawlins RMP.

Volume II considered 12 additional alternatives but eliminated them from detailed study since they did not meet the purpose and need of the proposed action, or because they were incorporated into the alternatives analyzed in detail.

A recent inventory of wilderness characteristics determined that lands with wilderness characteristics are not present.

If the analysis results in the decision to approve wind energy development, PCW may submit up to four plans of development (POD) for separate aspects of the project including: Turbine siting in the Chokecherry development area, turbine siting in the Sierra Madre development area, haul-road development throughout the project area, and transmission lines. The site-specific PODs would be tiered to the analysis and decisions in the EIS and Record of Decision for the CCSM wind farm project. Site-specific impacts associated with the location of individual project components not analyzed in the EIS would be evaluated in subsequent NEPA analyses based on site-specific proposals within the boundary of the alternative selected in the ROD. ROW grants for these PODs, if issued, will include site-specific terms and conditions analyzed either in the POD NEPA documents or in the CCSM project EIS.

Instructions for filing a protest with the Director of the BLM regarding the Proposed RMP Amendment/Final EIS may be found in the ''Dear Reader'' Letter of the Proposed RMP Amendment/Final EIS and at 43 CFR 1610.5–2. Email and faxed protests will not be accepted as valid protests unless the protesting party also provides the original letter by either regular or overnight mail postmarked by the close of the protest period. Under these conditions, the BLM will consider the email or faxed protest as an advance copy and it will receive full consideration. If you wish to provide the BLM with such advance notification, please direct faxed protests to the attention of the BLM protest coordinator at 202–245–0028 or emails to *Brenda_Hudgens-Williams@blm.gov.*

All protests, including the follow-up letter to emails or faxes, must be in writing and mailed to the appropriate address, as set forth in the **ADDRESSES** section above.

Before including your phone number, email address, or other personal identifying information in your protest, you should be aware that your entire protest—including your personal identifying information—may be made publicly available at any time. While you may ask us in your protest to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 40 CFR 1506.6, 40 CFR 1506.10, 43 CFR 1610.2; 43 CFR 1610.5.

Donald A. Simpson,

State Director, Wyoming.

[FR Doc. 2012–16160 Filed 7–2–12; 8:45 am]

BILLING CODE 4310–VC–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–10417; 2200–1100–665]

Notice of Inventory Completion: Wesleyan University, Middleton, CT

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Wesleyan University, Middleton, CT, 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 Wesleyan University, Middleton, CT. 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 Wesleyan University, Middleton, CT, at the address below by August 2, 2012.

ADDRESSES: Dr. Sonia Mañjon, Chief Diversity Officer, Wesleyan University, 237 High Street, Middletown, CT 06457, telephone (860) 685–3927.

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 Wesleyan University, Middleton, CT. The human remains were removed from Hamilton County, TN.

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 Wesleyan University professional staff in consultation with representatives of Cherokee Nation, Oklahoma; Chickasaw Nation, Oklahoma; Eastern Band of Cherokee Indians of North Carolina; Muscogee (Creek) Nation, Oklahoma; Poarch Band of Creek Indians of Alabama; and the United Keetoowah Band of Cherokee Indians in Oklahoma.

History and Description of the Remains

In the late 1800s, human remains representing, at minimum, three individuals were removed from Hamilton County, TN, during exploration of a mound on William's Island (site 40Ha60) by George D. Barnes, an amateur collector from Dayton, TN, with the permission of the landowner. This is part of a larger collection purchased from Barnes by A.R. Crittenden of Middletown, CT, in 1896 and deposited in the Wesleyan University Museum until the purchase price ($1000) could be raised by the Wesleyan University Museum. The collection was officially purchased by the Wesleyan University Museum in 1899. No known individuals were identified. No associated funerary objects are present. The majority of the material culture from William's Island site has been provisionally assigned to the mid/late Mississippian period (late prehistoric/early historic). The human remains are Native American based on the site context.

In the late 1800s, human remains representing, at minimum, two individuals were removed from a mound 12 miles north of Chattanooga, TN, on the Yarnell (or Garnell) farm by George D. Barnes, an amateur collector from Dayton, TN. This is part of a larger collection purchased from Barnes by A. R. Crittenden of Middletown, CT, in 1896 and deposited in the Wesleyan University Museum until the purchase price ($1000) could be raised by the Wesleyan University Museum. The collection was officially purchased by the Wesleyan University Museum in 1899. No known individuals were identified. No associated funerary objects are present. The mound is believed to be date to the Mississippian period. The human remains are Native American based on the mound context.

In the late 1800s, human remains representing, at minimum, five individuals were removed from ''vicinity of Chattanooga,'' in Hamilton County, TN, by George D. Barnes, an amateur collector from Dayton, TN. This is part of a larger collection purchased from Barnes by A. R. Crittenden of Middletown, CT, in 1896 and deposited in the Wesleyan University Museum until the purchase price ($1000) could be raised by the Wesleyan University Museum. The collection was officially purchased by the Wesleyan University Museum in 1899. No known individuals were identified. No associated funerary objects are present. The human remains are Native American based on the collecting practices of Mr. Barnes.

Archeological evidence, oral tradition, and geographical location supports a cultural affiliation determination to all three Federally recognized Cherokee tribes (Cherokee Nation, Oklahoma; Eastern Band of Cherokee Indians of North Carolina; and the United Keetoowah Band of Cherokee Indians in Oklahoma), which were one group until their forced relocation known as The Trail of Tears, which resulted from the Indian Relocation Act of 1830. Oral tradition supports archeological research that suggests a much longer Cherokee occupation of the region associated with the upper Tennessee, Little Tennessee, and Hiwassee rivers. According to one source, ''[d]ue to similar culturally conservative traits, such as commonality in burial practices, house patterns, and community organization, a temporal progression is suggested from Dallas to Mouse Creek to Overhill Cherokee based on shifts in ceramic styles, settlement characteristics, and sociopolitical organizations'' (Schroedl, 1986). The Eastern Band of Cherokee Indians support this conclusion, and their oral tradition reinforces this determination. Based on the Indian Claims Commission decision, Hamilton County, TN, is the aboriginal territory of the Eastern Band of Cherokee Indians. Based on Indian Land Cessions 1784–1894, Hamilton County, TN, is the aboriginal territory of all three Federally recognized Cherokee tribes.

Determinations Made by Wesleyan University

Officials of Wesleyan University have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of ten 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 is to 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 Indian tribe that believes itself to be culturally

affiliated with the human remains should contact Dr. Sonia Mañjon, Chief Diversity Officer, Wesleyan University, 237 High Street, Middletown, CT 06457, telephone (860) 685–3927, before August 2, 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.

Wesleyan University is responsible for notifying the Cherokee Nation, Oklahoma; Chickasaw Nation, Oklahoma; Eastern Band of Cherokee Indians of North Carolina; Muscogee (Creek) Nation, Oklahoma; Poarch Band of Creek Indians of Alabama; and the United Keetoowah Band of Cherokee Indians in Oklahoma that this notice has been published.

Dated: May 23, 2012.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2012–16205 Filed 7–2–12; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–10458; 2200–1100–665]

Notice of Inventory Completion: Bishop Museum, Honolulu, HI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Bishop Museum has completed an inventory of human remains in consultation with the appropriate Native Hawaiian Organizations, and has determined that there is a cultural affiliation between the human remains and present-day Native Hawaiian Organizations. Representatives of any Native Hawaiian Organization that believes itself to be culturally affiliated with the human remains may contact the Bishop Museum. Repatriation of the human remains to the NHOs stated below may occur if no additional claimants come forward.

DATES: Representatives of any Native Hawaiian Organization that believes it has a cultural affiliation with the human remains should contact the Bishop Museum at the address below by August 2, 2012.

ADDRESSES: Noa Dettweiler, General Counsel, Bishop Museum, Honolulu, HI 96817, telephone (808) 847–8216.

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 Bishop Museum. The human remains were removed from an unknown location in Hawaii.

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 Bishop Museum professional staff in consultation with representatives of the donor and the Hawaii State Department of Land and Natural Resources.

History and Description of the Remains

Prior to 1920, human remains representing, at minimum, one individual were removed from an unknown location in Hawaii by unknown individuals. The Bishop Museum received the remains unsolicited via the U.S. Postal Service. The sender noted that they believed the skull to be that of a 19th century Hawaiian, discovered in a cave by two teen-aged boys and given to Dr. J. Gilbert McAllister in the 1920s. No information is available on which island the cave was located. Dr. McAllister was an archaeologist doing research at Bishop Museum during that time period, but it is unknown how the skull left his possession. The skull is missing the lower jaw bone. No known individuals were identified. No associated funerary objects are present.

Determinations Made by the Bishop Museum

Officials of the Bishop Museum 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 Hawaiian 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 Hawaiian human remains and Hui Malama I Na Kupuna O Hawaii Nei and the Office of Hawaiian Affairs.

Additional Requestors and Disposition

Representatives of any Native Hawaiian Organization that believes itself to be culturally affiliated with the human remains should contact Noa Dettweiler, General Counsel, Bishop Museum, 1525 Bernice Street, Honolulu, HI 96817, telephone (808) 847–8216, before August 2, 2012. Repatriation of the human remains to Hui Malama I Na Kupuna O Hawaii Nei and the Office of Hawaiian Affairs may proceed after that date if no additional claimants come forward.

The Bishop Museum is responsible for notifying Hui Malama I Na Kupuna O Hawaii Nei and the Office of Hawaiian Affairs that this notice has been published.

Dated: May 31, 2012.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2012–16209 Filed 7–2–12; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–10467; 2200–1100–665]

Notice of Inventory Completion: U.S. Department of Agriculture, Forest Service, Tongass National Forest, Craig Ranger District, Craig, AK

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture (USDA), Forest Service, Tongass National Forest, 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 USDA Tongass National Forest. 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 USDA Tongass National Forest at the address below by August 2, 2012.

ADDRESSES: Forrest Cole, Supervisor, Tongass National Forest, 648 Mission Street Federal Building, Ketchikan, AK 99901–6591, telephone (907) 225–3101.

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 USDA Tongass National Forest, Craig Ranger District, Craig, AK. The human remains were removed from site DIX–00013 on Prince of Wales Island in southeast Alaska.

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 USDA Forest Service professional staff in consultation with representatives of the Hydaburg Cooperative Association.

History and Description of the Remains

On an unknown date prior to 1987, human remains representing, at minimum, one individual were removed from site DIX–00013 on Prince of Wales, AK. In that year, a resident of Hydaburg on Prince of Wales Island, AK, came into possession the human remains, which consisted of a skull. The skull was later seized as a part of a criminal investigation on January 2, 1990. The resident said a friend had found it on the beach on Prince of Wales Island prior to 1987. That friend took the skull to Seattle, WA, for a time and eventually sent it to the resident in Hydaburg. The USDA Forest Service took possession of the skull, and it was stored at the Craig Ranger District where it remains today. No known individual was identified. No associated funerary objects are present.

The area of the discovery of the human remains was the aboriginal lands of the Hydaburg Cooperative Association, according to consultation with the tribe and ''*Haa Aani Tlingit and Haida Land Rights and Use*'' by Walter Goldschmidt and Theodore H. Haas, first issued in 1948, reprinted in 1988 by the Sealaska Heritage Association. During consultation with the Hydaburg Cooperative Association, it was discovered that a tribal elder knew the details of exactly where the skull was taken, an area clearly defined in *Haa Aani* and by the tribe as the aboriginal lands of the Hydaburg Cooperative Association.

Determinations Made by the USDA, Forest Service, Tongass National Forest

Officials of the USDA, Forest Service, Tongass National Forest, 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 Hydaburg Cooperative Association.

Additional Requestors and Disposition

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Forrest Cole, Supervisor, Tongass National Forest, 648 Mission Street Federal Building, Ketchikan, AK 99901–6591, telephone (907) 225–3101 before August 2, 2012. Repatriation of the human remains to the Hydaburg Cooperative Association may proceed after that date if no additional claimants come forward.

The USDA Forest Service is responsible for notifying the Hydaburg Cooperative Association that this notice has been published.

Dated: May 31, 2012.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2012–16208 Filed 7–2–12; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–10413; 2200–1100–665]

Notice of Inventory Completion: Fowler Museum at UCLA, Los Angeles, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Fowler Museum at UCLA 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 Fowler Museum at UCLA. 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 Fowler Museum at UCLA at the address below by August 2, 2012.

ADDRESSES: Wendy G. Teeter, Ph.D., Curator of Archaeology, Fowler Museum at UCLA, Box 951549, Los Angeles, CA 90095–1549, telephone (310) 825–1864.

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 Fowler Museum at UCLA, Los Angeles, CA. The human remains and associated funerary objects were removed from the Seven Palms Valley Rancheria, Riverside 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 Fowler Museum at UCLA's professional staff in consultation with representatives of the Agua Caliente Indian Reservation, California; Morongo Band of Mission Indians, California (formerly the Morongo Band of Cahuilla Mission Indians of the Morongo Reservation); and the Soboba Bando of Luiseno Indians, California (hereafter referred to as ''The Tribes.'')

History and Description of the Remains

At an unknown date prior to 1951, human remains representing, at minimum, one individual were removed from the ethnohistoric village site of Seven Palms Valley Rancheria (CA–RIV–154), in Riverside County, CA. In April 1951, Mrs. Frances Foster Cronholm donated this collection to UCLA consisting of human remains of an incomplete adult male and two mountain lion phalanges. No known individuals were identified. The two associated funerary objects are two mountain lion phalanges.

In 1998, Ginger Ridgeway, Curator, Agua Caliente Cultural Museum, determined that the human remains were Native American based on

diagnostic traits. Anthony Andreas, Elder, Cahuilla Cultural Historian, identified the location of the site as traditional territory of the Agua Caliente Band of Cahuilla Indians of the Agua Caliente Indian Reservation, California. Britt Wilson, Cultural Director, Morongo Band of Cahuilla Mission Indians of the Morongo Reservation, identified the remains and associated funerary object as culturally affiliated with the Morongo Band of Mission Indians, California. Furthermore, Joe Ontiveros, Cultural Director, Soboba Band of Luiseno Indians identified the Seven Palms Valley Rancheria as within ancestral territory of the Soboba Bando of Luiseno Indians, California. The Fowler Museum at UCLA has determined the human remains and associated funerary objects to be culturally affiliated with The Tribes based on ethnographic, geographic, and linguistic evidence.

Determinations Made by the Fowler Museum at UCLA

Officials of the Fowler Museum at UCLA 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(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 or associated funerary objects should contact Dr. Wendy G. Teeter, Curator of Archaeology, Fowler Museum at UCLA, Box 951549, Los Angeles, CA 90095–1549, telephone (310) 825–1864 before August 2, 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 Fowler Museum at UCLA is responsible for notifying The Tribes that this notice has been published.

Dated: May 23, 2012.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2012–16206 Filed 7–2–12; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–10557; 2200–1100–665]

Notice of Inventory Completion: Field Museum of Natural History, Chicago, IL; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

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 Field Museum of Natural History in Chicago, IL (Field Museum). The human remains and associated funerary objects were removed from Fresno, Kings, and Madera Counties, 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.

This notice corrects the total minimum number of individuals previously published in a Notice of Inventory Completion in the **Federal Register** (76 FR 80393–80394, December 23, 2011). Following publication of the notice, the Field Museum staff re-examined the human remains and associated funerary objects removed from Fresno, Kings, and Madera Counties, CA, and is reducing the minimum number of individuals removed from Fresno County from six to four. Field Museum staff also assigned an official catalog number (42709.1) to one of the associated funerary objects, the abalone shell.

In the **Federal Register** (76 FR 80393–80394, December 23, 2011), paragraph seven is corrected by substituting the following paragraph:

In March 1901, human remains representing, at minimum, four individuals (catalog numbers 42707-42709, 42713) were removed from unknown locations in Squaw Valley, near Sanger in Fresno County, CA, by John Hudson. No known individuals were identified. The two associated funerary objects are a broken child's basket (catalog number 70830) and an abalone shell (catalog number 42709.1) comprised of one larger piece of shell and its fragments.

In the **Federal Register** (76 FR 80393–80394, December 23, 2011), paragraph ten is corrected by substituting the following paragraph:

Officials of the Field Museum have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described above represent the physical remains of seven individuals of Native American ancestry.

Additional Requestor 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 Helen Robbins, Repatriation Director, Field Museum of Natural History, 1400 South Lake Shore Drive, Chicago, IL, 60605–2496, telephone (312) 665–7317, before August 2, 2012. Repatriation of the human remains and associated funerary objects 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 Field Museum is responsible for notifying 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, that this notice has been published.

Dated: June 11, 2012.

David Tarler,

Acting Manager, National NAGPRA Program.

[FR Doc. 2012–16207 Filed 7–2–12; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2012–0048]

Commercial Wind Lease Issuance and Site Assessment Activities on the Atlantic Outer Continental Shelf (OCS) Offshore Rhode Island and Massachusetts

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Notice of the availability of an environmental assessment.

SUMMARY: BOEM has prepared an environmental assessment (EA)

considering the reasonably foreseeable environmental impacts and socioeconomic effects of issuing renewable energy leases and subsequent site characterization activities (geophysical, geotechnical, archaeological, and biological surveys needed to develop specific project proposals on those leases) in an identified Wind Energy Area (WEA) on the OCS offshore Rhode Island (RI) and Massachusetts (MA). This EA also considers the reasonably foreseeable environmental impacts associated with the approval of site assessment activities (including the installation and operation of meteorological towers and buoys) on the leases that may be issued in the WEA. The purpose of this notice is to inform the public of the availability of the EA for review and to solicit public comments on the EA. The EA can be found online at *http://www.boem.gov/Renewable-Energy-Program/Smart-from-the-Start/Index.aspx*.

Authority: This Notice of the Availability (NOA) of an EA is published pursuant to 43 CFR 46.305.

FOR FURTHER INFORMATION CONTACT: Michelle Morin, BOEM Office of Renewable Energy Programs, 381 Elden Street, HM 1328, Herndon, Virginia 20170–4817, (703) 787–1340 or *michelle.morin@boem.gov*.

SUPPLEMENTARY INFORMATION: On August 18, 2011, BOEM published a Notice of Intent (NOI) to prepare an EA, which requested public comments on alternatives to be considered in the EA as well as measures (*e.g.,* limitations on activities based on technology, distance from shore, or timing) that would mitigate impacts to environmental resources and socioeconomic conditions that could result from leasing, site characterization, and site assessment in and around the Call Area (76 FR 51391). The Call Area is located within the Area of Mutual Interest (AMI), as described by a Memorandum of Understanding between the Governors of RI and MA. Comments received in response to the NOI can be viewed at: *http://www.regulations.gov* by searching for Docket ID BOEM–2011–0063.

On February 24, 2012, BOEM announced the area identification of the RI/MA WEA. The WEA does not include the ''high value'' fishing grounds located in the Call Area. This EA analyzes the WEA for leasing and approval of site assessment plans as the proposed action under the National Environmental Policy Act (42 U.S.C. 4321–4370f). In this EA, BOEM also identifies other alternatives to the proposed action that could exclude additional portions of the WEA from leasing based on a number of factors, such as potential effects to right whales, the viewshed, and existing telecommunication cables.

BOEM is seeking public input on the EA, including comments on the completeness and adequacy of the environmental analysis, and on the measures and operating conditions considered in the EA that are designed to reduce or eliminate potential environmental impacts. BOEM will consider public comments on the EA in determining whether to issue a Finding of No Significant Impact (FONSI), or conduct additional analysis under NEPA.

Comments

Federal, state, and local government agencies, tribal governments, and other interested parties are requested to submit their written comments on the EA in one of the following ways:

1. Electronically: *http://www.regulations.gov*. In the entry entitled ''Enter Keyword or ID,'' enter BOEM–2012–0048, then click ''search.'' Follow the instructions to submit public comments and view supporting and related materials available for this document.

2. In written form, delivered by hand or by mail, enclosed in an envelope labeled ''Comments on Commercial Wind Lease Issuance and Site Assessment Activities on the Atlantic OCS Offshore RI and MA'' to: Program Manager, Office of Renewable Energy Programs, Bureau of Ocean Energy Management, 381 Elden Street, HM 1328, Herndon, Virginia 20170–4817.

Comments must be received or postmarked no later than August 2, 2012. All written comments received or postmarked during the comment period will be made available to the public.

Dated: June 26, 2012.

Tommy P. Beaudreau,

Director, Bureau of Ocean Energy Management.

[FR Doc. 2012–16155 Filed 7–2–12; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[Docket No. 2902]

Certain Video Analytics Software, Systems, Components Thereof, and Products Containing Same; Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled Certain Video Analytics Software, Systems, Components Thereof, and Products Containing Same, DN 2902; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing under section 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(b)).

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Acting Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*, and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to section 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of ObjectVideo, Inc. on June 27, 2012. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain video analytics software, systems, components thereof, and products containing same. The complaint names as respondent Pelco, Inc.

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or section 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would

affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) Identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) Indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) Explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 2902'') in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: June 27, 2012.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2012–16202 Filed 7–2–12; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–840]

Certain Semiconductor Integrated Circuit Devices and Products Containing Same; Determination Not To Review an Initial Determination Granting Complainant's Unopposed Motion for Leave To Amend the Complainant and Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (''ALJ'') initial determination (''ID'') (Order No. 7) granting complainant's unopposed motion for leave to amend the Complaint and Notice of Investigation (''NOI'') in the above-referenced investigation.

FOR FURTHER INFORMATION CONTACT: Megan M. Valentine, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708–2301. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on May 1, 2012, based on a complaint filed by Microchip Technology Incorporated of Chandler, Arizona (''Microchip''). 77 FR 25747–48 (May 1, 2012). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain semiconductor integrated circuit devices and products containing same by reason of infringement of certain claims of U.S. Patent Nos. 7,225,088; 6,245,597; 6,159,765; 5,760,720 (''the '720 patent''); 6,559,783; and 6,847,904. The complaint further alleges the existence of a domestic industry. The Commission's notice of investigation named as respondents Intersil Corporation of Milpitas, California; Zilker Labs, Inc. of Austin, Texas (''Zilker''); and Techwell LLC of Milpitas, California. The Office of Unfair Import Investigation was not named as a participating party.

On June 5, 2012, Microchip filed a motion for leave to amend its Complaint and the NOI to change the name of respondent Zilker to Zilker Labs LLC. The motion also sought leave to amend Exhibit 74 to the Complaint to correct a clerical error regarding the identification of a Microchip product that allegedly practices the '720 patent. The motion indicated that no party opposed Microchip's request.

On June 7, 2012, the ALJ issued the subject ID, granting Microchip's motion pursuant to section 210.14(b)(1) of the Commission's Rules of Practice and Procedure (19 CFR 210.14(b)(1)). No petitions for review of this ID were filed.

The Commission has determined not to review the ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

By order of the Commission.

Issued: June 27, 2012.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2012–16201 Filed 7–2–12; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (OJJDP) Docket No. 1594]

Meeting (Webinar) of the Federal Advisory Committee on Juvenile Justice

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice.

ACTION: Notice of Webinar Meeting.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) announces a meeting of the Federal Advisory Committee on Juvenile Justice (FACJJ).

Dates and Locations: The meeting will take place online, as a webinar, on Friday, August 10, 2012, from 3 to 7 p.m. ET.

FOR FURTHER INFORMATION CONTACT: Robin Delany-Shabazz, Designated Federal Official, OJJDP, *Robin.Delany-Shabazz@usdoj.gov*, or 202–307–9963. [**Note:** This is not a toll-free number.]

SUPPLEMENTARY INFORMATION: The Federal Advisory Committee on Juvenile Justice (FACJJ), established pursuant to Section 3(2)A of the Federal Advisory Committee Act (5 U.S.C. App. 2), will meet to carry out its advisory functions under Section 223(f)(2)(C–E) of the Juvenile Justice and Delinquency Prevention Act of 2002. The FACJJ is composed of representatives from the states and territories. FACJJ member duties include: reviewing Federal policies regarding juvenile justice and delinquency prevention; advising the OJJDP Administrator with respect to particular functions and aspects of OJJDP; and advising the President and Congress with regard to State perspectives on the operation of OJJDP and Federal legislation pertaining to juvenile justice and delinquency prevention. More information may be found at *www.facjj.org*.

Meeting Agenda: The agenda will include: (a) Welcome and introductions; (b) remarks from the Administrator; (c) presentation by and discussion with staff of the National Juvenile Justice Evaluation Center; (d) subcommittee reports and discussions; (e) other business; and (f) adjournment.

Members of the FACJJ and of the public who wish to attend must pre-register online by linking to the webinar registration portal through *www.facjj.org* no later than Wednesday, August 8, 2012. Upon registration, information will be sent to you at the email you provide to enable you to connect to the webinar. Should problems arise with webinar registration, call Michelle Duhart-Tonge at 703–789–4712. [**Note:** this is not a toll-free telephone number.] Members of the public will be able to listen to and view the webinar as observers but will not be able to actively participate.

Written Comments: Interested parties may submit written comments in advance to Robin Delany-Shabazz, Designated Federal Official, by email to *Robin.Delany-Shabazz@usdoj.gov* no later than Monday, August 6, 2012. Alternatively, fax your comments to 202–307–2819 and call Joyce Mosso Stokes at 202–305–4445 to ensure that they are received. [**Note:** These are not toll-free numbers.]

Melodee Hanes,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 2012–16267 Filed 7–2–12; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

National Institute of Corrections

Solicitation for a Cooperative Agreement: Development of a Guide for Correctional Agencies To Establish Tele-Visiting Capacity in Correctional Facilities

AGENCY: National Institute of Corrections, U.S. Department of Justice.

ACTION: Solicitation for a cooperative agreement.

SUMMARY: The National Institute of Corrections (NIC) is seeking applications from organizations, groups, or individuals to enter into a cooperative agreement for an 18-month period to develop a guide to establishing televisiting capacity in correctional facilities.

DATES: Applications must be received by 4:00 p.m. (EDT) on Friday, August 3, 2012.

ADDRESSES: Mailed applications must be sent to: Director, National Institute of Corrections, 320 First Street NW., Room 5002, Washington, DC 20534. Applicants are encouraged to use Federal Express, UPS, or similar service to ensure delivery by the due date. Hand delivered applications should be brought to 500 First Street NW., Washington, DC 20534. At the front security desk, dial 7–3106, ext. 0 for pickup. Faxed or emailed applications will not be accepted. Electronic applications can only be submitted via *http://www.grants.gov.*

FOR FURTHER INFORMATION CONTACT: A copy of this announcement and links to the required application forms can be downloaded from the NIC Web site at *http://www.nicic.gov/cooperative_agreements.*

All technical or programmatic questions concerning this announcement should be directed to Maureen Buell, Correctional Program Specialist, National Institute of Corrections, Community Services Division. Ms. Buell can be reached directly at 1–800–995–6423, ext. 40121 or by email at *mbuell@bop.gov.* In addition to the direct reply, all questions and responses will be posted on NIC's Web site at *www.nicic.gov* for public review (the names of those submitting questions will not be posted). The Web site will be updated regularly and postings will remain on the Web site until the closing date of this cooperative agreement solicitation. Only questions received by 12:00 p.m. (EDT) on July 25, 2012 will be posted on the NIC Web site.

SUPPLEMENTARY INFORMATION:

Overview: According to a 2000 Bureau of Justice Statistics report (Mumola, C.J. NCJ 182335, 8/30/2000), of the nearly 2 million men and women being held in state prisons, local jails, and federal facilities, nearly 1.1 million were parents, affecting an estimated amount of 2.3 million children. Over half of those parents had minor children. This has a significant effect on children who are assigned temporary living arrangements such as foster care or placement with extended family or neighbors. Without maintaining positive connections to a parent, children are more likely to experience a variety of adverse effects, including impaired learning, poverty, and frequent displacement or instability in their living situations. Data shows that children who were residing with their mothers prior to incarceration were most likely to be living with grandmothers (78%) or other kinship or under foster care arrangements. Children of male offenders were more likely living with their biological mother (90%) and less likely to be in other kinship or foster care placements. Over the past two decades, as the number of incarcerated men and women has increased, so have the numbers of prison and jail facilities. It is likely that the facility in which a man or woman is housed is far away from family, community, and other potential supports. This is more often the rule with women, given that states may have only a single facility that houses women, and they frequently are not

easily accessed by family and other potential support networks. Regardless of the gender of the offender, the effect of parental incarceration is significant, and lack of appropriate contact with family and other community supports affects how an offender serves his or her time and challenges the reentry process.

Research shows there is a positive relationship among supportive family, community contacts, and behavioral health issues that support successful reentry. In fact, ''maintaining community and family ties is related to desistance'' (Visher, C., and S. Courtney, 2007. One Year Out, Experiences of Prisoners Returning to Cleveland, Washington). Yet, U.S. incarceration trends support the transfer of offenders to accommodate inmate populations. Family and community supports are becoming disconnected as men and women are sentenced and transferred to facilities far from home, leaving them with numerous systemic barriers to maintaining healthy contact.

Beginning with the sentencing process, ''whereas a family law court often makes children's interests paramount, a criminal law court may overlook altogether how its sentencing decision will affect a defendant's children'' (Abramowicz, S. Rethinking Parental Incarceration, summer 2011 Copyright© 2011 University of Colorado Law Review, 82 U. Colo L. Rev. 793). Institutional policy and practice, while in place to facilitate manageable and safe visitation, may inadvertently create barriers due to staffing requirements, physical plant and space accommodations, security issues, and scheduling. Furthermore, staff may perceive in-person visiting as a privilege or perk, rather than as programming and preparation for reentry. Such attitudes can severely limit opportunities to build potential supportive networks.

The inability of incarcerated individuals to visit with family and build community supports can have far-reaching consequences. Inmate parents face significant obstacles in asserting parental rights. The Adoption and Safe Family Act of 1994 (ASFA) was developed to provide adoption priority for children who were lingering in foster care waiting for adoption. For those parents who had maintained appropriate contact (for example, having had sufficient contact between parent and child in 15 consecutive months out of 22) or had their children living with them prior to incarceration, an unintended consequence of ASFA could be the termination of parental rights during the period of incarceration. Some states, but not all, have opted out of this legal mandate. Whether it be because of financial ability, transportation, geographical distance, unwillingness of a caregiver, or inconvenience, lack of visitation can have severe consequences for both the parent and child.

Numerous studies over the decades have supported the building of familial and community bonds as contributing to improved reentry and reductions in recidivism. Some national criminal justice organizations have supported the increased use of visitation to improve reentry efforts. These include The Sentencing Project (The Effects of Prison Visitation on Offender Recidivism, November 2011), The Reentry Policy Council (Children of Incarcerated Parents: An Action Plan for Federal Policymakers, 2009), and The Vera Institute of Justice Family Justice Program (Close to Home: Building on Family Support for People Leaving Jail, October 2011). The National Institute of Justice currently has a solicitation out as well, ''Impact of Video Visitation on Offenders and Their Families'' under Research and Evaluation in Justice Systems, CFDA No. 16.560.

This request for application is not intended to create a guide to supplant in-person visitation, but used in combination with other types of communication, televisiting has the potential for building and maintaining supportive connections between parents and children.

Background: The National Institute of Corrections has been providing support to federal, state, and local criminal justice organizations nationally since 1974. Since that time, NIC has worked closely with federal, state, and local jails, prisons, and community corrections agencies on a broad range of projects ranging from operational to research and innovation-based. As correctional practice has evolved, trends have emerged and focus has expanded beyond study of the individual in corrections to the study of the impact that community and family, broadly defined, have on an individual's success in our nation's facilities or under some form of community supervision (i.e., probation or parole). As correctional populations have soared, bed space has been at a premium and new facilities have been opened, often far from whatever supports the individual in correctional custody may have.

Scope of Work: The intent of this cooperative agreement is to inform the development of televisiting initiatives. The cooperative agreement awardee will design and develop a guide to assist correctional agencies in the establishment of televisiting programs to enhance family and supportive community connections. The concept of televisiting has been employed in correctional agencies in various ways, and with the transfer of offenders, to locations often far from their communities and families. There continues to be a strong interest in the field for establishing such programs. It is anticipated that in developing the guide, the applicant will have strong familiarity with the concept of televisiting, technology, and potential uses of televisiting. The applicant will draw from the existing research and incorporate lessons learned from correctional agencies that have already established programs. Lessons learned might include any current evaluations, knowledge about the potential for and existing collaborative partnerships, the financial aspects of televisiting systems and the potential for broadly defined cost benefits. It is further anticipated that the applicant will prepare a resource guide for sites that are contemplating development of televisiting or looking to make enhancements to current televisiting initiatives. The final product will be broadly available to the correctional field and will be shared via the National Institute of Correction's Web site.

Document Length: The length of the document should be determined by content. Brevity and clarity are encouraged.

Intended Audience: The primary audience for this curriculum is the leadership and management of correctional organizations and various external public and private stakeholders interested in the establishment of televisiting programs in correctional settings.

Meetings: The cooperative agreement awardee will participate in an initial meeting with NIC staff for a project overview and preliminary planning prior to September 15, 2012. Additionally, the awardee should plan to meet with NIC staff on a routine, established basis to discuss the activities noted in the timeline during the course of the cooperative agreement. (The applicant creates a timeline in response to the RFP. See section titled Project Management below.) Meetings will be held no less than quarterly and may be conducted via webinar or in person as agreed upon by NIC and the awardee.

Project Deliverables: Under this cooperative agreement, the awardee will design and develop three products: (1) A guide to assist correctional agencies in the establishment of televisiting programs to enhance family and supportive community connections, (2) a resource guide for sites that are contemplating the development of

televisiting in their own facility or looking to make enhancements to current televisiting initiatives, (3) a series of evaluative questions about the efficacy of televisiting for sites that have implemented or are considering the establishment of correctional televisiting. These questions will be developed in collaboration with NIC's Research and Information Services Division.

Document Preparation: For all awards in which a document will be a deliverable, the awardee must follow the Guidelines for Preparing and Submitting Manuscripts for Publication as found in the ''General Guidelines for Cooperative Agreements,'' which can be found on the NIC Web site at *www.nicic.gov/cooperativeagreements.* In addition, awardees are asked to comply with NIC's recommendations for producing media using plain language. These can be found at *www.nicic.gov/plainlanguage.* All final publications submitted for posting on the NIC Web site must meet the federal government's requirement for accessibility (e.g., 508 PDF, HTML file, or other acceptable format). All documents developed under this cooperative agreement must be submitted in draft form to NIC for review prior to the final products being delivered.

Application Requirements: An application package must include OMB Standard Form 425, Application for Federal Assistance; a cover letter that identifies the audit agency responsible for the applicant's financial accounts as well as the audit period or fiscal year under which the applicant operates (e.g. July 1 through June 30); and an outline of projected costs with the budget and strategy narratives described in the announcement. The following additional forms must also be included: OMB Standard Form 424A, Budget Information—Non-Construction Programs; OMB Standard Form 424B, Assurances—Non-Construction Programs (both available at *www.grants.gov*); DOJ/FBOP/NIC Certification Regarding Lobbying, Debarment, Suspension and Other Responsibility Matters; and the Drug-Free Workplace Requirements (available at *www.nicic.gov/Downloads/General/certif-frm.pdf*).

Applications should be concisely written, typed double spaced, and reference the NIC opportunity number and title referenced in this announcement. If you are hand delivering or submitting via Fed-Ex, please include an original and three copies of your full proposal (program and budget narrative, application forms, assurances, and other descriptions). The original should have the applicant's signature in blue ink. Electronic submissions will be accepted only via *www.grants.gov.*

Place the following at the top of the abstract: Project title; Applicant name (Legal name of applicant organization); Mailing address; Contact phone numbers (voice, fax); Email address; and Web site address, if applicable.

The narrative portion of the application should include, at a minimum, a statement indicating the applicant's understanding of the project's purpose, goals and objectives. The applicant should state this in language other than that used in the solicitation.

Project Design and Implementation: This section should describe the design and implementation of the project and how the key design and implementation issues and challenges will be addressed.

Project Management: This section should include a chart of measurable project milestones and timelines for the completion of each milestone.

Capabilities and Competencies: This section should describe (1) the qualifications of the applicant organization and any partner organizations to do the work proposed and (2) the expertise of key staff to be involved in the project. Attach resumes that document the relevant knowledge, skills, and abilities of the principle investigator and each staff member to complete the project. If the applicant organization has completed similar projects in the past, please include the URL/Web site or ISBN number for accessing a copy of the referenced work.

Budget: The budget should detail all costs for the project, show consideration for all contingencies for the project, note a commitment to work within the proposed budget, and demonstrate the ability to provide deliverables according to schedule.

Authority: Public Law 93–415.

Funds Available: NIC is seeking the applicant's best ideas regarding accomplishment of the scope of work and the related costs for achieving the goals of this solicitation. Funds may be used only for the activities that are linked to the desired outcome of the project. The funding amount should not exceed $48,000 for a period of 18 months.

Eligibility of Applicants: An eligible applicant is any state or general unit of government, private agency, educational institution, organization, individual, or team with expertise in the described areas. Applicants must have demonstrated ability to implement a project of this size and scope. To be considered, applicants must demonstrate, at a minimum, in-depth knowledge of research and practice regarding reentry; the effect of parental incarceration and correctional visitation policy and practice; understanding of the challenges experienced by family and other potential sources of support in the correctional visitation process; in-depth knowledge of the practices, programs and complexities in operation of correctional facilities; issues relevant to parenting, the importance of family in influencing offender outcomes, and the benefit of community supports in male and female facilities; knowledge of case law as it relates to visitation in correctional environments; demonstrated knowledge of tele-visiting technology and its potential uses; specific examples of expertise in directing project design and implementation, particularly with regard to the development of similar projects in which such technology might be used; and demonstrated ability to work in a collaborative fashion with other experts in the field of reentry, transition, family, and community supports.

Review Considerations: Among the criteria used to evaluate the applications are: An assessment of whether the applicant has a clear understanding of the project requirements as stated in the solicitation; background, experience and expertise of the proposed project staff, including any sub-contractors; effectiveness of an innovative approach to the project; clear, concise description of all elements and tasks of the project, with sufficient and realistic time frames necessary to complete the tasks; technical soundness of project design and methodology; financial and administrative integrity of the proposal, including adherence to federal financial guidelines and processes; a sufficiently detailed budget that shows consideration of all contingencies for this project and commitment to work within the budget proposed; and indication of availability to work with NIC staff.

Applications received under this announcement will be subject to a collaborative review process. The criteria for the evaluation of each application will be as follows:

Programmatic: 40 Points

Are all of the tasks and activities adequately covered? Is there a clear description of how each project activity will be accomplished, including major tasks, the strategies to be employed, required staffing, responsible parties, and other required resources? Are there any unique or exceptional approaches,

techniques, or design aspects proposed that will enhance the project?

Project Management and Administration: 20 Points

Does the applicant identify reasonable objectives, milestones, and measures to track progress? Are the proposed management and staffing plans clear, realistic, and sufficient to complete the project? Is the applicant willing to meet with NIC as specified in the solicitation for this cooperative agreement?

Organizational and Project Staff Background: 30 Points

Do the skills, knowledge, and expertise of the organization and the proposed project staff demonstrate a high level of competency to complete the tasks? Does the applicant/organization have the necessary experience and organizational capacity to complete all goals of the project? If consultants and/or partnerships are proposed, is there a reasonable justification for their inclusion in the project and a clear structure to ensure effective coordination?

Budget: 10 Points

Is the proposed budget realistic? Does it provide sufficient cost detail/narrative? Does it represent good value relative to the anticipated results? Does the application include a chart that aligns the budget with project activities along a timeline with, at minimum, quarterly benchmarks? In terms of program value, is the estimated cost reasonable in relation to work performed and project products?

Note: NIC will NOT award a cooperative agreement to an applicant who does not have a Dun and Bradstreet Database Universal Number (DUNS) and is not registered in the Central Contractor Registry (CCR). Applicants can obtain a DUNS number at no cost by calling the dedicated toll-free request line at 800–333–0505. Applicants who are sole proprietors should dial 866–705–5711 and select option #1.

Applicants may register in the CCR online at the CCR Web site: *www.ccr.gov.* Applicants can also review a CCR handbook and worksheet at this Web site.

Number of Awards: One.

NIC Opportunity Number: 12CS06. This number should appear as a reference line in the cover letter, where indicated on Standard Form 424, and outside of the envelope in which the application is sent.

Catalog of Federal Domestic Assistance Number: 16.601.

Executive Order 12372: This project is not subject to the provisions of Executive Order 12372.

Morris L. Thigpen,

Director, National Institute of Corrections.

[FR Doc. 2012–16171 Filed 7–2–12; 8:45 am]

BILLING CODE 4410–36–P

DEPARTMENT OF JUSTICE

National Institute of Corrections

Solicitation for a Cooperative Agreement: Women Offenders: Developing an Agencywide Approach

AGENCY: National Institute of Corrections, U.S. Department of Justice.

ACTION: Solicitation for a Cooperative Agreement.

SUMMARY: The National Institute of Corrections (NIC) is seeking applications from organizations, groups, or individuals to enter into a 18-month cooperative agreement to implement a blended-learning training program entitled Women Offenders: Developing an Agencywide Approach. This project will be completed in conjunction with the NIC Community Services Division and the awardee will work closely with NIC staff on all aspects of the project. To be considered, applicants must demonstrate, at a minimum, in-depth knowledge of (1) evidence-based, gender-responsive research and knowledge and practice in the policy, programming, and operation of women's jails, prisons, and community supervision agencies; (2) the preparation needed for the delivery of a blended-learning curriculum to correctional audiences and related stakeholders; (3) specific examples of expertise in directing implementation of similar projects in which blended learning was used; and (4) working collaboratively with correctional leadership and related stakeholders.

DATES: Applications must be received by August 15, 2012.

ADDRESSES: Mailed applications must be sent to: Director, National Institute of Corrections, 320 First Street NW., Room 5002, Washington, DC 20534. Applicants are encouraged to use Federal Express, UPS, or similar service to ensure delivery by the due date.

Hand delivered applications should be brought to 500 First Street NW., Washington, DC 20534. At the front security desk, dial 7–3106, ext. 0 for pickup.

Faxed or emailed applications will not be accepted. Electronic applications can only be submitted via *http://www.grants.gov.*

FOR FURTHER INFORMATION CONTACT: A copy of this announcement and links to the required application forms can be downloaded from the NIC Web site at *http://www.nicic.gov/cooperativeagreements.*

All technical or programmatic questions concerning this announcement should be directed to Maureen Buell, Correctional Program Specialist, National Institute of Corrections, Community Services Division. Ms. Buell can be reached directly at 1–800–995–6423 ext. 40121 or by email at *mbuell@bop.gov.* In addition to the direct reply, all questions and responses will be posted on NIC's Web site at *www.nicic.gov* for public review (the names of those submitting questions will not be posted). The Web site will be updated regularly and postings will remain on the Web site until the closing date of this cooperative agreement solicitation. Only questions received by 12:00 p.m. (EDT) on August 8, 2012 will be posted on the NIC Web site.

SUPPLEMENTARY INFORMATION:

Background: Established by Congress in 1974, NIC has worked closely with federal, state, and local jails, prisons, and community corrections on a broad range of initiatives. Related to this solicitation, NIC has worked diligently to develop products through collaborative partnerships that reflect research and experience relevant to justice-involved women. Within that body of work, there is an awareness that correctional policy and practice has been created to manage primarily male offenders and then applied to female populations, bypassing issues that contribute to women's pathways to criminal justice involvement, imprisonment, transition/reentry, and community supervision. The program in this solicitation, Women Offenders: Developing an Agencywide Approach, provides a roadmap for agency planners to effect policy and practice in managing the increased numbers of justice-involved women.

The delivery of this training event is designed for audiences of correctional leadership and management who influence agency policy and practice and are invested in improving systemic (i.e., improved management of correctional resources, including staff, programs, use of physical space, etc.) and individual outcomes (i.e., risk reduction/recidivism, reduction in behavioral health symptoms) in the management of women committed to the justice system. The blended-learning program will be hosted regionally.

Scope of Work: The awardee will use the existing curricula, Women

Offenders: Developing an Agencywide Approach, and other adjunct materials already developed for use in the 2.5- to 3-day training events. Additionally, the awardee may add additional current and relevant materials that will enhance the quality of the program. The awardee will also ensure that any adaptations to program content and instructional strategies are previously approved by NIC and effectively contribute to meeting the program goals.

All the activities noted will be conducted collaboratively with NIC. The awardee will (1) review and become familiar with the established curriculum, lesson plans, presentation slides, participant and trainer manuals, as well as any other adjunct training materials in preparation for program delivery. Any additional materials will be shared with NIC staff to ensure relevance and appropriateness to the established curriculum. (2) Pay fees and expenses for the instructors (faculty) delivering the program. If qualified, the project director and designated project staff may be included as instructors (faculty). (3) Work with NIC to print instructor and participant materials and assume additional costs not covered by NIC related to provision of the materials. The awardee will send one full set of these materials to NIC prior to the delivery of the program for approval. (4) Establish criteria for choosing the regional training sites while considering some of the following criteria: regions that have expressed interest in hosting and have access to appropriate space, a region's or jurisdiction's desire to implement and/or enhance current practice with its female offender population, geographic consideration (accessibility by participant teams without incurring costs that cannot be covered by the host agency [NIC will not be responsible for participant travel, lodging, or per diem costs]), agencies that are interested in developing and/or enhancing correctional partnerships. (5) Select instructors (faculty) with appropriate expertise and knowledge, negotiate their work, pay their fees and expenses, and supervise their work. (6) Actively work with NIC to determine participant team eligibility and notify participant teams of program acceptance. (7) Sequence blended-learning training events to include what activities will occur before the onsite portion of the training, activities onsite, and post-training activities either virtual or onsite. The awardee will distribute materials to participant teams and faculty, deliver webinar events and engage after the training in followup tasks including ongoing, but time-limited, virtual coaching of participant teams. (8) Lead participant teams through a strategic planning process using the established curriculum. (9) Ensure that the NIC program evaluation form is both distributed to and collected from participants. The results will be shared with NIC to be used as feedback for future training.

Document Length: The length of the application should be determined by content. Brevity and clarity are encouraged.

Meetings: The cooperative agreement awardee will participate in an initial meeting with the NIC staff for a project overview and preliminary planning prior to September 15, 2012. Additionally, the awardee should plan to meet with NIC staff routinely to discuss the activities noted in the timeline (see below) during the course of the cooperative agreement. Meetings will be held no less than quarterly and may be conducted via webinar or in person as agreed upon by NIC and the awardee.

Document preparation: For all awards in which a document will be a deliverable, the awardee must follow (1) the Guidelines for Preparing and Submitting Manuscripts for Publication as found in the ''General Guidelines for Cooperative Agreements,'' which can be found on our Web site at *http://www.nicic.gov/cooperativeagreements;* and (2) NIC recommendations for producing documents using plain language, which can be found at *www.nicic.gov/plainlanguage.*

All final publications submitted for posting on the NIC Web site must meet the federal government's requirement for accessibility (508 PDF, 508 HTML file, or other acceptable format). The awardee must provide descriptive text interpreting all graphics, photos, graphs, and/or multimedia associated with publication. All documents developed under this cooperative agreement must be submitted in draft form to NIC for review prior to the final products being delivered.

Application Requirements: An application package must include OMB Standard Form 425, Application for Federal Assistance; a cover letter that identifies the audit agency responsible for the applicant's financial accounts as well as the audit period or fiscal year under which the applicant operates (*e.g.* July 1 through June 30); an outline of projected costs with the budget and strategy narratives described in the announcement. The following additional forms must also be included: OMB Standard Form 424A, Budget Information—Non-Construction Programs; OMB Standard Form 424B, Assurances—Non-Construction Programs (both available at *www.grants.gov*); DOJ/FBOP/NIC Certification Regarding Lobbying, Debarment, Suspension and Other Responsibility Matters; and the Drug-Free Workplace Requirements (available at *http://www.nicic.gov/Downloads/General/certif-frm.pdf*).

Applications should be concisely written, typed double spaced, and reference the NIC opportunity number and title referenced in this announcement. If you are hand delivering or submitting via Fed-Ex, please include an original and three copies of your full proposal (program and budget narrative, application forms, assurances, and other descriptions). The original should have the applicant's signature in blue ink. Electronic submissions will be accepted only via *www.grants.gov.*

Place the following at the top of the abstract: Project title; Applicant name (Legal name of applicant organization); Mailing address; Contact phone numbers (voice, fax); Email address, and; Web site address, if applicable.

The narrative portion of the application should include, at a minimum, the following:

Opening statement: A statement indicating the applicant's understanding of the project's purpose, goals, and objectives. The applicant should state this in language that is specific and that fully explains the proposed activities.

Project Design and Implementation: This section should describe the design and implementation of the project fully as noted in the scope of work.

Project Management: Include a chart of measurable project milestones and timelines for the completion of each aspect of the project.

Capabilities and Competencies: This section should describe the qualifications of the applicant organization, any involvement of partner organizations, and the expertise of key staff to be involved in the project. Please attach resumes that document relevant knowledge, skills, and abilities to complete the project for the project principle and each staff member assigned. If the applicant organization has completed similar projects in the past, please include the URL/Web site or ISBN number for accessing a copy of the referenced work.

Budget: The budget should detail all costs for the project, show consideration for all contingencies for the project, note a commitment to work within the proposed budget, and demonstrate the ability to provide deliverables according to schedule.

Authority: Public Law 93–415.

Funds Available: NIC is seeking the applicant's best ideas regarding accomplishment of the scope of work and the related costs for achieving the goals of this solicitation. Funds may be used only for the activities that are linked to the desired outcome of the project. The funding amount will not exceed $50,000 for a period of 18 months.

Eligibility of Applicants: An eligible applicant is any state or general unit of government, private agency, educational institution, organization, individual, or team with expertise in the described areas. Applicants must have demonstrated ability to implement a project of this size and scope.

Review Considerations: Applications will be reviewed by a team. Among the criteria used to evaluate the applications are indication of a clear understanding of the project requirements as stated in the solicitation; background, experience, and expertise of the proposed project staff, including any sub-contractors; effectiveness of an innovative approach to the project; clear, concise description of all elements and tasks of the project with sufficient and realistic time frames necessary to complete the tasks; technical soundness of project design and methodology; financial and administrative integrity of the proposal, including adherence to federal financial guidelines and processes; a sufficiently detailed budget that shows consideration of all contingencies for this project and commitment to work within the proposed budget; and indication of availability to work with NIC staff.

Applications received under this announcement will be subject to a collaborative review process. The criteria for the evaluation of each application will be as follows:

Programmatic: 40 Points

Are all of the tasks and activities adequately covered? Is there a clear description of how each project activity will be accomplished, including major tasks; the strategies to be employed; required staffing; responsible parties, and other required resources? Are there any unique or exceptional approaches, techniques, or design aspects proposed that will enhance the project?

Project Management and Administration: 20 Points

Does the applicant identify reasonable objectives, milestones, or measures to track progress? Are the proposed management and staffing plans clear, realistic, and sufficient to complete the project? Is the applicant willing to meet with NIC as specified in the solicitation for this cooperative agreement?

Organizational and Project Staff Background: 30 Points

Do the skills, knowledge, and expertise of the organization and the proposed project staff demonstrate a high level of competency to complete the tasks? Does the applicant/organization have the necessary experience and organizational capacity to complete all goals of the project? If consultants and/or partnerships are proposed, is there a reasonable justification for their inclusion in the project and a clear structure to ensure effective coordination?

Budget: 10 Points

Is the proposed budget realistic, does it provide sufficient cost detail/narrative, and does it represent good value relative to the anticipated results? Does the application include a chart that aligns the budget with project activities along a timeline with quarterly benchmarks? In terms of program value, is the estimated cost reasonable in relation to the work performed and project objectives?

Note: NIC will NOT award a cooperative agreement to an applicant who does not have a Dun and Bradstreet Database Universal Number (DUNS) and is not registered in the Central Contractor Registry (CCR).

Applicants can obtain a DUNS number at no cost by calling the dedicated toll-free request line at 800–333–0505. Applicants who are sole proprietors should dial 866–705–5711 and select option #1.

Applicants may register in the CCR online at the CCR Web site: www.ccr.gov. Applicants can also review a CCR handbook and worksheet at this Web site.

Number of Awards: One

NIC Opportunity Number: 12CS19. This number should appear as a reference line in the cover letter, where indicated on Standard Form 424, and outside of the envelope in which the application is sent.

Catalog of Federal Domestic Assistance Number: 16.601.

Executive Order 12372: This project is not subject to the provisions of Executive Order 12372.

Morris L. Thigpen,

Director, National Institute of Corrections.

[FR Doc. 2012–16276 Filed 7–2–12; 8:45 am]

BILLING CODE 4410–36–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of a Public Meeting of the Advisory Committee on Apprenticeship (ACA)

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice of a public 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 an open meeting of the Advisory Committee on Apprenticeship on August 1–2, 2012. This meeting will take place at the U.S. Department of Labor, Frances Perkins Building, 200 Constitution Avenue NW., Washington, DC 20210. 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.

TIME AND DATE: The meeting will begin at approximately 1:30 p.m. Eastern Daylight Savings Time on Wednesday, August 1, 2012, and continues until approximately 5:00 p.m. The meeting will reconvene on Thursday, August 2, 2012, at approximately 9:00 a.m. Eastern Daylight Savings Time and adjourn at approximately 1:00 p.m.

ADDRESSES: The meeting location is the U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

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 meeting is open to the public and members of the public are invited to attend the proceedings. 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, July 25, 2012, to request for arrangements to be made.

Agenda topics for this meeting can be found below. 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 the Designated Federal Official, Mr. John V. Ladd, Administrator via email at *oa.administrator@dol.gov,* subject line ''ACA Meeting,'' or submitting to Administrator, 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, July 25, 2012, to be included in the record for the meeting.

Purpose of the Meeting and Topics To Be Discussed

The August ACA meeting will follow the Department's Registered Apprenticeship National Education and Action Summit in recognition of the 75th Anniversary of the National Apprenticeship Act. The primary purpose of the meeting is to convene expert panels, drawn from summit participants, to consider key goals of the ACA's draft vision for 21st Century Registered Apprenticeship as follows:

- An increasing number of businesses and additional industries will use and reap the advantages of the Registered Apprenticeship model.
- Americans will seek and find Registered Apprenticeship as a valuable post-secondary pathway to rewarding careers.
- Diverse populations in the U.S. workforce will have access to growing opportunities generated within Registered Apprenticeship.
- Public policy will increasingly reflect the power and value of Registered Apprenticeship to address economic and workforce development challenges.

In addition, the Department will provide a report to the Committee on the outcomes of the Registered Apprenticeship National Education and Action Summit, including specific recommendations generated at the summit, held in recognition of the 75th Anniversary of the National Apprenticeship Act. Finally, the Employee Benefits Security Administration will also provide information to the Committee related to recent oversight activities of apprenticeship and training plans.

Finally, the ACA may also consider comments from members of the public related to the agenda items above. 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, July 25, 2012; (see above for contact information). 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 27th day of June 2012.

Jane Oates,

Assistant Secretary for the Employment and Training Administration.

[FR Doc. 2012–16157 Filed 7–2–12; 8:45 am]

BILLING CODE 4510–FR–P

DEPARTMENT OF LABOR

Employment and Training Administration

Request for Certification of Compliance—Rural Industrialization Loan and Grant Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration is issuing this notice to announce the receipt of a ''Certification of Non-Relocation and Market and Capacity Information Report'' (Form 4279–2) for the following:

Applicant/Location: NuWeld, Inc. and ARC Tech, Inc.

Principal Product/Purpose: The loan, guarantee, or grant application is to acquire and renovate a facility, which will be located in Williamsport, Lycoming County, Pennsylvania. The NAICS industry code for this enterprise is: 811310 (fabrication and welding services).

DATES: All interested parties may submit comments in writing no later than July 17, 2012.

Copies of adverse comments received will be forwarded to the applicant noted above.

ADDRESSES: Address all comments concerning this notice to Anthony D. Dais, U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue NW., Room S–4231, Washington, DC 20210; or email *Dais.Anthony@dol.gov;* or transmit via fax (202) 693–3015 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Anthony D. Dais, at telephone number (202) 693–2784 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Section 188 of the Consolidated Farm and Rural Development Act of 1972, as established under 29 CFR Part 75, authorizes the United States Department of Agriculture to make or guarantee loans or grants to finance industrial and business activities in rural areas. The Secretary of Labor must review the application for financial assistance for the purpose of certifying to the Secretary of Agriculture that the assistance is not calculated, or likely, to result in: (a) A transfer of any employment or business activity from one area to another by the loan applicant's business operation; or, (b) An increase in the production of goods, materials, services, or facilities in an area where there is not sufficient demand to employ the efficient capacity of existing competitive enterprises unless the financial assistance will not have an adverse impact on existing competitive enterprises in the area. The Employment and Training Administration within the Department of Labor is responsible for the review and certification process. Comments should address the two bases for certification and, if possible, provide data to assist in the analysis of these issues.

Signed at Washington, DC, this 26th day of June 2012.

Jane Oates,

Assistant Secretary for Employment and Training.

[FR Doc. 2012–16281 Filed 7–2–12; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Notice [12–038]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, 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: All comments should be submitted within 30 calendar days from the date of this publication.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of NASA.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ms. Frances Teel, NASA Clearance Officer, NASA Headquarters, 300 E Street SW., JF000, Washington, DC 20546, *Frances.C.Teel@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The NASA Contractor Financial Management Reporting System is the basic financial medium for contractor reporting of estimated and incurred costs, providing essential data for projecting costs and hours to ensure that contractor performance is realistically planned and supported by dollar and labor resources. The data provided by these reports is an integral part of the Agency's accrual accounting and cost based budgeting system.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

II. Method of Collection

NASA collects this information electronically and that is the preferred manner, however information may also be collected via mail or fax.

III. Data

Title: NASA Contractor Financial Management Reports.

OMB Number: 2700–0003.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit, not-for-profit institutions.

Estimated number of respondents: 800.

Estimated Time per Response: 9 hrs.

Estimated Total Annual Burden Hours: 86,000.

Estimated Total Annual Cost: $0.

IV Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collection has practical utility; (2) the accuracy of NSA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to minimize the burden of the collection of information on respondents.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Frances Teel,

NASA PRA Clearance Officer.

[FR Doc. 2012–16253 Filed 7–2–12; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 12–037]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, 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: All comments should be submitted within 30 calendar days from the date of this publication.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of NASA.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ms. Frances Teel, NASA Clearance Officer, NASA Headquarters, 300 E Street SW., JF000, Washington, DC 20546, *Frances.C.Teel@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The purpose of this project is to assess if National Park Service (NPS) visitors, as well as visitors to other public lands, are benefiting from an interagency partnership, known as Earth to Sky, by measuring awareness and understanding of global climate change in visitors to NPS and other public land locations. An on-site survey will be administered to park visitors to assess their awareness and understanding of global climate change; meaning of and connection to park resources; and perception of trust in sources of information regarding global climate change. Data will be collected in a variety of NPS and other sites from June–Aug, 2012. Results will help NASA and other managers of the Earth to Sky partnership assess the success of the partnership efforts and help refine and encourage the continued collaboration.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

II. Method of Collection

A voluntary on-site survey will be provided to visitors to collect the data.

III. Data

Title: An assessment of global climate change in visitors to National Park Service sites and other public lands.

OMB Number: 2700–0146.

Type of Review: Renewal of an approved collection.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 1,200.

Estimated Time per Response: 20 minutes.

Estimated Total Annual Burden Hours: 400.

Estimated Total Annual Cost: $0.

IV: Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collection has practical utility; (2) the accuracy of NSA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality and utility of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Frances Teel,

NASA PRA Clearance Officer.

[FR Doc. 2012–16256 Filed 7–2–12; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

Notice: (12–036).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, 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: All comments should be submitted within 30 calendar days from the date of this publication.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of NASA.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Frances Teel, NASA Clearance Officer, NASA Headquarters, 300 E Street SW., JF0000, Washington, DC 20546, *Frances.C.Teel@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

To ensure accurate reporting of Government-owned, contractor-held property on the financial statements and to provide information necessary for effective property management, NASA obtains summary data annually from the official Government property records maintained by its contractors, on the NASA Form 1018, as of the end of the fiscal year.

II. Method of Collection

Electronic.

III. Data

Title: NASA Property in the Custody of Contractors.

OMB Number: 2700–0017.

Type of review: Revision of currently approved collection.

Affected Public: Business or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 1092.

Estimated Time per Response: Variable.

Estimated Total Annual Burden Hours: 9,805 hours.

Estimated Total Annual Cost: $0.00.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Frances Teel,

NASA PRA Clearance Officer.

[FR Doc. 2012–16255 Filed 7–2–12; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before August 2, 2012. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting Records Management Services (ACNR) using one of the following means:

Mail: NARA (ACNR), 8601 Adelphi Road, College Park, MD 20740–6001.

Email: *request.schedule@nara.gov.*

Fax: 301–837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Margaret Hawkins, Director, National Records Management Program (ACNR), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–1799. Email: *request.schedule@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media neutral unless specified otherwise. An item in a schedule is media neutral when the disposition instructions may be applied to records regardless of the medium in which the records are created and maintained. Items included in schedules submitted to NARA on or after December 17, 2007, are media neutral unless the item is limited to a specific medium. (See 36 CFR 1225.12(e).)

No Federal records are authorized for destruction without the approval of the

Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Defense, Defense Threat Reduction Agency (N1–374–09–3, 2 items, 1 temporary item). Master files of an electronic information system used to monitor arms control agreements and treaties. Proposed for permanent retention are annual and semi-annual reports regarding arms control treaties and agreements.

2. Department of Defense, Defense Threat Reduction Agency (N1–374–09–4, 2 items, 2 temporary items). Master files of electronic information systems compiled from various sources to track and monitor the effects of past nuclear tests on Armed Forces personnel.

3. Department of Energy, Federal Energy Regulatory Commission (N1–138–12–2, 1 temporary item). Master files of an electronic information system used to track and maintain public subscriptions to documents issued by the Commission.

4. Department of Health and Human Services, Centers for Medicare & Medicaid Services (DAA–0440–2012–0004, 2 items, temporary items). Records of the Center for Program Integrity, including master files of an electronic information system and supplemental information related to claims data used in the detection and investigation of program fraud, waste, and abuse.

5. Department of Homeland Security, U.S. Citizenship and Immigration Services (N1–566–12–2, 1 item, 1 temporary item). Master files of an electronic information system used to track agency and public requests for records searches.

6. Department of Justice, National Drug Intelligence Center (N1–523–12–1, 1 item, 1 temporary item). Project files, including working papers relating to product reports.

7. Department of Labor, Office of the Secretary (N1–174–12–1, 1 item, 1 temporary item). Master files of an electronic information system used to manage and track an adjudicatory board appeal process.

8. Department of the Navy, United States Marine Corps (N1–NU–07–11, 4 items, 4 temporary items). Master files of an electronic information system used to track Congressional inquiries.

9. Department of Transportation, Federal Transit Administration (N1–408–11–14, 3 items, 3 temporary items). Records include audits reports and financial evaluations of contractor operations.

10. Department of Transportation, Federal Transit Administration (N1–408–11–16, 2 items, 2 temporary items). Copies of records maintained outside the office of primary responsibility, including policy development records for agency related legislation and regulations, as well as materials used to prep agency staff for Congressional testimony.

11. Department of Transportation, National Highway Traffic Safety Administration (N1–416–05–3, 15 items, 13 temporary items). Records of the Office of Defects and Investigation, including routine investigations and resolutions, petitions, and manufacturer correspondence. Proposed for permanent retention are significant investigations and manufacturer recall files.

12. Department of Transportation, Pipeline and Hazardous Materials Safety Administration (N1–571–11–1, 1 item, 1 temporary item). Continuity of operations plans maintained by the Office of Pipeline Safety.

13. Department of the Treasury, Internal Revenue Service (N1–58–09–50, 2 items, 1 temporary item). Routine reports of an electronic information system which tracks public laws and provisions which impact the agency. Proposed for permanent retention are the master files.

14. Department of the Treasury, Internal Revenue Service (N1–58–09–51, 2 items, 1 temporary item). Routine reports of an electronic information system which tracks actions needed to implement legislation impacting the Taxpayer Assistance Blueprint Initiative. Proposed for permanent retention are the master files.

15. Department of the Treasury, Internal Revenue Service (N1–58–09–54, 2 items, 1 temporary item). Routine reports of an electronic information system which tracks actions necessary to implement legislation impacting the Tax Gap Initiative. Proposed for permanent retention are the master files.

16. Department of Treasury, Internal Revenue Service (N1–58–12–2, 3 items, 3 temporary items). Master files, inputs, and system documentation of an electronic information system used to analyze taxpayer financial information relating to the use of illegal offshore accounts.

17. Department of Treasury, Internal Revenue Service (N1–58–12–3, 2 items, 2 temporary items). Master files and system documentation of an electronic information system containing tax shelter disclosure information.

18. Federal Communications Commission, Wireline Competition Bureau (N1–173–09–3, 1 item, 1 temporary item). Master files of an electronic information system containing results of telephone service customer satisfaction surveys.

19. Federal Communications Commission, Wireline Competition Bureau (N1–173–09–4, 1 item, 1 temporary item). Master files of an electronic information system used to report on trends in telephone industry infrastructure development.

20. Federal Communications Commission, Wireline Competition Bureau (N1–173–09–5, 1 item, 1 temporary item). Master files of an electronic information system used to monitor network growth, usage, and reliability of telephone service carriers.

21. Federal Retirement Thrift Investment Board, Office of Investments (N1–474–12–3, 2 items, 2 temporary items). Reports and tracking records of an electronic information system used to track investments and performance.

22. Federal Trade Commission, Agency-wide (N1–122–09–1, 23 items, 16 temporary items). Comprehensive schedule covering all aspects of agency work. Records relating to administrative and mission support functions; budget and financial administration; routine health, safety, and security; inspector general investigative background records and case files; and project files. Proposed for permanent retention are significant project files; documentation of the Commission's establishment, regulations, policy and organization including related deliberations and

findings; final issuances; and inspector general final reports.

Dated: June 26, 2012.

Paul M. Wester, Jr.,

Chief Records Officer for the U.S. Government.

[FR Doc. 2012–16268 Filed 7–2–12; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

Application for a License To Export Nuclear Reactor Major Components and Equipment

Pursuant to 10 CFR 110.70 (b) ''Public Notice of Receipt of an Application,'' please take notice that the Nuclear Regulatory Commission (NRC) has received the following request for an export license. Copies of the request are available electronically through ADAMS and can be accessed through the Public Electronic Reading Room (PERR) link *http://www.nrc.gov/reading-rm.html* at the NRC Homepage.

A request for a hearing or petition for leave to intervene may be filed within thirty days after publication of this notice in the **Federal Register.** Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

A request for a hearing or petition for leave to intervene may be filed with the NRC electronically in accordance with NRC's E–Filing rule promulgated in August 2007, 72 FR 49139 (Aug. 28, 2007). Information about filing electronically is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* To ensure timely electronic filing, at least 5 (five) days prior to the filing deadline, the petitioner/requestor should contact the Office of the Secretary by email at *HEARINGDOCKET@NRC.GOV*, or by calling (301) 415–1677, to request a digital ID certificate and allow for the creation of an electronic docket.

In addition to a request for hearing or petition for leave to intervene, written comments, in accordance with 10 CFR 110.81, should be submitted within thirty (30) days after publication of this notice in the **Federal Register** to Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Rulemaking and Adjudications

The information concerning this application for an export license follows.

NRC EXPORT LICENSE APPLICATION

Description of Material

Name of applicant Date of application Date received Application No. Docket No.	Material type	Total quantity	End use	Destination
Westinghouse Electric Company LLC May 14, 2012 May 16, 2012 XR176 110060011	Reactor internals, reactor coolant pumps with motors, instrumentation, monitoring and control equipment, auxiliary equipment and emergency cooling systems.	Components and equipment for four APR1400 units.	For use in constructing four APR1400 units at the civil nuclear power plant in Braka.	Braka nuclear power plant Abu Dhabi, United Arab Emirates.

Dated this 22nd day of June 2012 at Rockville, Maryland.

For the Nuclear Regulatory Commission.

Stephen Dembek,

Acting Deputy Director, Office of International Programs.

[FR Doc. 2012–16266 Filed 7–2–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0142]

Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving Proposed No Significant Hazards Considerations and Containing Sensitive Unclassified Non-Safeguards Information and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment request; opportunity to comment, request a hearing and petition for leave to intervene, order.

DATES: Comments must be filed by August 2, 2012. A request for a hearing or leave to intervene must be filed by September 4, 2012. Any potential party as defined in Title 10 of the *Code of Federal Regulations* (10 CFR) 2.4, who believes access to Sensitive Unclassified Non-Safeguards Information (SUNSI) is necessary to respond to this notice must request document access by July 13, 2012.

ADDRESSES: You may access information and comment submissions related to this document, which the NRC possesses and are publicly available, by searching on *http://www.regulations.gov* under Docket ID NRC–2012–0142. You may submit comments by the following methods:

- *Federal rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0142. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory

Commission, Washington, DC 20555–0001.

• *Fax comments to:* RADB at 301–492–3446.

For additional direction on accessing information and submitting comments, see ''Accessing Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2012–0142 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly available, by the following methods:

• *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0142.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. To begin the search, select ''*ADAMS Public Documents*'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*. The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2012–0142 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed. The NRC posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS, and the NRC does not edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information in their comment submissions that they do not want to be publicly disclosed. Your request should state that the NRC will not edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Background

Pursuant to Section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This notice includes notices of amendments containing SUNSI.

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license or combined license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The NRC regulations are accessible electronically from the NRC Library on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of

the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of any amendment.

All documents filed in the NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E–Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in the NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html*, by email at *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper

filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/*, unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

For further details with respect to this amendment action, see the application for amendment which is available for public inspection at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR's Reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*.

Carolina Power & Light Company, Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendment request: March 6, 2012. A publicly available version is available in ADAMS under Accession No. ML12076A062.

Description of amendment request: This license amendment request contains Sensitive Unclassified Non-Safeguards Information (SUNSI). The proposed license amendments would (1) revise Brunswick Steam and Electric Plant, Units 1 and 2 Technical Specification (TS) 5.6.5.b by replacing AREVA Topical Report ANF–524(P)(A), ANF Critical Power Methodology for Boiling Water Reactors with AREVA Topical Report ANP–10307PA, Revision 0, ''AREVA MCPR Safety Limit Methodology for Boiling Water Reactors,'' in the list of analytical methods that have been reviewed and approved by the NRC for determining core operating limits, (2) revise TS 2.1.1, ''Reactor Core SLs,'' by incorporating revised Safety Limit Minimum Critical Power Ratio (SLMCPR) values, and (3) revise the license condition in Appendix B, ''Additional Conditions,'' of the facility operating licenses regarding an alternate method for evaluating SLMCPR values.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The probability of an evaluated accident is derived from the probabilities of the individual precursors to that accident. The proposed license amendments do not involve any plant modifications or operational changes that could affect system reliability or performance, or that could affect the probability of operator error. As such, the proposed changes do not affect any postulated accident precursors. Since no individual precursors of an accident are affected, the proposed license amendments do not involve a significant increase in the probability of a previously analyzed event.

The consequences of an evaluated accident are determined by the operability of plant systems designed to mitigate those consequences. The basis for the SLMCPR calculation is to ensure that during normal operation and during anticipated operational occurrences, at least 99.9 percent of all fuel rods in the core do not experience transition boiling if the safety limit is not exceeded.

The proposed SLMCPR values have been determined using NRC-approved methods discussed in AREVA Topical Report ANP–10307PA, Revision 0, AREVA MCPR Safety Limit Methodology for Boiling Water Reactors, June 2011. To support use of Topical Report ANP–10307PA, Revision 0, by BSEP, Units 1 and 2, this NRC-approved analytical method is being added to the list of NRC-approved analytical methods identified in Technical Specification 5.6.5.b. Replacing AREVA Topical Report ANF–524(P)(A), ANF Critical Power Methodology for Boiling Water Reactors with the analytical methods described in Topical Report ANP–10307PA in Technical Specification 5.6.5.b does not alter the assumptions of accident analyses. Furthermore, establishing a two recirculation loop SLMCPR value of > 1.08 and a single recirculation loop SLMCPR value of > 1.11 ensures that the acceptance criteria continues to be met (i.e., at least 99.9 percent of all fuel rods in the core do not experience transition boiling), while the revised license condition ensures that SLMCPR, setpoint, and core operating limit values determined using the NRC-approved AREVA methodologies remain applicable and the core operating limits include margin sufficient to bound the effects of the K-factor calculation issue described in AREVA Operability Assessment CR 2011–2274, Revision 1.

Based on these considerations, the proposed changes do not involve a significant increase in the consequences of a previously analyzed accident.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Creation of the possibility of a new or different kind of accident requires creating one or more new accident precursors. New accident precursors may be created by modifications of plant configuration, including changes in allowable modes of operation. The SLMCPR is a TS numerical value calculated for two recirculation loop operation and single recirculation loop operation to ensure at least 99.9 percent of all fuel rods in the core do not experience transition boiling if the safety limit is not exceeded. SLMCPR values are calculated using NRC-approved methodology identified in the TS. The proposed SLMCPR values and the AREVA methodology being added to TS do not involve any new modes of plant operation or any plant modifications and do not directly or indirectly affect the failure modes of any plant systems or components.

Therefore, the proposed changes do not create the possibility of a new or different

kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The SLMCPR provides a margin of safety by ensuring that at least 99.9 percent of the fuel rods do not experience transition boiling during normal operation and anticipated operational occurrences if the MCPR Safety Limit is not exceeded.

Replacing the analytical methodology described in Topical Report ANF–524(P)(A) with the methodology described in Topical Report ANP–10307PA in the list of NRC-approved analytical methods identified in Technical Specification 5.6.5.b, revision of the SLMCPR values in Technical Specification 2.1.1.2 using NRC-approved methodology, and confirmation that the SLMCPR, setpoint, and core operating limit values remain applicable and the core operating limits include margin sufficient to bound the effects of the K-factor calculation issue described in AREVA Operability Assessment CR 2011–2274, Revision 1, will ensure that the current level of fuel protection is maintained by continuing to ensure that the fuel design safety criterion is met (i.e., that no more than 0.1 percent of the rods are expected to be in boiling transition if the MCPR Safety Limit is not exceeded).

Meeting the fuel design criterion that at least 99.9 percent of all fuel rods in the core do not experience transition boiling and establishing core operating limits based on the proposed SLMCPR values, to ensure that the SLMCPR is not exceeded, ensures the margin of safety required by the fuel design criterion is maintained.

Therefore, the proposed amendments do not result in a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration. *Attorney for licensee:* David T. Conley, Senior Counsel—Legal Department, Progress Energy Service Company, LLC, Post Office Box 1551, Raleigh, NC 27602. *NRC Branch Chief:* Douglas A. Broaddus.

Exelon Generation Company, LLC, and PSEG Nuclear LLC, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units 2 and 3, York and Lancaster Counties, Pennsylvania

Date of application for amendments: April 27, 2012. A publicly available version is available in ADAMS under Accession No. ML121230354.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The proposed amendment would: (1) Adopt a new methodology for preparation of the reactor coolant system pressure-temperature (P–T) limits; (2) relocate the P–T limits in the technical specifications (TS) to a new licensee-controlled document, the Pressure and Temperature Limits Report (PTLR); and (3) modify the TSs to add references to the PTLR. Peach Bottom Atomic Power Station (PBAPS), Units 2 and 3, are currently licensed to P–T limits that are applicable up to 32 effective full-power years (EFPY). The PTLR would include P–T limits applicable to both 32 EFPY and 54 EFPY.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below with the NRC staff's edits in square brackets:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes modify the TS by replacing references to existing reactor vessel heatup and cooldown rate limits and P–T limit curves with references to the PTLR. The proposed amendment also adopts the [NRC-approved] methodology of the GE Hitachi Nuclear Energy Licensing Topical Report NEDC–33178P–A, Revision 1, for the preparation of the PBAPS, Units 2 and 3 P–T limit curves. In 10 CFR [Part] 50, Appendix G, requirements are established to protect the integrity of the Reactor Coolant Pressure Boundary in nuclear power plants. Implementing the [NRC-approved] methodology for calculating P–T limit curves and relocating those curves to the PTLR provide an equivalent level of assurance that Reactor Coolant Pressure Boundary integrity will be maintained, as specified in 10 CFR [Part] 50, Appendix G.

The proposed changes do not adversely affect accident initiators or precursors, and do not alter the design assumptions, conditions, or configuration of the plant or the manner in which the plant is operated and maintained. The ability of structures, systems, and components to perform their intended safety functions is not altered or prevented by the proposed changes, and the assumptions used in determining the radiological consequences of previously evaluated accidents are not affected.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The change in methodology for calculating P–T limits and the relocation of those limits to the PTLR do not alter or involve any design basis accident initiators. Reactor Coolant Pressure Boundary integrity will continue to be maintained in accordance with 10 CFR [Part] 50, Appendix G, and the assumed accident performance of plant structures, systems and components will not be affected. These changes do not involve any physical alteration of the plant (i.e., no new or different type of equipment will be installed), and installed equipment is not being operated in a new or different manner. Thus, no new failure modes are introduced.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

The proposed changes do not affect the function of the Reactor Coolant Pressure Boundary or its response during plant transients. By calculating the P–T limits using [an NRC-approved] methodology, adequate margins of safety relating to Reactor Coolant Pressure Boundary integrity are maintained. The proposed changes do not alter the manner in which safety limits, limiting safety system settings, or limiting conditions for operation are determined. There are no changes to setpoints at which protective actions are initiated, and the operability requirements for equipment assumed to operate for accident mitigation are not affected.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, and with the changes noted above in square brackets, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for Licensee: Mr. J. Bradley Fewell, Assistant General Counsel, Exelon Generation Company, LLC, 200 Exelon Way, Kennett Square, PA 19348.

NRC Branch Chief: Meena K. Khanna.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: March 29, 2012. A publicly available version is available in ADAMS under Accession No. ML12102A080.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The proposed amendment would revise the Wolf Creek Generating Station's (WCGS's) Technical Specification (TS) 5.5.9, ''Steam Generator (SG) Program,'' to exclude portions of the tube below the top of the steam generator tubesheet from periodic steam generator tube inspections. In addition, the proposed amendment would revise TS 5.6.10,

''Steam Generator Tube Inspection Report,'' to remove reference to previous interim alternate repair criteria and provide reporting requirements specific to the permanent alternate repair criteria.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The previously analyzed accidents are initiated by the failure of plant structures, systems, or components. The proposed change that alters the steam generator inspection criteria does not have a detrimental impact on the integrity of any plant structure, system, or component that initiates an analyzed event. The proposed change will not alter the operation of, or otherwise increase the failure probability of any plant equipment that initiates an analyzed accident.

Of the applicable accidents previously evaluated, the limiting transients with consideration to the proposed change to the steam generator tube inspection and repair criteria are the steam generator tube rupture (SGTR) event, the steam line break (SLB), and the feed line break (FLB) postulated accidents.

Addressing the SGTR event, the required structural integrity margins of the steam generator tubes and the tube-to-tubesheet joint over the H* distance will be maintained. Tube rupture in tubes with cracks within the tubesheet is precluded by the presence of the tubesheet and constraint provided by the tube-to-tubesheet joint. Tube burst cannot occur within the thickness of the tubesheet. The tube-to-tubesheet joint constraint results from the hydraulic expansion process, thermal expansion mismatch between the tube and tubesheet, from the differential pressure between the primary and secondary side, and tubesheet deflection. The structural margins against burst, as discussed in Regulatory Guide (RG) 1.121, ''Bases for Plugging Degraded PWR [Pressurized-Water Reactor] Steam Generator Tubes,'' and TS 5.5.9 are maintained for both normal and postulated accident conditions.

The proposed change has no impact on the structural or leakage integrity of the portion of the tube outside of the tubesheet. The proposed change maintains structural and leakage integrity of the steam generator tubes consistent with the performance criteria in TS 5.5.9. Therefore, the proposed change results in no significant increase in the probability of the occurrence of a SGTR accident.

At normal operating pressures, leakage from tube degradation below the proposed limited inspection depth is limited by the tube-to-tubesheet joint. Consequently, negligible normal operating leakage is expected from degradation below the inspected depth within the tubesheet region. The consequences of an SGTR event are not affected by the primary to secondary leakage flow during the event as primary to secondary leakage flow through a postulated tube that has been pulled out of the tubesheet is essentially equivalent to a severed tube. Therefore, the proposed changes do not result in a significant increase in the consequences of a SGTR.

The consequences of a SLB or FLB are also not significantly affected by the proposed changes. The leakage analysis shows that the primary-to-secondary leakage during a SLB/FLB event would be less than or equal to that assumed in the Updated Safety Analysis Report.

Primary-to-secondary leakage from tube degradation in the tubesheet area during the limiting accident (i.e., SLB/FLB) is limited by flow restrictions. These restrictions result from the crack and tube-to-tubesheet contact pressures that provide a restricted leakage path above the indications and also limit the degree of potential crack face opening as compared to free span indications.

The leakage factor of 2.50 for WCGS, for a postulated SLB/FLB, has been calculated as shown in References 10, 15, and 19 [of the license amendment request dated March 29, 2012]. Specifically, for the condition monitoring (CM) assessment, the component of leakage from the prior cycle from below the H* distance will be multiplied by a factor of 2.50 and added to the total leakage from any other source and compared to the allowable accident induced leakage limit. For the operational assessment (OA), the difference in the leakage between the allowable leakage and the accident induced leakage from sources other than the tubesheet expansion region will be divided by 2.50 and compared to the observed operational leakage.

The probability of a SLB/FLB is unaffected by the potential failure of a steam generator tube as the failure of the tube is not an initiator for a SLB/FLB event. SLB/FLB leakage is limited by leakage flow restrictions resulting from the leakage path above potential cracks through the tube-to-tubesheet crevice. The leak rate during all postulated accident conditions that model primary-to-secondary leakage (including locked rotor and control rod ejection) has been shown to remain within the accident analysis assumptions for all axial and or circumferentially orientated cracks occurring 15.21 inches below the top of the tubesheet. The accident induced leak rate limit for WCGS is 1.0 gpm [gallon per minute]. The TS 3.4.13, ''RCS [Reactor Coolant System] Operational LEAKAGE,'' operational leak rate limit is 150 gpd [gallons per day] (0.1 gpm) through any one steam generator. Consequently, accident leakage is approximately 10 times the allowable leakage, if only one steam generator is leaking. Using the limiting SLB/FLB overall leakage factor of 2.50, accident induced leakage is less than 0.6 gpm, if all 4 steam generators are leaking at 150 gpd at the beginning of the accident. Therefore, significant margin exists between the conservatively estimated accident induced leakage and the allowable accident leakage (1.0 gpm).

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change alters the steam generator inspection and reporting criteria. It does not introduce any new equipment, create new failure modes for existing equipment, or create any new limiting single failures. Plant operation will not be altered, and safety functions will continue to perform as previously assumed in accident analyses.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

Response: No.

The proposed change alters the steam generator inspection and reporting criteria. It maintains the required structural margins of the steam generator tubes for both normal and accident conditions. NEI [Nuclear Energy Institute] 97–06, and RG 1.121, are used as the bases in the development of the limited tubesheet inspection depth methodology for determining that steam generator tube integrity considerations are maintained within acceptable limits. RG 1.121 describes a method acceptable to the NRC [U.S. Nuclear Regulatory Commission] for meeting GDC [General Design Criterion] 14, ''Reactor Coolant Pressure Boundary,'' GDC 15, ''Reactor Coolant System Design,'' GDC 31, ''Fracture Prevention of Reactor Coolant Pressure Boundary,'' and GDC 32, ''Inspection of Reactor Coolant Pressure Boundary,'' by reducing the probability and consequences of a SGTR. RG 1.121 concludes that by determining the limiting safe conditions for tube wall degradation, the probability and consequences of a SGTR are reduced. This RG uses safety factors on loads for tube burst that are consistent with the requirements of Section III of the American Society of Mechanical Engineers (ASME) [Boiler and Pressure Vessel] Code.

For axially-oriented cracking located within the tubesheet, tube burst is precluded due to the presence of the tubesheet. For circumferentially-oriented cracking, the H* Analysis documented in Section 3 [of the license amendment request dated March 29, 2012], defines a length of degradation-free expanded tubing that provides the necessary resistance to tube pullout due to the pressure induced forces, with applicable safety factors applied. Application of the limited hot and cold leg tubesheet inspection criteria will preclude unacceptable primary to secondary leakage during all plant conditions. The methodology for determining leakage provides for large margins between calculated and actual leakage values in the proposed limited tubesheet inspection depth criteria.

Therefore, the proposed change does not involve a significant reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jay Silberg, Esq., Pillsbury Winthrop Shaw Pittman LLP, 2300 N Street NW., Washington, DC 20037.

NRC Branch Chief: Michael T. Markley.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation

Carolina Power & Light Company, Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Exelon Generation Company, LLC, and PSEG Nuclear LLC, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units 2 and 3, York and Lancaster Counties, Pennsylvania

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing Sensitive Unclassified Non-Safeguards Information (SUNSI).

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI is necessary to respond to this notice may request such access. A ''potential party'' is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requestor shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The email address for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *OGCmailcenter@nrc.gov,* respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1); and

(3) The identity of the individual or entity requesting access to SUNSI and the requestor's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention.

D. Based on an evaluation of the information submitted under paragraph C.(3) the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order[2] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after the requestor is granted access to that information. However, if more than 25 days remain between the date the petitioner is granted access to the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.

G. Review of Denials of Access.

(1) If the request for access to SUNSI is denied by the NRC staff after a determination on standing and need for access, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requestor may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

H. Review of Grants of Access. A party other than the requestor may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed with the Chief Administrative Judge within 5 days of the notification by the NRC staff of its grant of access.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[3]

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's ''E–Filing Rule,'' the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

[2] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

[3] Requestors should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR Part 2. Attachment 1 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It is so ordered.

Dated at Rockville, Maryland, this 27th day of June 2012.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION IN THIS PROCEEDING

Day	Event/Activity
0	Publication of **Federal Register** notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: Supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.
60	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 requestor/petitioner reply).
20	Nuclear Regulatory Commission (NRC) staff informs the requestor of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents).
25	If NRC staff finds no "need" or no likelihood of standing, the deadline for requestor/petitioner to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds "need" for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
A	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 60	Decision on contention admission.

[FR Doc. 2012–16269 Filed 7–2–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0002]

Sunshine Act Meeting

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission; [NRC–2012–0002].

DATE: Weeks of July 2, 9, 16, 23, 30, August 6, 2012.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of July 2, 2012

There are no meetings scheduled for the week of July 2, 2012.

Week of July 9, 2012—Tentative

Tuesday, July 10, 2012

9:30 a.m. Strategic Programmatic Overview of the Operating Reactors, Business Line (Public Meeting), (Contact: Trent Wertz, 301–415–1568).

This meeting will be webcast live at the Web address—*www.nrc.gov.*

Week of July 16, 2012—Tentative

There are no meetings scheduled for the week of July 16, 2012.

Week of July 23, 2012—Tentative

There are no meetings scheduled for the week of July 23, 2012.

Week of July 30, 2012—Tentative

There are no meetings scheduled for the week of July 30, 2012.

Week of August 6, 2012—Tentative

Tuesday, August 7, 2012

9:30 a.m. Briefing on the Status of Lessons Learned from the Fukushima, Dai-Ichi Accident (Public Meeting), (Contact: John Monninger, 301–415–0610).

This meeting will be webcast live at the Web address—*www.nrc.gov.*

* * * * *

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—301–415–1292. Contact person for more information: Rochelle Bavol, 301–415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. Braille, large print), please notify Bill Dosch, Chief, Work Life and Benefits Branch, at 301–415–6200, TDD: 301–415–2100, or by email at *william.dosch@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an email to *darlene.wright@nrc.gov.*

Dated: June 28, 2012.

Rochelle C. Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2012–16405 Filed 6–29–12; 11:15 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 17Ad–15; OMB Control No. 3235–0122; SEC File No. 270–154.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in the following rule: Rule 17Ad–15 (17 CFR 240.17Ad–15) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 17Ad–15 (17 CFR 240.17Ad–15) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (the ''Act'') requires approximately 477 transfer agents to establish written standards for the acceptance or rejection of guarantees of securities transfers from eligible guarantor institutions. Transfer agents are required to establish procedures to ensure that those standards are used by the transfer agent to determine whether to accept or reject guarantees from eligible guarantor institutions. Transfer agents must maintain, for a period of three years following the date of a rejection of transfer, a record of all transfers rejected, along with the reason for the rejection, identification of the guarantor, and whether the guarantor failed to meet the transfer agent's guarantee standard. These recordkeeping requirements assist the Commission and other regulatory agencies with monitoring transfer agents and ensuring compliance with the rule.

There are approximately 477 registered transfer agents. The staff estimates that every transfer agent will spend about 40 hours annually to comply with Rule 17Ad–15. The total annual burden for all transfer agents is 19,080 hours (477 times 40 hours). The average cost per hour is approximately $50. Therefore, the total cost of compliance for all transfer agents is $954,000 (19,080 hours times $50).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

Please direct your comments to 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.*

Dated: June 27, 2012.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–16224 Filed 7–2–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Regulation S–P; SEC File No. 270–480; OMB Control No. 3235–0537.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in the privacy notice and opt out notice provisions of Regulation S–P—Privacy of Consumer Financial Information (17 CFR part 248) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act''). The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

The privacy notice and opt out notice provisions of Regulation S–P (the ''Rule'') implement the privacy notice and opt out notice requirements of Title V of the Gramm-Leach-Bliley Act (''GLBA''), which include the requirement that at the time of establishing a customer relationship with a consumer and not less than annually during the continuation of such relationship, a financial institution shall provide a clear and conspicuous disclosure to such consumer of such financial institution's policies and practices with respect to disclosing nonpublic personal information to affiliates and nonaffiliated third parties (''privacy notice''). Title V of the GLBA also provides that, unless an exception applies, a financial institution may not disclose nonpublic personal information of a consumer to a nonaffiliated third party unless the financial institution clearly and conspicuously discloses to the consumer that such information may be disclosed to such third party; the consumer is given the opportunity, before the time that such information is initially disclosed, to direct that such information not be disclosed to such third party; and the consumer is given an explanation of how the consumer can

exercise that nondisclosure option (''opt out notice''). The Rule applies to broker-dealers, investment advisers registered with the Commission, and investment companies (''covered entities'').

Commission staff estimates that, as of early May, 2012, the Rule's information collection burden applies to approximately 21,500 covered entities (approximately 4,700 broker-dealers, 12,600 investment advisers registered with the Commission, and 4,200 investment companies). In view of (a) The minimal recordkeeping burden imposed by the Rule (since the Rule has no recordkeeping requirement and records relating to customer communications already must be made and retained pursuant to other SEC rules); (b) the summary fashion in which information must be provided to customers in the privacy and opt out notices required by the Rule (the model privacy form adopted by the SEC and the other agencies in 2009, designed to serve as both a privacy notice and an opt out notice, is only two pages); (c) the availability to covered entities of the model privacy form and online model privacy form builder; and (d) the experience of covered entities' staff with the notices, SEC staff estimates that covered entities will each spend an average of approximately 12 hours per year complying with the Rule, for a total of approximately 258,000 annual burden-hours (12 × 21,500 = 258,000). SEC staff understands that the vast majority of covered entities deliver their privacy and opt out notices with other communications such as account opening documents and account statements. Because the other communications are already delivered to consumers, adding a brief privacy and opt out notice should not result in added costs for processing or for postage and materials. Also, privacy and opt out notices may be delivered electronically to consumers who have agreed to electronic communications, which further reduces the costs of delivery. Because SEC staff assumes that most paper copies of privacy and opt out notices are combined with other required mailings, the burden-hour estimates above are based on resources required to integrate the privacy and opt notices into another mailing, rather than on the resources required to create and send a separate mailing. SEC staff estimates that, of the estimated 12 annual burden-hours incurred, approximately 8 hours would be spent by administrative assistants at an hourly rate of $65, and approximately 4 hours would be spent by internal counsel at an hourly rate of $378, for a total annualized cost of $2,032 for each of the covered entities (8 × $65 = $520; 4 × $378 = $1,512; $520 + $1,512 = $2,032). Hourly cost estimates for personnel time are derived from the Securities Industry and Financial Markets Association's *Management & Professional Earnings in the Securities Industry 2011,* modified by SEC staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead. Accordingly, SEC staff estimates that the total annualized cost for the estimated total hour burden for the approximately 21,500 covered entities subject to the Rule is approximately $43,688,000 ($2,032 × 21,500 = $43,688,000).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information on respondents; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

Please direct your written comments to: Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, Virginia 22312 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: June 27, 2012.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–16225 Filed 7–2–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67272; File No. SR–BX–2012–042]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Its Excess Order Fee

June 27, 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 June 25, 2012, NASDAQ OMX BX, Inc. (''BX'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

BX proposes to institute an excess order fee. [sic] BX will implement the proposed change on July 2, 2012. The text of the proposed rule change is available at *http://nasdaqomxbx.cchwallstreet.com/,* at BX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 III 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

BX recently submitted a proposed rule change to introduce an Excess

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Order Fee,[3] aimed at reducing inefficient order entry practices of certain market participants that place excessive burdens on the systems of BX and its members and that may negatively impact the usefulness and life cycle cost of market data. The fee is scheduled to be implemented on July 2, 2012. In general, the determination of whether to impose the fee on a particular market participant identifier (''MPID'') is made by calculating the ratio between (i) entered orders, weighted by the distance of the order from the national best bid or offer (''NBBO''), and (ii) orders that execute in whole or in part. The fee is imposed on MPIDs that have an ''Order Entry Ratio'' of more than 100.

Through this proposed rule change, the Exchange is modifying the parameters of the fee slightly to provide that all calculations under the rule establishing the fee will be based on orders received by BX during regular market hours (generally, 9:30 a.m. to 4 p.m.)[4] and will exclude orders received at other times, even if they execute during regular market hours. BX is making the change because the concerns about inefficient order entry practices that have prompted the fee are generally not present with regard to trading activity outside of regular market hours, when volumes are light. BX is also concerned that lower execution rates outside of regular market hours may skew calculations under the rule, such that an MPID that is considered acceptably efficient during regular market hours would be required to pay a fee under the rule due to its activity outside of regular market hours.

2. Statutory Basis

BX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[5] in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,[6] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which BX operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As originally proposed and as modified by this proposed rule change, BX believes that the Order Entry Fee is reasonable because it is designed to achieve improvements in the quality of displayed liquidity and market data that will benefit all market participants. In addition, although the level of the fee may theoretically be very high, the fee is reasonable because market participants may readily avoid the fee by making improvements in their order entry practices that reduce the number of orders they enter, bring the prices of their orders closer to the NBBO, and/or increase the percentage of their orders that execute. The proposed change to the fee is reasonable because it will reduce the likelihood of the fee being imposed on an MPID that is considered acceptably efficient during regular market hours, when the impact of inefficient trading on BX and other market participants is highest.

For similar reasons, the fee is consistent with an equitable allocation of fees, because although the fee may apply to only a small number of market participants, the fee would be applied to them in order to encourage better order entry practices that will benefit all market participants. Ideally, the fee will be applied to no one, because market participants will adjust their behavior in order to avoid the fee. The proposed change will increase the likelihood that the fee will not be imposed in unwarranted circumstances. Finally, BX believes that the fee is not unfairly discriminatory. Although the fee may apply to only a small number of market participants, it will be imposed because of the negative externalities that such market participants impose on others through inefficient order entry practices. The proposed modification to the fee is not unfairly discriminatory because although it will lessen the potential impact of the fee on MPIDs that are active outside of regular market hours, this change is rationally related to the fee's purpose of promoting efficient trading practices in conditions where inefficiency may negatively impact BX and other market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

BX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Specifically, BX believes that the fee will constrain market participants from pursuing certain inefficient and potentially abusive trading strategies. To the extent that this change may be construed as a burden on competition, BX believes that it is appropriate in order to further the purposes of Section 6(b)(5) of the Act.[7] The proposed change will lessen any burden on competition by removing from consideration orders entered outside of regular market hours, when concerns about the impact of inefficient trading on BX and other market participants are diminished.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[8] 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–BX–2012–042 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2012–042. 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

[3] Securities Exchange Act Release No. 67007 (May 17, 2012), 77 FR 30579 (May 23, 2012) (SR–BX–2012–033).

[4] Regular market hours may be different in some circumstances, such as on the day after Thanksgiving, when regular market hours on all exchanges traditionally end at 1 p.m.

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(4) and (5).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(a)(ii). [sic]

Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2012–042, and should be submitted on or before July 24, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–16212 Filed 7–2–12; 8:45 am]

BILLING CODE 8011–01–P

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67274; File No. SR–BYX–2012–011]

Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Modify Exchange Rule 11.13, Entitled ''Order Execution''

June 27, 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 June 15, 2012, BATS Y-Exchange, Inc. (the ''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposal to amend Rule 11.13 entitled ''Order Execution'' to modify Exchange system functionality when the consolidated market is crossed and to modify the handling of orders that have been rejected after routing away through the Exchange's affiliated broker-dealer.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing changes to its system functionality to implement a price constraint in the event the Exchange receives a non-routable order and a Protected Bid[3] and a Protected Offer[4] are crossed (a ''Crossed Market''). The Exchange is also proposing to provide its Users with the option to avoid any execution when there is a Crossed Market. Finally, the Exchange is proposing a change to the way that it responds to rejections of orders that were routed to a Protected Quotation.[5]

Under current BYX Rules, for any execution to occur during Regular Trading Hours,[6] the price must be equal to or better than the Protected NBBO,[7] unless the order is marked ISO or unless the execution falls within another exception set forth in Rule 611(b) of Regulation NMS. For any execution to occur during the Pre-Opening Session[8] or the After Hours Trading Session,[9] the price must be equal to or better than the highest Protected Bid or lowest Protected Offer. As noted below, the Exchange also currently allows executions of orders outside of Regular Trading Hours when an order is marked ISO and there is a Crossed Market.

The restrictions on executions described above reflect the Exchange's implementation of the trade-through rule of Regulation NMS, Rule 611, which only applies during Regular Trading Hours; however the Exchange has also implemented trade-through protection outside of Regular Trading Hours in order to promote the handling of orders in a consistent and orderly fashion. Pursuant to the exception of Rule 611(b)(4) during Regular Trading Hours, as well as during the Pre-Opening Session and the After Hours Trading Session, the Exchange does not currently impose trade-through protections when there is a Crossed Market. In order to constrain the price of executions when there is a Crossed Market, in the event that a Protected Bid is crossing a Protected Offer, whether during or outside of Regular Trading Hours, unless an order is marked ISO, the Exchange will not execute any portion of a bid at a price more than the greater of 5 cents or 0.5 percent higher than the lowest Protected Offer or any portion of an offer that is not marked ISO that would execute at a price more than the greater of 5 cents or 0.5 percent lower than the highest Protected Bid. In order to provide an additional option for Users[10] that do not want any orders to

[3] As defined in BYX Rule 1.5(t), Protected Bid means a bid in a stock that is displayed by an automated trading center, disseminated pursuant to an effective national market system plan, and an automated quotation that is the best bid of a national securities exchange or association.

[4] As defined in BYX Rule 1.5(t), Protected Offer means an offer in a stock that is displayed by an automated trading center, disseminated pursuant to an effective national market system plan, and an automated quotation that is the best offer of a national securities exchange or association.

[5] As defined in BYX Rule 1.5(t), Protected Quotation means a quotation that is a Protected Bid or Protected Offer.

[6] As defined in BYX Rule 1.5(w), Regular Trading Hours means the time between 9:30 a.m. and 4:00 p.m. Eastern Time.

[7] As defined in BYX Rule 1.5(s), Protected NBBO means the national best bid or offer that is a Protected Quotation.

[8] As defined in BYX Rule 1.5(r), the Pre-Opening Session means the time between 8:00 a.m. and 9:30 a.m. Eastern Time.

[9] As defined in BYX Rule 1.5(c), the After Hours Trading Session means the time between 4:00 p.m. and 5:00 p.m. Eastern Time.

[10] As defined in BYX Rule 1.5(cc), a User is any Member or Sponsored Participant who is authorized to access the Exchange's system pursuant to Exchange Rules.

execute when there is a Crossed Market, upon instruction from a User, the Exchange will not execute any incoming order from such User in the event a Protected Bid is crossing a Protected Offer. The Exchange believes that the thresholds proposed in this rule filing will help avoid executions of orders at prices that are significantly worse than the NBBO.[11]

The following example demonstrates how the Exchange's Crossed Market threshold would operate:

- The NBBO in security ABC is $5.00 (bid) by $4.98 (offer), and thus, there is a Crossed Market;
- A User submits a non-routable market order (e.g., designated as a ''BATS Only'' order) to buy 1,000 shares of ABC;
- The Exchange has liquidity in ABC as follows: 100 shares to sell for $4.98, 100 shares to sell for $5.00, 200 shares to sell for $5.03, and 300 shares to sell for $5.05.

Under the circumstances described above, the incoming market order to buy would be executed as follows:

- 100 shares executed on the Exchange at the $4.98 price level;
- 100 shares executed on the Exchange at the $5.00 price level;
- 200 shares executed on the Exchange at the $5.03 price level;
- 600 shares cancelled back to the User.

As proposed, with a Crossed Market of $5.00 by $4.98, the Exchange will execute any incoming buy orders up to and including $5.03 and any incoming sell orders down to and including $4.95 per share. Accordingly, under this example, 400 shares of the incoming buy order would be executed, including 200 shares at the Crossed Market threshold of $5.03. The remaining 600 shares of the market order would be cancelled back to the User because the liquidity on the Exchange at the $5.05 price level exceeds the thresholds set forth in proposed Rule 11.13. The Exchange notes that in the event the order was designated as eligible for routing, the Exchange's normal routing strategies would apply, and, to the extent that other market centers have better prices than are available on the BATS Book,[12] the Exchange would route the order away to such other market centers rather than executing solely on the Exchange. Accordingly, the Exchange proposes to add language to Rule 11.13 to make clear that to the extent an incoming order is executable because a Protected Bid is crossing a Protected Offer but such incoming order is eligible for routing and there is a Protected Bid or Protected Offer available at another Trading Center[13] that is better priced than the bid or offer against which the order would execute on the Exchange, the Exchange will first seek to route the order to such better priced quotation pursuant to Rule 11.13(a)(2).

The Exchange has proposed to exclude ISOs from the proposed pricing threshold because a User is subject to certain specific obligations when pricing and submitting an order as an ISO.[14] The Exchange believes that rejecting an ISO upon receipt due to a Crossed Market is inconsistent with the general notion of an ISO, which allows a User to designate a price at which the Exchange can execute the order without regard to the Exchange's view of the NBBO.

In addition to the implementation of Crossed Market price constraints and the ability to designate orders as ineligible for execution during a Crossed Market, the Exchange is proposing to modify the way that it handles rejections received from other Trading Centers. Currently the Exchange routes all orders through its affiliated broker-dealer, BATS Trading, Inc. (''BATS Trading''). In certain instances, BATS Trading, in turn, routes to certain third party broker-dealers in order to ensure that the Exchange has effective and redundant connections to all other Trading Centers with Protected Quotations. BATS Trading occasionally receives ''rejections'' of orders either from the Trading Centers to which it routes directly or through the third party broker-dealers through which it routes. Such rejections can be for various reasons, including a technical problem with the order, market access thresholds implemented pursuant to SEC Rule 15c3–5, or other operational thresholds. The Exchange currently handles orders on which it receives rejections by either cancelling the order back to the User or, if the order submitted by the User instructs the Exchange to do so, by posting the order to the Exchange's order book after subjecting such order to its price sliding process pursuant to Rule 11.9(g) in order to avoid locking any Protected Quotation that it cannot access. Rather than posting an order to its book, the Exchange proposes to cancel all orders for which it has received a rejection due to an inability to access another Trading Center, providing a User with the opportunity to submit a new order or seek another path to the applicable Protected Quotation. The Exchange has also proposed to make clear that such a cancellation will not apply to Protected Quotations published by a Trading Center against which the Exchange has declared self-help pursuant to Exchange Rule 11.13(d). Although a Protected Quotation may be inaccessible to the Exchange, once the Exchange has declared self-help pursuant to Rule 11.13(d), the Exchange disregards, and will continue to execute transactions and route orders without regard to, such Protected Quotations. Notwithstanding the foregoing, however, even after the Exchange has received a rejection from a Trading Center, if there are multiple Trading Centers included in the routing option selected by the User that have Protected Quotations at the NBBO, the System[15] will continue to route the order to the Protected Quotations at other such other Trading Centers at that price level.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[16] In particular, the proposal is consistent with Section 6(b)(5) of the Act,[17] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system by helping to avoid executions of orders on the Exchange at prices that are significantly worse than the NBB[18] or NBO[19] at the time an order is initially received by the Exchange, even if executions are

[11] As defined in BYX Rule 1.5(o), NBBO shall mean the national best bid or offer.

[12] As defined in BYX Rule 1.5(e), BATS Book means the System's electronic file of orders.

[13] As defined in BYX Rule 2.11, a Trading Center is another securities exchange, facility of a securities exchange, automated trading system, electronic communication network or other broker or dealer.

[14] *See* 17 CFR 240.600(b)(30) and 611(c); *see also* BYX Rule 11.9(d)(1), which states that ''[t]he Exchange relies on the marking of an order as an ISO order when handling such order, and thus, it is the entering Member's responsibility, not the Exchange's responsibility, to comply with the requirements of Regulation NMS relating to Intermarket Sweep Orders.'' The Exchange notes that as a self-regulatory organization it conducts regulatory oversight of each Exchange Member's use of Intermarket Sweep Orders on the Exchange.

[15] As defined in BYX Rule 1.5(aa), System means the electronic communications and trading facility designate [sic] by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away.

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

[18] As defined in BYX Rule 1.5(o), NBB means the national best bid.

[19] As defined in BYX Rule 1.5(o), NBO means the national best offer.

permissible pursuant to Regulation NMS. The Exchange believes that permitting Users to avoid any execution of an incoming order in a Crossed Market is an additional functionality that is consistent with the protection of investors and the public interest. Although the Exchange does not believe that any other self-regulatory organization has exactly the same Crossed Market threshold in place, the Exchange as well as other market centers have implemented a variety of pricing thresholds to constrain executions and protect market participants.[20] Also, this proposal is consistent with existing Exchange rules that allow for the breaking of trades deemed clearly erroneous by reference to objective thresholds worse than the NBBO.[21] The Exchange believes that the proposed pricing thresholds are reasonable because they are significantly narrower than thresholds in place on the Exchange for market orders received by the Exchange[22] and also narrower than applicable clearly erroneous thresholds. A narrow threshold will protect market participants and their customers from potentially executing at prices away from the NBBO when there is a Crossed Market, which can be an indication of a pricing anomaly in a security or a potential systems issue at another Trading Center. Further, the proposed threshold is consistent with the protection of investors and the public interest because it will help to avoid clearly erroneous executions from occurring in the first place, rather than allowing an execution to occur and breaking the trade based on clearly erroneous rules. Finally, the Exchange believes that the cancellation of all orders that have been rejected by other market centers or third party routers, rather than posting such orders to the Exchange's book will provide Users with more immediate certainty regarding their orders, and will provide Users the ability to modify and re-submit or send their orders via a different path to attempt to access the applicable Protected Quotation. Accordingly, the modifications to BYX Rule 11.13 promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the 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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[23] and Rule 19b–4(f)(6) thereunder.[24]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[25] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)[26] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay, noting that doing so would allow investors and market participants to benefit immediately from additional protection against certain executions in Crossed Market conditions and from the ability to re-route or re-submit orders that are unable to access, and therefore rejected by, other market centers with Protected Quotations at the NBBO. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[27] Therefore, the Commission designates the proposal operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange 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–BYX–2012–011 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–BYX–2012–011. 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 10:00 a.m. and 3:00 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

[20] *See, e.g.,* BYX Rule 11.9(a)(2), which constrains the executions of a market order on BYX to $0.50 or 5 percent away from the NBBO at the time the order initially reaches the Exchange; *see also* NYSE Arca Rule 7.31(a); NASDAQ Rule 4751(f)(13).

[21] *See* BYX Rule 11.17.

[22] *See supra* note 20.

[23] 15 U.S.C. 78s(b)(3)(A).

[24] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[25] 17 CFR 240.19b–4(f)(6).

[26] 17 CFR 240.19b–4(f)(6).

[27] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BYX–2012–011 and should be submitted on or before July 24, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–16214 Filed 7–2–12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67283; File No. SR–NYSEArca–2012–64]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To List and Trade Option Contracts Overlying 10 Shares of a Security

June 27, 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 June 15, 2012, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade option contracts overlying 10 shares of a security (''mini-options contracts''). The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 is proposing to list and trade mini-options contracts and implement rule text necessary to integrate mini-options contracts with contracts overlying 100 shares (''standard contracts''). Whereas standard contracts represent a deliverable of 100 shares of an underlying security, mini-options contracts would represent a deliverable of 10 shares. The Exchange proposes to initially list and trade mini-options contracts overlying 5 high priced securities for which the standard contract overlying the same security exhibits significant liquidity.[3] The Exchange believes that investors would benefit from the availability of mini-options contracts by making options overlying high priced securities more readily available as an investing tool and at more affordable and realistic prices, most notably for the average retail investor.

For example, with Apple Inc. (''AAPL'') trading at $605.85 on March 21, 2012, ($60,585 for 100 shares underlying a standard contract), the 605 level call expiring on March 23 is trading at $7.65. The cost of the standard contract overlying 100 shares would be $765, which is substantially higher in notional terms than the average equity option price of $250.89.[4] Proportionately equivalent mini-options contracts on AAPL would provide investors with the ability to manage and hedge their portfolio risk on their underlying investment, at a price of $76.50 per contract. In addition, investors who hold a position in AAPL at less than the round lot size would still be able to avail themselves of options to manage their portfolio risk. For example, the holder of 50 shares of AAPL could write covered calls for five mini-options contracts. The table below demonstrates the proposed differences between a mini-options contracts [sic] and a standard contract with a strike price of $125 per share and a bid or offer of $3.20 per share:

	Standard	Mini
Share Deliverable Upon Exercise	100 shares	10 shares.
Strike Price	125	125.
Bid/Offer	3.20	3.20.
Premium Multiplier	$100	$10.
Total Value of Deliverable	$12,500	$1,250.
Total Value of Contract	$320	$32.

The Exchange notes that the Commission has approved an earlier proposal of NYSE Arca to list and trade option contracts overlying a number of shares other than 100.[5] Moreover, the concept of listing and trading parallel options products of reduced values and sizes on the same underlying security is not novel. For example, parallel product pairs on a full-value and reduced-value basis are currently listed on the S&P 500 Index (''SPX'' and ''XSP,'' respectively),

[28] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange proposes that mini-options contracts would be listed in only five issues, specifically SPDR S&P 500 (SPY), Apple, Inc. (AAPL), SPDR Gold Trust (GLD), Google Inc. (GOOG), and Amazon.com Inc. (AMZN). These issues were selected because they are priced greater than $100 and are among the most actively traded issues, in that the standard contract exhibits average daily volume (''ADV'') over the previous three calendar months of at least 45,000 contracts, excluding LEAPS and FLEX series. The Exchange notes that any expansion of the program would require that a subsequent proposed rule change be submitted with the Commission.

[4] A high priced underlying security may have relatively expensive options, because a low percentage move in the share price may mean a large movement in the options in terms of absolute dollars. Average non-FLEX equity option premium per contract January 1–December 31, 2011. *See http://www.theocc.com/webapps/monthly-volume-reports?reportClass=equity.*

[5] *See* Securities Exchange Act Release No. 44025 (February 28, 2001), 66 FR 13986 (March 8, 2001) (approving SR–PCX–01–12).

the Nasdaq 100 Index (''NDX'' and ''MNX,'' respectively) and the Russell 2000 Index (''RUT'' and ''RMN,'' respectively).

The Exchange believes that the proposal to list and trade mini-options contracts will not lead to investor confusion. There are two important distinctions between mini options and standard options that are designed to ease the likelihood of any investor confusion. First, the premium multiplier for the proposed mini options will be 10, rather than 100, to reflect the smaller unit of trading. To reflect this change, the Exchange proposes to add Rule 6.71(c) which notes that bids and offers for an option contract overlying 10 shares will be expressed in terms of dollars per 1/10th part of the total value of the contract. Thus, an offer of ''.50'' shall represent an offer $5.00 on an options contract having a unit of trading consisting of 10 shares. Additionally, the Exchange will designate mini-options contracts with different trading symbols than their related standard contract.[6] The Exchange believes that the clarity of this approach is appropriate and transparent, as supported by the recent Options Clearing Corporation (''OCC'') filing to amend its bylaws to accommodate such strike prices and premiums.[7] Moreover, the Exchange believes that the terms of mini-options contracts are consistent with the terms of the Options Disclosure Document.

The Exchange recognizes the need to differentiate mini-options contracts from standard options and therefore is proposing the following changes to its rules.

The Exchange proposes to add Commentary .01 to Rule 6.3 (Option Contracts to Be Traded) to reflect that, in addition to option contracts with a unit of trading of 100, the Exchange may list option contracts overlying 10 shares of SPDR S&P 500 (SPY), Apple, Inc. (AAPL), SPDR Gold Trust (GLD), Google Inc. (GOOG), and Amazon.com Inc. (AMZN) for all expirations applicable to 100 share options in each class. The Exchange believes that these five securities are appropriate because they are high priced securities for which there is already significant options liquidity and therefore significant customer demand.

The Exchange also proposes to add Commentary .14 to Rule 6.4 (Series of Options Open for Trading) to list series of mini-options provided that the underlying security has been designated as eligible under Rule 6.3 Commentary .01. Also, the Exchange proposes to not permit the listing of additional mini-options series if the underlying is trading at $90 or less to limit the number of strikes once the underlying is no longer a high priced security. The Exchange proposes a $90.01 minimum for continued qualification so that additional mini-options strikes may be added even though the underlying has fallen slightly below the initial qualification standard. In addition, the underlying security must be trading above $90 for five consecutive days before the listing of mini-option contracts in a new expiration month. This restriction will allow the Exchange to list mini-option strikes without disruption when a new expiration month is added even if the underlying has had a minor decline in price.

The Exchange also proposes to add Commentary .08 to Rule 6.8 (Position Limits) to reflect that, for purposes of compliance with the Position Limits of Rules [sic] 6.8, ten mini-options contracts will equal one standard contract overlying 100 shares.

The Exchange also proposes to add subsection (c) to Rule 6.71 (Meaning of Premium Bids and Offers) to extend the explanation of bids and offers with respect to mini-options contracts and also remove references to Exchange-Traded Fund Shares, because other types of underlying securities have options traded on them.

With regard to the impact of this proposal on system capacity, the Exchange has analyzed its capacity and represents that it and the Options Price Reporting Authority have the necessary systems capacity to handle the potential additional traffic associated with the listing and trading of mini-options contracts. The Exchange has further discussed the proposed listing and trading of mini-options contracts with the OCC, which has represented that it is able to accommodate the proposal.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)[8] of the Securities Exchange Act of 1934 (the ''Act''), in general, and furthers the objectives of Section 6(b)(5),[9] in particular, because it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest. Specifically, the Exchange believes that investors would benefit from the availability of mini-options contracts by making options on high priced securities more readily available as an investing tool and at more affordable and realistic prices, most notably for the average retail investor. As described above, the proposal contains a number of features designed to protect investors by reducing investor confusion, such as the mini-options contracts being designated by different trading symbols from their related standard contracts.[10] Moreover, the proposal is designed to protect investors and the public interest by providing investors with an enhanced tool to reduce risk in high priced securities. In particular, the proposed contracts will provide retail customers who invest in high priced issues in lots of less than 100 shares with a means of protecting their investments that is presently only available to those who have positions of 100 shares or more. Further, the proposal currently is limited to five high priced securities for which there is already significant options liquidity, and therefore significant customer demand and trading volume.

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

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

[6] OCC Symbology is structured for contracts with other than 100 shares to be designated with a numerical suffix to the standard trading symbol, *i.e.,* AAPL8.

[7] *See* Securities Exchange Act Release No. 61485 (February 3, 2010), 75 FR 6750 (February 10, 2010) (SR–OCC–2010–01).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] *See supra* note 6.

(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–NYSEArca–2012–64 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–2012–64. 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 10:00 a.m. and 3:00 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–2012–64 and should be submitted on or before July 24, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–16221 Filed 7–2–12; 8:45 am]

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[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67271; File No. SR–Phlx–2012–85]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Its Excess Order Fee

June 27, 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 June 25, 2012, NASDAQ OMX PHLX LLC (''Phlx'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Phlx proposes to institute an Excess Order Fee. [sic] Phlx will implement the proposed change on July 2, 2012. The text of the proposed rule change is available at *http://nasdaqomxphlx.cchwallstreet.com/nasdaqomxphlx/phlx/*, at Phlx's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Phlx recently submitted a proposed rule change to introduce an Excess Order Fee,[3] aimed at reducing inefficient order entry practices of certain market participants that place excessive burdens on Phlx's NASDAQ OMX PSX system (''PSX'') and the member organizations that trade on it and that may negatively impact the usefulness and life cycle cost of market data. The fee is scheduled to be implemented on July 2, 2012. In general, the determination of whether to impose the fee on a particular market participant identifier (''MPID'') is made by calculating the ratio between (i) entered orders, weighted by the distance of the order from the national best bid or offer (''NBBO''), and (ii) orders that execute in whole or in part. The fee is imposed on MPIDs that have an ''Order Entry Ratio'' of more than 100.

Through this proposed rule change, the Exchange is modifying the parameters of the fee slightly to provide that all calculations under the rule establishing the fee will be based on orders received by PSX during regular market hours (generally, 9:30 a.m. to 4:00 p.m.)[4] and will exclude orders received at other times, even if they execute during regular market hours. Phlx is making the change because the concerns about inefficient order entry practices that have prompted the fee are generally not present with regard to trading activity outside of regular market hours, when volumes are light. Phlx is also concerned that lower execution rates outside of regular market hours may skew calculations under the rule, such that an MPID that is considered acceptably efficient during regular market hours would be required to pay a fee under the rule due to its activity outside of regular market hours.

2. Statutory Basis

Phlx believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[5] in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,[6] in particular, in that it provides for the equitable allocation of reasonable

[3] Securities Exchange Act Release No. 67004 (May 17, 2012), 77 FR 30581 (May 23, 2012) (SR–Phlx–2012–64).

[4] Regular market hours may be different in some circumstances, such as on the day after Thanksgiving, when regular market hours on all exchanges traditionally end at 1:00 p.m.

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(4) and (5).

dues, fees and other charges among members and issuers and other persons using any facility or system which Phlx operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As originally proposed and as modified by this proposed rule change, Phlx believes that the Order Entry Fee is reasonable because it is designed to achieve improvements in the quality of displayed liquidity and market data that will benefit all market participants. In addition, although the level of the fee may theoretically be very high, the fee is reasonable because market participants may readily avoid the fee by making improvements in their order entry practices that reduce the number of orders they enter, bring the prices of their orders closer to the NBBO, and/or increase the percentage of their orders that execute. The proposed change to the fee is reasonable because it will reduce the likelihood of the fee being imposed on an MPID that is considered acceptably efficient during regular market hours, when the impact of inefficient trading on PSX and other market participants is highest.

For similar reasons, the fee is consistent with an equitable allocation of fees, because although the fee may apply to only a small number of market participants, the fee would be applied to them in order to encourage better order entry practices that will benefit all market participants. Ideally, the fee will be applied to no one, because market participants will adjust their behavior in order to avoid the fee. The proposed change will increase the likelihood that the fee will not be imposed in unwarranted circumstances. Finally, Phlx believes that the fee is not unfairly discriminatory. Although the fee may apply to only a small number of market participants, it will be imposed because of the negative externalities that such market participants impose on others through inefficient order entry practices. The proposed modification to the fee is not unfairly discriminatory because although it will lessen the potential impact of the fee on MPIDs that are active outside of regular market hours, this change is rationally related to the fee's purpose of promoting efficient trading practices in conditions where inefficiency may negatively impact Phlx and other market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

Phlx does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Specifically, Phlx believes that the fee will constrain market participants from pursuing certain inefficient and potentially abusive trading strategies. To the extent that this change may be construed as a burden on competition, Phlx believes that it is appropriate in order to further the purposes of Section 6(b)(5) of the Act.[7] The proposed change will lessen any burden on competition by removing from consideration orders entered outside of regular market hours, when concerns about the impact of inefficient trading on Phlx and other market participants are diminished.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[8] 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–2012–85 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–2012–85. This file number should be included on the subject line if email is used.

To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices 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-2012–85, and should be submitted on or before July 24, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–16211 Filed 7–2–12; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(a)(ii). [sic]

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67275; File No. SR–BATS–2012–024]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Modify Rule 11.13 Entitled ''Order Execution,'' Rule 21.9 Entitled ''Order Routing'' and Rule 27.2 Entitled ''Order Protection''

June 27, 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 June 15,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

2012, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposal to amend Rule 11.13 entitled ''Order Execution'', Rule 21.9 entitled ''Order Routing'' and Rule 27.2 entitled ''Order Protection'', to modify Exchange system functionality when the consolidated market is crossed and to modify the handling of orders that have been rejected after routing away through the Exchange's affiliated broker-dealer. The proposal applies to both the BATS equity securities trading platform (''BATS Equities'') and the BATS equity options trading platform (''BATS Options'').

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this rule filing is to modify Exchange system functionality when the consolidated market is crossed and to modify the handling of orders that have been rejected after routing away through the Exchange's affiliated broker-dealer. The proposal applies to both BATS Equities and BATS Options, as described below.

BATS Equities

The Exchange is proposing changes to its system functionality for BATS Equities to implement a price constraint in the event the Exchange receives a non-routable order and a Protected Bid [3] and a Protected Offer [4] are crossed (a ''Crossed Market''). The Exchange is also proposing to provide its Users with the option to avoid any execution when there is a Crossed Market. Finally, the Exchange is proposing a change to the way that it responds to rejections of orders that were routed to a Protected Quotation.[5]

Under current BATS Rules, for any execution to occur on BATS Equities during Regular Trading Hours,[6] the price must be equal to or better than the Protected NBBO,[7] unless the order is marked ISO or unless the execution falls within another exception set forth in Rule 611(b) of Regulation NMS. For any execution to occur during the Pre-Opening Session [8] or the After Hours Trading Session,[9] the price must be equal to or better than the highest Protected Bid or lowest Protected Offer. As noted below, the Exchange also currently allows executions of orders outside of Regular Trading Hours when an order is marked ISO and there is a Crossed Market.

The restrictions on executions described above reflect the Exchange's implementation of the trade-through rule of Regulation NMS, Rule 611, which only applies during Regular Trading Hours; however the Exchange has also implemented trade-through protection outside of Regular Trading Hours in order to promote the handling of orders in a consistent and orderly fashion. Pursuant to the exception of Rule 611(b)(4) during Regular Trading Hours, as well as during the Pre-Opening Session and the After Hours Trading Session, the Exchange does not currently impose trade-through protections when there is a Crossed Market. In order to constrain the price of executions when there is a Crossed Market, in the event that a Protected Bid is crossing a Protected Offer, whether during or outside of Regular Trading Hours, unless an order is marked ISO, BATS Equities will not execute any portion of a bid at a price more than the greater of 5 cents or 0.5 percent higher than the lowest Protected Offer or any portion of an offer that is not marked ISO that would execute at a price more than the greater of 5 cents or 0.5 percent lower than the highest Protected Bid. In order to provide an additional option for Users [10] that do not want any orders to execute when there is a Crossed Market, upon instruction from a User, BATS Equities will not execute any incoming order from such User in the event a Protected Bid is crossing a Protected Offer. The Exchange believes that the thresholds proposed in this rule filing will help avoid executions of orders at prices that are significantly worse than the NBBO.[11]

The following example demonstrates how the Exchange's Crossed Market threshold would operate for BATS Equities:

- The NBBO in security ABC is $5.00 (bid) by $4.98 (offer), and thus, there is a Crossed Market;
- A User submits a non-routable market order (e.g., designated as a ''BATS Only'' order) to buy 1,000 shares of ABC;
- The Exchange has liquidity in ABC as follows: 100 shares to sell for $4.98, 100 shares to sell for $5.00, 200 shares to sell for $5.03, and 300 shares to sell for $5.05.

Under the circumstances described above, the incoming market order to buy would be executed as follows:

- 100 shares executed on the Exchange at the $4.98 price level;
- 100 shares executed on the Exchange at the $5.00 price level;
- 200 shares executed on the Exchange at the $5.03 price level;
- 600 shares cancelled back to the User.

As proposed, with a Crossed Market of $5.00 by $4.98, the Exchange will execute any incoming buy orders up to and including $5.03 and any incoming sell orders down to and including $4.95

[3] As defined in BATS Rule 1.5(t), Protected Bid means a bid in a stock that is displayed by an automated trading center, disseminated pursuant to an effective national market system plan, and an automated quotation that is the best bid of a national securities exchange or association.

[4] As defined in BATS Rule 1.5(t), Protected Offer means an offer in a stock that is displayed by an automated trading center, disseminated pursuant to an effective national market system plan, and an automated quotation that is the best offer of a national securities exchange or association.

[5] As defined in BATS Rule 1.5(t), Protected Quotation means a quotation that is a Protected Bid or Protected Offer.

[6] As defined in BATS Rule 1.5(w), Regular Trading Hours means the time between 9:30 a.m. and 4:00 p.m. Eastern Time.

[7] As defined in BATS Rule 1.5(s), Protected NBBO means the national best bid or offer that is a Protected Quotation.

[8] As defined in BATS Rule 1.5(r), the Pre-Opening Session means the time between 8:00 a.m. and 9:30 a.m. Eastern Time.

[9] As defined in BATS Rule 1.5(c), the After Hours Trading Session means the time between 4:00 p.m. and 5:00 p.m. Eastern Time.

[10] As defined in BATS Rule 1.5(cc), a User is any Member or Sponsored Participant who is authorized to access the Exchange's system pursuant to Exchange Rules.

[11] As defined in BATS Rule 1.5(o), NBBO shall mean the national best bid or offer.

per share. Accordingly, under this example, 400 shares of the incoming buy order would be executed, including 200 shares at the Crossed Market threshold of $5.03. The remaining 600 shares of the market order would be cancelled back to the User because the liquidity on the Exchange at the $5.05 price level exceeds the thresholds set forth in proposed Rule 11.13. The Exchange notes that in the event the order was designated as eligible for routing, the Exchange's normal routing strategies would apply, and, to the extent that other market centers have better prices than are available on the BATS Book,[12] the Exchange would route the order away to such other market centers rather than executing solely on the Exchange. Accordingly, the Exchange proposes to add language to Rule 11.13 to make clear that to the extent an incoming order is executable because a Protected Bid is crossing a Protected Offer but such incoming order is eligible for routing and there is a Protected Bid or Protected Offer available at another Trading Center[13] that is better priced than the bid or offer against which the order would execute on the Exchange, the Exchange will first seek to route the order to such better priced quotation pursuant to Rule 11.13(a)(2).

The Exchange has proposed to exclude ISOs from the proposed pricing threshold because a User is subject to certain specific obligations when pricing and submitting an order as an ISO.[14] The Exchange believes that rejecting an ISO upon receipt due to a Crossed Market is inconsistent with the general notion of an ISO, which allows a User to designate a price at which the Exchange can execute the order without regard to the Exchange's view of the NBBO.

In addition to the implementation of Crossed Market price constraints and the ability to designate orders as ineligible for execution during a Crossed Market, the Exchange is proposing to modify the way that it handles rejections received from other Trading Centers. Currently the Exchange routes all orders through its affiliated broker-dealer, BATS Trading, Inc. (''BATS Trading''). In certain instances, BATS Trading, in turn, routes to certain third party broker-dealers in order to ensure that the Exchange has effective and redundant connections to all other Trading Centers with Protected Quotations. BATS Trading occasionally receives ''rejections'' of orders either from the Trading Centers to which it routes directly or through the third party broker-dealers through which it routes. Such rejections can be for various reasons, including a technical problem with the order, market access thresholds implemented pursuant to SEC Rule 15c3–5, or other operational thresholds. The Exchange currently handles orders on which it receives rejections by either cancelling the order back to the User or, if the order submitted by the User instructs the Exchange to do so, by posting the order to the Exchange's order book after subjecting such order to its price sliding process pursuant to Rule 11.9(g) in order to avoid locking any Protected Quotation that it cannot access. Rather than posting an order to its book, the Exchange proposes to cancel all orders for which it has received a rejection due to an inability to access another Trading Center, providing a User with the opportunity to submit a new order or seek another path to the applicable Protected Quotation. The Exchange has also proposed to make clear that such a cancellation will not apply to Protected Quotations published by a Trading Center against which the Exchange has declared self-help pursuant to Exchange Rule 11.13(d). Although a Protected Quotation may be inaccessible to the Exchange, once the Exchange has declared self-help pursuant to Rule 11.13(d), the Exchange disregards, and will continue to execute transactions and route orders without regard to, such Protected Quotations. Notwithstanding the foregoing, however, even after the Exchange has received a rejection from a Trading Center, if there are multiple Trading Centers included in the routing option selected by the User that have Protected Quotations at the NBBO, the System[15] will continue to route the order to the Protected Quotations at other such other Trading Centers at that price level.

BATS Options

The Exchange proposes to make each of the proposed changes described above to the functionality applicable to trading on and routing away from, BATS Options. The Exchange notes that there are no substantive differences to the proposed functionality; rather, the only differences between the proposal for BATS Equities and BATS Options are the references to applicable rules and terms.

The Exchange is proposing changes to its system functionality for BATS Options to implement a price constraint in the event the Exchange receives a non-routable order and a Protected Bid is higher than a Protected Offer[16] in a series of an Eligible Class (a ''Crossed Market'').[17] The Exchange is also proposing to provide its Users with the option to avoid any execution when there is a Crossed Market. Finally, the Exchange is proposing a change to the way that it responds to rejections of orders that were routed to a Protected Quotation.[18]

Under current BATS Rules, Members are prohibited from effecting Trade-Throughs[19] on BATS Options unless the execution falls within another exception set forth in BATS Rule 27.2(b), which includes an exception for any order that is marked ISO. Pursuant to the exception of Rule 27.2(b)(3), the Exchange does not prohibit Trade-Throughs when there is a Crossed Market. In order to constrain the price of executions when there is a Crossed Market, in the event that a Protected Bid is crossing a Protected Offer, unless an order is marked ISO, BATS Options will not execute any portion of a bid at a price more than the greater of 5 cents or 0.5 percent higher than the lowest Protected Offer or any portion of an

[12] As defined in BATS Rule 1.5(e), BATS Book means the System's electronic file of orders.

[13] As defined in BATS Rule 2.11, a Trading Center is another securities exchange, facility of a securities exchange, automated trading system, electronic communication network or other broker or dealer.

[14] *See* 17 CFR 240.600(b)(30) and 611(c); *see also* BATS Rule 11.9(d)(1), which states that ''[t]he Exchange relies on the marking of an order as an ISO order when handling such order, and thus, it is the entering Member's responsibility, not the Exchange's responsibility, to comply with the requirements of Regulation NMS relating to Intermarket Sweep Orders.'' The Exchange notes that as a self-regulatory organization it conducts regulatory oversight of each Exchange Member's use of Intermarket Sweep Orders on the Exchange.

[15] As defined in BATS Rule 1.5(aa), System means the electronic communications and trading facility designate [sic] by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away.

[16] As defined in BATS 27.1(18), ''Protected Bid'' or ''Protected Offer'' means a Bid or Offer in an options series, respectively, that: (A) Is disseminated pursuant to the OPRA Plan; and (B) Is the Best Bid or Best Offer, respectively, displayed by an Eligible Exchange. An ''Eligible Exchange'' is a national securities exchange registered with the SEC in accordance with Section 6(a) of the Exchange Act that: (a) Is a Participant Exchange in OCC (as that term is defined in Section VII of the OCC by-laws); (b) is a party to the OPRA Plan (as that term is described in Section I of the OPRA Plan); and (c) if the national securities exchange chooses not to become a party to this Plan, is a participant in another plan approved by the Commission providing for comparable Trade-Through and Locked and Crossed Market protection.

[17] This definition for Crossed Market is consistent with the definition contained in BATS Rule 27.1(5).

[18] As defined in BATS Rule 27.1(19), Protected Quotation means a Protected Bid or Protected Offer.

[19] As defined in BATS Rule 27.1(22), a Trade-Through is a transaction in an options series at a price that is lower than a Protected Bid or higher than a Protected Offer.

offer that is not marked ISO that would execute at a price more than the greater of 5 cents or 0.5 percent lower than the highest Protected Bid. In order to provide an additional option for Users [20] that do not want any orders to execute when there is a Crossed Market, upon instruction from a User, BATS Options will not execute any incoming order from such User in the event a Protected Bid is crossing a Protected Offer. The Exchange believes that the thresholds proposed in this rule filing will help avoid executions of orders at prices that are significantly worse than the NBBO.[21]

The following example demonstrates how the Exchange's Crossed Market threshold would operate for BATS Options:

- The NBBO in options series XYZ is $2.00 (bid) by $1.98 (offer), and thus, there is a Crossed Market;
- A User submits a non-routable market order (e.g., designated as a ''BATS Only'' order) to buy 100 contracts of XYZ;
- The Exchange has liquidity in XYZ as follows: 10 contracts to sell for $1.98, 10 contracts to sell for $2.00, 20 contracts to sell for $2.03, and 30 contracts to sell for $2.05.

Under the circumstances described above, the incoming market order to buy would be executed as follows:

- 10 contracts executed on the Exchange at the $1.98 price level;
- 10 contracts executed on the Exchange at the $2.00 price level;
- 20 contracts executed on the Exchange at the $2.03 price level;
- 60 contracts cancelled back to the User.

As proposed, with a Crossed Market of $2.00 by $1.98, the Exchange will execute any incoming buy orders up to and including $2.03 and any incoming sell orders down to and including $1.95 per share. Accordingly, under this example, 40 contracts of the incoming buy order would be executed, including 20 contracts at the Crossed Market threshold of $2.03. The remaining 60 contracts of the market order would be cancelled back to the User because the liquidity on the Exchange at the $2.05 price level exceeds the thresholds set forth in proposed Interpretation and Policy .01 to Rule 27.2. The Exchange notes that in the event the order was designated as eligible for routing, the Exchange's normal routing strategies would apply, and, to the extent that other market centers have better prices than are available on the BATS Options Book,[22] the Exchange would route the order away to such other market centers rather than executing solely on the Exchange. Accordingly, the Exchange proposes to add Interpretation and Policy .02 to Rule 27.2 to make clear that to the extent an incoming order is executable because a Protected Bid is crossing a Protected Offer but such incoming order is eligible for routing and there is a Protected Bid or Protected Offer available at another options exchange that is better priced than the bid or offer against which the order would execute on the Exchange, the Exchange will first seek to route the order to such better priced quotation pursuant to Rule 21.9.

As described for BATS Equities, the Exchange has proposed to exclude ISOs from the proposed pricing threshold for BATS Options because a User is subject to certain specific obligations when pricing and submitting an order as an ISO. The Exchange believes that rejecting an ISO upon receipt due to a Crossed Market is inconsistent with the general notion of an ISO, which allows a User to designate a price at which the Exchange can execute the order without regard to the Exchange's view of the NBBO.

In addition to the implementation of Crossed Market price constraints and the ability to designate orders as ineligible for execution during a Crossed Market, the Exchange is proposing to modify the way that it handles rejections received from other options exchanges. Currently the Exchange routes all orders through its affiliated broker-dealer, BATS Trading, Inc. (''BATS Trading''). In certain instances, BATS Trading, in turn, routes to certain third party broker-dealers in order to ensure that the Exchange has effective and redundant connections to all other options exchanges with Protected Quotations. BATS Trading occasionally receives ''rejections'' of orders either from the options exchanges to which it routes directly or through the third party broker-dealers through which it routes. Such rejections can be for various reasons, including a technical problem with the order, market access thresholds implemented pursuant to SEC Rule 15c3–5, or other operational thresholds. The Exchange currently handles orders on which it receives rejections by either cancelling the order back to the User or, if the order submitted by the User instructs the Exchange to do so, by posting the order to the Exchange's order book after subjecting such order to its price sliding process pursuant to Rule 21.1 in order to avoid locking any Protected Quotation that it cannot access. Rather than posting an order to its book, the Exchange proposes to cancel all orders for which it has received a rejection due to an inability to access another options exchange, providing a User with the opportunity to submit a new order or seek another path to the applicable Protected Quotation. The Exchange has also proposed to make clear that such a cancellation will not apply to Protected Quotations published by an options exchange against which the Exchange has declared self-help pursuant to Exchange Rule 27.2(b)(1). Although a Protected Quotation may be inaccessible to the Exchange, once the Exchange has declared self-help pursuant to Rule 27.2(b)(1), the Exchange disregards, and will continue to execute transactions and route orders without regard to, such Protected Quotations. Notwithstanding the foregoing, however, even after the Exchange has received a rejection from an options exchange, if there are multiple options exchanges included in the routing option selected by the User that have Protected Quotations at the NBBO, the System [23] will continue to route the order to the Protected Quotations at other such other options exchanges at that price level.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[24] In particular, the proposal is consistent with Section 6(b)(5) of the Act,[25] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system by helping to avoid executions of orders on the Exchange at prices that are significantly worse than the national best bid or national best offer at the time an order is initially received by the Exchange, even if executions are permissible pursuant to Regulation NMS or under the Exchange's analogous rules for BATS Options. The Exchange believes

[20] As defined in BATS Rule 16.1(a)(63), a User is any Options Member or Sponsored Participant who is authorized to access the Exchange's system pursuant to Exchange Rules.

[21] As defined in BATS Rule 27.1(11), NBBO shall mean the national best bid and offer in an option series as calculated by an Eligible Exchange.

[22] As defined in BATS Rule 16.1(a)(9), BATS Options Book means the means the electronic book of options orders maintained by the System.

[23] As defined in BATS Rule 16.1(a)(59), System means the automated trading system used by BATS Options for the trading of options contracts.

[24] 15 U.S.C. 78f(b).

[25] 15 U.S.C. 78f(b)(5).

that permitting Users to avoid any execution of an incoming order in a Crossed Market is an additional functionality that is consistent with the protection of investors and the public interest. Although the Exchange does not believe that any other self-regulatory organization has exactly the same Crossed Market threshold in place, the Exchange as well as other market centers have implemented a variety of pricing thresholds to constrain executions and protect market participants.[26] Also, this proposal is consistent with existing Exchange rules that allow for the breaking of trades deemed clearly erroneous [27] or in obvious error [28] by reference to objective thresholds worse than the NBBO. The Exchange believes that the proposed pricing thresholds are reasonable because they are significantly narrower than thresholds in place on BATS Equities for market orders received by the Exchange [29] and also narrower than applicable clearly erroneous thresholds for BATS Equities. A narrow threshold will protect market participants and their customers from potentially executing at prices away from the NBBO when there is a Crossed Market, which can be an indication of a pricing anomaly in a security or a potential systems issue at another Trading Center or options exchange. Further, the proposed threshold is consistent with the protection of investors and the public interest because it will help to avoid clearly erroneous executions or obvious error transactions from occurring in the first place, rather than allowing an execution to occur and breaking the trade based on Exchange rules.

Finally, the Exchange believes that the cancellation of all orders that have been rejected by other market centers or third party routers, rather than posting such orders to the Exchange's book will provide Users with more immediate certainty regarding their orders, and will provide Users the ability to modify and re-submit or send their orders via a different path to attempt to access the applicable Protected Quotation. Accordingly, the modifications to BATS Rules 11.13 and 20.9 [sic] promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the 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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [30] and Rule 19b–4(f)(6) thereunder.[31]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [32] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6) [33] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay, noting that doing so would allow investors and market participants to benefit immediately from additional protection against certain executions in Crossed Market conditions and from the ability to re-route or re-submit orders that are unable to access, and therefore rejected by, other market centers with Protected Quotations at the NBBO. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[34] Therefore, the Commission designates the proposal operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BATS–2012–024 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BATS–2012–024. 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 10:00 a.m. and 3:00 p.m. Copies of the

[26] *See, e.g.,* BATS Rule 11.9(a)(2), which constrains the executions of a market order on BATS to $0.50 or 5 percent away from the NBBO at the time the order initially reaches the Exchange; *see also* NYSE Arca Rule 7.31(a); NASDAQ Rule 4751(f)(13).

[27] *See* BATS Rule 11.17.

[28] *See* BATS Rule 20.6.

[29] *See supra* note 26.

[30] 15 U.S.C. 78s(b)(3)(A).

[31] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[32] 17 CFR 240.19b–4(f)(6).

[33] 17 CFR 240.19b–4(f)(6).

[34] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–BATS–2012–024 and should be submitted on or before July 24, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[35]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–16215 Filed 7–2–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67281; File No. SR–NASDAQ–2012–057]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Approving a Proposed Rule Change With Respect to the Authority of NASDAQ or NASDAQ Execution Services To Cancel Orders When a Technical or Systems Issue Occurs and To Describe the Operation of an Error Account

June 27, 2012.

I. Introduction

On April 30, 2012, The NASDAQ Stock Market LLC (''Exchange'' or ''NASDAQ'') 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 NASDAQ Equity Rule 4758 by adding a new paragraph (d) that addresses the authority of NASDAQ or NASDAQ Execution Services (''NES'') to cancel orders when a technical or systems issue occurs and to describe the operation of an error account for NES. The proposed rule change was published for comment in the **Federal Register** on May 16, 2012.[3] The Commission received no comment letters regarding the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposal

NES, a broker-dealer that is a facility and an affiliate of NASDAQ, provides outbound routing services from NASDAQ to other market centers pursuant to NASDAQ rules.[4] In its proposal, NASDAQ states that a technical or systems issue may occur at NASDAQ, NES, or a routing destination that causes NASDAQ or NES to cancel orders, if NASDAQ or NES determines that such action is necessary to maintain a fair and orderly market.[5] NASDAQ also states that a technical or systems issue that occurs at NASDAQ, NES, a routing destination, or a non-affiliate third-party Routing Broker[6] may result in NES acquiring an error position that it must resolve.[7]

New paragraph (d) to NASDAQ Equity Rule 4758 provides NASDAQ or NES with general authority to cancel orders to maintain fair and orderly markets when a technical or systems issue occurs at NASDAQ, NES, or a routing destination. It also provides authority for NES to maintain an error account for the purpose of addressing, and sets forth the procedures for resolving, error positions. Specifically, paragraph (d)(1) of NASDAQ Equity Rule 4758 authorizes NASDAQ or NES to cancel orders as either deems necessary to maintain fair and orderly markets if a technical or systems issue occurs at NASDAQ, NES, or a routing destination. NASDAQ or NES will be required to provide notice of the cancellation to all affected members as soon as practicable.[8]

Paragraph (d)(2) of NASDAQ Equity Rule 4758 will allow NES to maintain an error account for the purpose of addressing error positions that result from a technical or systems issue at NASDAQ, NES, a routing destination, or a non-affiliate third-party Routing Broker.

For purposes of NASDAQ Equity Rule 4758(d), an error position will not include any position that results from an order submitted by a member to NASDAQ that is executed on NASDAQ and automatically processed for clearance and settlement on a locked-in basis.[9] NES will not be permitted to (i) accept any positions in its error account from a member's account or (ii) permit any member to transfer any positions from the member's account to NES's error account.[10] In other words, NES may not accept from a member positions that are delivered to the member through the clearance and settlement process, even if those positions may have been related to a technical or systems issue at NASDAQ, NES, a routing destination, or a non-affiliate third-party Routing Broker.[11] If a member receives locked-in positions in connection with a technical or systems issue and experiences a loss in unwinding those positions, that member may seek to rely on NASDAQ Equity Rule 4626, which provides members with the ability to file claims against NASDAQ ''for losses directly resulting from the [NASDAQ] systems' actual failure to correctly process an order, Quote/Order, message, or other data, provided the Nasdaq Market Center has acknowledged receipt of the order, Quote/Order, message, or data.''[12] If, however, a technical or systems issue results in NASDAQ not having valid clearing instructions for a member to a trade, NES may assume that member's side of the trade so that the trade can be

[35] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 66964 (May 10, 2012), 77 FR 28905 (May 16, 2012) (SR–NASDAQ–2012–057) (''Notice'').

[4] *See* Notice, 77 FR at 28906, n.3 and accompanying text, and text accompanying n.4. *See also* NASDAQ Equity Rule 4758.

NASDAQ also has authority to receive equities orders routed inbound to NASDAQ by NES from NASDAQ OMX BX and the NASDAQ OMX PSX of NASDAQ OMX PHLX on a pilot basis. *See* Notice, 77 FR at 28906, n.4. *See also* Securities Exchange Act Release No. 65554 (October 13, 2011), 76 FR 65311 (October 20, 2011) (SR–NASDAQ–2011–142).

[5] *See* Notice, 77 FR at 28906. For examples of some of the circumstances in which NASDAQ or NES may decide to cancel orders, see *id.*

[6] NASDAQ states that, from time to time, it also uses non-affiliate third-party broker-dealers to provide outbound routing services. In its proposal, the Exchange refers to these broker-dealers as ''third party Routing Brokers.'' *See* Notice, 77 FR at 28906, n.3.

[7] *See* Notice, 77 FR at 28906. Specifically, NASDAQ Equity Rule 4758(d)(2) defines ''error positions'' as ''positions that result from a technical or systems issue at Nasdaq Execution Services, Nasdaq, a routing destination, or a non-affiliate third-party Routing Broker that affects one or more orders.''

For examples of some of the circumstances that may lead to error positions, see Notice, 77 FR at 28906–07.

[8] *See* NASDAQ Equity Rule 4758(d)(1).

[9] *See* NASDAQ Equity Rule 4758(d)(2)(A).

[10] *See* NASDAQ Equity Rule 4758(d)(2)(B).

[11] *See* Notice, 77 FR at 28907, n.11. This provision would not apply if NES incurred a short position to settle a member's purchase, as the member would not have had a position in its account as a result of the purchase at the time of NES's action. Similarly, if a systems issue occurs that causes one member to receive an execution for which there is not an available counterparty, action by NES would be required for the positions to settle into that member's account. *See id.*

If error positions result in connection with NASDAQ's use of a third-party Routing Broker for outbound routing and those positions are delivered to NES through the clearance and settlement process, NES would be permitted to resolve those positions. If, however, such positions were not delivered to NES through the clearance and settlement process, then the third-party Routing Broker would resolve the error positions itself, and NES would not be permitted to accept the positions. *See* Notice, 77 FR at 28906, n.3.

[12] *See* Notice, 77 FR at 28907, n.11.

automatically processed for clearance and settlement on a locked-in basis.[13]

Paragraph (d)(3) of NASDAQ Equity Rule 4758 permits NASDAQ or NES, in connection with a particular technical or systems issue, to either (i) assign all resulting error positions to members or (ii) have all resulting error positions liquidated. Any determination to assign or liquidate error positions, as well as any resulting assignments, will be made in a nondiscriminatory fashion.[14]

NASDAQ and NES will be required to assign all error positions resulting from a particular technical or systems issue to the members affected by that technical or systems issue if NASDAQ or NES:

(i) Determines that it has accurate and sufficient information (including valid clearing information) to assign the positions to all of the members affected by that technical or systems issue;

(ii) Determines that it has sufficient time pursuant to normal clearance and settlement deadlines to evaluate the information necessary to assign the positions to all of the members affected by that technical or systems issue; and

(iii) Has not determined to cancel all orders affected by that technical or systems issue in accordance with NASDAQ Equity Rule 4758(d)(1).[15]

If NASDAQ or NES is unable to assign all error positions resulting from a particular technical or systems issue to all of the affected members, or if NASDAQ or NES determines to cancel all orders affected by the technical or systems issue, then NES will be required to liquidate the error positions as soon as practicable.[16] NES will be required to provide complete time and price discretion for the trading to liquidate the error positions to a third-party broker-dealer, and would be prohibited from attempting to exercise any influence or control over the timing or methods of such trading.[17] Further, NES will be required to establish and enforce policies and procedures that are reasonably designed to restrict the flow of confidential and proprietary information between the third-party broker-dealer, on one hand, and NASDAQ and NES, on the other, associated with the liquidation of the error positions.[18]

Finally, paragraph (d)(4) of NASDAQ Equity Rule 4758 requires NASDAQ and NES to make and keep records to document all determinations to treat positions as error positions; all determinations to assign error positions to members or to liquidate error positions; and the liquidation of error positions through the third-party broker-dealer.

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b) of the Act[19] and the rules and regulations thereunder applicable to a national securities exchange.[20] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[21] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. In addition, the Commission believes the proposed rule change is consistent with Section 11A(a)(1)(C) of the Act[22] in that it seeks to assure economically efficient execution of securities transactions.

The Commission recognizes that technical or systems issues may occur, and believes that NASDAQ Equity Rule 4758, in allowing NASDAQ or NES to cancel orders affected by technical or systems issues, should provide a reasonably efficient means for NASDAQ to handle such orders, and appears reasonably designed to permit NASDAQ to maintain fair and orderly markets.[23]

The Commission also believes that allowing the Exchange to resolve error positions through the use of an error account maintained by NES pursuant to the procedures set forth in the rule, and as described above, is consistent with the Act. The Commission notes that the rule establishes criteria for determining which positions are error positions,[24] and that NASDAQ or NES, in connection with a particular technical or systems issue, will be required to either (i) assign all resulting error positions to members or (ii) have all resulting error positions liquidated.[25] Also, NASDAQ or NES will assign error positions that result from a particular technical or systems issue to members only if all such error positions can be assigned to all of the members affected by that technical or systems issue.[26] If NASDAQ or NES cannot assign all error positions to all members, NES will liquidate all of those error positions.[27] In this regard, the Commission believes that the new rule appears reasonably designed to further just and equitable principles of trade and the protection of investors and the public interest, and to help prevent unfair discrimination, in that it should help assure the handling of error positions will be based on clear and objective criteria, and that the resolution of those positions will occur promptly through a transparent process.

Additionally, the Commission notes that it has previously expressed concern about the potential for unfair competition and conflicts of interest between an exchange's self-regulatory obligations and its commercial interest when the exchange is affiliated with one of its members.[28] The Commission is also concerned about the potential for misuse of confidential and proprietary information. The Commission believes that the requirement that NES provide complete time and price discretion for the liquidation of error positions to a third-party broker-dealer, including that NES not attempt to exercise any influence or control over the timing or methods of such trading, combined with the requirement that NASDAQ establish and enforce policies and procedures that are reasonably designed to restrict the flow of confidential and proprietary information to the third-party broker-dealer liquidating such positions, should help mitigate the Commission's concerns. In particular, the Commission

[13] *See* NASDAQ Equity Rule 4758(d)(2)(C).

[14] *See* NASDAQ Equity Rule 4758(d)(3).

[15] *See* NASDAQ Equity Rule 4758(d)(3)(A)(i)–(iii).

[16] *See* NASDAQ Equity Rule 4758(d)(3)(B).

[17] *See* NASDAQ Equity Rule 4758(d)(3)(B)(i).

[18] *See* NASDAQ Equity Rule 4758(d)(3)(B)(ii).

[19] 15 U.S.C. 78f(b).

[20] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[21] 15 U.S.C. 78f(b)(5).

[22] 15 U.S.C. 78k–1(a)(1)(C).

[23] The Commission notes that NASDAQ states that the proposed amendments to NASDAQ Equity Rule 4758 are designed to maintain fair and orderly markets, ensure full trade certainty for market participants, and avoid disrupting the clearance and settlement process. *See* Notice, 77 FR at 28908. The Commission also notes that NASDAQ states that a decision to cancel orders due to a technical or systems issue is not equivalent to the Exchange declaring self-help against a routing destination pursuant to Rule 611 of Regulation NMS. *See* 17 CFR 242.611(b). *See also* Notice, 77 FR at 28907, n.10.

[24] *See* NASDAQ Equity Rule 4758(d)(2).

[25] *See* NASDAQ Equity Rule 4758(d)(3).

[26] *See* NASDAQ Equity Rule 4758(d)(3)(A).

[27] *See* NASDAQ Equity Rule 4758(d)(3)(B).

[28] *See, e.g.,* Securities Exchange Act Release No. 65455 (September 30, 2011), 76 FR 62119 (October 6, 2011) (SR–NYSEArca–2011–61) at 62120, n.16 and accompanying text.

believes that these requirements should help assure that none of NASDAQ, NES, or the third-party broker-dealer is able to misuse confidential or proprietary information obtained in connection with the liquidation of error positions for its own benefit. The Commission also notes that NASDAQ and NES would be required to make and keep records to document all determinations to treat positions as error positions; all determinations to assign error positions to members or liquidate error positions; and the liquidation of error positions through the third-party broker-dealer.[29]

Finally, the Commission notes that the proposed procedures for canceling orders and the handling of error positions are consistent with procedures the Commission has approved for other exchanges.[30]

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[31] that the proposed rule change (SR–NASDAQ–2012–057) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–16220 Filed 7–2–12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67284; File No. SR–ISE–2012–58]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of Proposed Rule Change To List and Trade Option Contracts Overlying 10 Shares of a Security

June 27, 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 June 20, 2012, the International Securities Exchange, LLC (''Exchange'' or ''ISE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade option contracts overlying 10 shares of a security (''Mini Options''). The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.ise.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Pursuant to ISE Rule 502, the Exchange currently lists and trades standardized options contracts on a number of equities and Exchange-Traded Fund Shares (''ETFs''), each with a unit of trading of 100 shares. The purpose of this proposed rule change is to expand investors' choices by listing and trading option contracts on a select number of high-priced and actively traded securities, each with a unit of trading ten times lower than those of the regular-sized option contracts, or 10 shares. Specifically, the Exchange proposes to list and trade Mini Options overlying five (5) high-priced securities for which the standard contract overlying the same security exhibits significant liquidity.[3] The Exchange believes that Mini Options will appeal to retail investors who may not currently be able to participate in the trading of options on such high priced securities.

Except for the difference in the deliverable of shares, the proposed Mini Options would have the same terms and contract characteristics as regular-sized equity and ETF options, including exercise style. All existing Exchange rules applicable to options on equities and ETFs would apply to Mini Options, except with respect to position and exercise limits and hedge exemptions to those position limits, which would be tailored for the smaller size. Pursuant to proposed amendments to Rule 412, position limits applicable to the regular-sized option contract will also apply to the Mini Options on the same underlying security, with 10 Mini Option contracts counting as one regular-sized contract. Positions in both the regular-sized option contract and Mini Options on the same security will be combined for purposes of calculating positions. Further, hedge exemptions will apply pursuant to ISE Rule 413(a), which the Exchange proposes to revise to provide that 10 (as opposed to 100) shares of the underlying security in [sic] the appropriate hedge for Mini Options and to make clear that the hedge exemptions apply to the position limits set forth in Rule 412(a) and any Supplementary Material thereto, as well as the position limits set forth in Rule 412(d).[4]

The Exchange believes that the proposal to list Mini Options will not lead to investor confusion. There are two important distinctions between Mini Options and regular-sized options that are designed to ease the likelihood of any investor confusion. First, the premium multiplier for the proposed Mini Options will be 10, rather than 100, to reflect the smaller unit of trading. To reflect this change, the Exchange proposes to add Rule 709(c) which notes that bids and offers for an option contract overlying 10 shares will be expressed in terms of dollars per 1/10th part of the total value of the

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[29] *See* NASDAQ Equity Rule 4758(d)(4).

[30] *See, e.g.,* Securities Exchange Act Release Nos. 66963 (May 10, 2012), 77 FR 28919 (May 16, 2012) (SR–NYSEArca–2012–22); 67010 (May 17, 2012), 77 FR 30564 (May 23, 2012) (SR–EDGX–2012–08); and 67011 (May 17, 2012), 77 FR 30562 (May 23, 2012) (SR–EDGA–2012–09).

[31] 15 U.S.C. 78s(b)(2).

[32] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange proposes to list Mini Options on SPDR S&P 500 (''SPY''), Apple, Inc. (''AAPL''), SPDR Gold Trust (''GLD''), Google Inc. (''GOOG'') and Amazon.com Inc. (''AMZN''). These issues were selected because they are priced greater than $100 and are among the most actively traded issues, in that the standard contract exhibits average daily volume (''ADV'') over the previous three calendar months of at least 45,000 contracts, excluding LEAPS and FLEX series. The Exchange notes that any expansion of the program would require that a subsequent proposed rule change be submitted to the Commission.

[4] ISE Rule 414, Exercise Limits, refers to exercise limits that correspond to aggregate long positions as described in ISE Rule 412. The position limit established in a given option under ISE Rule 412 is also the exercise limit for such option. Thus, although the proposed rule change would not amend the text of ISE Rule 414 itself, the proposed amendment to ISE Rule 412 would have a corresponding effect to the exercise limits established in ISE Rule 414.

contract. Thus, an offer of ''.50'' shall represent an offer of $5.00 on an option contract having a unit of trading consisting of 10 shares. Second, the Exchange intends to designate Mini Options with different trading symbols than that designated for the regular-sized contract. For example, while the trading symbol for regular option contracts for Apple, Inc. is AAPL, the Exchange proposes to adopt AAPL7 as the trading symbol for Mini Options on that same security.

The Exchange proposes to add Supplementary Material .12(b) to reflect that strike prices for Mini Options shall be set at the same level as for regular options. For example, a call series strike price to deliver 10 shares of stock at $125 per share has a total deliverable value of $1250, and the strike price will be set at 125. Further, pursuant to proposed new Supplementary Material .12(c) to Rule 504, the Exchange proposes to not permit the listing of additional series of Mini Options if the underlying is trading at $90 or less to limit the number of strikes once the underlying is no longer a high priced security. The Exchange proposes a $90.01 minimum for continued qualification so that additional series of Mini Options that correspond to standard strikes may be added even though the underlying has fallen slightly below the initial qualification standard. In addition, the underlying security must be trading above $90 for five consecutive days before the listing of Mini Option contracts in a new expiration month. This restriction will allow the Exchange to list strikes in Mini Options without disruption when a new expiration month is added even if the underlying has had a minor decline in price.

The same trading rules applicable to existing equity and ETF options will apply to Mini Options. The Exchange notes that by listing the same strike price for Mini Options as for regular options, the Exchange seeks to keep intact the long-standing relationship between the underlying security and an option strike price thus allowing investors to intuitively grasp the option's value, *i.e.,* option is in the money, at the money or out of the money. The Exchange believes that by not changing anything but the multiplier and the option symbol, as discussed above, retail investors will be able to grasp the distinction between regular option contracts and Mini Options. The Exchange notes that The Options Clearing Corporation (''OCC'') Symbology is structured for contracts that have a deliverable of other than 100 shares to be designated with a numeric added to the standard trading symbol. Further, the Exchange believes that the contract characteristics of Mini Options are consistent with the terms of the Options Disclosure Document.

With regard to the impact of this proposal on system capacity, ISE has analyzed its capacity and represents that it and the Options Price Reporting Authority have the necessary systems capacity to handle the potential additional traffic associated with the listing and trading of Mini Options. The Exchange has further discussed the proposed listing and trading of Mini Options with the OCC, which has represented that it is able to accommodate the proposal.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Securities and [sic] Exchange Act of 1934 (''Exchange Act''),[5] in general, and with Section 6(b)(5) of the Exchange Act,[6] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. Specifically, the Exchange believes that investors would benefit from the introduction and availability of Mini Options by making options on high priced securities more readily available and as an investing tool at more affordable prices, particularly for average retail investors, who otherwise may not be able to participate in trading options on high priced securities. As noted above, the proposed rule change intends to adopt a different trading symbol to distinguish Mini Options from regular option contracts and therefore, ease any investor confusion as to the product they are trading. Moreover, the proposed rule change is designed to protect investors and the public interest by providing investors with an enhanced tool to reduce risk in high priced securities. In particular, Mini Options will provide retail customers who invest in SPY, AAPL, GLD, GOOG and AMZN in lots of less than 100 shares with a means of protecting their investments that is currently only available to those who have positions of 100 shares or more. Further, the proposed rule change is limited to just five high-priced securities to ensure that only securities that have significant options liquidity and therefore, customer demand, are selected to have Mini Options listed on them.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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–ISE–2012–58 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number *SR–ISE–2012–58.* This file number should be included on the

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

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 10:00 a.m. and 3:00 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–ISE–2012–58 and should be submitted on or before July 24, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–16222 Filed 7–2–12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67278; File No. SR–NYSEAmex–2012–29]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change Amending Commentary .07 to NYSE Amex Options Rule 904 To Eliminate Position Limits for Options on the SPDR® S&P 500® Exchange-Traded Fund Which List and Trade Under the Symbol SPY

June 27, 2012.

On May 2, 2012, NYSE Amex LLC (''NYSE Amex'' or ''Exchange'')[1] filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] a proposed rule change to eliminate position limits for options on the SPDR® S&P 500® exchange-traded fund (''SPY ETF''),[4] which list and trade under the symbol SPY. The proposed rule change was published for comment in the **Federal Register** on May 18, 2012.[5] The Commission received no comments on the proposal.

Section 19(b)(2) of the Act[6] provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is July 2, 2012. The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposal. Currently, Commentary .07 to NYSE Amex Options Rule 904 imposes a position limit for SPY options of 900,000 contracts on the same side of the market. The proposal would amend Commentary .07 to NYSE Amex Options Rule 904 to eliminate position limits for SPY options.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[7] designates August 16, 2012, as the date by which the Commission should either approve or disapprove or institute proceedings to determine whether to disapprove the proposed rule change.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–16218 Filed 7–2–12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67273; File No. SR–BOX–2012–008]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule To Amend the BOX Options Exchange LLC Limited Liability Company Agreement and the BOX Holdings Group LLC Limited Liability Company Agreement

June 27, 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 June 21, 2012, BOX Options Exchange LLC (the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend each of the Limited Liability Company Agreement of the Exchange (the ''Exchange LLC Agreement'') and the Limited Liability Company Agreement (the ''BOX Holdings LLC Agreement'') of BOX Holdings Group LLC (''BOX Holdings''), in connection with the proposed acquisition of TMX Group Inc., a company incorporated in Ontario, Canada (''TMX Group'') by Maple Group Acquisition Corporation, a company incorporated in Ontario, Canada (''Maple''). The text of the proposed rule change is available from the principal office of the Exchange, at

[7] 17 CFR 200.30–3(a)(12).

[1] NYSE Amex now is known as ''NYSEMKT.'' The proposed rule change to which this notice relates, however, was submitted before the name change was implemented.

[2] 15 U.S.C. 78s(b)(1).

[3] 17 CFR 240.19b–4.

[4] ''SPDR®,'' ''Standard & Poor's®,'' ''S&P®,'' ''S&P 500®,'' and ''Standard & Poor's 500'' are registered trademarks of Standard & Poor's Financial Services LLC. The SPY ETF represents ownership in the SPDR S&P 500 Trust, a unit investment trust that generally corresponds to the price and yield performance of the SPDR S&P 500 Index.

[5] *See* Securities Exchange Act Release No. 66984 (May 14, 2012), 77 FR 29721 (May 18, 2012) (''Notice'').

[6] 15 U.S.C. 78s(b)(2).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(31).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

the Commission's Public Reference Room and also on the Exchange's Internet Web site at *www.boxexchange.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On April 27, 2012, the Commission granted the Exchange's Application for Registration as a National Securities Exchange, including the adoption of the Exchange LLC Agreement and the adoption of the BOX Holdings LLC Agreement.[5]

Currently, Montreal Exchange Inc., a company incorporated in Quebec, Canada (''MX''), is a direct subsidiary of TMX Group. MX US 2, Inc., a Delaware corporation and indirect, wholly owned subsidiary of MX (''MXUS2''), holds a 40% Economic Percentage Interest (as defined below) and 20% Voting Percentage Interest (as defined below) in the Exchange and a 53.83% ownership interest in BOX Holdings. Accordingly, MXUS2 is subject to, and a party to, each of the Exchange LLC Agreement and the BOX Holdings LLC Agreement.

The Exchange is submitting the proposed rule change to the Commission to amend each of the Exchange LLC Agreement and the BOX Holdings LLC Agreement pursuant to the respective proposed Instruments of Accession in connection with the Acquisition (as defined below).

Maple's investors comprise Alberta Investment Management Corporation, Caisse de dépôt et placement du Québec, Canada Pension Plan Investment Board, CIBC World Markets Inc., Desjardins Financial Corporation, Dundee Capital Markets Inc., Fonds de solidarité des travailleurs du Québec (F.T.Q.), GMP Capital Inc., The Manufacturers Life Insurance Company, National Bank Financial & Co. Inc., Ontario Teachers' Pension Plan Board, Scotia Capital Inc. and TD Securities Inc. (collectively, the ''Investors''). All of the Investors or their respective affiliates currently own common shares of Maple (the ''Maple Shares''). Each of the Investors currently owns less than 12% of Maple. The Maple Shares are currently privately held, not listed on any recognized exchange and not qualified for public distribution. However, after the completion of the second step of the Acquisition, the Maple Shares will be freely tradable (subject to 5-year contractual standstill arrangements to which some of the Investors have agreed to comply) and will be listed for trading on Toronto Stock Exchange. Following the Acquisition, each of the Investors will own less than 9% of Maple and current shareholders of TMX Group will own at least 26% of Maple.

The Acquisition will be effected in two steps: (1) an offer (the ''Offer'') by Maple to the shareholders of TMX Group to exchange a minimum of 70% and a maximum of 80% of the outstanding common shares of TMX Group (''TMX Group Shares'') for cash, and (2) a subsequent transaction pursuant to a court-approved ''plan of arrangement''[6] whereby TMX Group shareholders whose TMX Group Shares have not been acquired under the Offer will receive Maple Shares in exchange for their TMX Group Shares (the ''Subsequent Arrangement'', and collectively with the Offer, the ''Acquisition''). The Offer is set to expire on July 31, 2012, unless extended in accordance with the terms thereof and, subject to the terms and the conditions of the Offer, Maple will pay for TMX Group Shares validly deposited under the Offer and not properly withdrawn, within ten days after the expiration of the Offer. If the Offer is successful, Maple will use its best efforts to complete the Subsequent Arrangement within 35 days after the expiration of the Offer.

As a result of the Acquisition, if successful, TMX Group will become a direct, wholly owned subsidiary of Maple. Consequently, MXUS2 (including MXUS2's 40% Economic Percentage Interest and 20% Voting Percentage Interest in the Exchange and MXUS2's 53.83% ownership interest in BOX Holdings LLC) will become an indirect, wholly owned subsidiary of Maple. The Offer is subject to several conditions, including certain regulatory approvals, including, but not limited to, certain approvals from the Ontario Securities Commission, Autorité des marchés financiers (Québec), Alberta Securities Commission, British Columbia Securities Commission, Competition Bureau (Canada) and the Commission.

Maple has developed a preliminary business plan that it anticipates would be implemented upon completion of the Acquisition. The operations of each of MX and TMX Group will continue to be located in the same province in which it is currently located, and each will remain subject to its existing regulatory framework and oversight, including any changes to the recognition orders governing MX and TMX Group and additional undertakings that may be required by Canadian securities regulators as a condition of approving the Acquisition. MXUS2's management of its ownership interests in each of the Exchange and BOX Holdings will remain essentially unaffected by the Acquisition. Ownership of interests in the Exchange and BOX Holdings through TMX Group, MX and MXUS2 will not be affected by the Acquisition and the ability of TMX Group, MX and MXUS2 to influence the Exchange and BOX Holdings will not change as a result of, the Acquisition.

Pursuant to Section 7.3(h) of the Exchange LLC Agreement, as previously approved by the Commission, the Exchange is required to amend the Exchange LLC Agreement to make a Controlling Person[7] a party to the Exchange LLC Agreement if such Controlling Person establishes a Controlling Interest[8] in any member of the Exchange that, alone or together with any Related Persons[9] of such

[5] *See* Securities Exchange Act Release No. 66871 (April 27, 2012) 77 FR 26323 (May 3, 2012) (File 10–206) (granting the application of BOX Options Exchange LLC for registration as a National Securities Exchange).

[6] A ''plan of arrangement'' is a statutory procedure available under the *Business Corporations Act* (Ontario) as well as under the *Canada Business Corporations Act* and other provincial business corporations statutes. Where a corporation wishes to combine (or to make any other ''fundamental change'') but cannot achieve the result it wants under another section of the statute, it can apply to the court for an order approving a proposed ''plan of arrangement''.

[7] A ''Controlling Person'' is defined as ''a Person who, alone or together with any Related Persons of such Person, holds a controlling interest in [an Exchange] Member.'' *See* Section 7.3(h)(v)(B), Exchange LLC Agreement.

[8] A ''Controlling Interest'' is defined as ''the direct or indirect ownership of 25% or more of the total voting power of all equity securities of [an Exchange] Member (other than voting rights solely with respect to matters affecting the rights, preferences, or privileges of a particular class of equity securities), by any Person, alone or together with any Related Persons of such Person.'' *See* Section 7.3(h)(v)(A), Exchange LLC Agreement.

[9] A ''Related Person'' is defined as, ''with respect to any Person: (A) Any Affiliate of such Person; (B) any other Person with which such first Person has any agreement, arrangement or understanding

member of the Exchange, holds an Economic Percentage Interest [10] or Voting Percentage Interest [11] in the Exchange equal to or greater than 20%.[12] Therefore, since Maple is acquiring a Controlling Interest in TMX Group, whose wholly owned indirect subsidiary, MXUS2, owns a 40% Economic Percentage Interest and a 20% Voting Percentage Interest in the Exchange, Maple, as a Controlling Person, is required to be, and will become, a party to the Exchange LLC Agreement pursuant to the proposed Exchange Instrument of Accession. As a result, Maple will agree to abide by all the provisions of the Exchange LLC Agreement, including those provisions requiring submission to the jurisdiction of the Commission.[13] The Exchange proposes to make this proposal operative upon the successful completion of the Offer, which is currently scheduled to expire on July 31, 2012.

Pursuant to Section 7.4(g) of the BOX Holdings LLC Agreement, as previously approved by the Commission, BOX Holdings is required to amend the BOX Holdings LLC Agreement to make a Controlling Person [14] a party to the BOX Holdings LLC Agreement if such Controlling Person establishes a Controlling Interest [15] in any member of BOX Holdings that, alone or together with any Related Persons [16] of such member of BOX Holdings, holds a Percentage Interest [17] in BOX Holdings equal to or greater than 20%.[18] Therefore, since Maple is acquiring a Controlling Interest in TMX Group, whose wholly owned indirect subsidiary, MXUS2, owns a 53.83% ownership interest in BOX Holdings, Maple, as a Controlling Person, is required to be, and will become, a party to the BOX Holdings LLC Agreement pursuant to the proposed BOX Holdings Instrument of Accession. As a result, Maple will agree to abide by all the provisions of the BOX Holdings LLC

(whether or not in writing) to act together for the purpose of acquiring, voting, holding or disposing of Units; (C) in the case of a Person that is a company, corporation or similar entity, any executive officer (as defined under Rule 3b–7 under the Exchange Act) or director of such Person and, in the case of a Person that is a partnership or limited liability company, any general partner, managing member or manager of such Person, as applicable; (D) in the case of any BOX Options Participant who is at the same time a broker-dealer, any Person that is associated with the BOX Options Participant (as determined using the definition of ''person associated with a member'' as defined under Section 3(a)(21) of the Exchange Act); (E) in the case of a Person that is a natural person and a BOX Options Participant, any broker or dealer that is also a BOX Options Participant with which such Person is associated; (F) in the case of a Person that is a natural person, any relative or spouse of such Person, or any relative of such spouse who has the same home as such Person or who is a director or officer of the Exchange or any of its parents or subsidiaries; (G) in the case of a Person that is an executive officer (as defined under Rule 3b–7 under the Exchange Act) or a director of a company, corporation or similar entity, such company, corporation or entity, as applicable; and (H) in the case of a Person that is a general partner, managing member or manager of a partnership or limited liability company, such partnership or limited liability company, as applicable.'' *See* Section 1.1, Exchange LLC Agreement.

An ''Affiliate'' is defined as, ''with respect to any Person, any other Person controlling, controlled by or under common control with, such Person. As used in this definition, the term ''control'' means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise with respect to such Person. A Person is presumed to control any other Person, if that Person: (i) Is a director, general partner, or officer exercising executive responsibility (or having similar status or performing similar functions); (ii) directly or indirectly has the right to vote 25 percent or more of a class of voting security or has the power to sell or direct the sale of 25 percent or more of a class of voting securities of the Person; or (iii) in the case of a partnership, has contributed, or has the right to receive upon dissolution, 25 percent or more of the capital of the partnership.'' *See* Section 1.1, Exchange LLC Agreement.

A ''BOX Options Participant'' is defined as, ''a firm or organization that is registered with the Exchange pursuant to the 2000 Series of the BOX Rules for purposes of participating in options Trading on the BOX Market as an order flow provider or market maker.'' *See* Section 1.1, Exchange LLC Agreement.

[10] The ''Economic Percentage Interest'' is defined as ''the ratio of the number of Economic Units held by the [Exchange] Member, directly or indirectly, of record or beneficially, to the total of all of the issued and outstanding Economic Units held by [Exchange] Members, expressed as a percentage.'' *See* Section 1.1, Exchange LLC Agreement.

[11] The ''Voting Percentage Interest'' is defined as ''the ratio of the number of Voting Units held by the [Exchange] Member, directly or indirectly, of record or beneficially, to the total of all of the issued and outstanding Voting Units held by [Exchange] Members, expressed as a percentage.'' *See* Section 1.1, Exchange LLC Agreement.

[12] *See* Section 7.3(h)(i), Exchange LLC Agreement.

[13] The Exchange LLC Agreement states, in part, that ''the [Exchange] Members and the officers, directors, employees and agents of each, by virtue of their acceptance of such positions, shall be deemed to irrevocably submit to the jurisdiction of the U.S. federal courts and the SEC, for the purposes of any suit, action or proceeding pursuant to U.S. federal securities laws, the rules or regulations thereunder, arising out of, or relating to, activities of the Exchange or this Section 18.6, (except that such jurisdictions shall also include Delaware state courts for any such matter relating to the organization or internal affairs of the Exchange) and shall be deemed to waive, and agree not to assert by way of motion, as a defense or otherwise in any such suit, action or proceeding, any claims that they are not personally subject to the jurisdiction of the U.S. federal courts, the SEC or Delaware state courts, as applicable, that the suit, action or proceeding is an inconvenient forum or that the venue of the suit, action or proceeding is improper, or that the subject matter hereof may not be enforced in or by such courts or agency.'' *See* Section 18.6(b), Exchange LLC Agreement.

[14] A ''Controlling Person'' is defined as ''a Person who, alone or together with any Related Persons of such Person, holds a controlling interest in [a BOX Holdings] Member.'' *See* Section 7.4(g)(v)(B), BOX Holdings LLC Agreement.

[15] A ''Controlling Interest'' is defined as ''the direct or indirect ownership of 25% or more of the total voting power of all equity securities of a[n Exchange] Member (other than voting rights solely with respect to matters affecting the rights, preferences, or privileges of a particular class of equity securities), by any Person, alone or together with any Related Persons of such Person.'' *See* Section 7.4(g)(v)(A), BOX Holdings LLC Agreement.

[16] A ''Related Person'' is defined as, ''with respect to any Person: (A) Any Affiliate of such Person; (B) any other Person with which such first Person has any agreement, arrangement or understanding (whether or not in writing) to act together for the purpose of acquiring, voting, holding or disposing of Units; (C) in the case of a Person that is a company, corporation or similar entity, any executive officer (as defined under Rule 3b–7 under the Exchange Act) or director of such Person and, in the case of a Person that is a partnership or limited liability company, any general partner, managing member or manager of such Person, as applicable; (D) in the case of any BOX Options Participant who is at the same time a broker-dealer, any Person that is associated with the BOX Options Participant (as determined using the definition of ''person associated with a member'' as defined under Section 3(a)(21) of the Exchange Act); (E) in the case of a Person that is a natural person and a BOX Options Participant, any broker or dealer that is also a BOX Options Participant with which such Person is associated; (F) in the case of a Person that is a natural person, any relative or spouse of such Person, or any relative of such spouse who has the same home as such Person or who is a director or officer of the Exchange or any of its parents or subsidiaries; (G) in the case of a Person that is an executive officer (as defined under Rule 3b–7 under the Exchange Act) or a director of a company, corporation or similar entity, such company, corporation or entity, as applicable; and (H) in the case of a Person that is a general partner, managing member or manager of a partnership or limited liability company, such partnership or limited liability company, as applicable.'' *See* Section 1.1, BOX Holdings LLC Agreement.

An ''Affiliate'' is defined as, ''with respect to any Person, any other Person controlling, controlled by or under common control with, such Person. As used in this definition, the term ''control'' means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise with respect to such Person. A Person is presumed to control any other Person, if that Person: (i) Is a director, general partner, or officer exercising executive responsibility (or having similar status or performing similar functions); (ii) directly or indirectly has the right to vote 25 percent or more of a class of voting security or has the power to sell or direct the sale of 25 percent or more of a class of voting securities of the Person; or (iii) in the case of a partnership, has contributed, or has the right to receive upon dissolution, 25 percent or more of the capital of the partnership.'' *See* Section 1.1, BOX Holdings LLC Agreement.

A ''BOX Options Participant'' is defined as, ''a firm or organization that is registered with the Exchange pursuant to the 2000 Series of the BOX Rules for purposes of participating in options Trading on the BOX Market as an order flow provider or market maker.'' *See* Section 1.1, BOX Holdings LLC Agreement.

[17] ''Percentage Interest'' is defined as ''the ratio of the number of Units held by the Member to the total of all of the issued Units, expressed as a percentage and determined with respect to each class of Units, whenever applicable.'' *See* Section 1.1, BOX Holdings LLC Agreement.

[18] *See* Section 7.4(g)(i), BOX Holdings LLC Agreement.

Agreement, including those provisions requiring submission to the submission to the jurisdiction of the Commission.[19] BOX Holdings proposes to make this proposal operative upon the successful completion of the Offer, which is currently scheduled to expire on July 31, 2012.

For the reasons stated above, the Exchange is submitting to the Commission the proposed Instruments of Accession to each of the Exchange LLC Agreement and the BOX Holdings LLC Agreement as a rule change.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[20] in general, and furthers the objectives of Section 6(b)(1),[21] in particular, in that it enables the Exchange to be so organized so as to have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange. The Exchange also believes that this filing furthers the objectives of Section 6(b)(5) of the Act[22] in that it is designed to facilitate transactions in securities, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

Additionally, the Exchange notes that the provisions of the Exchange LLC Agreement, together with the provisions of the BOX Holdings LLC Agreement, each previously approved by the Commission, provide a framework for addressing the Acquisition. Accordingly, the Exchange believes the Acquisition does not present any novel issues that have not been anticipated and addressed by the Exchange LLC Agreement and the BOX Holdings LLC Agreement.

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

The Exchange has neither solicited nor received comments from members, participants or others on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[23] and Rule 19b–4(f)(6)[24] thereunder.

The Exchange has asked the Commission to waive the 30-day operative delay.[25] The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the Acquisition does not present any novel issues that have not been anticipated and addressed by the Exchange LLC Agreement and the BOX Holdings LLC Agreement. Accordingly, the Commission designates the proposal operative upon filing.[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.

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–BOX–2012–008 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–BOX–2012–008. 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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for

[19] The BOX Holdings LLC Agreement states, in part, that "the [BOX Holdings] Members and the officers, directors, employees and agents of each, by virtue of their acceptance of such positions, shall be deemed to irrevocably submit to the jurisdiction of the U.S. federal courts, the SEC and the Exchange, for the purposes of any suit, action or proceeding pursuant to U.S. federal securities laws, the rules or regulations thereunder, arising out of, or relating to, activities of the Exchange and BOX Market or Section 11.1 or this Section 18.6, (except that such jurisdictions shall also include Delaware state courts for any such matter relating to the organization or internal affairs of BOX Holdings) and shall be deemed to waive, and agree not to assert by way of motion, as a defense or otherwise in any such suit, action or proceeding, any claims that they are not personally subject to the jurisdiction of the U.S. federal courts, the SEC, the Exchange or Delaware state courts, as applicable, that the suit, action or proceeding is an inconvenient forum or that the venue of the suit, action or proceeding is improper, or that the subject matter hereof may not be enforced in or by such courts or agency." *See* Section 18.6(a), BOX Holdings LLC Agreement.

[20] 15 U.S.C. 78f(b).

[21] 15 U.S.C. 78f(b)(5).

[22] 15 U.S.C. 78f(b)(5).

[23] 15 U.S.C. 78s(b)(3)(A).

[24] 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.

[25] 17 CFR 240.19b–4(f)(6)(iii).

[26] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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–BOX–2012–008 and should be submitted on or before July 24, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–16213 Filed 7–2–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67285; File No. SR–NASDAQ–2012–074]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Terminate Revenue Sharing Agreement and Delete Associated Fee Schedule

June 27, 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 June 22, 2012, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes a rule change to terminate a revenue sharing program with Correlix, Inc. (''Correlix''), and delete the associated fees set forth in NASDAQ Rule 7034(e). The text of the proposed rule change is available at *http://nasdaq.cchwallstreet.com,* at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 eliminate its revenue-sharing program with Correlix, which was adopted to provide users of the NASDAQ Market Center real-time analytical tools to measure the latency of orders to and from that system. In 2010, NASDAQ entered into an agreement with Correlix, under which NASDAQ would receive 30% of the total monthly subscription fees received by Correlix from parties who contracted directly with Correlix to use its RaceTeam latency measurement service for the NASDAQ Market Center. The Commission approved a one-time 60-day free trial period for parties wishing to evaluate the Correlix RaceTeam offering,[3] and thereafter approved codification in NASDAQ's rules of fees imposed by Correlix, as well as a modification of the free trial period so that all parties would be eligible for one free 60-day trial period whenever they initially elected to sign up for the service.[4]

The Exchange proposes to terminate the revenue sharing relationship with Correlix due to the lack of customer interest in the measurement tools offered. It also proposes to delete from the rulebook the listing of fees for the service, so as to eliminate any confusion on the part of customers.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[5] in general, and with Section 6(b)(5) of the Act,[6] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, NASDAQ believes ending the revenue share [sic] agreement and eliminating the fee schedule for a product that customers have not chosen to utilize is responsive to market participants and eliminates confusion about offered products.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Specifically, the Exchange believes that terminating the revenue sharing agreement and deleting the fee schedule in the rulebook will not burden competition since the latency measurement tools are not currently being used by any customers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8]

[27] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 62605; (July 30, 2010) 75 FR 47651 (August 6, 2010) (SR–NASDAQ–2010–068).

[4] *See* Exchange Act Release No. 63218 (November 1, 2010) 75 FR 68385 (November 5, 2010) (SR–NASDAQ–2010–140).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 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 the filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

A proposed rule change filed under Rule 19b–4(f)(6)[9] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[10] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing to eliminate confusion on the part of potential customers regarding the availability of the Correlix RaceTeam offering. The Exchange represents that there are no customers currently using Correlix's RaceTeam latency measurement service. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[11] Therefore, the Commision designates the proposed rule change to be operative upon filing with the Commission.

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–NASDAQ–2012–074 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2012–074. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2012–074, and should be submitted on or before July 24, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–16223 Filed 7–2–12; 8:45 am]

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[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67280; File No. SR–BX–2012–034]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Order Approving a Proposed Rule Change With Respect to the Authority of the Exchange or NASDAQ Execution Services To Cancel Orders When a Technical or Systems Issue Occurs and To Describe the Operation of an Error Account

June 27, 2012.

I. Introduction

On May 11, 2012, NASDAQ OMX BX, Inc. (''Exchange'' or ''BX'') 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 BX Equity Rule 4758 by adding a new paragraph (d) that addresses the authority of BX or NASDAQ Execution Services (''NES'') to cancel orders when a technical or systems issue occurs and to describe the operation of an error account for NES. The proposed rule change was published for comment in the **Federal Register** on May 23, 2012.[3] The Commission received no comment letters regarding the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposal

NES, a broker-dealer that is a facility and an affiliate of BX, provides outbound routing services from BX to other market centers pursuant to BX rules.[4] In its proposal, BX states that a technical or systems issue may occur at BX, NES, or a routing destination that causes BX or NES to cancel orders, if BX or NES determines that such action is necessary to maintain a fair and orderly market.[5] BX also states that a technical

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 67014 (May 17, 2012), 77 FR 30576 (May 23, 2012) (SR–BX–2012–034) (''Notice'').

[4] *See* Notice, 77 FR at 30576, n.3 and accompanying text, and text accompanying n.4. *See also* BX Equity Rule 4758.

BX also has authority to receive equities orders routed inbound to BX by NES from The NASDAQ Stock Market and, on a pilot basis, from the NASDAQ OMX PSX of NASDAQ OMX PHLX. *See* Notice, 77 FR at 30576, n.4. *See also* Securities Exchange Act Release Nos. 64090 (March 17, 2011), 76 FR 16462 (March 23, 2011) (SR–BX–2011–007); 65514 (October 7, 2011), 76 FR 63969 (October 14, 2011) (SR–BX–2011–066).

[5] *See* Notice, 77 FR at 30576. For examples of some of the circumstances in which BX or NES may decide to cancel orders, see Notice, 77 FR at 30576–77.

or systems issue that occurs at BX, NES, a routing destination, or a non-affiliate third-party Routing Broker[6] may result in NES acquiring an error position that it must resolve.[7]

New paragraph (d) to BX Equity Rule 4758 provides BX or NES with general authority to cancel orders to maintain fair and orderly markets when a technical or systems issue occurs at BX, NES, or a routing destination. It also provides authority for NES to maintain an error account for the purpose of addressing, and sets forth the procedures for resolving, error positions. Specifically, paragraph (d)(1) of BX Equity Rule 4758 authorizes BX or NES to cancel orders as either deems necessary to maintain fair and orderly markets if a technical or systems issue occurs at BX, NES, or a routing destination. BX or NES will be required to provide notice of the cancellation to all affected members as soon as practicable.[8]

Paragraph (d)(2) of BX Equity Rule 4758 will allow NES to maintain an error account for the purpose of addressing error positions that result from a technical or systems issue at BX, NES, a routing destination, or a non-affiliate third-party Routing Broker.

For purposes of BX Equity Rule 4758(d), an error position will not include any position that results from an order submitted by a member to the Exchange that is executed on the Exchange and automatically processed for clearance and settlement on a locked-in basis.[9] NES will not be permitted to (i) accept any positions in its error account from a member's account or (ii) permit any member to transfer any positions from the member's account to NES's error account.[10] In other words, NES may not accept from a member positions that are delivered to the member through the clearance and settlement process, even if those positions may have been related to a technical or systems issue at BX, NES, a routing destination, or a non-affiliate third-party Routing Broker.[11] If a member receives locked-in positions in connection with a technical or systems issue and experiences a loss in unwinding those positions, that member may seek to rely on BX Equity Rule 4626, which provides members with the ability to file claims against BX ''for losses directly resulting from the [NASDAQ OMX BX Equities Market] Systems' actual failure to correctly process an order, Quote/Order, message, or other data, provided the NASDAQ OMX BX Equities Market has acknowledged receipt of the order, Quote/Order, message, or data.'' [12] If, however, a technical or systems issue results in BX not having valid clearing instructions for a member to a trade, NES may assume that member's side of the trade so that the trade can be automatically processed for clearance and settlement on a locked-in basis.[13]

Paragraph (d)(3) of BX Equity Rule 4758 permits BX or NES, in connection with a particular technical or systems issue, to either (i) assign all resulting error positions to members or (ii) have all resulting error positions liquidated. Any determination to assign or liquidate error positions, as well as any resulting assignments, will be made in a nondiscriminatory fashion.[14]

BX and NES will be required to assign all error positions resulting from a particular technical or systems issue to the members affected by that technical or systems issue if BX or NES:

(i) Determines that it has accurate and sufficient information (including valid clearing information) to assign the positions to all of the members affected by that technical or systems issue;

(ii) Determines that it has sufficient time pursuant to normal clearance and settlement deadlines to evaluate the information necessary to assign the positions to all of the members affected by that technical or systems issue; and

(iii) Has not determined to cancel all orders affected by that technical or systems issue in accordance with BX Equity Rule 4758(d)(1).[15]

If BX or NES is unable to assign all error positions resulting from a particular technical or systems issue to all of the affected members, or if BX or NES determines to cancel all orders affected by the technical or systems issue, then NES will be required to liquidate the error positions as soon as practicable.[16] NES will be required to provide complete time and price discretion for the trading to liquidate the error positions to a third-party broker-dealer, and would be prohibited from attempting to exercise any influence or control over the timing or methods of such trading.[17] Further, NES will be required to establish and enforce policies and procedures that are reasonably designed to restrict the flow of confidential and proprietary information between the third-party broker-dealer, on one hand, and BX and NES, on the other, associated with the liquidation of the error positions.[18]

Finally, paragraph (d)(4) of BX Equity Rule 4758 requires BX and NES to make and keep records to document all determinations to treat positions as error positions; all determinations to assign error positions to members or to liquidate error positions; and the liquidation of error positions through the third-party broker-dealer.

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b) of the Act[19] and the rules and regulations thereunder applicable to a national securities exchange.[20] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[21] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing

[6] BX states that, from time to time, it also uses non-affiliate third-party broker-dealers to provide outbound routing services. In its proposal, the Exchange refers to these broker-dealers as ''third party Routing Brokers.'' *See* Notice, 77 FR at 30576, n.3.

[7] *See* Notice, 77 FR at 30577. Specifically, BX Equity Rule 4758(d)(2) defines ''error positions'' as ''positions that result from a technical or systems issue at Nasdaq Execution Services, the Exchange, a routing destination, or a non-affiliate third-party Routing Broker that affects one or more orders.''

For examples of some of the circumstances that may lead to error positions, see Notice, 77 FR at 30577.

[8] *See* BX Equity Rule 4758(d)(1).

[9] *See* BX Equity Rule 4758(d)(2)(A).

[10] *See* BX Equity Rule 4758(d)(2)(B).

[11] *See* Notice, 77 FR at 30578, n.11. This provision would not apply if NES incurred a short position to settle a member's purchase, as the member would not have had a position in its account as a result of the purchase at the time of NES's action. Similarly, if a systems issue occurs that causes one member to receive an execution for which there is not an available counterparty, action by NES would be required for the positions to settle into that member's account. *See id.*

If error positions result in connection with BX's use of a third-party Routing Broker for outbound routing and those positions are delivered to NES through the clearance and settlement process, NES would be permitted to resolve those positions. If, however, such positions were not delivered to NES through the clearance and settlement process, then the third-party Routing Broker would resolve the error positions itself, and NES would not be permitted to accept the positions. *See* Notice, 77 FR at 30576, n.3.

[12] *See* Notice, 77 FR at 30578, n.11.

[13] *See* BX Equity Rule 4758(d)(2)(C).

[14] *See* BX Equity Rule 4758(d)(3).

[15] *See* BX Equity Rule 4758(d)(3)(A)(i)–(iii).

[16] *See* BX Equity Rule 4758(d)(3)(B).

[17] *See* BX Equity Rule 4758(d)(3)(B)(i).

[18] *See* BX Equity Rule 4758(d)(3)(B)(ii).

[19] 15 U.S.C. 78f(b).

[20] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[21] 15 U.S.C. 78f(b)(5).

information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. In addition, the Commission believes the proposed rule change is consistent with Section 11A(a)(1)(C) of the Act [22] in that it seeks to assure economically efficient execution of securities transactions.

The Commission recognizes that technical or systems issues may occur, and believes that BX Equity Rule 4758, in allowing BX or NES to cancel orders affected by technical or systems issues, should provide a reasonably efficient means for BX to handle such orders, and appears reasonably designed to permit BX to maintain fair and orderly markets.[23]

The Commission also believes that allowing the Exchange to resolve error positions through the use of an error account maintained by NES pursuant to the procedures set forth in the rule, and as described above, is consistent with the Act. The Commission notes that the rule establishes criteria for determining which positions are error positions,[24] and that BX or NES, in connection with a particular technical or systems issue, will be required to either (i) assign all resulting error positions to members or (ii) have all resulting error positions liquidated.[25] Also, BX or NES will assign error positions that result from a particular technical or systems issue to members only if all such error positions can be assigned to all of the members affected by that technical or systems issue.[26] If BX or NES cannot assign all error positions to all members, NES will liquidate all of those error positions.[27] In this regard, the Commission believes that the new rule appears reasonably designed to further just and equitable principles of trade and the protection of investors and the public interest, and to help prevent unfair discrimination, in that it should help assure the handling of error positions will be based on clear and objective criteria, and that the resolution of those positions will occur promptly through a transparent process.

Additionally, the Commission notes that it has previously expressed concern about the potential for unfair competition and conflicts of interest between an exchange's self-regulatory obligations and its commercial interest when the exchange is affiliated with one of its members.[28] The Commission is also concerned about the potential for misuse of confidential and proprietary information. The Commission believes that the requirement that NES provide complete time and price discretion for the liquidation of error positions to a third-party broker-dealer, including that NES not attempt to exercise any influence or control over the timing or methods of such trading, combined with the requirement that BX establish and enforce policies and procedures that are reasonably designed to restrict the flow of confidential and proprietary information to the third-party broker-dealer liquidating such positions, should help mitigate the Commission's concerns. In particular, the Commission believes that these requirements should help assure that none of BX, NES, or the third-party broker-dealer is able to misuse confidential or proprietary information obtained in connection with the liquidation of error positions for its own benefit. The Commission also notes that BX and NES would be required to make and keep records to document all determinations to treat positions as error positions; all determinations to assign error positions to members or liquidate error positions; and the liquidation of error positions through the third-party broker-dealer.[29]

Finally, the Commission notes that the proposed procedures for canceling orders and the handling of error positions are consistent with procedures the Commission has approved for other exchanges.[30]

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[31] that the proposed rule change (SR–BX–2012–034) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–16219 Filed 7–2–12; 8:45 am]

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[22] 15 U.S.C. 78k–1(a)(1)(C).

[23] The Commission notes that BX states that the proposed amendments to BX Equity Rule 4758 are designed to maintain fair and orderly markets, ensure full trade certainty for market participants, and avoid disrupting the clearance and settlement process. *See* Notice, 77 FR at 30579. The Commission also notes that BX states that a decision to cancel orders due to a technical or systems issue is not equivalent to the Exchange declaring self-help against a routing destination pursuant to Rule 611 of Regulation NMS. *See* 17 CFR 242.611(b). *See also* Notice, 77 FR at 30577–78, n.10.

[24] *See* BX Equity Rule 4758(d)(2).

[25] *See* BX Equity Rule 4758(d)(3).

[26] *See* BX Equity Rule 4758(d)(3)(A).

[27] *See* BX Equity Rule 4758(d)(3)(B).

[28] *See, e.g.,* Securities Exchange Act Release No. 65455 (September 30, 2011), 76 FR 62119 (October 6, 2011) (SR–NYSEArca–2011–61) at 62120, n.16 and accompanying text.

[29] *See* BX Equity Rule 4758(d)(4).

[30] *See, e.g.,* Securities Exchange Act Release Nos. 66963 (May 10, 2012), 77 FR 28919 (May 16, 2012) (SR–NYSEArca–2012–22); 67010 (May 17, 2012), 77 FR 30564 (May 23, 2012) (SR–EDGX–2012–08); and 67011 (May 17, 2012), 77 FR 30562 (May 23, 2012) (SR–EDGA–2012–09).

[31] 15 U.S.C. 78s(b)(2).

[32] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67277; File No. SR–NYSEArca–2012–39]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change Relating to Listing and Trading the Global Alpha & Beta ETF Pursuant to NYSE Arca Equities Rule 8.600

June 27, 2012.

I. Introduction

On April 30, 2012, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the Global Alpha & Beta ETF (''Fund'') under NYSE Arca Equities Rule 8.600. The proposed rule change was published for comment in the **Federal Register** on May 17, 2012.[3] The Commission received no comments on the proposal. This order grants approval of the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposes to list and trade the Shares of the Fund pursuant to NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares on the Exchange. The Shares will be offered by AdvisorShares Trust (''Trust''), a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company.[4] The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 66973 (May 11, 2012), 77 FR 29429 (''Notice'').

[4] The Trust is registered under the Investment Company Act of 1940 (''1940 Act''). On January 30, 2012, the Trust filed with the Commission Form N–1A under the Securities Act of 1933 and under the 1940 Act relating to the Fund (File Nos. 333–157876 and 811–22110) (''Registration Statement''). In addition, the Exchange notes that the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act.

investment adviser to the Fund is AdvisorShares Investments, LLC (''Adviser''). Your Source Financial, PLC (''Sub-Adviser'') is the Fund's sub-adviser and provides day-to-day portfolio management of the Fund. Foreside Fund Services, LLC is the principal underwriter and distributor of the Fund's Shares. The Bank of New York Mellon serves as the administrator, custodian, transfer agent, and fund accounting agent for the Fund. The Exchange represents that neither the Adviser nor the Sub-Adviser is affiliated with a broker-dealer.[5]

Description of the Fund

The Fund's investment objective is long-term capital growth. The Fund is an exchange-traded fund (''ETF'') that is actively managed and thus does not seek to replicate the performance of a specific index. The Fund is a ''fund of funds'' that seeks to achieve its investment objective by investing, under normal conditions,[6] 80% or more in other U.S.-listed exchange-traded products (''Underlying ETPs''),[7] U.S. exchange-listed common stock of issuers of any capitalization range, and U.S. exchange-listed sponsored American Depositary Receipts (''ADRs'')[8] that provide investment exposure to global equity markets and that meet certain selection criteria established by the Sub-Adviser.

The Sub-Adviser will seek to achieve the Fund's investment objective by implementing a ''top-down'' portfolio management style. This management style begins with a look at the overall economic picture and current market conditions and then narrows its focus down to sectors, industries, or countries and ultimately to individual companies. The final step is a fundamental analysis of each individual security and to a lesser extent technical analysis. A ''top-down'' portfolio management style utilizes a tactical and globally diversified allocation strategy in an attempt to reduce risk and increase overall performance.

Prior to making an investment for the Fund, the Sub-Adviser will consider two indicators: (i) The 200-day moving average of the S&P 500 Index (''Index''); and (ii) an inverted yield curve.[9] If the Index is below its 200-day moving average or if the yield curve is inverted, the Sub-Adviser will maintain a defensive position in the Fund's portfolio.[10]

The Fund's asset allocation and performance baseline benchmark is the Index. The Index consists of ten separate industry sectors—each of which has a weighting in the Index as a whole. In selecting investments for the Fund's portfolio, the Sub-Adviser will seek to add value by overweighting sectors that the Sub-Adviser expects to perform well and underweighting sectors that it expects to perform poorly.

The Sub-Adviser seeks to maintain diversification among and across economic sectors, industries, and countries. The Sub-Adviser will consider the following factors when selling investments in the Fund's portfolio: (i) Whether an equity security has reached a price considered to be fully valued; (ii) business or sector risk exposure to a specific security or class of securities; (iii) overvaluation or overweighting of the position in the Fund's portfolio; (iv) change in risk tolerance; and (v) identification of a better opportunity.

Other Investments

While the Fund will invest at least 80% in the Underlying ETPs, U.S. exchange-listed common stock of issuers of any capitalization range, and U.S. exchange-listed sponsored ADRs, on a day-to-day basis, the Fund may hold the remainder of its assets in, under normal conditions, money market instruments, cash, other cash equivalents, and other highly liquid instruments.

The Fund may invest in other types of equity securities, which represent ownership interests in a company or partnership and consist not only of common stocks, which are one of the Fund's primary types of investments, but also preferred stocks, warrants to acquire common stock, securities convertible into common stock, and investments in master limited partnerships. The Fund also may invest in exchange-traded notes (''ETNs''),[11] U.S. government securities, and U.S. Treasury zero-coupon bonds.

In the absence of normal conditions, the Fund may invest 100% of its total assets, without limitation, in high-quality debt securities and money market instruments either directly or through its investments in ETFs. The Fund may be invested in these instruments for extended periods, depending on the Sub-Adviser's assessment of market conditions. These debt securities and money market instruments include shares of other mutual funds, commercial paper, certificates of deposit, bankers' acceptances, U.S. Government

See Investment Company Act Release No. 29291 (May 28, 2010) (File No. 812–13677) (''Exemptive Order'').

[5] *See* Commentary .06 to NYSE Arca Equities Rule 8.600. The Exchange represents that, in the event (a) the Adviser or the Sub-Adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes affiliated with a broker-dealer, it will implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding such portfolio.

[6] ''Normal conditions'' as used herein includes, but is not limited to, the absence of adverse market, economic, political or other conditions, including extreme volatility or trading halts in the fixed income markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance.

[7] Underlying ETPs include Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)); Portfolio Depositary Receipts (as described in NYSE Arca Equities Rule 8.100); Trust Issued Receipts (as described in NYSE Arca Equities Rule 8.200); Commodity-Based Trust Shares (as described in NYSE Arca Equities Rule 8.201); Currency Trust Shares (as described in NYSE Arca Equities Rule 8.202); Commodity Index Trust Shares (as described in NYSE Arca Equities Rule 8.203); Trust Units (as described in NYSE Arca Equities Rule 8.500); Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600); and closed-end funds. The Underlying ETPs all will be listed and traded in the U.S. on registered exchanges. The Underlying ETPs in which the Fund may invest will primarily be index-based ETFs that hold substantially all of their assets in securities representing a specific index. The Fund intends to invest in ETFs consistent with the requirements of Section 12(d)(1) of the 1940 Act, or any rule, regulation, or order of the Commission or interpretation thereof. The Fund will only make such investments in conformity with the requirements of Subchapter M of the Internal Revenue Code of 1986, as amended (''Code'').

[8] ADRs are U.S. dollar denominated receipts representing interests in the securities of a foreign issuer, which securities may not necessarily be denominated in the same currency as the securities into which they may be converted. ADRs are receipts typically issued by United States banks and trust companies which evidence ownership of underlying securities issued by a foreign corporation. Generally, ADRs in registered form are designed for use in domestic securities markets and are traded on exchanges or over-the-counter in the United States. The Fund may invest up to 10% of total assets in ADRs traded over-the-counter.

[9] An inverted yield curve occurs when short-term interest rates exceed long term rates and historically has been viewed as an indicator of a pending economic recession.

[10] Such a defensive position would be a more conservative allocation involving any combination of (a) reducing equity exposures (*i.e.,* U.S. exchange-listed common stock and U.S. exchange-listed ADRs), (b) investing in inverse ETFs (the Fund may invest up to 10% of its total assets in leveraged, inverse, or inverse leveraged Underlying ETPs), and (c) increasing investments in short-term, high-quality debt securities and money market instruments, cash, and cash equivalents, including through increasing investments in U.S. exchange-listed Underlying ETPs holding short-term debt or cash and cash equivalents.

[11] ETNs, also called index-linked securities as would be listed, for example, under NYSE Arca Equities Rule 5.2(j)(6), are senior, unsecured, and unsubordinated debt securities issued by an underwriting bank that are designed to provide returns that are linked to a particular benchmark, less investor fees.

securities, repurchase agreements,[12] and bonds that are rated BBB or higher.

The Fund may not (i) with respect to 75% of its total assets, purchase securities of any issuer (except securities issued or guaranteed by the U.S. Government, its agencies or instrumentalities, or shares of investment companies) if, as a result, more than 5% of its total assets would be invested in the securities of such issuer; or (ii) acquire more than 10% of the outstanding voting securities of any one issuer. For purposes of this policy, the issuer of an ADR will be deemed to be the issuer of the respective underlying security.

The Fund may not invest 25% or more of its total assets in the securities of one or more issuers conducting their principal business activities in the same industry or group of industries. The Fund will not invest 25% or more of its total assets in any investment company that so concentrates. This limitation does not apply to investments in securities issued or guaranteed by the U.S. Government, its agencies or instrumentalities, or shares of investment companies. For purposes of this policy, the issuer of ADRs will be deemed to be the issuer of the respective underlying security.

The Fund will not purchase illiquid securities, including Rule 144A securities and loan participations.[13] While the Fund does not anticipate doing so, the Fund may hold securities that become illiquid, including securities that are not readily marketable and Rule 144A securities. The Fund will not hold more than 15% of the Fund's net assets in illiquid securities including Rule 144A securities and loan participations. If the percentage of the Fund's net assets invested in illiquid securities exceeds 15% due to market activity, the Fund will take appropriate measures to reduce its holdings of illiquid securities.

While the Fund may invest up to 10% of its total assets in leveraged, inverse, or inverse leveraged Underlying ETPs, such investments will not be used to enhance the leverage of the Fund as a whole and will otherwise be consistent with the Fund's investment objective. In addition, consistent with the Exemptive Order, the Fund will not invest in options contracts, futures contracts, or swap agreements.[14] The Exchange also states that the Fund will not invest in any non-U.S. registered equity security, including depositary receipts, and will seek to qualify for treatment as a Regulated Investment Company under the Code.

Additional information regarding the Fund, the Trust, and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings, disclosure policies, distributions, and taxes can be found in the Notice and Registration Statement, as applicable.[15]

III. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act[16] and the rules and regulations thereunder applicable to a national securities exchange.[17] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[18] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the Fund and the Shares must comply with the requirements of NYSE Arca Equities Rule 8.600 to be listed and traded on the Exchange.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,[19] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association (''CTA'') high-speed line, and, for the underlying securities, will be available from the national securities exchange on which they are listed. In addition, the Portfolio Indicative Value (''PIV''), as defined in NYSE Arca Equities Rule 8.600(c)(3), will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Core Trading Session.[20] On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio, as defined in NYSE Arca Equities Rule 8.600(c)(2), that will form the basis for the Fund's calculation of the net asset value (''NAV'') at the end of the business day.[21] The Fund will calculate NAV once each business day as of the regularly scheduled close of trading on the New York Stock Exchange, LLC (''NYSE'') (normally, 4:00 p.m., Eastern Time). In addition, information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. The Web site for the Fund will include a form of the prospectus for the Fund, additional data relating to NAV, and other applicable quantitative information. In addition, a basket composition file, which includes the security names and share quantities required to be delivered in exchange for Fund Shares, together with estimates and actual cash components, will be

[12] The Fund may enter into repurchase agreements with financial institutions, which may be deemed to be loans. The Fund follows certain procedures designed to minimize the risks inherent in such agreements. These procedures include effecting repurchase transactions only with large, well-capitalized, and well-established financial institutions whose condition will be continually monitored by the Sub-Adviser. In addition, the value of the collateral underlying the repurchase agreement will always be at least equal to the repurchase price, including any accrued interest earned on the repurchase agreement. In the event of a default or bankruptcy by a selling financial institution, the Fund will seek to liquidate such collateral. In addition, the Fund may enter into reverse repurchase agreements as part of the Fund's investment strategy. Reverse repurchase agreements involve sales by the Fund of portfolio assets concurrently with an agreement by the Fund to repurchase the same assets at a later date at a fixed price.

[13] *See* Investment Company Act Release Nos. 28193 (March 11, 2008), 73 FR 14617 (March 18, 2008); and 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986).

[14] *See supra* note 4.

[15] *See supra* notes 3 and 4, respectively.

[16] 15 U.S.C. 78f.

[17] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[18] 15 U.S.C. 78f(b)(5).

[19] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[20] According to the Exchange, several major market data vendors display and/or make widely available PIVs published on the CTA or other data feeds.

[21] The Disclosed Portfolio will include, as applicable, for each portfolio security and other financial instrument of the Fund the following: Ticker symbol; name of security and financial instrument; the number of shares or dollar value of securities and financial instruments held in the portfolio; and percentage weighting of the security and financial instrument in the portfolio. The Web site information will be publicly available at no charge.

publicly disseminated daily prior to the opening of the NYSE via the National Securities Clearing Corporation. The basket represents one Creation Unit of the Fund.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Commission notes that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.[22] In addition, the Exchange will halt trading in the Shares under the specific circumstances set forth in NYSE Arca Equities Rule 8.600(d)(2)(D), and may halt trading in the Shares if trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Fund, or if other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.[23] The Exchange will consider the suspension of trading in or removal from listing of the Shares if the PIV is no longer calculated or available or the Disclosed Portfolio is not made available to all market participants at the same time.[24] Neither the Adviser nor the Sub-Adviser is affiliated with a broker-dealer.[25] The Commission notes that Adviser personnel who make decisions on a Fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material non-public information regarding that Fund's portfolio.[26] Further, the Commission notes that the Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the portfolio.[27] The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees. The Commission also notes that, for surveillance purposes, the Exchange may obtain information via the Intermarket Surveillance Group (''ISG'') from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement,[28] including information from the U.S. exchanges on which the Fund's investments in Underlying ETPs, common stock, exchange-listed ADRs, and other U.S. exchange-listed securities are listed and traded.

The Exchange further represents that the Shares are deemed to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including:

(1) The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) The Exchange's surveillance procedures applicable to derivative products, which include Managed Fund Shares, are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

(4) Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin (''Bulletin'') of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (a) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated PIV will not be calculated or publicly disseminated; (d) how information regarding the PIV is disseminated; (e) the requirement that Equity Trading Permit Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(5) For initial and/or continued listing, the Fund will be in compliance with Rule 10A–3 under the Act,[29] as provided by NYSE Arca Equities Rule 5.3.

(6) The Fund will not purchase illiquid securities, including Rule 144A securities and loan participations. While the Fund does not anticipate doing so, the Fund may hold securities that become illiquid, including securities that are not readily marketable, but will not hold more than 15% of its net assets in illiquid securities, including Rule 144A securities and loan participations. If the percentage of the Fund's net assets invested in illiquid securities exceeds 15% due to market activity, the Fund will take appropriate measures to reduce its holdings of illiquid securities.

(7) Consistent with the Exemptive Order, the Fund will not invest in options contracts, futures contracts, or swap agreements.

(8) While the Fund may invest up to 10% of its total assets in leveraged, inverse, or inverse leveraged Underlying ETPs, such investments will not be used to enhance the leverage of the Fund as a whole and will otherwise be consistent with the Fund's investment objective.

(9) All Underlying ETPs and securities in which the Fund may invest will be listed on securities exchanges,

[22] *See* NYSE Arca Equities Rule 8.600(d)(1)(B).

[23] With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.

[24] *See* NYSE Arca Equities Rule 8.600(d)(2)(C)(ii).

[25] *See supra* note 5 and accompanying text. The Commission notes that an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (''Advisers Act''). As a result, the Adviser and Sub-Adviser and their related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[26] *See* Commentary .06 to NYSE Arca Equities Rule 8.600.

[27] *See* NYSE Arca Equities Rule 8.600(d)(2)(B)(ii).

[28] While not all components of the Disclosed Portfolio may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement, all Underlying ETPs and securities in which the Fund may invest will be listed on securities exchanges, all of which are members of ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange, provided that the Fund may invest up to 10% of total assets in ADRs traded over-the-counter. *See* Notice, *supra* note 3, at footnote 26. *See also, supra* note 8.

[29] *See* 17 CFR 240.10A–3.

all of which are members of ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange, provided that the Fund may invest up to 10% of total assets in ADRs traded over-the-counter.

(10) The Fund will not invest in any non-U.S. registered equity security, including depositary receipts.

(11) A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange.

This approval order is based on all of the Exchange's representations and description of the Fund, including those set forth above and in the Notice.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act [30] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[31] that the proposed rule change (SR–NYSEArca–2012–39) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–16217 Filed 7–2–12; 8:45 am]

BILLING CODE 8011–01–P

[30] 15 U.S.C. 78f(b)(5).

[31] 15 U.S.C. 78s(b)(2).

[32] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67276; File No. SR–ICC–2012–11]

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Schedule 502 of the ICC Rules To Update the Contract Reference Obligation ISIN Associated With One Single Name Contract

June 27, 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 June 22, 2012, ICE Clear Credit LLC (''ICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by ICC. ICC filed the proposal pursuant to Section 19(b)(3)(A)(iii) of the Act,[3] and Rule 19b–4(f)(3) [4] thereunder so that the proposal was 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 purpose of proposed rule change is to update the Contract Reference Obligation International Securities Identification Number (''Contract Reference Obligation ISIN'') in Schedule 502 of the ICE Clear Credit Rules in order to be consistent with the industry standard reference obligation for one single name contract that ICC currently clears (Vornado Realty L.P.).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICC 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. ICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

ICC is updating the Contract Reference Obligation ISIN in order to remain consistent with industry standard reference obligations. The Contract Reference Obligation ISIN update does not require any changes to the body of the ICC Rules. Also, the Contract Reference Obligation ISIN update does not require any changes to the ICC risk management framework. The only change being submitted is the update to the Contract Reference Obligation ISIN in Schedule 502 of the ICC Rules.

Section 17A(b)(3)(F) of the Act [5] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions. ICC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to ICC, in particular, to Section 17A(b)(3)(F), because the update to the Contract Reference Obligation ISIN for Vornado Realty L.P. will facilitate the prompt and accurate settlement of securities transactions and contribute to the safeguarding of securities and funds associated with swap transactions which are in the custody of control of ICC or for which it is responsible.

(B) Self-Regulatory Organization's Statement on Burden on Competition

ICC does not believe the proposed rule change would have any impact, or impose any burden, on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited or received. ICC will notify the Commission of any written comments received by ICC.

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)(iii) [6] of the Act and Rule 19b–4(f)(3) [7] thereunder because it is concerned solely with the administration of the self-regulatory organization. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ICC–2012–11 on the subject line.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(3).

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] 15 U.S.C. 78s(b)(3)(A)(iii).

[7] 17 CFR 240.19b–4(f)(3).

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–ICC–2012–11. 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 Section, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Credit and on ICE Clear Credit's Web site at *https://www.theice.com/publicdocs/regulatory_filings/ICEClearCredit_062012.pdf.*

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–ICC–2012–11 and should be submitted on or before July 24, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin O'Neill,

Deputy Secretary.

[FR Doc. 2012–16216 Filed 7–2–12; 8:45 am]

BILLING CODE 8011–01–P

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In The Matter of China Medical Technologies, Inc.; Order of Suspension of Trading

June 29, 2012.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of China Medical Technologies, Inc. (''China Medical'') because of questions regarding the accuracy and adequacy of disclosures by China Medical concerning, among other things: (1) The status of the company's officers and directors, (2) the accuracy of the company's financial statements filed with the Commission, and (3) the current financial condition of the company. China Medical's securities are quoted on OTC Link operated by OTC Markets Group Inc. under the ticker symbol ''CMEDY.''

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-quoted company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-quoted company is suspended for the period from 9:30 a.m. EDT, on June 29, 2012 through 11:59 p.m. EDT, on July 13, 2012.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–16397 Filed 6–29–12; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of AngelCiti Entertainment, Inc., BodyTel Scientific, Inc., Clearant, Inc., DataMetrics Corp., and Green Energy Group, Inc. (a/k/a eCom eCom.Com, Inc.); Order of Suspension of Trading

June 29, 2012.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of AngelCiti Entertainment, Inc. because it has not filed any periodic reports since the period ended March 31, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of BodyTel Scientific, Inc. because it has not filed any periodic reports since the period ended August 31, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Clearant, Inc. because it has not filed any periodic reports since the period ended June 30, 2009.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of DataMetrics Corporation because it has not filed any periodic reports since the period ended January 31, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Green Energy Group, Inc. (a/k/a eCom eCom.Com, Inc.) because it has not filed any periodic reports since the period ended February 28, 2011. Moreover, the company's Form 10–K for the period ended May 31, 2010 was materially deficient in that it failed to include a report on internal controls over financial reporting, as required by Commission rules.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on June 29, 2012, through 11:59 p.m. EDT on July 13, 2012.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2012–16398 Filed 6–29–12; 11:15 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13097 and #13098]

Vermont Disaster #VT–00025

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Vermont (FEMA–4066–DR), dated 06/22/2012.

Incident: Severe Storm, Tornado, and Flooding.

Incident Period: 05/29/2012.

Effective Date: 06/22/2012.

Physical Loan Application Deadline Date: 08/21/2012.

Economic Injury (EIDL) Loan Application Deadline Date: 03/22/2013.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 06/22/2012, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Addison, Lamoille, Orleans.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere	3.125
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 13097B and for economic injury is 13098B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Joseph P. Loddo,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2012–16237 Filed 7–2–12; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Interest Rates

The Small Business Administration publishes an interest rate called the optional ''peg'' rate (13 CFR 120.214) on a quarterly basis. This rate is a weighted average cost of money to the government for maturities similar to the average SBA direct loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. This rate will be 2.500 (2½) percent for the July–September quarter of FY 2012.

Pursuant to 13 CFR 120.921(b), the maximum legal interest rate for any third party lender's commercial loan which funds any portion of the cost of a 504 project (see 13 CFR 120.801) shall be 6% over the New York Prime rate or, if that exceeds the maximum interest rate permitted by the constitution or laws of a given State, the maximum interest rate will be the rate permitted by the constitution or laws of the given State.

Eugene D. Stewman,

Acting Director, Office of Financial Assistance.

[FR Doc. 2012–16238 Filed 7–2–12; 8:45 am]

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DEPARTMENT OF STATE

[Public Notice 7945]

International Joint Commission

International Joint Commission Invites Public Comment on Upper Great Lakes Report

The International Joint Commission (IJC) announced today that it is inviting public comment on the final report of its International Upper Great Lakes Study Board, *Lake Superior Regulation: Addressing Uncertainty in Upper Great Lakes Water Levels.* Comments will be accepted at public hearings and by mail, email and on-line until August 31, 2012.

The Study examines whether the regulation of outflows from Lake Superior through the compensating works and power dams on the St. Marys River at Sault Ste. Marie might be improved to take into consideration the evolving needs of users on Lakes Superior, Huron, Michigan and Erie. The Commission is considering proposed changes to its Orders of Approval for the outflows of Lake Superior at the St. Marys River that have been recommended by the Study. The Study report also examines the potential future impacts of climate change, a management strategy to better anticipate and respond to future extreme water levels, the feasibility and implications of restoring water levels in lakes Michigan-Huron and multi-lake regulation and its impacts throughout the Great Lakes St-Lawrence system. The report and related supporting documents and peer review are available at the Upper Great Lakes Public Hearings Web site.

Commissioners invite the public to present comments at hearings that will be held the following dates and locations:

Monday, July 9	Tuesday, July 10	Wednesday, July 11	Thursday, July 12
Sarnia, ON, 7:00 pm EDT, Lambton College, Room A223, 1457 London Rd.	Grosse Pointe Farms, MI, 7:00 pm EDT, The Grosse Pointe War Memorial, Reception Room, 32 Lakeshore Drive.	Port Clinton, OH, 7:00 pm EDT, Sutton Center, 1848 E. Perry St.	Holland, MI, 7:00 pm EDT, Doubletree Hotel, 650 East 24th Street.
Thunder Bay, ON, 7:00 pm EDT, Lakehead University, ATAC Room 1001, 955 Oliver Road.	Duluth, MN, 6:00 pm CDT, Labovitz School of Business, 1318 Kirby Drive.	Fish Creek, WI, 6:00 pm CDT, Door Community Auditorium, 3926 Wisconsin Hwy 42.	Milwaukee, WI, 6:00 pm CDT, University of Wisconsin-Milwaukee's Great Lakes Water Institute, 600 E. Greenfield Ave.
Saturday, July 14	**Sunday, July 15**	**Monday, July 16**	**Tuesday, July 17**
Sault Ste. Marie, ON, 1:00 pm EDT, Algoma University, Great West Life Theatre, 1520 Queen Street East.	Little Current, ON, 1:00 pm EDT, Northeast Manitoulin and the Islands Recreation Center, 9001 Hwy-6 S.	Parry Sound, ON, 2:00 pm EDT, Bobby Orr Community Centre, 7–17 Marry Street. Midland, ON, 7:00 pm EDT, North Simcoe Sports and Recreation Centre, 527 Len Self Boulevard.	Collingwood, ON, 1:00 pm EDT, Cranberry Resort, 19 Keith Ave, RR#4.

Video conference technology will be used to link the hearings scheduled from July 9–12 and to allow the participation of some Commissioners from other locations.

Two teleconferences will be held for those people who are not able to attend the meetings. One will be held in English on and the other in French. Details of the teleconferences will be provided in a subsequent news release.

Written comments may be submitted to the IJC for receipt by August 31, 2012 from the *Upper Great Lakes Public Hearings Web site* or to either address below: U.S. Section Secretary, International Joint Commission, 200 L Street NW., Suite 615, Washington, DC 20440, Fax: 202–632–2006, *commission@washington.ijc.org* Canadian Section Secretary, International Joint Commission, 234 Laurier Avenue West, 22nd Floor, Ottawa, ON K1P 6K6, Fax: 613–993–5583, *commission@ottawa.ijc.org.*

Technical questions should be sent in writing to the Commission if a detailed response is expected.

The International Joint Commission was established under the Boundary Waters Treaty of 1909 to help the United States and Canada prevent and resolve disputes over the use of the waters the two countries share. Its responsibilities include considering applications for projects that affect the natural levels and flows of boundary waters. For more information, visit the Commission's Web site at *www.ijc.org.*

CONTACTS

Bernard Beckhoff (Ottawa)	613–947–1420	*beckhoffb@ottawa.ijc.org.*
Frank Bevacqua (Washington)	202–736–9024	*bevacqauf@washington.ijc.org.*

Dated: June 27, 2012.

Charles A. Lawson,

Secretary, U.S. Section, International Joint Commission, Department of State.

[FR Doc. 2012–16316 Filed 7–2–12; 8:45 am]

BILLING CODE 4710–14–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Recommendations from Airman Testing Standards and Training Aviation Rulemaking Committee (ARC)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of report availability.

SUMMARY: This notice announces the availability of a report from the ARC, which presents recommendations to enhance the content, process, and methodology for development of aeronautical knowledge testing and training materials.

FOR FURTHER INFORMATION CONTACT: Van L. Kerns, Manager, Regulatory Support Division, FAA Flight Standards Service, AFS 600, FAA Mike Monroney Aeronautical Center, P.O. Box 25082, Oklahoma City, OK 73125; telephone (405) 954–4431, email *van.l.kerns@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On September 21, 2011, the FAA chartered the ARC to provide a forum for the U.S. aviation community to share its experience and expertise in the areas of aeronautical knowledge required for safer operation in today's National Airspace System (NAS).

The FAA's charge to the ARC was to help ensure that technical information related to airman knowledge tests, computer testing supplements, knowledge test guides, and training handbooks incorporates the most current and relevant standards, policies, procedures, and techniques. The FAA specifically tasked the ARC with providing recommendations on the content of these materials, a process for stakeholder participation, and appropriate methodologies for developing test item bank questions. The FAA also requested the ARC's recommendations on prioritizing the enhancement of these materials.

Notice of Availability

The ARC submitted its report to FAA on April 13, 2012. The report is now available for review and download from the FAA Web site at: *http://www.faa.gov/aircraft/draft_docs/arc.*

Issued in Washington, DC on June 12, 2012.

Melvin O. Cintron,

Acting, Director, Flight Standards, AFS–1.

[FR Doc. 2012–16298 Filed 7–2–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2012–0057]

Advanced Braking Technologies That Rely on Forward-Looking Sensors; Request for Comments

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice; Request for comments on research report.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) has, for about two years, been studying advanced braking technologies that rely on forward-looking sensors to supplement driver braking or to actuate automatic braking in response to an impending crash. NHTSA believes these technologies show promise for enhancing vehicle safety by helping drivers to avoid crashes or mitigate the severity and effects of crashes. NHTSA is soliciting comments on the results of its research thus far to help guide its continued efforts in this area.

DATES: *Comments:* The agency must receive comments on or before September 4, 2012.

ADDRESSES: Comments should refer to the docket number above and be submitted by one of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Fax: 1–202–493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal Holidays.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the

name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: Ms. Abigail Morgan of NHTSA's Office of Crash Avoidance Standards at (202) 366–6005 or by email at *abigail.morgan@dot.gov*. For technical issues, contact Mr. Garrick Forkenbrock of NHTSA's Vehicle Research and Test Center (VRTC) at (937) 666–3317 or by email at *garrick.forkenbrock@dot.gov*. Mail to these officials may be sent in care of the National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., West Building, Washington, DC 20590–0001.

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I. Background

There are presently three forward-looking technologies intended to address rear-end crashes involving light vehicles in the United States: Forward Collision Warning (FCW), Dynamic Brake Support (DBS), and Crash Imminent Braking (CIB). These technologies, listed in the order of increasing vehicle system assistance/intervention, may be generally defined as follows:

Forward Collision Warning (FCW): A system that uses information from forward-looking sensors, usually a camera or radar, to determine whether or not a crash is likely or unavoidable and that, in such cases, warns the driver so the driver can brake and/or steer to avoid or minimize the impact of the crash.

Dynamic Brake Support (DBS): A system that uses information from forward-looking sensors about driving situations in which a crash is likely or unavoidable to supplement automatically the output of the brakes when the DBS system senses that the force being applied by the driver to the brake pedal is insufficient to avoid the crash.

Crash Imminent Braking (CIB): A system that uses information from forward-looking sensors to automatically apply the brakes in driving situations in which a crash is likely or unavoidable and the driver makes no attempt to avoid the crash.

In 2010, NHTSA began a thorough examination of the state of forward-looking advanced braking technologies, analyzing their performance and identifying areas of concern or uncertainty, in an effort to better understand their potential. The agency's recent research and analysis of DBS and CIB systems have been documented in the report ''Forward-Looking Advanced Braking Technologies: An analysis of current system performance, effectiveness, and test protocols'' (2012). This report is referred to below as the ''2012 report.'' The report is available in the Forward Looking Advanced Braking Technologies docket NHTSA–2012–0057 at *www.regulations.gov*.

Our efforts to date indicate that DBS and CIB have the capability to provide substantial safety benefits (to varying degrees, depending on which vehicle make and model is considered). However, we continue to explore test procedures and effectiveness of these systems and to refine the performance criteria that should be used to assess these systems.

NHTSA will use information from the public to guide its continued efforts regarding DBS and CIB technologies.

II. Opportunity for the Public To Comment

The efforts of the agency described in the 2012 report have significantly enhanced NHTSA's knowledge of forward-looking advanced braking technologies and the state of their development. The agency wants to enhance its knowledge further and to help guide its continued efforts. This includes work regarding effectiveness, test operation (including how to ensure repeatability using a target or surrogate vehicle), refinement of performance criteria, and exploring the need for an approach and criteria for ''false positive'' tests to minimize unintended negative consequences. To that end, the agency is seeking public comment in the specific areas listed below. Any other relevant comments are welcome and encouraged. However, the subjects below are the areas in which the agency thinks comments will most advance the agency's knowledge. The agency also recognizes that, for some questions below, the information provided by commenters will be manufacturer-specific and may be considered confidential. Comments containing confidential information should be submitted consistent with section III. Public Participation.

A. Test Protocols

The draft test protocols for CIB and DBS prepared by the agency use speed reductions and crash avoidance measures for assessing system effectiveness (see Docket NHTSA–2012–0057). The agency has the following questions in this area:

(1) Performance

(a) Can the tests be performed within the tolerances (i.e., subject-vehicle and principle-other-vehicle test speeds, lateral movement, yaw rates, etc.) provided in the Phase 2 (October 2011) version of the agency's CIB and DBS test protocols, which are located in the docket?

(b) Are there sections of the test protocols that require additional detail or more clearly-defined instructions?

(c) Do the specified speed reductions in the draft performance measures accurately test system effectiveness?

(d) Are the speed reduction criteria under consideration feasible for CIB and DBS systems? If not, what system changes would be necessary?

(e) Given the idealized test conditions, is it feasible to achieve the speed reductions under consideration during each test trial?

(f) Can fault codes occur during testing when the test vehicle makes contact with the surrogate vehicle? Will fault codes that occur during testing have an impact on system performance?

(g) False positive tests are not presently included in the CIB or DBS test protocols. Work performed at the agency's VRTC has indicated it is possible to observe consistent false positive CIB activations; however, these false positive CIB activations were found to be vehicle-dependent and occurred during only one of seven test scenarios: driving over a 1-inch thick steel plate lying flat on the pavement (a plate often used as a temporary cover during road repairs). Will the omission of a false positive test (or suite of such tests) have the potential to promote systems prone to such behavior? Are CIB and DBS false activations expected to have an adverse effect on safety, or a concern of customer acceptance of the technologies?

(2) DBS Test Protocol

(a) In the DBS test protocol, is the manner in which the brake controller is used (i.e., whether its control logic is based on pedal position or brake application force) a short-term concern expected to affect only a limited population of vehicles, or will this protocol have more serious implications on future-generation vehicles (e.g., vehicles with throttle-by-wire braking)?

(b) For DBS testing, is the methodology used for ''Foundation Brake System Characterization'' a reasonable approach for objectively evaluating a vehicle's brake system without advanced braking technologies such as DBS or brake assist? Please explain if the DBS test approach will activate brake assist technologies in some vehicles and not in others? Should this issue be further evaluated while attempting to derive the benefits of DBS?

(c) Does the DBS test protocol provision for a vehicle to be evaluated with one of two force-based applications, pedal position or brake application, provide enough flexibility to evaluate the performance of systems appropriately?

(d) Will the DBS system performance observed in tests performed in accordance with the DBS test protocol be sufficiently representative of the performance expected in the ''real-world,'' given similar input conditions (including driver-based brake applications or similar magnitudes and rates)? Would such testing be sufficient to ensure robust performance, i.e., good performance in a broad range of conditions?

B. Surrogate Vehicle and Related Testing Equipment

The agency recognizes surrogate vehicles (strikeable artificial vehicles or target vehicles) are necessary to safely perform CIB and DBS tests. NHTSA believes an acceptable surrogate vehicle should be ''realistic'' (i.e., be interpreted the same as an actual vehicle) to systems using RADAR, camera, LIDAR, and/or infrared sensors to assess the potential threat of a rear-end collision. The surrogate vehicle should be robust and able to withstand repeated impacts from the CIB- or DBS-equipped test vehicle with little to no hysteresis over time. A test vehicle should not incur damage resulting from repeated impacts with the surrogate vehicle. Construction of the surrogate vehicle should be consistent.

(1) Please provide specific recommendations for other surrogate vehicle design considerations that should be addressed (physical characteristics, radar reflectivity, material type, etc.) and suggestions for how those attributes could be objectively validated.

(2) To ensure real-world robustness, should NHTSA use a ''fleet'' of different surrogate vehicles? Is there a need to conduct testing with a fleet of different surrogate vehicles representing various vehicle body styles that any system would encounter in the real world to ensure robustness? If there is such a need, describe what body styles should comprise the fleet.

(3) Testing conducted on behalf of the agency used a simple platform on which the surrogate vehicle was mounted and towed. This apparatus worked well with good repeatability and reasonable cost, but it was unable to accurately accommodate the decelerating lead vehicle test condition. In future testing, NHTSA intends to use a rigid mechanical link between the surrogate vehicle and the towing vehicle to enable the testing of the decelerating lead vehicle condition. The agency welcomes specific recommendations for a practical, feasible, standardized towing system.

C. System Functionality and Performance

(1) *Operational Speed:* Once a system has been initialized, in what speed range does it remain fully functional? What speed reduction levels are achievable with systems presently available or soon-to-be available (5–10 years)? Under what crash scenarios are those speed reductions achievable (i.e., speeds of vehicles involved and distance between vehicles)? What changes to current systems would improve system performance (sensor quality or quantity, better algorithms, etc.)?

(2) *Suppression algorithms:* The agency requests comments on the rationale used to determine when a CIB and/or DBS system will be activated and when its activation will be suppressed including, but not limited to answers to the following questions:

(a) What inputs to the steering wheel and/or throttle pedal are capable of suppressing system activation?

(b) If an object is on the roadway in the driver's forward path, what characteristics of the object or situation will cause the system activation to be suppressed?

(c) How and why could the presence of one or more unbelted vehicle occupants suppress or limit system operation?

(d) If the system activation is suppressed because of an unbelted occupant, on which unbelted occupants does the system suppression rely (e.g., driver, front seat passenger, rear seat passenger)?

(e) If suppression is based on vehicle speed, what are the relative and absolute upper and lower velocity thresholds? What is the rationale for these limits?

(f) Are certain environmental conditions capable of suppressing system activation (e.g., a wet/rainy roadway surface)? If so, please describe these conditions and explain how these conditions are measured and determined by the vehicle?

(g) What other factors can be capable of suppressing, or contributing to the suppression, of system activation?

(3) *System Robustness:* What environmental and/or driving conditions totally or partially negate the ability of CIB and/or DBS systems presently on the market to perform as designed (e.g., driving in the dark or in adverse weather)? What information should be communicated to the driver when conditions have negated the system's capabilities and how? Are there improvements under development to respond to these challenges? What are they and what is the timing of their availability? What is the expected useful life of the system components installed in vehicles presently on the market?

D. Target Population and Its Relationship to Benefit Estimates

(1) With the relatively short time to collision (TTC) defining when a CIB and/or DBS operation is possible (i.e., system availability), what is the effectiveness of these systems, if activated, at preventing a fatal crash when the relative front-to-rear end impact speed (difference in speed between the two vehicles involved in crash) is 80 km/h or higher?

(2) In fatal crashes in which the lead vehicle was a large truck or trailer, under what circumstances would the CIB and/or DBS technology have decreased the impact speed enough to prevent the fatality given the current state of the technology?

(3) At what impact speed is it reasonable to assume that the outcomes of high speed fatal crashes in which the fatalities occurred in the lead (struck) vehicle would be the same if CIB and/or DBS systems were activated, due to the fact that the impact was severe and the crashworthiness of the vehicle was exceeded?

E. Activities of Other Countries, Multiple Government Entities, or Non-Government Organizations (NGOs)

In addition to the studies listed in the *Review of Literature and Current Activities* section of the 2012 report, are there additional noteworthy activities that are planned or ongoing by individual countries, entities consisting of multiple governments, or non-government organizations (NGOs) that may provide additional information on the capabilities, limitations, and readiness of these systems?

III. Public Participation

How do I prepare and submit comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Comments may be submitted to the docket electronically by logging onto the Docket Management System Web site at *http://www.regulations.gov.* Follow the online instructions for submitting comments.

You may also submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES**.

Please note that pursuant to the Data Quality Act, in order for substantive data to be relied upon and used by the agency, it must meet the information quality standards set forth in the Office of Management and Budget (OMB) and DOT Data Quality Act guidelines. Accordingly, we encourage you to consult the guidelines in preparing your comments. OMB's guidelines may be accessed at *http://www.whitehouse.gov/omb/fedreg/reproducible.html.* DOT's guidelines may be accessed at *http://dms.dot.gov.*

How can I be sure that my comments were received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How do I submit confidential business information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (See 49 CFR part 512.)

How can I read the comments submitted by other people?

You may read the comments received by Docket Management at the address given above under **ADDRESSES**. The hours of the Docket are indicated above in the same location. You may also see the comments on the Internet. To read the comments on the Internet, go to *http://www.regulations.gov.* Follow the online instructions for accessing the dockets.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

Authority: 49 U.S.C. 30101.

Issued: June 26, 2012.

Nathaniel Beuse,

Director, Office of Crash Avoidance Standards.

[FR Doc. 2012–16250 Filed 7–2–12; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2012–0086]

Group Lotus Plc, Receipt of Petition for Temporary Exemption From an Advanced Air Bag Requirement of FMVSS No. 208

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of receipt of a petition for a temporary exemption from a provision of Federal Motor Vehicle Safety Standard (FMVSS) No. 208, *Occupant Crash Protection.*

SUMMARY: In accordance with the procedures in 49 CFR part 555, Group Lotus Plc has petitioned the agency for a temporary exemption from one advanced air bag requirement of FMVSS No. 208, the higher maximum speed (56 km/h (35 mph)) belted test requirement using 5th percentile adult female dummies for its Evora model. The basis for the application is that the petitioner avers compliance would cause it substantial economic hardship and that it has tried in good faith to comply with the standard.[1] This notice of receipt of an application for a temporary exemption is published in accordance with statutory and administrative provisions. NHTSA has made no judgment on the merits of the application.

DATES: You should submit your comments not later than August 2, 2012.

FOR FURTHER INFORMATION CONTACT: David Jasinski, Office of the Chief Counsel, NCC–112, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., West Building 4th Floor, Room W41–213, Washington, DC 20590. Telephone: (202) 366–2992; Fax: (202) 366–3820.

ADDRESSES: We invite you to submit comments on the application described above. You may submit comments identified by docket number in the heading of this notice by any of the following methods:

- *Web Site: http://www.regulations.gov.* Follow the instructions for submitting comments on the electronic docket site by clicking on ''Help and Information'' or ''Help/Info.''
- *Fax:* 1–202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act discussion below. We will consider all comments received before the close of business on the comment closing date indicated

[1] To view the application, go to *http://www.regulations.gov* and enter the docket number set forth in the heading of this document.

above. To the extent possible, we will also consider comments filed after the closing date.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. Telephone: (202) 366–9826.

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

Confidential Business Information: If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation (49 CFR Part 512).

SUPPLEMENTARY INFORMATION:

I. Advanced Air Bag Requirements and Small Volume Manufacturers

In 2000, NHTSA upgraded the requirements for air bags in passenger cars and light trucks, requiring what are commonly known as ''advanced air bags.'' [2] The upgrade was designed to meet the twin goals of improving protection for occupants of all sizes, belted and unbelted, in moderate-to-high-speed crashes, and of minimizing the risks posed by air bags to infants, children, and other occupants, especially in low-speed crashes. Prior to this rule, crash tests under FMVSS No. 208 used only one size dummy, a 50th percentile adult male dummy. However, the advanced air bag rule specified the use of both 50th percentile adult male and 5th percentile adult female dummies for the standard's crash tests.

The requirements for the vehicle performance in an unbelted 32 km/h (20 mph) to 40 km/h (25 mph) rigid barrier crash test and the belted rigid barrier crash test with a maximum test speed of 48 km/h (30 mph) for both the 50th percentile male dummy and the 5th percentile female dummy were phased in beginning with the 2004 model year. Small volume manufacturers were not subject to these advanced air bag requirements until the end of the phase-in period, which was September 1, 2006.

A second phase-in period required vehicles to be certified as passing the belted rigid barrier test requirements at speeds up to 56 km/h (35 mph) using the 50th percentile adult male dummy. This requirement was phased in beginning with the 2008 model year. Small volume manufacturers were not subject to this requirement until the end of the phase-in period, which was September 1, 2010.

The 2000 final rule did not include a higher speed belted rigid barrier test for a 5th percentile adult female dummy. Instead, NHTSA initiated testing to examine the practicability of imposing such a requirement.[3]

On August 31, 2006, NHTSA published a final rule that increased the maximum test speed for the belted rigid barrier test using the 5th percentile adult female test dummy from 48 km/h (30 mph) to 56 km/h (35 mph).[4] This new requirement was phased in beginning with the 2010 model year. Small manufacturers are not subject to this requirement until the completion of the phase in period, which is September 1, 2012.

In recent years, NHTSA has addressed a number of petitions for exemption from some of the initial advanced air bag requirements of FMVSS No. 208. The majority of these requests came from small manufacturers, each of which petitioned on the basis that compliance would cause it substantial economic hardship and that it has tried in good faith to comply with the standard. In recognition of the more limited resources and capabilities of small manufacturers, authority to grant exemptions based on substantial economic hardship and good faith efforts was added to the Vehicle Safety Act in 1972 to enable the agency to give those manufacturers additional time to comply with the Federal safety standards.

NHTSA granted a number of these petitions, usually in situations in which the manufacturer was supplying standard air bags in lieu of advanced air bags.[5] In addressing these petitions, NHTSA has recognized that small manufacturers may face particular difficulties in acquiring or developing advanced air bag systems.

Notwithstanding those previous grants of exemption, NHTSA has considered two key issues—

(1) whether it is in the public interest to continue to grant such petitions, particularly in the same manner as in the past, given the number of years these requirements have now been in effect and the benefits of advanced air bags, and

(2) to the extent such petitions are granted, what plans and countermeasures to protect child and infant occupants, short of compliance with the advanced air bags, should be expected.

While the exemption authority was created to address the problems of small manufacturers and the agency wishes to be appropriately attentive to those problems, it was not anticipated by the agency that use of this authority would result in small manufacturers being given much more than relatively short term exemptions from recently implemented safety standards, especially those addressing particularly significant safety problems.

Given the passage of time since the advanced air bag requirements were established and implemented, and in light of the benefits of advanced air bags, NHTSA has determined that it is not in the public interest to continue to grant exemptions from these requirements under the same terms as in the past.[6] The costs of compliance with the advanced air bag requirements of FMVSS No. 208 are costs that all entrants to the U.S. automobile marketplace should expect to bear. Furthermore, NHTSA understands that, in contrast to the initial years after the advanced air bag requirements went into effect, low volume manufacturers now have access to advanced air bag technology. Accordingly, NHTSA has concluded that the expense of advanced air bag technology is not now sufficient, in and of itself, to justify the grant of a petition for a hardship exemption from the advanced air bag requirements.[7]

NHTSA further notes that the granting of hardship exemptions from motor

[2] *See* 65 FR 30680 (May 12, 2000).

[3] See 65 FR 30690.

[4] *See* 71 FR 51768.

[5] *See, e.g.,* grant of petition to Panoz, 72 FR 28759 (May 22, 2007), or grant of petition to Koenigsegg, 72 FR 17608 (April 9, 2007).

[6] See denial of petition of Pagani Automobili SpA, 76 FR 47641–42 (Aug. 5, 2011).

[7] See *id.*

vehicle safety standards is subject to the agency's finding that the petitioning manufacturer has ''tried to comply with the standard in good faith.'' [8] In response to prior petitions, NHTSA has granted temporary exemptions from the advanced air bag requirements as a means of affording eligible manufacturers an additional transition period to comply with the exempted standard. In deciding whether to grant an exemption based on substantial economic hardship and good faith efforts, NHTSA considers the steps that the manufacturer has already taken to achieve compliance, as well as the future steps the manufacturer plans to take during the exemption period and the estimated date by which full compliance will be achieved.[9]

NHTSA invites comment on how these considerations relate to Lotus's petition for an exemption from the higher speed belted rigid barrier test using the 5th percentile adult female test dummy. In this respect, Lotus notes that it seeks exemption from only a single test performance requirement rather than all of the advanced air bag requirements.

II. Statutory Authority for Temporary Exemptions

The National Traffic and Motor Vehicle Safety Act (Safety Act), codified as 49 U.S.C. Chapter 301, provides the Secretary of Transportation authority to exempt, on a temporary basis and under specified circumstances, motor vehicles from a motor vehicle safety standard or bumper standard. This authority is set forth at 49 U.S.C. 30113. The Secretary has delegated the authority for implementing this section to NHTSA.

The Act authorizes the Secretary to grant a temporary exemption to a manufacturer of not more than 10,000 motor vehicles annually, on such terms as he deems appropriate, if he finds that the exemption would be consistent with the public interest and the Safety Act and if he also finds that ''compliance with the standard would cause substantial economic hardship to a manufacturer that has tried to comply with the standard in good faith.''

NHTSA established Part 555, *Temporary Exemption from Motor Vehicle Safety and Bumper Standards,* to implement the statutory provisions concerning temporary exemptions. Under Part 555, a petitioner must provide specified information in submitting a petition for exemption. These requirements are specified in 49 CFR 555.5, and include a number of items. Foremost among them are that the petitioner must set forth the basis of the application under § 555.6, and the reasons why the exemption would be in the public interest and consistent with the objectives of 49 U.S.C. Chapter 301.

A manufacturer is eligible to apply for a hardship exemption if its total motor vehicle production in its most recent year of production did not exceed 10,000 vehicles, as determined by the NHTSA Administrator (49 U.S.C. 30113).

In determining whether a manufacturer of a vehicle meets that criterion, NHTSA considers whether a second vehicle manufacturer also might be deemed the manufacturer of that vehicle. The statutory provisions governing motor vehicle safety (49 U.S.C. Chapter 301) do not state that a manufacturer has substantial responsibility as manufacturer of a vehicle simply because it owns or controls a second manufacturer that assembled that vehicle. However, the agency considers the statutory definition of ''manufacturer'' (49 U.S.C. 30102) to be sufficiently broad to include sponsors, depending on the circumstances. Thus, NHTSA has stated that a manufacturer may be deemed to be a sponsor and thus a manufacturer of a vehicle assembled by a second manufacturer if the first manufacturer had a substantial role in the development and manufacturing process of that vehicle.

While 49 U.S.C. 30113(b) states that exemptions from a Safety Act standard are to be granted on a ''temporary basis,'' [10] the statute also expressly provides for renewal of an exemption on reapplication. Manufacturers are nevertheless cautioned that the agency's decision to grant an initial petition in no way predetermines that the agency will repeatedly grant renewal petitions, thereby imparting semi-permanent status to an exemption from a safety standard. Exempted manufacturers seeking renewal must bear in mind that the agency is directed to consider financial hardship as but one factor, along with the manufacturer's ongoing good faith efforts to comply with the regulation, the public interest, consistency with the Safety Act, generally, as well as other such matters provided in the statute.

III. Overview of Petition

In accordance with 49 U.S.C. 30113 and the procedures in 49 CFR part 555, Group Lotus Plc (Lotus) has submitted a petition asking the agency for a temporary exemption from one advanced air bag requirement of FMVSS No. 208 for its Evora model. Specifically, the petition requests an exemption from the advanced air bag requirement in S14.7, which requires vehicles manufactured on or after September 1, 2012, to meet the higher maximum speed (56 km/h (35 mph)) belted test requirement using the 5th percentile adult female dummy.[11] Lotus requests this exemption only for the front passenger seat. The basis for the application is that compliance would cause the petitioner substantial economic hardship and that the petitioner has tried in good faith to comply with the standard. Lotus has requested an exemption for a period of 31 months from September 1, 2012 to March 31, 2015.

Lotus is a United Kingdom corporation. In the year prior to the filing of its petition, Lotus produced a total of 3,115 vehicles.[12] Lotus states that, since its inception, it has never manufactured more than 10,000 vehicles in a year. Lotus states further that, although it is owned by the Malaysian automobile manufacturer Proton, Proton is not a ''sponsor'' of Lotus and its production should not be (and historically has not been) aggregated with Lotus's production for the purpose of determining eligibility for a temporary exemption. Lotus anticipates that the number of exempted vehicles imported to the U.S. if this petition is granted would be approximately 800.

Lotus previously obtained an exemption from the advanced air bag requirements for its Elise model.[13] In its petition for exemption from the advanced air bag requirements for the Elise, Lotus committed to equipping its next model, the Evora, with compliant advanced air bags. Lotus states that, since its introduction to the U.S. market in 2010, the Evora has been fully compliant with FMVSS No. 208. However, Lotus states that its sales have been lower than projected because of

[8] 49 U.S.C. 30113(b)(3)(B)(i)

[9] 49 CFR 555.6(a)(2)

[10] 49 U.S.C. 30113(b)(1).

[11] In its petition, Lotus asks for exemption from S15.1(b) and S16.1(a)(2) as well. However, those provisions apply to only those vehicles certified as complying with S14.6 or S14.7. If an exemption is granted, the vehicle would not be required to be certified to S14.7. S14.6 is the phase in for the higher speed 5th percentile adult female belted barrier test requirement that is not applicable to Lotus. In that instance, neither provision would apply to the exempted vehicles. Furthermore, S16.1(a)(2) is the test procedure for conducting the rigid barrier test using 5th percentile adult female dummies. This test procedure contains no substantive requirements for which Lotus would need exemption.

[12] This total includes 690 vehicles that were assembled for Tesla Motors, Inc.

[13] See 71 FR 52851, 52859–62 (Docket No. NHTSA–2006–25324).

Lotus's financial hardship, exacerbated by the global recession; emergence of competition in its market segment; and the withdrawal of the Elise from the U.S. market. Furthermore, Lotus states the Evora's advanced air bag system will not comply with the higher speed 5th percentile female belted occupant (passenger side, fully forward seat position) barrier crash test without sourcing new components and conducting a complete revalidation of the system. Lotus previously believed that Evora sales would have been augmented by a new product using substantially the same platform, upon which compliance with the higher speed 5th percentile female belted requirements would have been developed. However, Lotus states that it stopped that development program due to poor Evora sales and repositioning of its business (moving from the entry level premium segment to the high performance, luxury sports car segment).

Lotus states that the Evora cannot meet the higher speed 5th percentile female belted test requirements because the Evora's air bag electronic control unit (ECU) does not have the capability to monitor whether the seat belt is buckled and its seat belt supplier does not have a suitable buckle switch. A buckle switch would allow the ECU to fire only the first stage of the air bag inflator for buckled occupants while firing two stages for unbuckled occupants, allowing the stiffness of the air bag to be different for belted and unbelted occupants. In order to incorporate a buckle switch in the Evora, Lotus states that a new air bag ECU would need to be sourced, calibrated, and validated; a new seat belt system would need to be sourced; and a complete series of development tests would need to be conducted.

Lotus expects that this development would cost over $4 million. Lotus states that it does not have sufficient financial resources to complete this development. Lotus's financial statements show that from the period between April 2007 and March 2010, the company experienced losses of approximately $40 million. With an exemption, Lotus predicts that it would make a profit of approximately $24 million between April 2010 and March 2014. Without an exemption, Lotus predicts its profit in the same period would be reduced to $13 million. However, Lotus contends that the financial impact would be greater because, without the exemption, Lotus would withdraw from the U.S. market and lose its market share, resulting in intangible losses such as loss of brand image, complication of reentry into the U.S. market in the future, and job losses.

Lotus states that it has considered alternative means of compliance, but these alternatives have been found to be incapable of providing a solution. Lotus states that it could not use a seat belt buckle sensor from its current seat belt supplier because the switch is inadequate and there is not a suitable ECU. Lotus states that it considered moving the passenger seat rearward, but concluded it would have to reevaluate compliance with the 50th percentile male tests in both the belted and unbelted conditions which would result in similar costs to those described above. Lotus also states that it considered fixing the passenger seat in the mid-position, but concluded that occupant ingress/egress would be adversely affected and it would prevent a 95th percentile occupant from fitting in the passenger seat.

Lotus states that, while an exemption is in effect, it will provide advice and warnings in its owners' manual identifying the risks associated with correct positioning of the seat belt and sitting too close to the air bag.

IV. Completeness and Comment Period

Upon receiving a petition, NHTSA conducts an initial review of the petition with respect to whether the petition is complete and whether the petitioner appears to be eligible to apply for the requested exemption. The agency has tentatively concluded that the petition from Lotus is complete and that Lotus is eligible to apply for a temporary exemption. The agency has not made any judgment on the merits of the application, and is placing a non-confidential copy of the petition in the docket.

The agency seeks comment from the public on the merits of Lotus's application for a temporary exemption from the higher speed 5th percentile adult female belted barrier crash test in S14.7 of FMVSS No. 208. We are providing a 30-day comment period. After considering public comments and other available information, we will publish a notice of final action on the application in the **Federal Register**.

Issued on: June 26, 2012.

Nathaniel Beuse,

Director, Office of Crash Avoidance Standards.

[FR Doc. 2012–16271 Filed 7–2–12; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2009–0017 (PD–34(R))]

Common Law Tort Claims Concerning Design and Marking of DOT Specification 39 Compressed Gas Cylinders

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

ACTION: Notice of administrative determination of preemption.

Applicable Federal Requirements: Federal hazardous material transportation law, 49 U.S.C. 5101 *et seq.,* and the Hazardous Materials Regulations (HMR), 49 CFR parts 171–180.

Modes Affected: All transportation modes.

SUMMARY: Federal hazardous material transportation law preempts a private cause of action which seeks to create or establish a State common law requirement applicable to the design, manufacture, or marking of a packaging, container, or packaging component that is represented, marked, certified, or sold as qualified for use in transporting hazardous material in commerce when that State common law requirement would not be substantively the same as the requirements in the HMR. Federal hazardous material transportation law does not preempt a tort claim that a packaging, container, or packaging component that is represented, marked, certified, or sold as qualified for use in transporting hazardous material failed to meet the design, manufacturing, or marking requirements in the HMR or that a person who offered a hazardous material for transportation in commerce or transported a hazardous material in commerce failed to comply with applicable requirements in the HMR.

FOR FURTHER INFORMATION CONTACT: Frazer C. Hilder, Office of Chief Counsel, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590–0001 (Tel. No. 202–366–4400).

SUPPLEMENTARY INFORMATION:

I. Application

AMTROL, Inc. has applied to PHMSA for an administrative determination whether the Federal hazardous

materials transportation law [1] preempts State common law tort claims that the manufacturer of a DOT specification 39 compressed gas cylinder should have designed the cylinder to resist rusting and/or marked or labeled the cylinder with warnings of the potential hazard of rusting over time.

A DOT specification 39 cylinder is a non-reusable (non-refillable) seamless, welded, or brazed cylinder made of steel or aluminum (having certain specified characteristics), with size limitations (depending on the service pressure of the cylinder) and requirements for manufacturing, minimum thickness of the cylinder wall, openings and attachments on the head of the cylinder, and pressure and flattening testing. 49 CFR 178.65. Subsection 178.65(i) provides that the cylinder must be marked with certain information [2] including the specification number, service and test pressure, date of manufacture and a registration number identifying the manufacturer, and:

—''NRC'' for ''non-reusable container,'' and
—the statement that ''Federal law forbids transportation if refilled'' plus a statement of the maximum civil and criminal penalties applicable at the date of manufacture.

On January 30, 2009, PHMSA published a notice in the **Federal Register** inviting interested persons to comment on AMTROL's application. 74 FR 5723. As discussed in this notice, a products liability lawsuit had been brought against AMTROL and other defendants by the survivors and next of kin of Kenneth Elder (the ''Elders'') who died on January 24, 2003, when a rusted DOT specification 39 cylinder ruptured after Mr. Elder placed the cylinder in 179 degree water.[3]

In response to AMTROL's application and the January 30, 2009 **Federal Register** notice, comments were submitted by AMTROL, the Elders, Thomas Wilson (a retired hazmat shipper who occasionally acts as a consultant), and the Gases and Welding Distributors Association, Inc. (GAWDA).[4]

II. Federal Preemption

A United States Court of Appeals has found that uniformity was the ''linchpin'' in the design of the Federal laws governing the transportation of hazardous materials. *Colorado Pub. Util. Comm'n* v. *Harmon,* 951 F.2d 1571, 1575 (10th Cir. 1991). Section 5125 of Title 49 U.S.C. contains express preemption provisions. As amended by Section 1711(b) of the Homeland Security Act of 2002 (Pub. L. 107–296, 116 Stat. 2320),[5] § 5125(a) provides that a requirement of a State, political subdivision of a State, or Indian tribe is preempted—unless the non-Federal requirement is authorized by another Federal law or DOT grants a waiver of preemption under § 5125(e)—if

(1) Complying with a requirement of the State, political subdivision, or tribe and a requirement of this chapter, a regulation prescribed under this chapter, or a hazardous materials transportation security regulation or directive issued by the Secretary of Homeland Security is not possible; or

(2) The requirement of the State, political subdivision, or tribe, as applied or enforced, is an obstacle to accomplishing and carrying out this chapter, a regulation prescribed under this chapter, or a hazardous materials transportation security regulation or directive issued by the Secretary of Homeland Security.[6]

Subsection (b)(1) of 49 U.S.C. 5125 further provides that a non-Federal requirement concerning any of the following subjects is preempted—unless authorized by another Federal law or DOT grants a waiver of preemption—when the non-Federal requirement is not ''substantively the same as'' a provision of Federal hazardous material transportation law, a regulation prescribed under that law, or a hazardous materials security regulation or directive issued by the Department of Homeland Security: [7]

(A) The designation, description, and classification of hazardous material.

(B) The packing, repacking, handling, labeling, marking, and placarding of hazardous material.

(C) The preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents.

(D) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material.

(E) The designing, manufacturing, fabricating, inspecting, marking, maintaining, reconditioning, repairing, or testing a package, container, or packaging component that is represented, marked, certified, or sold as qualified for use in transporting hazardous material.

The Supreme Court has found ''that common-law causes of action for negligence and strict liability do impose 'requirement[s]' '' that may be subject to preemption by Federal laws. *Riegel* v. *Medtronic,* 552 U.S. 312, 323, 128 S.Ct. 999, 1007 (2008). The Supreme Court has also specifically recognized the authority in 49 U.S.C. 5125 for DOT ''to decide whether a state or local statute that conflicts with the regulation of hazardous [materials] transportation is pre-empted.'' *Wyeth* v. *Levine,* 555 U.S. 555, 129 S.Ct. 1187, 1201 n.9 (2009).

Under 49 U.S.C. 5125(d)(1), any person (including a State, political subdivision of a State, or Indian tribe) directly affected by a requirement of a State, political subdivision or tribe may apply to the Secretary of Transportation for a determination whether the requirement is preempted. The Secretary of Transportation has delegated authority to PHMSA to make determinations of preemption, except for those concerning highway routing (which have been delegated to the Federal Motor Carrier Safety Administration). 49 CFR 1.53(b).

[1] The Federal hazardous material transportation law currently codified at 49 U.S.C. 5101 *et seq.* is often referred to by the acronym ''HMTA'' for the Hazardous Materials Transportation Act, Public Law 93–633, 88 Stat. 2156, enacted January 3, 1975. Prior to codification in 1994 (Pub. L. 103–272, 108 Stat. 745 (July 5, 1994)), the HMTA was set forth at 49 App. U.S.C.A. 1801 *et seq.*

[2] In this determination, the word ''marking'' is used to refer to the information required to be marked on a DOT specification 39 cylinder under 49 CFR 178.65(i)—to distinguish this marking from a hazard class warning label (*e.g.,* NONFLAMMABLE GAS) and a product sticker or label that may contain the proper shipping name and UN identification number required to be marked on the filled cylinder by a person who offers the filled cylinder for transportation in commerce. *See* 49 CFR 172.301 *et seq.* and 172.400 *et seq.*

[3] The Elders' claims against AMTROL are presently pending as a claim in bankruptcy in the U.S. Court of Appeals for the Third Circuit which has issued a stay pending PHMSA's determination. *In re Amtrol Holdings, Inc.* v. *Kenneth Elder,* No. 10–3273.

[4] GAWDA describes itself as ''a national trade association representing the interests of some 600 distributors of compressed and cryogenic gases and related supplies and equipment in the United States and Canada,'' some of which ''fill, store, handle and transport gases in DOT–39 compressed gas cylinders.''

[5] Section 1711 of the Homeland Security Act of 2002 added the words ''including security'' to the applicability provisions in 49 U.S.C. 5103(b)(1) and the preemption provisions in § 5125(a) and (b)(1). Otherwise, the 1994 codification of Title 49 and subsequent editorial revisions and technical corrections have not made any substantive changes to these provisions since amendment of the original HMTA in 1990. *See* Sec. 7122(a) of the Hazardous Materials Transportation Safety and Security Reauthorization Act of 2005, which is Title VII of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), Pub. L. 109–59, 119 Stat. 1891 (Aug. 10, 2005), and Public Law 110–244 § 302(b), 122 Stat. 1618 (June 6, 2008).

[6] These two paragraphs set forth the ''dual compliance'' and ''obstacle'' criteria which are based on U.S. Supreme Court decisions on preemption. *Hines* v. *Davidowitz,* 312 U.S. 52 (1941); *Florida Lime & Avocado Growers, Inc.* v. *Paul,* 373 U.S. 132 (1963); *Ray* v. *Atlantic Richfield, Inc.,* 435 U.S. 151 (1978).

[7] To be ''substantively the same,'' the non-Federal requirement must conform ''in every significant respect to the Federal requirement. Editorial and other similar *de minimis* changes are permitted.'' 49 CFR 107.202(d). Additional standards apply to preemption of non-Federal requirements on highway routes over which hazardous materials may or may not be transported and fees related to transporting hazardous material. *See* 49 U.S.C. 5125(c) and (f).

Section 5125(d)(1) requires notice of an application for a preemption determination to be published in the **Federal Register**. Following the receipt and consideration of written comments, PHMSA publishes its determination in the **Federal Register**. *See* 49 CFR 107.209(c).

Preemption determinations do not address issues of preemption arising under the Commerce Clause, the Fifth Amendment or other provisions of the Constitution, or statutes other than the Federal hazardous material transportation law unless it is necessary to do so in order to determine whether a requirement is authorized by another Federal law, or whether a fee is ''fair'' within the meaning of 49 U.S.C. 5125(f)(1). A State, local or Indian tribe requirement is not authorized by another Federal law merely because it is not preempted by another Federal statute. *Colorado Pub. Util. Comm'n* v. *Harmon,* above, 951 F.2d at 1581 n.10.

In making preemption determinations under 49 U.S.C. 5125(d), PHMSA is guided by the principles and policies set forth in Executive Order No. 13132, entitled ''Federalism'' (64 FR 43255 (Aug. 10, 1999)), and the President's May 20, 2009 memorandum on ''Preemption'' (74 FR 24693 (May 22, 2009)). Section 4(a) of that Executive Order authorizes preemption of State laws only when a statute contains an express preemption provision, there is other clear evidence Congress intended to preempt State law, or the exercise of State authority directly conflicts with the exercise of Federal authority. The President's May 20, 2009 memorandum sets forth the policy ''that preemption of State law by executive departments and agencies should be undertaken only with full consideration of the legitimate prerogatives of the States and with a sufficient legal basis for preemption.'' Section 5125 contains express preemption provisions, which PHMSA has implemented through its regulations and which PHMSA applies in making administrative preemption determinations.

III. Discussion

A. Summary of Comments

AMTROL asserts that the Elders' common law tort claims are preempted because they could create design, manufacturing, and marking and labeling requirements for DOT specification cylinders that are not substantively the same as the requirements in 49 CFR 178.65. In its original application, it stated that ''[a]pplication of the state court requirement would undercut'' the ''need for national uniformity'' in requirements for the packaging of hazardous materials, as discussed in PHMSA's determinations in Inconsistency Rulings Nos. 7–15, 49 FR 36632, 36633 (Nov. 22, 1984). AMTROL also stated that, ''as presented by the [Elders'] common law claims, the only issue has to do with requirements for labeling and design of a specification 39 cylinder'' which ''are not 'substantively the same' as the requirements'' in the HMR and, ''[c]onsequently, such 'requirements' are preempted.''

The Elders frame the issue in terms of whether the design, manufacturing, and marking requirements for a DOT specification 39 cylinder apply to a cylinder that was being ''used.'' The Elders acknowledge ''that the cylinder in question, as designed and manufactured, complies with all of the specifications set forth in 49 CFR 178.65 * * * and complies with all the labels and warnings required by the DOT specification.'' However, they assert that ''warnings should be utilized to protect the end user,'' because ''the manufacturer knew or should have known that the cylinders could rust.'' [8]

The Elders stated that the technician was not using the cylinder in a transportation mode; he was simply using the cylinder as an end-user on the job after its journey had ended.'' Accordingly, they assert that ''a State common law requirement that the products being used on the job be safe for their intended use does not interfere with the DOT regulation. The state common law does not seek to impose its requirement where the cylinder in question clearly, at the time of its manufacture and transportation, complied with the DOT specifications.'' [9]

Mr. Wilson stated that ''the common law tort claim appears to be about design and labeling of the compressed gas cylinder as it relates to consumer use—not as it relates to use of the cylinder in transporting hazardous materials in commerce.'' However, he also noted ''that end-users may re-transport hazmat during their daily routine,'' acknowledging implicitly that the HMR applied to Mr. Elder's transportation of the cylinder from his shop to his customer's location.

According to GAWDA, the critical inquiry is ''whether Congress intended to preempt certain specific types of claims,'' and an ''[a]nalysis of this question must begin, as the Supreme Court has stated, with determining Congressional intent'' (citing *Altria Group, Inc.* v. *Good,* 129 S.Ct. 398, 543 (2008)). It rejected the Elders' position that State requirements covering ''end use'' are not preempted by 49 U.S.C. 5125 and stated:

> Clearly, it is immaterial whether the cylinder in question was at its final destination or how long it had been there, if it was marked indicating it was a DOT–39 cylinder; it was by definition subject to DOT regulation. Therefore, any state requirements of additional manufacturing specifications or packaging warnings must affect the ''transportation'' of the cylinder and are, therefore, preempted by HMTA.

B. Analysis

Federal hazardous material transportation law explicitly provides that the HMR apply to the design, manufacture, and marking of packagings (such as cylinders) that are ''represented, marked, certified, or sold as qualified for use in transporting hazardous material in commerce.'' 49 U.S.C. 5103(b)(1)(A)(iii), (b)(1)(E). In its October 30, 2003 final rule, on the ''Applicability of the Hazardous Materials Regulations to Loading, Unloading, and Storage,'' PHMSA explained that ''[p]ackaging integrity is critical to safe transportation of hazardous materials, and

> uniformity of packaging requirements assures the safe and efficient movement of hazardous materials across state lines and international boundaries. Thus, consistent with the preemption provisions of Federal hazmat law, the Secretary's regulatory jurisdiction in this area must preempt state and local law.

68 FR 61906, 61908. PHMSA continued by explaining that ''because a packaging that is used for storage one day may be used for transportation the next, it is critical to transportation safety that packagings represented as meeting DOT or UN specifications in fact do so.'' *Id.* Accordingly, ''[i]f a packaging shows evidence that its effectiveness as a container may be substantially reduced or if the packaging has been subjected to conditions or operating practices that could reduce its effectiveness, it must be inspected and repaired, in accordance with applicable requirements, before it

[8] The Elders provided three samples of ''warnings utilized in the past by manufacturers [that] state: 'Overheating, pressurizing, or rusting can cause cylinder to burst, resulting in serious personal injury or death.' ''

[9] The Elders also cited and quoted from cases which they contend ''are applicable'' or ''nearly on all fours with the present case.'' However, some of these cases appear to have involved an injury from a hazardous material that was not packaged or handled in complete compliance with requirements in the HMR. In other cases, the hazardous material was a consumer item purchased for personal use and subject to regulations of the Consumer Product Safety Commission.

can be filled and offered for transportation. *Id.*[10]

In this final rule, PHMSA relocated to 49 CFR 171.2(g) and revised without making any substantive change to the wording of former § 171.2(c) (Oct. 1, 2003 ed.) to read:

> No person may represent, mark, certify, sell, or offer a packaging or container as meeting the requirements of this subchapter governing its use in the transportation of a hazardous material in commerce unless the packaging or container is manufactured, fabricated, marked, maintained, reconditioned, repaired, and retested in accordance with the applicable requirements of this subchapter * * * The requirements of this paragraph apply whether or not the packaging or container is used or to be used for the transportation of a hazardous material.

These provisions in the HMR and the ''substantively the same as'' preemption standard added to the law in 1990 carry out the finding of the House of Representatives Committee on Energy and Commerce that there is ''a compelling need for standardized requirements relating to certain areas of the transportation of hazardous materials. Conflicting Federal, State and local requirements pose potentially serious threats to the safe transportation of hazardous materials.'' H. Rept. 101–444, part 1, pp 33–34 (Apr. 3, 1990). In particular, ''[u]niform requirements for designing, manufacturing, and testing such containers and packages will enhance the safe transportation of hazardous materials by allowing for ease of identification, familiarity with characteristics of packages and containers and consistency in systems designed to handle such hazardous materials.'' *Id.* at 35.

It is not necessary to determine whether the DOT specification 39 cylinder was in ''transportation'' when it failed, because the HMR applied to AMTROL when it designed, manufactured, and marked the cylinder ''as qualified for use in transporting hazardous material in commerce.'' 49 U.S.C. 5103(b)(1)(A)(iii). The Elders' contention that the design, manufacture, and marking requirements in 49 CFR 178.65 do not ''cover [Mr. Elder's] use of the cylinder'' is beside the point, as is its position that the ''use'' to which the cylinder might be put is ''outside the purview'' of that section of the HMR. Rather, the ''substantively the same as'' preemption provision in 49 U.S.C. 5125(b)(1)(E) must govern the ''adequacy of the cylinder'' at all times that it is ''represented, marked, certified, or sold as qualified for use in transporting hazardous material in commerce,'' and not just the period in time ''when it was used to transport hazardous material,'' as the Elders contend.

The U.S. Court of Appeals for the Third Circuit reached the same conclusion in *Roth* v. *Norfalco LLC,* 651 F.3d 367, 379–80 (2011). In this case, the Court affirmed a summary judgment in favor of the manufacturer of a rail tank car from which sulfuric acid had sprayed when the tank car was being unloaded by an employee of the consignee of the shipment and stated:

> Here, the statute and its applicability could not be more clear. Roth seeks to impose a tank car design requirement. Section 5125(b)(1) expressly preempts any common law requirement ''about'' the design of a ''package, container, or packaging component * * * qualified for use in transporting hazardous materials in commerce.'' * * * It is irrelevant what Roth was doing at the precise moment of his injury * * * The tank car is, at all times, a container qualified for use in transporting hazardous materials. The proposed design requirement is expressly preempted.

It should be noted that the preemption provision in 49 U.S.C. 5125(b)(1)(E) would not insulate a person who improperly, and in violation of the HMR, offers or transports a hazardous material in a packaging ''that is represented, marked, certified, or sold as qualified for use in transporting hazardous material in commerce.'' Nor would there be preemption of a common law tort action for damages when the packaging does not, in fact, meet the applicable design and manufacturing specification in the HMR.[11]

Under the plain language of the Federal hazardous material transportation law, requirements in the HMR govern the design, manufacture, and marking of ''a package, container, or packaging component that is represented, marked, certified, or sold as qualified for use in transporting hazardous material in commerce.'' 49 U.S.C. 5103(b)(1)(A)(iii), 49 CFR 171.1(a). Any State requirement, including a State's common law, on the ''designing, manufacturing, [or] marking * * * a package, container, or packaging component that is represented, marked, certified, or sold as qualified for use in transporting hazardous material in commerce'' is preempted unless it is ''substantively the same as'' the requirements in the HMR. 49 U.S.C. 5125(b)(1)(E). The Elders have not pointed to, and PHMSA is not aware of, any other Federal law that would authorize the common law tort claims asserted by the Elders that the manufacturer of a DOT specification 39 compressed gas cylinder should have designed the cylinder (or any component thereof) in a different manner than—or marked or labeled the cylinder with any information beyond that required by—49 CFR 178.65.

IV. Ruling

Federal hazardous material transportation law preempts a private cause of action which seeks to create or establish a State common law requirement applicable to the design, manufacture, or marking of a packaging, container, or packaging component that is represented, marked, certified, or sold as qualified for use in transporting hazardous material in commerce when that State common law requirement would not be substantively the same as the requirements in the HMR. Federal hazardous material transportation law does not preempt tort claims that the packaging or packaging component failed to meet the design, manufacturing, or marking requirements in the HMR or that a person who offered a hazardous material for transportation in commerce or transported a hazardous material in commerce failed to comply with applicable requirements in the HMR.

V. Petition for Reconsideration/Judicial Review

In accordance with 49 CFR 107.211(a), any person aggrieved by this decision may file a petition for reconsideration within 20 days of publication of this decision in the **Federal Register**. A petition for judicial review of a final preemption determination must be filed in the United States Court of Appeals for the District of Columbia or in the Court of Appeals for the United States for the circuit in which the petitioner resides or has its principal place of business, within 60 days after the determination becomes final. 49 U.S.C. 5127(a).

This decision will become PHMSA's final decision 20 days after publication in the **Federal Register** if no petition for reconsideration is filed within that time. The filing of a petition for reconsideration is not a prerequisite to seeking judicial review of this decision under 49 U.S.C. 5127(a).

[10] *See, e.g.,* 49 CFR 173.301(a)(2): ''A cylinder that has a crack or leak, is bulged, has a defective valve or a leaking or defective pressure relief device, or bears evidence of physical abuse, fire or heat damage, or detrimental rusting or corrosion, may not be filled and offered for transportation.''

[11] Moreover, the Consumer Product Safety Commission (CPSC) has the authority to require ''that a consumer product be marked with or accompanied by clear and adequate warnings or instructions, or requirements respecting the form of warnings or instructions.'' 15 U.S.C. 2056(a).

If a petition for reconsideration is filed within 20 days of publication in the **Federal Register**, the action by PHMSA's Chief Counsel on the petition for reconsideration will be PHMSA's final action. 49 CFR 107.211(d).

Issued in Washington, DC, on June 26, 2012.

Vanessa L. Allen Sutherland,

Chief Counsel.

[FR Doc. 2012–16240 Filed 7–2–12; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. MCF 21047][1]

Frank Sherman, FSCS Corporation, TMS West Coast, Inc.,

Evergreen Trails, Inc. and Cabana Coaches, LLC—Acquisition and Consolidation of Assets—America Charters, LTD., American Coach Lines of Jacksonville, Inc., American Coach Lines of Miami, Inc., American Coach Lines of Orlando, Inc., CUSA ASL, LLC, CUSA BCCAE, LLC, CUSA CC, LLC, CUSA FL, LLC, CUSA GCBS, LLC, CUSA GCT, LLC, CUSA K–TCS, LLC, and Midnight Sun Tours, Inc.

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of Finance Application.

SUMMARY: On June 4, 2012, Frank Sherman, an individual who controls motor passenger carriers, together with FSCS Corporation, a noncarrier holding company; TMS West Coast, Inc., a noncarrier holding company; Evergreen Trails, Inc. d/b/a Horizon Coach Lines (Evergreen), an interstate motor passenger carrier; and Cabana Coaches, LLC (Cabana), an interstate motor passenger carrier (collectively, Applicants) filed an application for approval under 49 U.S.C. 14303 to acquire the assets of 12 separate interstate motor passenger common carrier subsidiaries of noncarrier Coach America Holdings, Inc. (Coach America)—American Charters, Ltd. (Charters); American Coach Lines of Jacksonville, Inc. (Coach-Jacksonville); American Coach Lines of Miami, Inc. (Coach-Miami); American Coach Lines of Orlando, Inc. (Coach-Orlando); CUSA ASL, LLC; CUSA BCCAE, LLC; CUSA CC, LLC; CUSA FL, LLC; CUSA GCBS, LLC; CUSA GCT, LLC; CUSA K–TCS, LLC; and Midnight Sun Tours, Inc. (Midnight Sun) (collectively, Coach America Subsidiaries)—and to consolidate certain of those assets into Evergreen and others into Cabana.

Specifically, the transaction contemplates that: (1) the assets of Charters; Coach-Jacksonville; Coach-Orlando; CUSA ASL, LLC; CUSA BCCAE, LLC; CUSA CC, LLC; CUSA FL, LLC; CUSA GCBS, LLC; CUSA GCT, LLC; and CUSA K–TCS, LLC, would be purchased by either FSCS or Evergreen to be operated under the Horizon Coach Lines name; and (2) the assets of Coach-Miami and Midnight Sun would be purchased by either FSCS or Cabana and consolidated into Cabana. Cabana would also adopt the d/b/a name ''Horizon Coach Lines,'' and the assets consolidated into Cabana would be operated under that name. Under an asset purchase agreement that was entered into on May 18, 2012, *see infra,* another company controlled by Sherman, Transportation Management Services, Inc. (TMS), obtained the right to purchase the Coach America Subsidiaries. TMS is to assign its right to purchase to either FSCS or to Evergreen and Cabana. If TMS assigns its right to purchase to Evergreen and Cabana, Cabana will receive the right to purchase the assets of Coach-Miami and Midnight Sun and Evergreen will receive the right to purchase the assets of all of the other Coach America Subsidiaries identified above.

On June 6, 2012, Michael Yusim, an individual, filed a letter in opposition to the proposed transaction, asserting that the public interest would not be served by allowing the transaction to proceed until two cases before the Secretary of Labor (Secretary) are completed. On June 19, 2012, the Ventura County Transportation Commission (VCTC), a California public agency that operates a regional bus system with connections to municipal and local transit operators, filed a request for delay of the proposed acquisition of assets or for conditions. Copies of this notice will be served on Mr. Yusim and VCTC. Persons wishing to oppose the application must follow the rules set forth at 49 CFR 1182.5 and 1182.8.

DATES: Comments must be filed by August 17, 2012. Applicants may file a reply by September 4, 2012.

ADDRESSES: Send an original and 10 copies of any comments referring to Docket No. MCF 21047 to: Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, send one copy of comments to Applicants' representative: David H. Coburn, Steptoe & Johnson LLP, 1330 Connecticut Avenue NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Marc Lerner, (202) 245–0390. [Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: The Coach America Subsidiaries are currently involved in proceedings instituted under Chapter 11 of the Bankruptcy Code, having filed a voluntary petition for relief with the U.S. Bankruptcy Court for the District of Delaware on January 3, 2012. On January 13, 2012, the Coach America Subsidiaries also filed a motion to sell substantially all of their assets and effectively to liquidate. According to Applicants, the proposed acquisition is evidenced by an Asset Purchase Agreement that was entered into by the parties on May 18, 2012, and was approved by the bankruptcy court at a hearing on May 22, 2012.

On June 6, 2012, Mr. Yusim filed a letter in opposition to both the request for interim approval and the application for permanent authority. Applicants filed a reply to Mr. Yusim's letter on June 11, 2012, and Mr. Yusim responded on June 12, 2012. The basis for Mr. Yusim's opposition relates to two cases alleging that Midnight Sun discriminated against him and another driver, both employed by Midnight Sun, for having accurately reported their hours of service. According to Mr. Yusim, the two cases are pending before the Secretary, but have been stayed by the bankruptcy court. Mr. Yusim requests that the Board disallow the sale of any subsidiaries of Coach America until the Secretary is allowed to hear the two cases.

On June 19, 2012, the Ventura County Transportation Commission (VCTC), a California public agency that operates a regional bus, filed a pleading stating that CUSA CC, LLC, is in violation of its operating agreement with VCTC because it has given insufficient notice of its intent to terminate the services it provides for VCTC and its riders, and that the communications VCTC has had with CUSA CC, LLC and TMS have led only to a possibility that these services could continue through July 2012. VCTC requests either that the proposed acquisition of assets be delayed or that conditions be placed on the transaction to assure both adequate time to find a new contractor to provide these ''essential'' services and a surviving entity to charge with breach of contract.

We have, by separate decision, granted Applicants interim approval to acquire management and operational control of the assets under 49 U.S.C. 14303(i) and the Board's regulations at

[1] A request for interim approval under 49 U.S.C. 14303(i) and 49 CFR 1182.7 was included in this filing (Docket No. MCF 21047 TA). In a decision served on June 29, 2012, interim approval was granted, effective on the service date of the decision.

49 CFR 1182.7(b). Those provisions permit us to grant interim approval to a transaction if it appears that a failure to do so may result in destruction of, or injury to, the involved properties or substantially interfere with their future usefulness in providing adequate and continuous service to the public. *See supra* note 1. Because we have received timely comments in opposition to the application, however, we will not grant tentative authority under 49 CFR 1182.4(b). *See* 49 CFR1182.6(a). Instead, we will institute a proceeding to address this matter as well as to determine the merits of the application pursuant to 49 U.S.C. 14303. Comments and responses are to be submitted as ordered below. *See* 49 CFR 1182.5 & 1182.6.

Board decisions and notices are available on our Web site at ''*www.stb.dot.gov.*''

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Comments must be filed by August 17, 2012. Applicants may file a reply to any comments by September 4, 2012.

2. This notice will be effective on its date of service.

3. A copy of this decision will be served on: (1) The U.S. Department of Transportation, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave. SE., Washington, DC 20590; (2) the U.S. Department of Justice, Antitrust Division, 950 Pennsylvania Ave. NW., Washington, DC 20530; (3) the U.S. Department of Transportation, Office of the General Counsel, 1200 New Jersey Ave. SE., Washington, DC 20590; (4) the Federal Trade Commission, Bureau of Competition, Premerger Notification Office, 600 Pennsylvania Ave. NW., Washington, DC 20580; (5) Michael Yusim, 7499 Eagle Point Dr., Delray Beach, FL 33446; and (6) Mitchel B. Kahn, 300 Esplanade Dr., Suite 1170, Oxnard, CA 93036.

Decided: June 28, 2012.

By the Board, Chairman Elliott, Vice Chairman Mulvey, and Commissioner Begeman.

Derrick A. Gardner,

Clearance Clerk.

[FR Doc. 2012–16277 Filed 7–2–12; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. EP 699]

Assessment of Mediation and Arbitration Procedures

AGENCY: Surface Transportation Board.

ACTION: Notice of public hearing.

SUMMARY: In a decision served on March 28, 2012, the Surface Transportation Board (Board) proposed regulations intended to increase the use of mediation and arbitration in lieu of formal adjudication to resolve disputes before the Board. Interested parties were asked to file written comments on these proposed regulations by May 17, 2012, and replies by June 18, 2012. The Board will hold a public hearing on August 2, 2012, to explore the issues raised in these comments and replies.

DATES: The hearing will begin at 9:30 a.m., on Thursday, August 2, 2012, in the Board's hearing room at the Board's headquarters located at 395 E Street SW., Washington, DC. The hearing will be open for public observation. Anyone wishing to participate at the hearing shall file with the Board a notice of intent to participate (identifying the party, the proposed speaker, and the time requested), and a summary of the intended testimony (not to exceed three pages), no later than July 19, 2012.[1] All witnesses are encouraged to use their hearing time to call attention to the points they believe are particularly important. Witnesses should present a short oral statement of their comments and be prepared to answer questions from the Board.

ADDRESSES: All filings may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions at the ''E–FILING'' link on the Board's ''*www.stb.dot.gov*'' Web site. Any person submitting a filing in the traditional paper format should send an original and 10 copies of the filing to: Surface Transportation Board, Attn: Docket No. EP 699, 395 E Street SW., Washington, DC 20423–0001.

Copies of written submissions will be posted to the Board's Web site and will be available for viewing and self-copying in the Board's public docket room, Suite 131. Copies of the submissions will also be available (for a fee) by contacting the Board's Chief Records Officer at (202) 245–0238 or 395 E Street SW., Washington, DC 20423–0001.

FOR FURTHER INFORMATION, CONTACT: Amy Ziehm at (202) 245–0391. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at (800) 877–8339.

SUPPLEMENTARY INFORMATION: The Board favors the resolution of disputes through the use of mediation and arbitration procedures, in lieu of formal Board proceedings, wherever possible.[2] To that end, the Board has existing rules that encourage parties to agree voluntarily to mediate or arbitrate certain matters subject to its jurisdiction. The Board's mediation rules are set forth at 49 CFR 1109.1, 1109.3, 1109.4, 1111.2, 1111.9, and 1111.10. Its arbitration rules are set forth at 49 CFR 1108, 1109.1, 1109.2, 1109.3, and 1115.8. In a decision served on August 20, 2010,[3] and published in the **Federal Register** on August 24, 2010,[4] the Board sought input regarding measures it might implement to encourage or require greater use of mediation, and to encourage greater voluntary use of arbitration, including making changes to the Board's existing rules and establishing new rules. The Board also sought input regarding possible changes to its rules to permit the use of Board-facilitated mediation procedures without the filing of a formal complaint.

The Board received input and issued a decision proposing new regulations on March 28, 2012.[5] These proposed regulations would require parties to participate in mediation in certain types of cases and would modify the agency's existing regulations that permit parties to engage voluntarily in mediation. The Board also proposed an arbitration program under which carriers and shippers would agree voluntarily to arbitrate certain types of disputes that come before the Board. Class I and Class

[1] Notices of intent to participate and the summaries of testimony are not required to be served on the Parties of Record in this proceeding. The notices and summaries will be posted to the Board's Web site when they are filed.

[2] Mediation is a process in which parties attempt to negotiate an agreement that resolves some or all of the issues in dispute, with the assistance of a trained, neutral, third-party mediator. Arbitration, by comparison, is an informal evidentiary process conducted by a trained, neutral, third-party arbitrator with expertise in the subject matter of the dispute. By agreeing to participate in arbitration, the parties agree to be bound (with limited appeal rights) by the arbitral decision.

[3] *Assessment of Mediation and Arbitration Procedures,* EP 699 (STB served Aug. 20, 2010).

[4] *Assessment of Mediation and Arbitration Procedures,* 75 FR 52,054.

[5] *Assessment of Mediation and Arbitration Procedures,* EP 699 (STB served Mar. 28, 2012). *Assessment of Mediation and Arbitration Procedures,* 77 FR 19,591.

II rail carriers would be deemed to agree voluntarily to participate in the proposed arbitration program unless they ''opt out.'' Finally, the Board proposed modifications to clarify and to simplify its existing rules governing the use of arbitration in other disputes.

The Board sought comments on the proposed regulations by May 17, 2012, and replies by June 18, 2012. It received filings from the U.S. Department of Agriculture, railroad and shipper interests, and other interested parties. The Board has reviewed these submissions, and it will hold a public hearing to gather further information on these comments and replies and to question the parties about their positions.

BOARD RELEASES AND LIVE VIDEO STREAMING AVAILABLE VIA THE INTERNET: Decisions and notices of the Board, including this notice, are available on the Board's Web site at *www.stb.dot.gov.* This hearing will be available on the Board's Web site by live video streaming. To access the hearing, click on the ''Live Video'' link under ''Information Center'' at the left side of the home page beginning at 9:00 a.m. on August 2, 2012.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. A public hearing in this proceeding will be held on Thursday, August 2, 2012, at 9:30 a.m., in the Surface Transportation Board Hearing Room, at 395 E Street SW., Washington, DC, as described above.

2. By July 19, 2012, anyone wishing to participate at the hearing shall file with the Board a notice of intent to participate (identifying the party, the proposed speaker, and the time requested), and a summary of the intended testimony (not to exceed three pages).

3. This decision is effective on the date of service.

Decided: June 28, 2012.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Derrick A. Gardner,

Clearance Clerk.

[FR Doc. 2012–16242 Filed 7–2–12; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Identifying Information Associated With Persons Whose Property and Interests in Property Are Blocked Pursuant to the Foreign Narcotics Kingpin Designation Act

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (''OFAC'') is publishing additional indentifying information associated with the three individuals identified by the President of the United States on June 1, 2012, whose property and interests in property have been blocked pursuant to the Foreign Narcotics Kingpin Designation Act (''Kingpin Act'') (21 U.S.C. 1901–1908, 8 U.S.C. 1182).

DATES: The President of the United States identified the three individuals in this notice pursuant to section 21 U.S.C. 1903(b)(1) of the Kingpin Act on June 1, 2012.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Sanctions Compliance & Evaluation, Office of Foreign Assets Control, U.S. Department of the Treasury, Washington, DC 20220, Tel: (202) 622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available on OFAC's Web site at *http://www.treasury.gov/ofac* or via facsimile through a 24-hour fax-on-demand service at (202) 622–0077.

Background

The Kingpin Act became law on December 3, 1999. The Kingpin Act establishes a program targeting the activities of significant foreign narcotics traffickers and their organizations on a worldwide basis. It provides a statutory framework for the imposition of sanctions against significant foreign narcotics traffickers and their organizations on a worldwide basis, with the objective of denying their businesses and agents access to the U.S. financial system and the benefits of trade and transactions involving U.S. companies and individuals.

The Kingpin Act blocks all property and interests in property, subject to U.S. jurisdiction, owned or controlled by significant foreign narcotics traffickers as identified by the President. In addition, the Secretary of the Treasury, in consultation with the Attorney General, the Director of the Central Intelligence Agency, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, the Secretary of Defense, the Secretary of State, and the Secretary of Homeland Security may designate and block the property and interests in property, subject to U.S. jurisdiction, of persons who are found to be: (1) Materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of a person designated pursuant to the Kingpin Act; (2) owned, controlled, or directed by, or acting for or on behalf of, a person designated pursuant to the Kingpin Act; or (3) playing a significant role in international narcotics trafficking.

OFAC is publishing additional indentifying information associated with the following three individuals the President of the United States identified on June 1, 2012, whose property and interests in property are blocked pursuant to section 21 U.S.C. 1903(b)(1) of the Kingpin Act:

1. KELMENDI, Naser (a.k.a. KELJMENDI, Naser Meto), Edhema Eke Dzubura 20, Ilidza, Bosnia and Herzegovina; DOB 15 Feb 1957; POB Pec, Kosovo; National ID No. 1502957172694 (Bosnia and Herzegovina) (individual) [SDNTK]

2. SOTO GASTELUM, Jose Antonio, DOB 24 Mar 1967; POB Sinaloa, Mexico; citizen Mexico; nationality Mexico; Passport TJT000291379 (Mexico) (individual) [SDNTK]

3. WAZIR SHAH, Sayid; DOB 10 Nov 1964; POB Herat, Afghanistan; citizen Afghanistan; alt. citizen Germany (individual) [SDNTK]

Dated: June 27, 2012.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2012–16272 Filed 7–2–12; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designations, Foreign Narcotics Kingpin Designation Act

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (''OFAC'') is publishing the names of four individuals and three

entities whose property and interests in property have been blocked pursuant to the Foreign Narcotics Kingpin Designation Act (''Kingpin Act'') (21 U.S.C. 1901–1908, 8 U.S.C. 1182). OFAC is also publishing additional information for an individual who was previously designated pursuant to the Kingpin Act (21 U.S.C. 1901–1908, 8 U.S.C. 1182).

DATES: The designation by the Director of OFAC of the four individuals and three entities identified in this notice and the additional identifying information for one individual pursuant to section 805(b) of the Kingpin Act is effective on June 27, 2012.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Sanctions Compliance & Evaluation, Office of Foreign Assets Control, U.S. Department of the Treasury, Washington, DC 20220, Tel: (202) 622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available on OFAC's Web site at *http://www.treasury.gov/ofac* or via facsimile through a 24-hour fax-on-demand service at (202) 622–0077.

Background

The Kingpin Act became law on December 3, 1999. The Kingpin Act establishes a program targeting the activities of significant foreign narcotics traffickers and their organizations on a worldwide basis. It provides a statutory framework for the imposition of sanctions against significant foreign narcotics traffickers and their organizations on a worldwide basis, with the objective of denying their businesses and agents access to the U.S. financial system and the benefits of trade and transactions involving U.S. companies and individuals.

The Kingpin Act blocks all property and interests in property, subject to U.S. jurisdiction, owned or controlled by significant foreign narcotics traffickers as identified by the President. In addition, the Secretary of the Treasury, in consultation with the Attorney General, the Director of the Central Intelligence Agency, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, the Secretary of Defense, the Secretary of State, and the Secretary of Homeland Security may designate and block the property and interests in property, subject to U.S. jurisdiction, of persons who are found to be: (1) Materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of a person designated pursuant to the Kingpin Act; (2) owned, controlled, or directed by, or acting for or on behalf of, a person designated pursuant to the Kingpin Act; or (3) playing a significant role in international narcotics trafficking.

On June 27, 2012, the Director of OFAC designated the following four individuals and three entities whose property and interests in property are blocked pursuant to section 805(b) of the Kingpin Act.

Individuals

1. CHIBLI, Ibrahim (a.k.a. SHIBLI SHIBLI, Ibrahim); DOB 10 Oct 1965; POB Sour, Lebanon; nationality Lebanon (individual) [SDNTK].
2. HARB, Abbas Hussein (a.k.a. HARB, Abass Hussein), Ave Pedro Melean, cruce con Calle No. 73, Local No. 22, Sector Santa Rosa, Valencia, Venezuela; Calle 10A No.12–21, Maicao, Colombia; Carrera 70 No. 76–50 BG 3, Barranquilla, Colombia; Calle 10 No 11–63, Maicao, Colombia; DOB 11 Nov 1979; POB Lebanon; Passport 1368212 (Venezuela); NIT # 6390001813 (Colombia); National ID No. 21495203 (Venezuela); alt. National ID No. 22465548 (Venezuela); National Foreign ID Number 264521 (Colombia); Matricula Mercantil No 398329 (Colombia); alt. Matricula Mercantil No 398330 (Colombia); alt. Matricula Mercantil No 076592 (Colombia); alt. Matricula Mercantil No 041789 (Colombia) (individual) [SDNTK] Linked To: IMPORTADORA SILVANIA; Linked To: IMPORTADORA SILVANIA, C.A.
3. SALEH, Kassem Mohamad (a.k.a. SALEH, Qasim), Calle 10A # 11A–02, Maicao, Colombia; Ave Pedro Melean, cruce con Calle No. 73, Local No. 22, Sector Santa Rosa, Valencia, Venezuela; DOB 10 Feb 1980; nationality Lebanon; Passport 1243712 (Lebanon); NIT # 6390003192 (Colombia); National Foreign ID Number 264619 (Colombia); alt. National Foreign ID Number 22075502 (Venezuela); Matricula Mercantil No 0081931 (individual) [SDNTK] Linked To: IMPORTADORA SILVANIA, C.A.; Linked To: BODEGA MICHIGAN.
4. HARB, Ali Houssein (a.k.a. HARB, Ali Hussein), Calle 10A No. 11–63, Maicao, La Guajira, Colombia; Calle 13 No. 10–34 Centro, Maicao, La Guajira, Colombia; DOB 11 Aug 1976; alt. DOB 19 Aug 1976; nationality Lebanon; National ID No. 26405022 (Venezuela); National Foreign ID Number 254291 (Colombia) (individual) [SDNTK].

Entities

5. BODEGA MICHIGAN, Calle 10A 11A–02, Maicao, Colombia; Matricula Mercantil No 0081931 (Colombia) [SDNTK].
6. IMPORTADORA SILVANIA, Carerra 70 No. 76–50 BG 3, Barranquilla, Colombia; Calle 10A No.12–21, Maicao, Colombia; Matricula Mercantil No 398330 (Colombia) [SDNTK].
7. IMPORTADORA SILVANIA, C.A., Ave Pedro Melean, cruce con Calle 73, Local No. 22, Sector Santa Rosa, Valencia, Carabobo, Venezuela; Tax ID No. RIF J–31069374–9 (Venezuela) [SDNTK].

On June 27, 2012, the Director of OFAC made additions to the identifying information for the following individual who was previously designated pursuant to the Kingpin Act:

SALEH, Ali Mohamad, c/o ALMACEN BATUL; c/o COMERCIAL ESTILO Y MODA; DOB 1 Jan 1974; Cedula No. 1124006380 (Colombia) (individual) [SDNTK].

The listing appears as follows:

SALEH, Ali Mohamad (a.k.a. SALAH, Ali Mohammad; a.k.a. SALEH, Ali Mohamed; a.k.a. SALEH, Ali Mohammad; a.k.a. SALIH, Ali Abd-Al-Amir Muhammad; a.k.a. SALIH, Ali Muhammad; a.k.a. SALIH, Ali Muhammad Abd-Al-Amir); DOB 01 Jan 1974; POB Adchit, Lebanon; Cedula No. 1124006380 (Colombia); Passport AJ911608 (Colombia); alt. Passport 2071362 (Lebanon); alt. Passport 1183967 (Lebanon) (individual) [SDNTK] [SDGT] Linked To: ALMACEN BATUL; Linked To: COMERCIAL ESTILO Y MODA.

Dated: June 27, 2012.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2012–16204 Filed 7–2–12; 8:45 am]

BILLING CODE 4810–AL–P

FEDERAL REGISTER

Vol. 77 Tuesday,

No. 128 July 3, 2012

Part II

Department of Agriculture

Forest Service

36 CFR Part 294

Special Areas; Roadless Area Conservation; Applicability to the National Forests in Colorado; Final Rule

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 294

RIN 0596–AC74

Special Areas; Roadless Area Conservation; Applicability to the National Forests in Colorado

AGENCY: Forest Service, USDA.

ACTION: Final rule and record of decision.

SUMMARY: The U.S. Department of Agriculture (USDA or Department), is adopting a State-specific final rule to provide management direction for conserving and managing approximately 4.2 million acres of Colorado Roadless Areas (CRAs) on National Forest System (NFS) lands. The final Colorado Roadless Rule is a rule that addresses current issues and concerns specific to Colorado. The State of Colorado and Forest Service, working in partnership, have found a balance between conserving roadless area characteristics for future generations and allowing management activities within CRAs that are important to the citizens and economy of the State of Colorado.

DATES: This rule is effective July 3, 2012.

FOR FURTHER INFORMATION CONTACT: Colorado Roadless Rule Team Leader Ken Tu at (303) 275–5156. Individuals using telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m. Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: This preamble states the basis and purpose of the rule, which includes responses to comments received on the proposed rule, and serves as the record of decision for this rulemaking. The preamble is organized into the following sections:

- Executive Summary
- Background
- Purpose and Need
- Decision
- Decision Rationale
- Public Involvement
- Tribal Involvement
- Alternatives Considered
- Environmentally Preferable Alternative
- Roadless Area Inventories
- Comments on the Proposed Rule and Changes Made in Response
- Regulatory Certifications

Executive Summary

The United States Forest Service manages approximately 14,520,000 acres of public lands in Colorado, which are distributed among eight national forests and two national grasslands. These national forests and grasslands are characterized by a diverse array of landscapes, ecosystems, natural resources, and land use activities.

In January 2001, the Roadless Area Conservation Rule (2001 Roadless Rule) was adopted into regulation. The 2001 Roadless Rule has been the subject of litigation for more than a decade, and is now currently in effect. Uncertainty about the future of the 2001 Roadless Rule, along with state-specific concerns, was a key factor that influenced Colorado to initiate a petition to manage roadless areas in Colorado in 2005.

The Department, the Forest Service, and the State of Colorado agree that a need exists to provide management direction for roadless areas in Colorado. In its petition to the Secretary of Agriculture, the State of Colorado indicated a need to develop regulations for the management of Colorado's roadless areas for the following reasons:

- Roadless areas are important because they are, among other things, sources of drinking water, important fish and wildlife habitat, semi-primitive or primitive recreation areas, including motorized and non-motorized recreation opportunities, and naturally appearing landscapes. A need exists to provide for the conservation and management of roadless area characteristics.
- The Department, the Forest Service, and the State of Colorado recognize that timber cutting, sale, or removal and road construction/reconstruction have the greatest likelihood of altering and fragmenting landscapes, resulting in immediate, long-term loss of roadless area characteristics. Therefore, there is a need to generally prohibit these activities in roadless areas. Some have argued that linear construction zones (LCZs) also need to be restricted.
- A need exists to accommodate state-specific situations and concerns in Colorado's roadless areas. These include the following:
  - Reducing the risk of wildfire to communities and municipal water supply systems
  - Facilitating exploration and development of coal resources in the North Fork coal mining area
  - Permitting construction and maintenance of water conveyance structures
  - Restricting LCZs, while permitting access to current and future electrical power lines
  - Accommodating existing permitted or allocated ski areas
- There is a need to ensure that Colorado Roadless Areas (CRAs) are accurately mapped.

The major provisions of the proposed rule would establish a system of CRAs with management direction to conserve roadless area characteristics. These areas would replace the roadless areas identified in the 2001 Roadless Rule for national forests in Colorado. The proposed rule conserves roadless area characteristics by prohibiting tree cutting, sale, or removal; road construction and reconstruction; and LCZs, with some limited exceptions. In addition, the rule establishes a system of upper tier acres within CRAs where additional restrictions apply, further limiting exceptions to the prohibitions.

The proposed CRAs encompass approximately 4.19 million acres of NFS land in Colorado, distributed among 363 separate roadless areas. The Colorado Roadless Rule provides for future adjustments to be made to CRA boundaries, subject to a public review and comment period, and applicable NEPA or other requirements. In addition, the rule provides for administrative corrections (defined as adjustments to remedy clerical and mapping errors) to upper tier boundaries, subject to a public review and comment period.

The rule adjusted roadless area boundaries from the 2001 inventory in the following ways:

- Correcting mapping errors that primarily resulted from improvements in inventory data and mapping technology.
- Excluding private land.
- Excluding land substantially altered by road construction and timber harvest activities.
- Excluding ski areas under permit or lands allocated in forest plans to ski area development.
- Excluding Congressionally designated lands, such as wilderness and other designations, that take legal precedence over roadless area regulations.
- Including unroaded areas outside IRAs that contain roadless area characteristics.

Official CRA and upper tier locations are contained in a set of maps at the Forest Service national headquarters. The Forest Service national headquarters office would maintain the official map of CRAs, including records of adjustments to such maps, pursuant to the final proposed rule. These maps will be available to the public.

The rule is expected to have a beneficial economic impact of about

$65,000,000 per year, which is not considered to be economically significant under Executive Order (E.O.) 12866, Regulatory Planning and Review. Even though this rule is not considered economically significant, it is considered a significant regulatory action under E.O. 12866 and E.O. 13563.

Background

On June 8, 2005, then-Governor Bill Owens signed Colorado Senate Bill 05–243 which directed the formation of a 13-person bipartisan task force to make recommendations to the Governor on the appropriate management of CRAs on National Forest Systems in Colorado. The Colorado law also identified the USDA 2001 Roadless Area Conservation Rule (2001 Roadless Rule) as the starting point for the task force. On July 14, 2005, the State of Colorado announced it would submit a petition requesting specific regulatory protections for the inventoried roadless areas within the State.

Colorado's petition (2006 Petition) was submitted by then-Governor Owens on November 13, 2006, to the Secretary of Agriculture for consideration under the Administrative Procedure Act. On April 11, 2007, then-Governor Ritter resubmitted the 2006 petition with additions (2007 Petition). After reviewing the recommendation from the Roadless Area Conservation National Advisory Committee (RACNAC), the Secretary of Agriculture accepted the 2007 Petition on August 24, 2007, and directed the Forest Service to initiate rulemaking based on the petition.

A notice of intent (NOI) to prepare an environmental impact statement (EIS) was published in the **Federal Register** on December 26, 2007, (72 FR 72982). The State of Colorado was granted cooperating agency status in a memorandum of understanding dated January 8, 2008. On July 25, 2008, the Forest Service published the 2008 proposed rule to establish State-specific management direction to provide, within the context of multiple use, lasting protection for roadless areas on NFS land in Colorado (73 FR 43544). A notice of availability for the draft EIS was published on August 1, 2008, (73 FR 44991). The availability of the regulatory risk assessment for the 2008 proposed rule was published on September 18, 2008, (73 FR 54125).

Based on the comments on the 2008 draft EIS and other public involvement efforts, the State requested the USDA postpone further rulemaking efforts until the State considered its 2007 Petition. On August 3, 2009, the State of Colorado sought additional public comment. The State considered the public comments and submitted a revised petition to the Secretary on April 6, 2010 (2010 Petition).

On April 15, 2011, the Forest Service published a revised proposed rule (76 FR 21272) to provide State-specific direction for the protection of roadless areas on NFS lands in Colorado. A notice of availability for the revised draft EIS (RDEIS) was published on April 29, 2011, (76 FR 24021).

Since the promulgation of the 2001 Roadless Rule, it has been in litigation. The ongoing uncertainty regarding management of roadless areas was a key factor that influenced Governor Bill Owens to initiate a State-specific petition to manage Colorado roadless areas. On October 21, 2011, the U.S. Tenth Circuit Court of Appeals reversed the Wyoming District Court's decision to set aside the 2001 Roadless Rule and remanded the case to the District Court to vacate the permanent injunction. On February 24, 2012, the Tenth Circuit issued a mandate effectuating the October 21, 2011 opinion and requiring the injunction of the 2001 Roadless Rule to be vacated. As of the printing of this final rule, the 2001 Roadless Rule is in effect nationwide, except in Idaho, which has its own State-specific roadless rule.

Purpose and Need

The Department, Forest Service, and the State of Colorado agree there is a need to establish management direction for the conservation of roadless area values and characteristics in Colorado. In addition, there is a need to ensure that CRAs are accurately mapped. In its petition to the Secretary of Agriculture, the State of Colorado indicated a need to develop State-specific regulations for the management of Colorado's roadless areas.

Roadless areas are, among other things, sources of drinking water, important fish and wildlife habitat, semi-primitive or primitive recreation areas, including motorized and nonmotorized recreation opportunities, and natural-appearing landscapes. There is a need to provide for the conservation and management of roadless area characteristics.

The Department believes tree cutting, sale or removal, and road construction/reconstruction have the greatest likelihood of altering and fragmenting landscapes, resulting in immediate, long-term loss of roadless area values and characteristics, and there is a need generally to prohibit these activities in roadless areas. Some have argued that linear construction zones (LCZs) also need to be restricted in roadless areas.

The State has indicated flexibility is needed to accommodate State-specific situations and concerns in Colorado's roadless areas. These include: (1) Reducing the risk of wildfire to at-risk communities and municipal water supply systems; (2) facilitating exploration and development of coal resources in the North Fork coal mining area on the Grand Mesa, Uncompahgre, and Gunnison National Forests; (3) permitting the construction and maintenance of water conveyance structures; (4) restricting linear construction zones, while permitting access to current and future electrical power lines and telecommunication lines; and (5) accommodating existing permitted or allocated ski areas.

Decision

The Department hereby promulgates a regulation establishing CRAs and providing for management of CRAs as described in Alternative 2 of the ''Rulemaking for Colorado Roadless Areas Final Environmental Impact Statement,'' USDA Forest Service, 2012, and the supporting record. This decision is not subject to Forest Service administrative appeal regulations.

Decision Rationale

Governor Ritter stated in his April 11, 2007 letter to Undersecretary Mark Rey that, ''Colorado's roadless areas are a treasure to be enjoyed by the citizens of Colorado and the visitors who come here to recreate and enjoy the natural beauty of our National Forests. Roadless areas provide critical wildlife habitat, clean drinking water, recreation and unmatched scenery. Roadless areas belong to all Americans and are a resource to protect and pass on to future generations.'' The final rule will provide long-term management of CRAs to ensure roadless area values are passed on to future generations, while providing for Colorado-specific situations and concerns that are important to the citizens and economy of Colorado.

The final rule provides a high level of conservation of roadless area characteristics on approximately 4.2 million acres. The final rule achieves this by establishing prohibitions for tree cutting, road construction and reconstruction, and use of linear construction zones with limited exceptions and establishing upper tier acres. The final rule will be applied to 409,500 acres that were not covered in the 2001 Roadless Rule. It does not establish roadless management direction for 459,100 acres of lands that were associated with the 2001 Roadless Rule that have been determined to be

substantially altered and 8,300 acres for ski area management. The final rule provides a higher level of conservation for the designated CRA lands than management direction under either the forest plans or the 2001 Roadless Rule.

The final rule designates 1,219,200 acres of CRAs as upper tier, which are acres where exceptions to road construction and tree cutting are more restrictive and limiting than the 2001 Roadless Rule. Upper tier designations were designed to offset the limited exceptions for Colorado-specific concerns so that the final rule is more protective than the 2001 Roadless Rule.

Generally, the exceptions for Colorado-specific concerns allow for road construction and reconstruction beyond that which are allowed under the 2001 Roadless Rule where roadless acres are within the first 0.5 mile from an at-risk community as described in the definitions section of this final rule (about 250,000 acres) and within the 19,100-acre North Fork coal mining area. Tree cutting allowances in non-upper tier acres in the final rule are similar to the 2001 Roadless Rule, except within a community protection zone (CPZ) as described in the definitions section of this final rule. Tree cutting allowances in upper tier areas are much more restrictive in the final rule as compared to the 2001 Roadless Rule.

The use of LCZs is restricted under the final rule, unlike the 2001 Roadless Rule. The LCZ provisions of the final rule are designed to encourage placement of linear facilities outside of roadless areas to conserve the large tracts of undisturbed lands that roadless areas provide. The final rule also encourages co-locating facilities if they must be constructed within a CRA. Co-locating facilities within CRAs would minimize overall impacts by concentrating infrastructure and associated human activities in previously disturbed areas.

Although it is difficult to directly compare the level of protection afforded by the final rule and the 2001 Roadless Rule, the final rule clearly offers a higher level of conservation of roadless area characteristics within the upper tier acres. In addition, the 2001 Roadless Rule allows management activities to occur on more acres of roadless areas than the final rule does due to the upper tier designation.

Colorado-Specific Concerns

Ski Areas. Roadless areas provide the scenic backdrop to many of Colorado's 22 ski areas located on public lands managed by the Forest Service. These 22 ski areas received about 11.7 million skier visits during the 2010–2011 ski season.

Colorado skiers spend about $2.6 billion annually, about one third of the annual tourist dollars spent in the State. The roadless area inventory for the 2001 Roadless Rule included portions of either the permit boundary and/or forest plan ski area management allocation for 13 ski areas. The final rule inventory excludes approximately 8,300 acres of permitted ski area boundaries or ski area management allocations from CRAs, which include roadless acres with degraded roadless area characteristics due to the proximity to a major recreational development and is less than 0.2% of the CRAs. This will ensure future ski area expansions within existing permit boundaries and forest plan allocations are not in conflict with desired conditions provided through the final rule and address one of the State-specific concerns identified by the State of Colorado. However, this final rule does not approve any future ski area expansions; any expansion proposal would need site-specific environmental analysis, appropriate public input, and independent approval.

Energy Development/Infrastructure. All existing Federal coal leases within CRAs occur in the North Fork Valley near Paonia, Colorado on the Grand Mesa, Uncompahgre, and Gunnison National Forests. Coal from this area meets the Clean Air Act definition for compliant and super-compliant coal, which means it has high energy value and low sulphur, ash and mercury content, making it desirable for electric-generation plants throughout the country. Coal from these existing leases is currently being extracted at three underground mines, which collectively produce about 10 to 15 million tons of coal per year and accounts for about 40% of all the coal production in the State of Colorado. These mines provide about 2,100 jobs (direct, indirect and induced) and $151.1 million annually of direct labor income within Colorado.

The final rule accommodates the continued operation of these three mines by defining an area called the North Fork coal mining area. This area is about 19,100 acres which is less than 0.5% of the CRAs. The North Fork coal mining exception allows for the construction of temporary roads for exploration and surface activities related to coal mining for existing and future coal leases. The final rule does not approve any future coal leases, nor does it make a decision about the leasing availability of any coal within the State. Those decisions would need to undergo separate environmental analyses, public input, and decision-making.

Many comments were received on the 2008 DEIS and the 2011 RDEIS regarding whether the Currant Creek CRA should be included or excluded from the North Fork coal mining area. About 9,000 acres of the Currant Creek CRA was removed from the North Fork coal mining area in the RDEIS due to important wildlife habitats and juxtaposition of these habitats to nearby habitats. The Colorado Division of Parks and Wildlife reviewed comments regarding the inclusion of Currant Creek to the North Fork coal mining area, including the independent analysis of wildlife resources submitted by a commenter, and remains convinced of the importance of the wildlife habitat values in Currant Creek.

The Department agrees and will not include Currant Creek in the North Fork coal mining area to ensure conservation of these important wildlife habitats. The Department notes that there are no existing coal leases in Currant Creek. The Department reviewed likely scenarios of potential mining within the Currant Creek CRA and determined that the economic effects of including Currant Creek in the North Fork coal mining area would not be realized for more than three decades based on current coal production levels, current mining technologies, the assumption that an adjacent area on non-NFS lands known as Oak Mesa would be mined, and the fact that coal from Currant Creek would not be mined until Oak Mesa was mined out.

Oil and gas resources were another issue that generated substantial public input. Colorado has 8% of all dry natural gas reserves in the U.S., the third largest domestic reserves of onshore dry natural gas behind Texas and Wyoming. In 2009, Colorado wells produced 1.45 trillion cubic feet of natural gas for market, or 7% of U.S. production. In addition, about 28.3 million barrels of oil were produced in Colorado, or 1% of U.S. production. In 2010, of the $287 million in total royalties collected on Federal oil and gas production in Colorado, $117 million was paid to the State of Colorado and $64 million was collected in severance taxes from federal oil and gas production.

Within CRAs, there are about 266,900 acres classified as ''moderate to high'' oil and gas potential and about 631,600 classified as ''high'' potential. Projected natural gas and oil production from CRAs with high development potential, although locally significant, does not change significantly under the final rule. A total of 355 firms affiliated with

oil and gas development and production are located within the affected region, of which 337 are estimated to be small businesses. However, there is no difference in estimated average annual natural gas or oil production between the final rule and the 2001 Rule (baseline conditions). The only difference in natural gas production across alternatives is under forest plans (Alternative 3) where average annual production is estimated to increase by 4 billion cubic feet per year compared to the final rule, which is below the Executive Order 13211 criterion for significant effects of 25 bcf/year. The only difference in oil production across the alternatives is under forest plans (Alternative 3) where oil production is estimated to increase by about seven barrels per day, compared to the final rule, which is an inconsequential difference compared to the E.O. 13211 criterion of 10,000 barrels per day.

The final rule provides for the conservation of roadless area characteristics by prohibiting road construction for future oil and gas leases and requiring a no surface occupancy (NSO) stipulation on all future oil and gas leases within upper tier acres. The final rule balances roadless protection with energy development by allowing continued temporary access across CRAs to explore, develop, and transport products from existing oil and gas leases that do not otherwise prohibit road construction or reconstruction. The 2001 Roadless Rule prohibited road construction to access mineral leases issued after the promulgation of the rule (January 12, 2001). Since 2001, the 2001 Roadless Rule has been subject to legal challenges, and leases have been issued in areas now identified as Colorado Roadless Areas. The Colorado Roadless Rule does not affect the terms or validity of leases existing prior to the promulgation date of the final rule. This rule preserves any surface development rights and limitations on surface development rights existing at the time of adoption of this rule on all oil and gas leases. Although the road prohibitions of the final rule could constrain development of future oil and gas leases within some CRAs, the economic impact of this prohibition would be negligible in the context of total energy production within the State of Colorado. The projected difference in potential natural gas production from CRAs under the final rule is an increase in total recovery of about 19.2 billion cubic feet over 30 years when compared to the existing condition. Averaged over the 30 year period, this represents about 0.1% of the current state-wide annual production of natural gas in Colorado. For oil production, the final rule would result in a decrease of about 3,500 barrels over 30 years when compared to the existing condition. This averaged over 30 years, is minimal compared to the current annual oil production in Colorado.

The final rule would not restrict road construction to extract locatable minerals, which include metals such as gold, silver, lead, zinc, molybdenum, rare earth minerals, and uranium; non-metallic minerals such as fluorspar, feldspar, and gem stones; and uncommon varieties of sand, stone, gravel, pumice, pumicite, and cinders such as high calcium limestone used for cement. Like the 2001 Roadless Rule, the final rule contains a specific exception for roads provided for by statute which would allow access to develop these mineral resources, which are subject to location under the General Mining Law of 1872, as amended. This law provides United States citizens a possessory right to these minerals, use of the surface for purposes reasonably incident to mining, and a right of reasonable access to these minerals across Federal land. This statutory right also made it unnecessary to include a specific exception for mining roads in the final rule as requested by several commenters. Therefore, operations such as the Henderson Mine in Clear Creek County would not be affected by the final rule prohibitions should operations need to expand into or develop additional mineral resources in the adjacent CRA.

In January, 2009 energy transmission and distribution corridors were designated in 11 Western States, including Colorado, in an interagency effort known as the West-Wide Energy Corridor project. These corridors will facilitate interstate energy transmission and distribution as well as improving reliability, relieving congestion, enhancing the capability of the national grid to deliver electricity, and concentrating these uses. All the designated West-Wide Energy Corridors for oil, gas, and hydrogen pipelines and electric transmission and distribution facilities are located outside of CRAs. Therefore, interstate energy transmission is not expected to be affected by the final rule.

Water Supply/Infrastructure. Water in Colorado is used for a variety of downstream purposes including public water supply, agriculture, and industrial uses (including mining/mineral development). Growing populations in Colorado are expected to increase the demand for reliable quantities of high-quality water. Roadless areas contribute to high quality water through high functioning watersheds, which provide for snow-pack retention and vegetative cover, resulting in reduced downstream sedimentation, lower water temperature, and decreased contaminants. The mountainous areas, where NFS lands are located, receive the highest amounts of precipitation in the State, primarily as snow. More than two-thirds of the water yield in Colorado originates on NFS lands. The streams and lakes within roadless areas generally have good to excellent water quality. Nearly all of the CRAs are located within watersheds that contribute to public supplies of surface or ground water.

Water projects are necessary to store and transport water from its origin in the mountains to where it is needed in downstream cities, towns, and farms. Storing water in mountain reservoirs provides more reliable year-round constant flows enabling distribution of water to places when needed. Water projects also allow for storage of excess water in one year to be saved and used in later years when water may not be as plentiful.

There are numerous reservoirs, diversions, ditches, tunnels and other water conveyance facilities located in CRAs. Access for operation and maintenance of these facilities is important to (1) ensure reliable delivery of needed water supplies to downstream users, and (2) prevent or mitigate failures in the water systems that could cause greater environmental impacts, such as an open ditch clogging with debris that overtops and carves a series of gullies into the hillside. The final rule allows access needed for the construction, reconstruction, or maintenance of authorized water conveyance structures operated pursuant to state decreed water rights.

With the current increased growth in the rural west, in and around the National Forests, the Forest Service anticipates proposals for new reservoirs and associated water conveyance structures on NFS lands. Existing permit holders are already asking for authorization to expand and enlarge existing reservoirs and water conveyance structures. The Department believes these circumstances require flexibility because in some cases, it may be preferable to expand existing facilities where impacts have already occurred than to construct new facilities in a relatively undisturbed area. In most cases, road access would be needed to transport the equipment and materials to complete new water projects or expansions efficiently, which is provided for in the final rule within non-upper tier areas through the road

construction exception and within upper tier areas through the LCZ exception for water rights with a pre-existing water court decree.

Community Protection. The ongoing mountain pine beetle epidemic has caused wide-spread tree mortality on more than three million acres across the State of Colorado. About 750,000 acres of this tree mortality has occurred in CRAs. This high level of tree mortality has increased the concern for high-intensity wildfires due to the increased amount of combustible material (fuels). High-intensity wildfires are more difficult to control, have the potential for greater environmental impacts, and increase risks to firefighter and public health and safety.

Colorado has a high number of residences in the vicinity of forests that are at risk of wildfire. The final rule defines the areas up to 1.5 miles of an at-risk community as CPZs if certain ground conditions exist. In some areas, where CRAs are adjacent to at-risk communities, some portion of the CRA's acres fall within the CPZ. Currently, about 250,000 acres of proposed CRAs (6% of total) are within 0.5 miles of an at-risk community, and over one million acres of the proposed CRAs (25% of total) are within 1.5 miles of an at-risk community. The ability to conduct fuel-reduction projects around at-risk communities is a concern and priority for the State of Colorado. Fuel treatments alter fuel profiles so that public and firefighter safety is improved and communities, watersheds, infrastructure, and other at-risk values are less vulnerable to impacts from wildfire. The final rule provides for this by allowing fuel treatments within the CPZs and allowing temporary road construction within 0.5 miles of an at-risk community.

Linear Construction Zones. Generally roadless areas are roadless because they are rugged, steep, and remote; the topography and juxtaposition of human developments have historically made going around roadless areas more practical than going through them; and they have limited economic development opportunities. For these reasons, opportunities to construct and the desire to construct linear facilities through roadless areas are expected to be limited. The majority of LCZ use in roadless areas is expected to come from the desire to move resources from inside roadless areas out of roadless areas, such as water, oil and gas. Although limited LCZ use is expected, it is a State-specific concern because the 2001 Roadless Rule does not restrict them and the potential for adverse impacts to roadless characteristics.

The final rule limits the potential impacts by prohibiting the use of LCZs across the 1,219,200 acres designated as upper tier except for reserved and outstanding rights; provided by statute or treaty; or water conveyance structures operated pursuant to a pre-existing water court decree.

The final rule further limits the potential impacts of LCZs by encouraging co-locating linear facilities within CRAs. Co-locating linear facilities would increase the width of the right-of-way, as power lines, pipelines or other linear facilities would parallel but not completely fall within the existing footprint. However, overall impacts would be reduced by concentrating infrastructure and associated human activities. These potential impacts, which would occur at a higher level under the 2001 Roadless Rule, include displacement of wildlife species sensitive to noise and human disturbance; soil compaction and erosion; fragmentation of aquatic and terrestrial habitats; and most notably an increased risk of the spread of invasive species. Many non-native plants establish themselves preferentially along disturbed habitats, which can lead to loss of native plants, loss of quality forage, and lowered reproductive success of native plants and wildlife. Expanding the width of existing right-of-ways would further amplify the magnitude and duration of these effects on roadless area values including fish, wildlife, and rare plants.

The increasingly high level of development that exists outside of roadless and wilderness areas accentuates the function of roadless areas as refugia for aquatic and terrestrial animal species. Refugia provide source populations that are not subject to high levels of angling or hunting pressure or frequent human disturbances, and can repopulate adjacent landscapes. This is why the final rule emphasizes placement of LCZs outside of roadless areas when at all possible. If additional LCZs need to be used in roadless areas, then the emphasis will be on co-locating or widening of existing right-of-ways.

Other Considerations. Roadless areas provide for unaltered and high quality fish and wildlife habitat. Based on a U.S. Fish and Wildlife National Survey (2006 National Survey of Fishing Hunting, and Wildlife-Associated Recreation), it is estimated that hunters and anglers spent about 8,750,000 days hunting and fishing in Colorado expending approximately $1,584,779 million annually; and 1,819,000 people spend about 9,404,000 days watching wildlife expending approximately $1.4 billion annually. Based on the 2006 National Survey, Colorado residents and nonresidents spent about $3.0 billion in 2006 on wildlife recreation within the State. The final rule provides for conservation of native cutthroat trout through a requirement to ensure the native cutthroat trout habitat is not diminished over the long-term and the implementation of water conservation practices. In addition to the final rule protections, native cutthroat trout in Colorado are protected through the Endangered Species Act and/or the National Forest Management Act implementing regulations. Greenback cutthroat trout are listed as Threatened under the Endangered Species Act, and Colorado and Rio Grande cutthroat trout are listed as Sensitive on the Regional Forester's Sensitive Species list. These listings provide a high level of protection for native cutthroat trout in Colorado and provide for special management emphasis. The final rule ensures conservation of roadless area characteristics over the majority of the 4.2 million acres of CRAs, which will provide for wildlife dependent on large tracts of undisturbed land.

Based on a 2009 report by the Colorado Off-Highway Vehicle Coalition, it is estimated that 210,000 Colorado residents and nonresidents participated in the 2006–2007 season's off-highway vehicle recreation in Colorado, expending approximately $784 million. The final rule does not prohibit use of existing authorized motorized trails nor does it prohibit the future development of motorized trails in CRAs (see 36 CFR 294.46(f)). The final rule allows continued motorized trail use of CRAs if determined appropriate through local travel management planning.

Alternatives Considered. Alternative 1, the 2001 Roadless Rule and No Action Alternative, was not selected as the final rule because it does not provide for Colorado specific concerns. The 2001 Roadless Rule limits economic opportunities important to the people of Colorado, such as coal development and ski area expansion. The 2001 Roadless Rule also poses a greater risk to communities adjacent to CRAs than the final rule by limiting fuel treatments designed to reduce wildfire intensities; and potentially impacting the efficient management of water needed to ensure an adequate future supply to the State in light of growing demands and increasing fluctuations in precipitation patterns.

Alternative 3, provisions of the Forest Plans, was not selected as the final rule because it does not provide for roadless area conservation to the degree that

Alternative 2 does. Although Alternative 3 does provide greater flexibility to provide for Colorado specific concerns, such as community protection and economic development, Alternative 2 balances Colorado specific concerns with roadless conservation, which is also important to the State. As stated in the purpose and need, roadless areas provide for sources of drinking water, important fish and wildlife habitat, semi-primitive and primitive recreation opportunities, and natural appearing landscapes as well as other attributes. It is important to balance the conservation of these roadless characteristics, while providing for the State-specific concerns, which Alternative 2 does.

Alternative 4 was not selected as the final rule because the amount of upper tier acres and location of those acres limit the ability of the Forest Service to accomplish its management objectives. Approximately 121,600 acres of Alternative 4 upper tier acres are within 0.5 mile of an at-risk community. This upper tier designation would prohibit fuels treatment within the CPZ, which would increase risk to public health and safety. In addition, some of the upper tier acres designated in Alternative 4 are located in areas with existing oil and gas leases, and should those existing leases be developed the designation of these acres as upper tier would be inconsistent with the purpose and desired condition of upper tier designations.

Public Involvement

The Forest Service and the State of Colorado have solicited public involvement and comments on the development of a Colorado Roadless Rule. Between the Forest Service and State efforts, there have been five formal public involvement processes, which have resulted in approximately 312,000 public comments. Public involvement efforts of the Forest Service and the State of Colorado included:

- Senate Bill 05–243, signed into Colorado law on June 8, 2005, created and identified a 13-member bipartisan task force. The task force held nine public meetings throughout the State, held six deliberative meetings that were open to the public, and reviewed and considered over 40,000 public comments.
- On December 27, 2007, the Forest Service published a notice of intent in the **Federal Register** to prepare an EIS on roadless area conservation on NFS lands in Colorado (72 FR 72982). The Forest Service also solicited comments from interested parties on the notice of intent from December 27, 2007 through February 25, 2008. Approximately 88,000 comments were received.
- On July 25, 2008, the Forest Service published a proposed rule to establish State-specific management direction for conserving roadless areas in Colorado (73 FR 43544). A notice of availability for the DEIS was published in the **Federal Register** (73 FR 44991). The availability of the regulatory risk assessment for the proposed rule was published on September 18, 2008 (73 FR 54125). Nine public meetings were held around the State of Colorado and in Washington, DC during the comment period. All comment periods closed on October 23, 2008. In total, approximately 106,000 comments were received.
- The State of Colorado held a comment period from August 3 to October 3, 2009 on a State-modified version of the Colorado Roadless Rule. Approximately 22,000 comments were received.
- On April 15, 2011, the Forest Service published a revised proposed rule (76 FR 21272). A notice of availability for the RDEIS was published in the **Federal Register** (76 FR 24021) on April 29, 2011. Nine public meetings were held around the State of Colorado and in Washington, DC during the comment period. Comment periods closed on July 14, 2011. Approximately 56,000 comments were received.

In addition to the five formal comment periods, the Forest Service and Colorado participated in Roadless Area Conservation National Advisory Committee (RACNAC) meetings that were open to the public in Washington, DC in June of 2007 and January, July and November of 2008. Also, a RACNAC meeting was held in Salt Lake City, Utah in October of 2008. Public comments were accepted at these meetings, which helped the RACNAC develop its December 5, 2008 recommendations to the Secretary of Agriculture.

On May 4, 2012, the notice of availability for the final EIS (FEIS) was published in the **Federal Register** (77 FR 26548). Although the Forest Service did not formally solicit comments, 181 comments were received.

Tribal Involvement

The United States has a unique relationship with Indian Tribes as provided in the Constitution of the United States, treaties, and Federal statutes. The relationship extends to the Federal government's management of public lands, and the Forest Service strives to assure that its consultation with Native American Tribes is meaningful and in good faith.

A vital part of the State of Colorado's public process in developing its petition was receiving the recommendations and comments from Native American Tribes. The Governor's office was keenly aware of the spiritual and cultural significance some of these areas hold for the Tribes.

There are two resident Tribes in Colorado, both retaining some of their traditional land base as reservations via a series of treaties, agreements, and laws. The Ute Mountain Ute and Southern Ute Indian Tribes (consisting originally of the Weeminuche, Capote, Tabeguache, and Mouaches Bands) under the Brunot Agreement of 1874 have reserved hunting rights on certain lands in Colorado and retain inherent aboriginal rights throughout their traditional territory. Many other Tribes located outside Colorado maintain tribal interests, including aboriginal and ceded territories, and claim inherent aboriginal rights within the State.

The Forest Service has consulted with Colorado-affiliated Tribes regarding this rulemaking action and analysis process. Information on the proposed Colorado Roadless Rule was provided to the Ute Mountain Ute and Southern Ute Indian Tribes prior to the release of the NOI. The San Juan National Forest staff held meetings with both Tribes to discuss the proposed rule as well as other Forest issues. At these meetings, the Tribes expressed concerns about hunting access and unauthorized roads. Nothing in the final rule changes hunting access or existing rights. The management of unauthorized roads is addressed through travel management processes.

Additionally, an introductory letter and the NOI along with background information on the proposed Colorado Roadless Rule and an offer for additional information or meetings was sent to 25 Tribes based on their current proximity to Colorado, their current use of lands in Colorado, and their historic use of lands within Colorado.

The 2008 Proposed Rule and DEIS were sent to each of these Tribes and each was contacted by phone to determine their level of interest in meeting or obtaining information. The Tribes did not request additional government-to-government involvement, and no formal comments from any of the Tribes were received. A letter was sent to each Tribe outlining the key points of this revised proposed rule, and the Forest Service met with those Tribes requesting further consultation.

In October 2010, the Forest Service met with Tribal members of the Ute Mountain Ute and Southern Ute tribes to obtain information. In April 2011, the Proposed Rule was sent to 25 Tribes

based on their current proximity to Colorado and their current and historic use of lands within Colorado to determine their interest in meeting or obtaining information. Follow-up phone calls were made to each of the 25 Tribes. Additional information was sent to Tribes as requested. The Tribes did not request additional government-to-government involvement, and no formal comments from any of the Tribes were received.

Pursuant to Executive Order 13175 of November 6, 2000, ''Consultation and Coordination with Indian Tribal Governments,'' the Department has assessed the impact of this rule on Indian Tribal Governments and has determined that the proposed rule does not significantly or uniquely affect Indian Tribes. The final rule establishes direction governing the management and protection of CRAs. However, the final rule respects prior existing rights, and it addresses discretionary Forest Service management decisions involving road construction, tree cutting, and some mineral activities. The Department has also determined that the final rule does not impose substantial direct compliance costs on Indian Tribal Governments. The final rule does not mandate tribal participation in roadless management or the planning of activities in CRAs. Rather, the Forest Service officials are obligated by other agency policies to consult early with Tribal governments and to work cooperatively with them where planning issues affect Tribal interests.

Alternatives Considered

The Forest Service analyzed four alternatives for managing roadless areas in the FEIS. Alternative 1 the No Action Alternative and the 2001 Roadless Rule, continues the use of the 2001 Roadless Rule prohibitions, exceptions and mapping. Alternative 2, selected as the final rule, examines a two tier approach for prohibitions and exceptions designed to protect CRAs. Alternative 3, provisions of Forest Plans, examines reliance on forest plan direction without the 2001 Roadless Rule, to manage roadless areas. Alternative 3 would consist of a Colorado Rule that exempts the State from the 2001 Roadless Rule. Alternative 4 uses the same parameters for management described in Alternative 2 but includes approximately 2.6 million acres in the upper tier. The only difference between Alternative 2 and 4 is the location and amount of upper tier acres. The FEIS may be found at *http://www.fs.usda.gov/goto/coroadlessrule.*

Environmentally Preferable Alternative

The environmentally preferable alternative is the alternative that would best promote the national environmental policy as expressed in Section 101 of the National Environmental Policy Act (NEPA), 42 U.S.C. 4331. Generally this means the alternative that causes the least damage to the biological and physical environment. It means the alternative that best protects, preserves, and enhances historic, cultural, and natural resources. In addition, it means the alternative that attains the widest range of beneficial uses of the environment without degradation, risk to health and safety, or other undesirable or unintended consequences.

All the alternatives presented in the FEIS meet the national environmental policy, as described in Section 101 of NEPA, to varying degrees. All the alternatives provide for safe, healthful, productive and aesthetically and culturally pleasing surroundings, now and into the future, by conserving and managing roadless area characteristics to a varying degree. However, of the four alternatives, Alternative 2 is the environmentally preferable alternative because it best promotes the national environmental policy. Alternative 2 is the environmentally preferable alternative because it attains the widest range of beneficial uses of the environment and achieves a balance between population and resource use while conserving roadless area characteristics. While Alternative 4 would cause the least amount of direct impact to the environment of all the alternatives, Alternative 4 limits activities, such as fuel treatments, that could protect the environment from wildfire. Under Alternative 4, hazardous fuels activities around at-risk communities that would reduce the severity of a wildfire and reduce impacts to watersheds would be limited due to upper tier designations. The higher amount of tree cutting projected for Alternative 2 is a result of hazardous fuel treatments around at-risk communities and is thus limited across the CRAs mainly to the 250,000 acres within the 0.5 mile CPZ. Alternative 4 does not provide as good of a balance between population and resource use, part of the national environmental policy. Alternative 2 provides for community protection and activities that are important to the economic well-being of the citizens of Colorado. Although Alternative 2 has a higher amount of road construction projected, this is mainly a result of allowing temporary roads within the North Fork coal mining area and within the CPZ. Thus this impact is limited in scope to the 19,100 acres of the North Fork coal mining area and the 250,000 acres within the 0.5 mile CPZ. This limited impact is offset by the 1,219,200 acres designated as upper tier, which would have less activities (tree cutting and road construction/reconstruction) occurring within them than what would occur under the 2001 Roadless Rule (Alternative 1, the No Action Alternative) or the forest plans (Alternative 3). The ''Decision Rationale'' section describes how the rule provides for these activities as well as why they are important to Colorado. Alternatives 1 and 4 do not provide for these benefits to the degree that Alternative 2 does.

Roadless Area Inventories

The final rule includes an updated inventory of roadless areas. The 2007 State Petition proposed starting with the inventories used in the 2001 Roadless Rule and updating them as necessary. In some cases, these inventories were conducted in the late 1970's and used mapping technologies that are now outdated. In addition, roads had been constructed in some areas between the time of the original inventories and their use in the 2001 Roadless Rule. The Forest Service has reviewed and updated the old inventories for use in this rulemaking by making technical corrections, removing private property, and making other boundary adjustments, including additions and deletions due to land exchanges. All congressionally-designated areas that overlapped roadless areas have also been removed from the CRA inventory.

During the public comment period on the 2008 Proposed Rule, comments were received on many of the boundaries of individual CRAs. Based on public comment received and work with the Colorado Division of Parks and Wildlife field staff, corrections were made to the inventories used for the 2008 Proposed Rule. Additional administrative corrections were made between the 2011 Proposed Rule and the final rule. Further information on the boundary changes and a description of the uniqueness of each CRA can be found at *http://www.fs.usda.gov/goto/coroadlessrule*.

Colorado Roadless Area boundaries have been adjusted where they overlap with ski areas that have special use authorizations (6,600 acres) or land use management plan allocations for ski areas that allow for possible future expansion of the permitted area (1,700 acres). Table 1 displays a comparison of

2001 Inventoried Roadless Area (IRA) acres and final CRA acres.

TABLE 1—PROPOSED NET CHANGE IN ROADLESS ACRES DESIGNATIONS BY FOREST—INVENTORIED ROADLESS AREA ACRES TO COLORADO ROADLESS AREA ACRES

	2001 Rule total IRA acres with forest plan vintage	IRA acres in Colorado database	IRA acres not included within CRAs	Roadless acres added to CRAs	Total roadless acres to be managed under Colorado rule	Net change between 2001 IRA and CRA acres
Arapaho-Roosevelt	391,000 (1997)	352,500	10,800	5,400	347,100	(5,400)
GMUG	1,127,000 (1979)	1,058,300	281,500	124,200	901,100	(157,200)
Manti La Sal	11,000 (1979)	11,000	3,800	500	7,700	(3,300)
Pike San Isabel	688,000 (1979)	667,300	62,900	170,300	774,700	107,400
Rio Grande	530,000 (1996)	529,000	14,200	3,800	518,600	(10,400)
Routt	442,000 (1998)	442,300	10,400	1,700	433,600	(8,800)
San Juan	604,000 (1979)	543,600	76,500	98,900	566,100	22,500
White River	640,000 (2002)	639,500	7,400	4,700	636,700	(2,800)
Total, State of Colorado	4,433,000	4,243,600	467,400	409,500	4,185,600	(58,000)

Column 2 acres rounded to nearest 1,000 acres; others rounded to nearest 100 acres. Acres do not add due to rounding.

Comments on the Proposed Rule and Changes Made in Response

Approximately 56,000 comments were received in response to the proposed rule and RDEIS. The Forest Service considered all substantive comments as part of the rulemaking. The following is a section-by-section description of changes to the final rule as compared to the proposed rule, comments received regarding that section, and the Agency response. A detailed analysis and response to public comment is contained in Appendix H of the FEIS.

§ 294.40 Purpose. No substantive changes were made to this section. Only a minor edit was made to utilize the full name of ''Colorado Roadless Areas'' rather than CRA because it is the first time this term is used in the rule text.

Comments on the purpose of the rule: Some respondents asked for clarification regarding the intent of the Colorado Roadless Rule.

Response: The intent of the final rule is contained in the FEIS Purpose and Need for Action section in Chapter 1 and in the Purpose and Need section of this preamble. Section 294.40 of the rule states the purpose of the rule is to provide ''State-specific direction for protection of roadless areas in Colorado.'' It also states that the intent is to ''protect roadless area characteristics * * * within CRAs.''

§ 294.41 Definitions. Four changes were made to the definitions section based on comments received and/or concerns identified by the Forest Service.

(1) The definition of an LCZ was modified to clarify the difference between it and a temporary road. The term ''maintain'' was added to the definition of an LCZ to clarify that LCZs could be used to maintain a linear facility as well as install one.

(2) The definition of linear facilities was expanded to include dams.

(3) A definition of a permanent road was added.

(4) The definition of pre-existing water court decree was changed to include decreed water rights that were filed by the promulgation date of the final rule. In addition, the definition was changed to clarify that moving a head gate within a roadless area would not change the status of a pre-existing water court decree.

(5) The definition of Watershed Conservation Practices (WCPs) was added to clarify that all project-level activities within cutthroat trout habitat would apply WCPs.

Comments on the definition of at-risk community: Respondents asked for clarification of the definition of at-risk community.

Response: The final rule utilizes the definition of an at-risk community from the Healthy Forests Restoration Act (HFRA). HFRA defines the term as a community listed in the notice entitled ''Wildland Urban Interface Communities Within the Vicinity of Federal Lands That Are at High Risk From Wildfire'' (66 FR 751) or as a group of homes and other structures with basic infrastructure and services, such as utilities, and collectively maintained transportation routes, within or adjacent to Federal land in which conditions are conducive to a large-scale wildland fire disturbance event and for which a significant threat to human life or property exists as a result of a wildland fire disturbance event.

Comments on the definition of temporary road: Some respondents requested further discussion and reconsideration of the definition for temporary road, given that temporary roads can impact soil and water resources.

Response: A temporary road is defined as a road necessary for emergency operations or authorized by contract, permit, lease, or other written authorization. A temporary road is not considered a forest road and does not become part of the transportation atlas. Although a temporary road is decommissioned at the end of its authorized use, temporary roads can be in operation for a few years to a decade or more. Temporary roads are not open to public travel. Any temporary roads would be subject to existing forest plan standards and guidelines that protect ecosystem conditions, including water quality. An appendix is included in the FEIS that describes the planning, design, approval, administration, construction, operation, maintenance and decommissioning of temporary roads as they would be applied in CRAs.

§ 294.42 Prohibitions on tree cutting, sale, or removal. No substantive changes were made to this section.

Comments on tree cutting near communities and consultation with the Colorado Division Parks and Wildlife. Some respondents would like to see the Colorado Division of Parks and Wildlife consulted on tree cutting for fuels reduction treatments and ecosystem restoration projections.

Response. The rule offers cooperating agency status to the State of Colorado, which would include the Division of Parks of Wildlife, on all proposed projects and planning activities

occurring on CRAs (§ 294.45(b)). Tree cutting for community protection beyond the first 0.5 mile of the CPZ must be consistent with a Community Wildfire Protection Plan, which is generally developed with assistance of State agencies.

Comments on tree cutting in upper tier. Many respondents indicated concern over the ability to treat upper tier acres to manage for a multitude of environmental conditions. Some respondents indicated that the rule should include a tree cutting exception in upper tier acres to treat hazardous fuel loads, in areas that supply municipal water systems, to allow wildlife habitat improvements, watershed health, to treat for insects and diseases, acres that are adjacent to ski areas, and for fire suppression, emergencies, and public safety. Other respondents indicated that no tree cutting should occur in upper tier areas.

Response: The rule strikes a balance between the need for tree cutting to protect at-risk communities and municipal water supply systems, habitat improvement projects, and ecosystem restoration, and the need to protect roadless area characteristics. Tree cutting for hazardous fuels treatment in upper tier is prohibited; however, the majority of the existing CPZs excluded upper tier acres in the final rule. The Colorado Roadless Rule provides for the State-specific concern of reducing the risk of wildfire to communities, despite the inclusion of 6,100 acres of the 0.5 mile CPZ in upper tier. This composes only about 2% of all the 0.5 mile CPZ, which is minimal, and it is likely that many of these acres would never be treated regardless of whether it is designated upper tier or non-upper tier. We note that although upper tier designation reduces the flexibility for fuel treatment on these particular 6,100 acres due to the limited exceptions, there are about 247,800 acres in the non-upper tier that are located within 0.5 miles of an at-risk community that will have increased flexibility compared to the 2001 Roadless Rule to cut trees and construct roads in order to minimize the risk of fire.

In addition fuel reduction, as well as other objectives, such as watershed protection and insect/disease treatments, can be accomplished through the use of prescribed fire, limbing to reduce ladder fuels, and piling and burning. Fire line construction would be allowed in conjunction with prescribed burning, including incidental tree cutting to ensure effective fire lines. Tree cutting for wildlife habitat improvements in upper tier is prohibited; however, prescribed fire could be used for terrestrial wildlife habitat improvement. Tree cutting around ski areas is addressed by removal of existing ski area permit boundaries and forest plan allocated ski areas from CRAs.

The only tree cutting allowed in upper tier is incidental to the implementation of a management activity not otherwise prohibited or for personal or administrative use. The responsible official determines if an activity is consistent with a tree cutting exception in upper tier. Examples of activities not otherwise prohibited include but are not limited to trail construction and maintenance; hazard tree removal along trails; fire line construction for wildland fire suppression or prescribed fire; survey and maintenance of property boundaries; maintenance of linear facilities such as existing electrical power lines, water conveyance structures with a pre-existing water court decree, and pipelines; use of LCZs associated with water conveyance structures; or road construction and reconstruction where allowed by the final rule. Tree cutting is allowed for imminent, direct risks to public safety and other emergency situations. Personal use includes activities such as Christmas tree and firewood cutting. Administrative use includes providing materials for activities such as construction of footbridges or fences.

Comments on tree cutting in roadless areas to treat hazardous fuels. Many respondents indicated a need to cut trees for hazardous fuel management around communities and to protect infrastructure such as transmission lines and water conveyance facilities.

Response: The rule recognizes the need for tree cutting to reduce the risk of wildfire to at-risk communities. It allows tree cutting in non-upper tier within 0.5 miles from the boundary of an at-risk community, or up to 1.5 miles if certain conditions exist and the area is within a Community Wildfire Protection Plan (CWPP). A temporary road may be constructed to facilitate hazardous fuel reduction within 0.5 miles of the boundary of an at-risk community. Tree cutting for protection of linear facilities such as transmission lines and water conveyance facilities is considered to be maintenance of those facilities, which is allowed under the final rule.

In addition, tree cutting is allowed in non-upper tier acres if a significant risk exists to the municipal water supply system or the maintenance of that system. The final rule states that a significant risk exists under conditions in which the history of fire occurrence and fire hazard and risk indicate a serious likelihood that a wildland fire disturbance event could present a high risk or threat to a municipal water supply system. Examples of determining the risk to municipal water supply systems include the watershed assessments completed by the Front Range Watershed Wildfire Protection Group. These assessments were based on methods used by the Pinchot Institute for Conservation and considered wildfire hazard, flooding, debris flow risk, soil erodibility, and water uses to identify zones of concerns.

§ 294.43 Prohibition on road construction and reconstruction. An exception in upper tier CRAs to allow for road construction to protect public health and safety in cases of an imminent threat of flood, fire or other catastrophic event was added. In addition, the word ''imminent'' was added to this exception as it is applied to non-upper tier CRAs. The timeframe for the term imminent is situational dependent and could vary from hours to years. For example, for a flood or fire, imminent is likely hours but for dam failures, this could mean years. This exception does not constitute permission to engage in routine forest health activities, such as temporary road construction for thinning to reduce mortality due to insect and disease infestation. In addition, the responsible official must ensure conditions outlined in section 294.43, paragraph (b)(3) are met, which will ensure road construction is minimized and permanent roads are rare. Examples of appropriate uses of this exception include but are not limited to: A circumstance in which a road is needed to repair a dam that without intervention would fail and cause the loss of life or property; burned area emergency rehabilitation activities to protect municipal water supply systems; or activities to prevent or mitigate rock fall or a rock slide above a highway that without intervention could result in the loss of life or property.

The phrase ''subject to the legal rights identified in 36 CFR 294.43(b)(1)'' was added to the provision outlining items the responsible official must determine to utilize one of the two road exceptions for upper tier. This change in paragraph (b)(3) was to make the language consistent with paragraph (c)(2) and to clarify that the determinations made by the responsible official are subject to the legal rights pursuant to reserved or outstanding rights or as provided by statute or treaty in upper tier as well as non-upper tier.

The phrase ''technically feasible'' has been changed to ''feasible'' in

paragraphs (b)(3)(i) and (c)(2)(i). This change was made to clarify that the determination of what is feasible includes more factors than just technical issues.

The condition that road construction must be consistent with applicable land management plan direction was added to (b)(3) to make it consistent with paragraph (c)(2) and to clarify that roads must be consistent with forest plan direction in upper tier as well as non-upper tier.

The phrase ''extent of the occupied'' was added to the provisions regarding whether road construction will diminish, over the long-term, conditions in the water influence zone and in occupied native cutthroat trout habitat (paragraph (b)(3)(iv) and paragraph (c)(2)(iv)). This term was added because almost all perennial streams in CRAs are historic native cutthroat trout habitat and the intent of this provision is not to have it applied to all streams, rather only those with native cutthroat trout within them.

A provision was added that WCPs will be applied for all activities occurring in occupied cutthroat trout habitat. The WCP provision is to highlight that while some activities may appear disruptive to trout habitat and resources in the short-term, over the long-term, WCP techniques and methods are used to ensure that impact to trout habitat is minimized to only what is necessary, and that over time the overall trout habitat is restored and improved. Any project, including trout habitat restoration activities, may have short-term disturbances to roadless area characteristics. The rule includes flexibility to allow such projects to go forward, with WCPs applied, in order to improve or maintain roadless area characteristics and fish habitat conditions over the long-term.

The term authorized use in paragraph (c)(1)(ii) was clarified to include uses authorized under permit, easement or other legal instrument.

The phrase ''with the use of the road limited to the water right identified in the pre-existing water court decree'' was added to paragraph (c)(1)(iv) to clarify that a road constructed under this exception cannot be used for other uses. In addition, it was clarified that the Regional Forester would determine the need for a temporary road under this provision.

Road decommissioning was added to the title of paragraph (d) and reconstruction was added to the title of paragraph (d)(1) for clarification. In addition, paragraph (d)(2) was modified to clarify that road decommissioning would occur upon termination of the authorizing instrument if possible. Examples of activities related to road decommissioning was added to paragraph (d)(2) to clarify the concept of road decommissioning.

Three other edits were made for clarification.

(1) In paragraph (c)(1)(ix) the word ''or'' was added between coal exploration and coal related surface activities to allow for only one purpose for road construction and not both purposes.

(2) In paragraph (d)(4)(ii) the words ''an authorization issued under'' were removed because they were not necessary.

(3) In paragraph (d)(1) the words ''to the extent practicable'' were removed because they were not necessary.

Comments on road construction and reconstruction. Many respondents expressed concerns regarding access in upper tier areas for the operation, maintenance or development of water supply systems, for access to private properties, for mining and recreation and for grazing permit holders. Some respondents wanted additional exceptions and others wanted to eliminate exceptions for road construction altogether.

Response: The rule strikes a balance between the need for roads for community protection, existing rights, economic interests, and the need to protect roadless area characteristics. Currently, there are no forest roads within CRAs, and it is the intent of the rule to limit road construction. Any road constructed under any of the exceptions in the rule will not provide public access, whether these roads are within upper tier portions of CRAs or not. The rule prohibits road construction in upper tier acres for the development of a future water supply structures but allows for development using a LCZ. In addition, areas with high potential for future water development projects were excluded from the areas designated as upper tier, reducing the potential limitations on future water supply projects.

The rule provides for roads needed pursuant to reserved or outstanding rights, or as provided for by statute or treaty. ''Reserved or outstanding rights'' is a legal term of art that deals with a class of real property rights conveyed through sale or exchange. ''Reserved rights'' are property interests held back when land is conveyed between parties, such as split estate surface/subsurface conveyances. ''Outstanding rights'' are third party rights in real property retained when the property is transferred or acquired. The ''reserved or outstanding right'' exception is intended to apply only when the agency lacks the authority or discretion to prohibit roads because the roads were reserved or outstanding prior to federal acquisition of the property. This reserved and outstanding exception would not provide the legal basis to access State created water rights as the State grant of a water right is not a reserved or outstanding right. Instead, access to State water rights on federal lands would occur in accordance with federal statutes, such as the Federal Land Policy and Management Act.

The rule provides for an exception for road construction to accommodate public health and safety concerns, which would include necessary reconstruction or maintenance of water conveyance structures in cases of emergency situations that threaten life or property. In addition, the rule allows motorized and non-motorized access into CRAs and does not affect reasonable exercise of reserved, outstanding, statutory, or treaty rights for access, occupancy and use of NFS lands within CRAs when the Agency lacks legal discretion to forbid such activities, for example exploration and mining of locatable minerals under the 1872 Mining Law.

Comments were received indicating the need for an exception in all roadless acres to allow for post-fire recovery efforts. Burned area emergency rehabilitation activities to protect roads, private property or municipal water supply systems would be an appropriate use under the public health and safety exception. An example of this could be the need for a temporary road to construct sediment traps and check dams to control debris flows that could block culverts or jam bridges or damage reservoir capacity after a fire.

One comment pointed out an inconsistency in the construct of the regulatory language between paragraph (b)(2) and paragraph (c)(2) of the proposed rule (paragraph (b)(2) is now (b)(3) in the final rule), expressing concern that it could be construed as an attempt to preclude roads for activities under the 1872 Mining Law in upper tier acres. In response, the final rule adds language to current paragraph (b)(3) to make it consistent with the wording of paragraph (c)(2) and reflects that the determinations to be made by the responsible official under both paragraphs are subject to the legal rights pursuant to reserved or outstanding rights, or as provided for by statute or treaty. The final rule also modified the language in paragraph (c)(2) to clarify its reference to the legal rights provided for in paragraph (c)(1) and that determinations are made by the

responsible official. These changes underscore that the right of reasonable access to locatable mineral exploration and development is not affected by the final rule or any of the alternatives analyzed in the FEIS, regardless of roadless designation as upper tier acres or non-upper tier acres.

Comments on line officer authority for use of road construction exceptions. Some respondents indicated that there should be limitations to the discretionary authority granted to line officers (responsible officials) especially concerning road construction and reconstruction in upper tier acres.

Response: The final rule limits the responsible official discretion by providing a narrow range of activities that are permitted in CRAs and several determinations must be made for road construction or reconstruction to be allowed. In addition, the Forest Service has very limited discretion for the two exceptions for road construction or reconstruction in upper tier. The exception for reserved or outstanding rights or as provided by statute or treaty means the Forest Service has limited authority to deny access. Examples of this include Revised Statute 2477 rights; access to inholdings under the Alaska National Interest Lands Conservation Act (ANILCA); access to locatable minerals under the General Mining Law of 1872; response actions under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA); Federal Aid Highway project authorized pursuant to Title 23 of the United States Code; or Federal Railroad project authorized pursuant to Title 49 of the United States Code.

The other exception for road construction or reconstruction in upper tier is for roads needed to protect public health and safety in cases of an imminent threat of flood, fire or other catastrophic event that without intervention would cause the loss of life or property. This exception is anticipated to be applied infrequently because threats to life or property are relatively infrequent. Limiting the discretion of a responsible official for these types of cases could result in greater loss of life or property.

Many of the exceptions would require a Regional Forester's determination on whether a proposed activity is consistent with the final rule. Activities allowed under the final rule which were not allowed under the 2001 Rule and the use of LCZs would require a Regional Forester determination. This higher level of review will provide for greater consistency on the implementation of the rule.

Comment on constructing roads for coal mining. Some respondents specifically commented that there should be no exception for road construction for coal mining.

Response. The final rule includes an exception to the prohibitions on road construction associated with coal mining only in the North Fork coal mining area. Coal mining is a valuable economic consideration to the State of Colorado and to many communities around the North Fork coal mining area. Roads are necessary for exploration and other coal related activities. Some of the areas within the North Fork coal mining area are under lease and others are not. Coal-related roads are used only by the coal operator and agency personnel, and are not open to the general public.

Experience in the West Elk IRA on the Grand Mesa, Uncompahgre, Gunnison National Forests shows that decommissioning roads by obliteration, along with land reclamation, effectively restores these underground mined areas.

Comment on road decommissioning. Some respondents requested that the rule provide more direction for road decommissioning.

Response. The final rule provides the broad programmatic requirement of road decommissioning in paragraph (d)(2). Providing specific requirements of road decommissioning in a programmatic regulation is problematic due to the high variability of ground conditions and road situations that could be encountered across 4.2 million acres. Defining road decommissioning restrictions at the programmatic level limits the flexibility needed to address specific and possibly unique purposes for temporary roads in a variety of landscapes. This type of direction is generally best provided as Forest Service handbook direction, guidance, or in a site-specific decision in which each unique situation can be assessed.

The FEIS includes Appendix F, page F–5 specifically, which outlines temporary road decommissioning requirements based on Forest Service manual and handbook. This section of the appendix describes direction for road decommissioning that would apply to temporary roads in CRAs.

§ 294.44 Prohibition on linear construction zones. This section was reorganized into an upper tier section, paragraph (b), and non-upper tier section, paragraph (c), to accommodate limiting the use of linear construction zones in upper tier. Under the final rule, LCZs are limited in upper tier to just two circumstances: (1) Reserved or outstanding rights, or as provided by statute or treaty; and (2) for water conveyance structures pursuant to a pre-existing water court decree.

Paragraph (b) was changed from ''the Regional Forester may authorize a linear construction zone'' to ''the Regional Forester determines a linear construction zone is needed''. This change was made to parallel other Regional Forester determination language in the final rule and to clarify that this determination is not a formal decision under the National Environmental Policy Act (NEPA).

The phrase ''technically feasible'' has been changed to ''feasible'' in paragraph (d)(1). This change was made to clarify that the determination of what is feasible includes more factors than just technical issues.

The phrase ''extent of the occupied'' was added to the provision regarding whether LCZs will diminish, over the long-term, conditions in the water influence zone and in occupied native cutthroat trout habitat. This word was added for the same reasons described in the parallel language for road construction and reconstruction in § 294.43.

Provisions were added including LCZs would be no wider than its intended use; reclamation of LCZs will not diminish roadless area characteristics; and WCPs will be applied for all activities occurring in occupied cutthroat trout habitat. The WCP provision parallels the road provision and has been added for the same reasons, to minimize short-term impact with the long-term objective of restoring or improving native cutthroat trout habitat.

The phrase ''while conserving roadless area characteristics over the long-term'' was added to paragraph (e) to clarify that decommissioning of LCZs needs to be conducted in a manner that minimizes impacts to roadless area characteristics over the long-term.

Comment on linear construction zones. Some respondents indicated that LCZs should be prohibited in upper tier and others indicated that no LCZs should be allowed under the rule. Others offered various suggested limitations or exceptions for the use of LCZs for a variety of management activities. Some respondents were concerned about the rule's affect to maintenance, development and expansion of reservoirs and oil and gas development.

Response. Linear construction zones were not prohibited under the 2001 Roadless Rule. One of the State-specific concerns is to restrict the use of LCZs, while permitting access to current and future electrical power lines and meeting the other State-specific

concerns. Linear construction zones are prohibited under the Colorado Roadless Rule with specific exceptions if a responsible official determines that the LCZ meets certain conditions.

The rule accommodates the development and expansion of reservoirs by the use of road construction (in non-upper tier acreage) or LCZs (in all CRA acreage) where the water right has been filed with the State prior to July 3, 2012. Future known reservoir locations are not within upper tier acreage, acknowledging the fact that for the most part, a road will not need to be constructed in upper tier for development of a reservoir.

The rule provides that the Regional Forester may authorize an LCZ for construction, reconstruction, and maintenance of existing or future authorized electrical power and communication lines within non-upper tier acres if there is no opportunity for the project to be implemented outside the CRA without causing substantially greater environmental damage. In doing this the Forest Service and the State of Colorado seek a balance between protecting roadless area characteristics and accommodating State-specific concerns. LCZs for electric power and communication lines are not allowed within upper tier acres.

The rule prohibits oil and gas pipelines within CRAs, except on oil and gas leases within CRAs where surface use is allowed and for leases outside of CRAs that need to connect to infrastructure within a CRA. Surface use would not be allowed on any new leases issued in upper tier acres, so pipelines would not be allowed. Pipelines would be allowed for new leases in non-upper tier acres where the forest plan allows surface occupancy. However, it is anticipated that there would be few new leases actually issued in non-upper tier areas as they would have to be developed by directional drilling from locations outside of CRAs. The limited applicability of the LCZ exception in the rule is a reasonable approach to addressing the issues of preventing the loss of roadless area characteristics and preventing the loss of opportunity to feasibly transport oil and gas resources using pipelines. The LCZ exceptions are allowed because water development is critical to Colorado and many other western states; energy sources need to be connected to the electrical grid, and oil and gas developments need pipelines for product removal. Within upper tier acres, LCZs are only allowed for oil and gas leases existing as of July 3, 2012 that allow surface occupancy.

Some commenters indicated a desire to utilize existing disturbed areas as much as possible for future linear facilities. Nothing in the final rule would prohibit an LCZ being routed through a previously used LCZ. In addition, the rule encourages utilization of previously disturbed areas as provided in section 294.44, paragraph (e), which requires LCZs to minimize ground disturbance, including the placement within existing right-of-ways where feasible. Also, section 294.46, paragraph (d)(6) encourages co-location of oil and gas linear facilities, consistent with health and safety standards, within areas of existing areas of disturbance. However, industry standards for separation of utilities or other factors could reduce the ability to do so.

Comments on Regional Forester determinations for LCZ: Some respondents indicated that the Regional Forester should not have determinations for LCZ decisions.

Response. The final rule includes Regional Forester determination for LCZs to ensure a level of consistency. This is of particular importance with LCZs because of the potential overlap of certain aspects of an LCZ and a temporary road. Both are utilized by motorized vehicles to move from one point to another on a temporary basis. However, key differences exist that separate the two, including location selection, design, and use. Generally, the location of a temporary road is defined largely by the desired end points with substantial discretion of road location in between the end points. On the other hand, the location of an LCZ on the landscape is often constrained by the linear facility requirements, which limits the discretion of where an LCZ can be put. For example, it is difficult and often impractical to design a pipeline with a sharp turn. However a temporary road can be designed to go around obstacles and areas of concerns more readily.

Both LCZs and temporary roads need to consider environmental/resource conditions and safety issues during design. However, traffic requirements, level of service, traffic management, user efficiency, stopping distance, and surfacing are rarely considered in the design of an LCZ. Rather construction right-of-way width is a main consideration for LCZ design, which includes the determination of how much surface disturbance is needed to install or maintain the linear facility. Often an LCZ is created at the same time it is being used. For example, a pipeline being constructed across flat ground, an LCZ can be ''developed'' as the trench is being dug. In this example, no construction is needed to ''use'' the LCZ. In contrast, temporary roads are constructed prior to use. Gradients of LCZs, especially for power lines, are often much steeper than would typically be found on a temporary road.

Due to the relatively new concept of LCZs and the potential for confusion with temporary roads, it was deemed important to centralize the determination for use of LCZs in CRAs with the Regional Forester. This would also facilitate identification of any additional guidance needed to ensure resource protection as well as appropriate use of LCZs. Regional Forester determination is a review process designed to be separate from the NEPA process. The Regional Forester is required to review the project but will not be the ''responsible official'' in the NEPA context.

Comment on linear construction zone decommissioning. Some respondents were concerned that the LCZ decommissioning direction was not addressing roadless area characteristics over the long-term.

Response. The language ''while conserving roadless area characteristics over the long-term'' was added to (c) to address the need to reclaim the affected landscape but also retain and or improve the roadless area characteristics.

§ 294.45 Environmental documentation. The sentence in paragraph (a) that states ''proposals that substantially alter the undeveloped character of a Colorado Roadless Area require an EIS'' was changed to ''proposed actions that would significantly alter the undeveloped character of a Colorado Roadless Area would require an EIS''. This change was made so the final rule is consistent with the Agency's environmental policies for EISs as described in FSH 1909.15.21.

The words ''subject to this rule that would'' were added in paragraph (b) to read: ''* * *all proposed projects and planning activities subject to this rule that would be implemented on lands within CRAs* * *'' This change was made because the intent of offering the cooperating agency status to the State is to ensure consistent implementation of the final rule. Many projects, such as trail construction projects or reissuance of a grazing permit, are not subject to the final rule and therefore, may not be appropriate for State involvement.

Comments on ''substantially alter'' definition: Some respondents requested that the definition of ''substantially alter'' should be clarified in the context of certain activities.

Response. There no longer is a need to define ''substantially alter'' in the final rule because the term has been replaced with ''significantly alter.'' This

change was made so paragraph (a) is consistent with agency policy and regulations on when an EIS is required. The term ''significantly'' is defined in 40 CFR 1508.27.

§ 294.46 Other activities. A new paragraph was inserted, paragraph (a), to address the concern regarding the modification of a water right. This change was needed to clarify that a water right with a pre-existing water court decree could be modified and still be accommodated by the exceptions in the final rule for water conveyance structures despite having a new filing date.

Sentences were added to paragraph (b) to clarify that the intent of the rule is to maintain the status quo in terms of existing leases, including surface development rights, and limitations on surface developments. The final rule does not validate nor invalidate any existing leases.

A new paragraph was inserted, paragraph (c), to require a no surface occupancy stipulation for oil and gas leases issued within upper tier after the promulgation date of the final rule. This provision was added to provide greater protection for upper tier acres.

In paragraph (d) the phrase ''and consistent with lease rights'' was added to clarify that the conditions (d)(1) to (d)(8) must be consistent with the existing lease rights to be applied to the surface use plan of operation.

In paragraph (d)(3) the text ''to the extent practical'' was removed, as it was determined to be not necessary. Also, ''topography'' was removed and ''surface conditions'' was replaced with ''surface and or operational conditions'' for clarification.

In paragraphs (d)(1), (d)(4), (d)(5) and (d)(6) the qualifying language ''to the extent possible'' and ''to the extent feasible'' were removed as not necessary.

Paragraph (d)(8) was changed from ''utilize the best available technology'' to ''consider the best available technology''. This change was made because the Forest Service does not have the authority to mandate the use of best available technology, which is a Clean Air Act term used in the context of limiting pollutant discharges.

Comments on water conveyance structures. Comments were received requesting that the rule allow for the construction and maintenance of existing and future water conveyance structures in response to future and pre-existing water rights.

Response. The rule does not confer any right to existing or future use of water or occupancy of NFS lands within the State of Colorado. Such rights must be acquired in accordance with applicable State and Federal laws. The final rule exempts activities associated with conditional and absolute water rights decreed by the Colorado Water Courts prior to promulgation of the final rule. In addition, the final rule accommodates modification of water rights with a pre-existing water court decree.

Comments requesting no surface occupancy in upper tier: Some respondents requested the rule require no surface occupancy in upper tier acres.

Response. Based on public comments that were received and additional analysis, prohibiting surface occupancy in upper tier acres was added to the preferred alternative in the FEIS and is part of the final rule.

Comments on oil and gas. Many responses were received concerning various aspects of oil and gas development and the rule. Some respondents requested that roadless areas that have high potential for oil and gas development be excluded from roadless area protection or that exceptions for oil and gas be provided to allow for development. Other respondents felt the rule should prohibit oil and gas leasing, or exceptions for roads for leasing, within CRAs. Still other respondents requested that the rule prohibit road construction specifically on leases issued after the 2001 Roadless Rule was promulgated.

Response. Roadless inventory procedures follow Forest Service Handbook 1909.12, Land Management Handbook procedures. Whether or not an area is identified as having high mineral potential is not an inventory criterion and a high potential for mineral occurrence does not always equate to a high potential for mineral development. The purpose of the rule was to provide for the management of roadless areas, not to prohibit oil and gas leasing. Under the rule, existing legal oil and gas leases as of the date of the final rule can continue to operate under their lease stipulations. The 2001 Roadless Rule prohibited road construction to access mineral leases issued after the promulgation of the rule (January 12, 2001). Since 2001, the 2001 Roadless Rule has been subject to legal challenges, and leases have been issued in areas now identified as Colorado Roadless Areas. The Colorado Roadless Rule does not affect the terms or validity of leases existing prior to the promulgation date of the final rule. This rule preserves any surface development rights and limitations on surface development rights existing at the time of adoption of this rule on all oil and gas leases.

However, in response to public comment, the rule has been modified to include stipulations for no-surface occupancy for new oil and gas leases (leases issued after the promulgation date of the final rule) within the upper tier. Under the rule, leasing could still occur, but occupancy of the surface with roads, wellpads, or other infrastructure within the upper tier is prohibited. In non-upper tier areas, surface occupancy but not road construction would still be allowed for new oil and gas leases.

The final rule does not distinguish whether existing oil and gas leases were issued before or after the original promulgation date of the 2001 Roadless Rule. Forest Service actions concerning leases issued within roadless areas in Colorado since promulgation of the 2001 Roadless Rule were done in compliance with all legal requirements and forest plans/leasing decisions in effect at the time consent was provided to the BLM. Once issued by the BLM, leases grant the exclusive right to drill for, extract, remove, and dispose of all the oil and gas from the lease, subject to terms and stipulations made as part of the lease. For purposes of the FEIS, all existing oil and gas leases within roadless areas, including post-2001 leases, are considered to be ''existing authorizations''. None of the alternatives in the FEIS restrict or prohibit activities associated with existing authorizations, including the construction of temporary roads and pipelines reasonably necessary to exercise lease rights.

All oil and gas leases issued by the BLM are considered valid regardless of whether they were issued before or after the 2001 Roadless Rule. If an existing lease is found at a later date to be invalid through a court of law, then any rights associated with that particular lease, including surface occupancy rights, would not be provided for by the final rule.

§ 294.47 Modifications and administrative corrections. No substantive comments specifically related to modifications and administrative corrections of the rule were received. However, the Forest Service recognized a need to be able to correct boundaries for upper tier designations. Therefore, paragraph (b) for administrative correction to boundaries was modified to include the ability to correct upper tier boundaries based on clerical errors or improvements in mapping technology.

§ 294.48 Scope and applicability. No changes were made to this section. No substantive comments were specifically related to scope and applicability.

§ 294.49 List of designated Colorado Roadless Areas. No substantive comments were received specifically related to the list of designated CRAs. However, a column was added to the list of CRAs to indicate which CRA includes upper tier acres. This change was made to clarify locations of upper tier.

Comments received related to the rule but not to a particular section. Many comments were received related to the rule but not specific to a particular provision or section of the rule. For example, the designation of upper tier acres and the North Fork coal mining area is not specifically addressed in the provisions of the rule but certainly an important outcome of the final rule. The following sections summarize those comments.

Based on public comments, the amount of upper tier acres designated was increased to about 1,219,200 acres. This change was needed to balance the conservation of roadless area characteristics with activities to provide for State-specific concerns. In addition, the North Fork coal mining area was reduced to 19,100 acres based on additional consideration of potential mineable coal.

Comments on the authority of the Secretary to make rules. There were concerns expressed that there is no congressionally approved authority for designation of upper tier acres and that a future Secretary could change the prohibitions and exceptions in the current rule.

Response. The Constitution provides the fundamental basis for control, acquisition, disposition, use and management of all federally owned lands, including NFS lands. Article IV, Section 3, paragraph 2 of the Constitution provides: The Congress shall have power to dispose of and make all needful rules and regulations respecting the Territory or other property belonging to the United States. Congress has authorized the Secretary of Agriculture to manage NFS lands under conditions described in various acts, including the Organic Administration Act of 1897 and the Multiple-Use Sustained Yield Act of 1960. The Organic Administration Act of 1897 provides the Secretary of Agriculture with the authority to make ''rules and regulations'' that will provide protection from fire and depredation, regulate occupancy and use, and preserve the forest from destruction. The Secretary of Agriculture has the authority to make rules and regulations such as the Colorado Roadless Rule and future Secretaries will also have the authority to make, or change, such rules.

Comments on multiple uses. Some respondents requested that the rule address recreation and management of recreational areas and areas of multiple uses.

Response. The Agency's mission is to manage multiple uses across NFS lands, including developed and dispersed recreation opportunities. The rule restricts only tree cutting, sale, and removal; road construction and reconstruction; and LCZs (with some exceptions) in CRAs. None of the alternatives affect access or use of existing roads and trails, including motorized travel on roads and trails, nor do they regulate recreational activities such as hunting, fishing, hiking, camping, mountain biking, summer/winter motorized recreation and skiing.

Comments on protection of resources: Comments were received that the Forest Service should increase protection on a variety of resources including, but not limited to: Municipal water supplies, cold water resources, fisheries, big game habitat, wildlife viability, etc.

Response. One of the primary purposes of the Colorado Roadless Rule is the conservation of roadless area characteristics, which includes sources of public drinking water and diversity of plants and animals, as well as other resources. The provisions of the final rule provide for an increased level of conservation of roadless area characteristics while balancing State-specific concerns, when compared to Alternatives 1 or 3.

Comments to modify the rule to expand, reduce, or eliminate upper tier designations. Many comments were received regarding upper tier designation in the rule. Respondents either favor the designation of upper tier acres or oppose the designation of any upper tier areas in the rule. Some respondents indicated that there is a need for more upper tier acres to increase protection for fish and wildlife habitats and Colorado's recreational resources. Some comments suggested substantially increasing the number of acres within the upper tier, while others consider the upper tier ''de facto wilderness'' and therefore inappropriate. Some comments suggested provisions that would allow for expansion of the upper tier in the future. Respondents in favor of the upper tier often had specific suggestions on CRAs to be included in upper tier. Some respondents suggested removing all upper tier acres from the Colorado Roadless Rule.

Response. Upper tier acres are a subset of the CRAs which have limited exceptions to provide a high-level of conservation. Upper tier acres in the rule represent areas with the highest-quality roadless area characteristics where there are no known conflicts, or limited conflicts, such as existing oil and gas leases, existing or future coal leases, known water conveyance structures or the high likelihood of future development needs for water development. A common theme heard from the public was to allow tree cutting and minimal road construction to reduce the risk of a high severity wildfire threatening Colorado's at-risk communities within upper tier acres. Therefore, the majority of the upper tier acres were removed from CPZs in the final rule. The designation of upper tier is distributed among all of the forests in the final rule.

The final rule increases the amount of upper tier to about 1,219,200 acres (29% of CRAs) for the final rule, which is about 657,000 acres more than what was proposed action in the RDEIS. The Department, Forest Service and State of Colorado agreed that an increase in the amount of upper tier acres provides a better balance of protection and uses. Substantially more upper tier acres than have been designated for the final rule could hinder the Forest Service's ability to provide for State-specific concerns. Substantially less upper tier acres than have been proposed in the RDEIS would not offset the greater flexibility the final rule provides for the State-specific concerns.

Upper tier acres are not a designation of *de facto* wilderness. Upper tier only restricts tree cutting, road construction and use of LCZs. Upper tier allows for the use of motorized and mechanized equipment, while official wilderness does not. Upper tier allows for motorized recreation, including future development of off-highway vehicle trails; official wilderness prohibits motorized recreation. Upper tier prohibitions can be modified through rulemaking, while wilderness changes require an act of Congress.

Comment. The Forest Service should reconsider upper-tier restrictions, including their overlap with CPZs, to ensure that options are available for fuels and forest health treatments.

Response. In response to public comments, the final rule excludes the majority of upper tier acres from the CPZ. Not all CPZs were excluded from upper tier designation due to topography, forest plan desired conditions, and manageability of an area.

Comments on Currant Creek CRA and the North Fork coal mining area. Many respondents had concerns regarding Currant Creek CRA and the North Fork coal mining area. Some respondents felt

that the rule should exclude Currant Creek from the North Fork coal mining area, while others felt the rule should include Currant Creek in the North Fork coal mining area. Some respondents felt the rule should not reduce the size of the North Fork coal mining area. Some respondents felt the rule should revise road construction provisions related to the North Fork coal mining area.

Response. After consideration of public input and additional analyses, the final rule excludes the Currant Creek CRA from the North Fork coal mining area. Therefore, no roads will be constructed in the Currant Creek CRA related to coal mining activities. The residual North Fork coal mining area includes 19,100 acres where temporary roads can be constructed for coal related activities. The Forest Service consulted with BLM and State agencies, and considered information on the presence and mineability of coal resources in Currant Creek CRA and adjacent areas. The Forest Service also weighed public input and economic factors, information on wildlife resources, and the best available geologic information available from the United States Geological Survey (USGS), Colorado Geological Survey, and BLM when making determinations on the boundaries of the North Fork coal mining area.

Currant Creek CRA was not added to the North Fork coal mining area due to the presence of high priority habitat as identified by the Colorado Division of Parks and Wildlife, the juxtaposition of these habitats to adjacent important habitat, and the need to maintain contiguous areas insulated from roads and fragmentation. In addition, Currant Creek CRA was not added because it is a relatively unique roadless area due to its low elevation and the potential that road development for coal mining activities could displace the two elk herds currently utilizing this area increasing wildlife-human conflicts.

Comments regarding effect to mining interests. Some respondents suggested modifying the roadless area boundaries to exclude the Henderson Mine and other mining interests, because it may prevent their ability to develop future potential sites and respond in the case of emergencies. Additionally, some respondents are concerned that the proposed rule will prohibit mineral extraction, such as quarries to construct roads and highways.

Response. The rule does not prohibit mineral extraction or the development of mineral material sites. Any person prospecting, locating, and developing mineral resources on NFS lands under the 1872 mining law has a statutory right of reasonable access for those purposes. Roads that are reasonably necessary for an activity conducted under the 1872 mining law are provided for by statute, and therefore exempt from the road construction and reconstruction prohibitions of the rule. With the right of access preserved under the rule, it was not necessary to exclude any unpatented mining claims from designated roadless areas. Road construction and reconstruction are allowed under the rule for emergency situations that threaten human life and property.

Comments regarding modification of the West Needles CRA boundary near Durango Mountain Resort. A commenter requested that the West Needles CRA boundary be modified to exclude activities permitted to the Durango Mountain Resort ski area.

Response. The Forest Service reviewed the activities authorized under the current Durango Mountain Resort ski area permit against the boundary of the West Needles CRA. Authorized activities on the east side of Highway 550 include a proposed sleigh/accessible trail, a nordic ski trail system, and a trailhead. The trailhead and associated parking are outside of the West Needles CRA. Portions of the proposed sleigh/accessible trail and nordic ski trail system are within the West Needles CRA. Construction and maintenance of the proposed sleigh/accessible trail and nordic trail system as authorized by the September 2008 Record of Decision for the Durango Mountain Resorts 2008 Improvement Plan are not prohibited under the Colorado Roadless Rule. Future tree cutting needed to construct or maintain these trails could occur under the exception for tree cutting incidental to the implementation of a management activity not otherwise prohibited. For these reasons, the Forest Service did not see the need to change the boundary of the West Needles CRA.

Regulatory Certifications

Regulatory Planning and Review

The final rule was reviewed under USDA procedures, E.O. 12866 issued September 30, 1993 as amended by E.O. 13497 on Regulatory Planning and Review, and the major rule provisions of the Small Business Regulatory Enforcement and Fairness Act (5 U.S.C. 800). Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. These executive orders require that agencies conduct a regulatory analysis for economically significant regulatory actions. Economically significant regulatory actions are those that have an annual effect on the economy of $100 million or more or adversely affect the economy or economic sectors. Total annual output associated with oil, gas, and coal production in the affected areas is projected to be approximately $760 million under the final rule, compared to $694 million under baseline conditions, implying the annual incremental monetized impact of the final rule is an increase of $65 million per year for total oil, gas, and coal output. The monetized economic impacts for the final rule are therefore estimated to be less than $100 million per year. However, this rule has been designated a significant regulatory action although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget. This final rule is not expected to interfere with an action taken or planned by another agency, or to raise new legal or policy issues. This action will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs.

The benefits, costs, and distributional effects of four alternatives are analyzed over a 15-year time period. The four alternatives evaluated are referred to as follows: Alternative 1—the 2001 Roadless Rule; Alternative 2—the final Colorado Roadless Rule (final rule); Alternative 3—provisions of Forest Plans; and Alternative 4—a modified version of Alternative 2 with additional upper tier acreage. The baseline condition for regulatory impact analysis is the 2001 Roadless Rule (Alternative 1). The final rule is programmatic in nature and intended to guide future development of proposed actions in CRAs. The final rule is intended to provide greater management flexibility under certain circumstances to address unique and local land management challenges, while continuing to conserve roadless area characteristics. Increased management flexibility is primarily needed to reduce hazardous fuels around at-risk communities, to allow access to coal reserves in the North Fork coal mining area, and to

allow access to future water conveyances.

The final rule does not authorize the implementation of any ground-disturbing activities, but rather it describes circumstances under which several activities may be allowed or restricted in CRAs. Before authorizing land use activities in roadless areas, the Forest Service must complete a more detailed and site-specific environmental analysis pursuant to NEPA and its implementing regulations.

Because the final rule does not prescribe site-specific activities, it is difficult to predict changes in benefits and costs or other changes under the different alternatives. It should also be emphasized that the types of benefits derived from uses of roadless areas in Colorado are far ranging and include a number of non-market and non-use benefit categories that are difficult to measure in monetary terms. As a consequence, benefits are not monetized, nor are net present values or benefit cost ratios estimated. Instead, increases and/or losses in benefits are discussed separately for each resource area in a quantitative or qualitative manner. Benefits and costs are organized and discussed in the context of local land management challenges or concerns ('local challenges') and 'roadless area characteristics' in an effort to remain consistent with the overall purpose of the final rule, recognizing that benefits associated with local challenges may trigger or overlap with benefits associated with roadless area characteristics in some cases (e.g., forest health). Access and designations for motorized versus non-motorized recreation is a topic raised in comments, however, the final rule does not provide direction on where and when off-highway vehicle use would be permissible and makes clear that travel planning-related actions should be addressed through travel management planning and individual forest plans.

Distributional effects or economic impacts, in terms of jobs and labor income, are quantified for the oil and gas and the coal sectors for an economic area consisting of five Colorado counties (Delta, Garfield, Mesa, Montrose, and Rio Blanco) using a regional impact model. Fiscal impacts (i.e., mineral lease payments) are estimated for counties where changes in mineral activity are expected to be physically located (Delta, Garfield, Gunnison, Mesa, and Pitkin). The distributional effects associated with reducing wildfire hazard are characterized by estimating the extent to which CPZ areas (i.e., 0.5 to 1.5 mile buffer areas surrounding at-risk communities from wildfire) overlap CRAs where tree cutting for fuel treatments has been identified as being likely to occur. Distributional effects or economic impacts are not evaluated for other economic sectors (e.g., timber harvest, recreation) due to evidence presented in Tables 2 and 3 suggesting that the extent or magnitude of changes in output or services are not sufficient to cause significant changes in jobs and income for those economic sectors.

Details about the environmental effects of the final rule can be found in the FEIS. Effects on opportunities for small entities under the final rule are discussed in the context of Executive Order 13272 regarding proper consideration of small entities and the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), which amended the Regulatory Flexibility Act (5 U.S.C. 601 et.seq.).

The results of the regulatory impact assessment for the final rule are summarized in the following tables. Table 2 provides information related to roadless area acreage, road miles, and tree cutting. Table 3 summarizes the potential benefits (i.e., protection of roadless area characteristics and values) and costs (i.e., local resource challenges, agency costs) of Alternatives 1, 2, 3 and 4. Table 4 summarizes distributional effects and economic impacts of the proposed rule and alternatives.

TABLE 2—FRAMEWORK FOR ANALYSIS: COMPARISON OF ROADLESS AREA ACREAGE, ROAD MILES, AND TREE CUTTING

	Alternative 1—2001 Roadless Rule (baseline condition)	Alternative 2—Final Rule	Alternative 3—forest plans	Alternative 4—proposed rule with public identified upper tier acres [1]
Roadless Area Acreage [2]	IRAs = 4,243,600 acres (4.24 million acres).	CRAs = 4,186,000 acres (4.19 million acres). Upper Tier CRAs = 1,219,200 acres.	IRAs = 4,243,600 acres	CRAs = 4,186,000 acres (4.19 million acres). Upper Tier CRAs = 2,614,200 acres.
Roadless Acres in Upper Tier.	Not applicable	1,219,200 acres	Not applicable	2,614,200 acres.
Total Existing Authorized Road Miles in Roadless Areas [3].	1,235 miles in IRAs	0 miles in CRAs	1,235 miles	0 miles in CRAs.
Road Construction and Reconstruction Projected in the Analysis Area.	13.8 miles/year (11 miles in IRAs).	19.7 miles/year (16 in CRAs). 5.9 miles/year more than 2001 Roadless Rule.	25.8 miles/year 12.0 miles/year more than 2001 Roadless Rule.	17.9 miles/year (14 in CRAs). 4.1 miles/year more than 2001 Roadless Rule.
Tree cutting Projected in the Analysis Area.	2,670 acres/year (1,520 acres within IRAs).	7,320 acres/year (5,970 acres within CRAs, majority within CPZs). 4,650 acres/year more than 2001 Roadless Rule.	17,380 acres/year 14,710 acres/year more than 2001 Roadless Rule.	3,140 acres/year (1,790 acres within CRAs). 470 acres/year more than 2001 Roadless Rule.

[1] Alternative 4 is the same as Alternative 2 with the exception that more roadless areas are assigned to the upper tier restrictions.
[2] The total analysis area is approximately 4.65 million acres and is the same across all four alternatives.
[3] Approximately 117 miles of roads are projected to be decommissioned in IRAs and 0 miles decommissioned in CRAs.

TABLE 3—COMPARISON OF THE FINAL RULE AND ALTERNATIVE 4 WITH BASELINE CONDITIONS

Issue or affected resource	Alternative 1—2001 Roadless Rule (baseline condition)	Alternative 2—Final rule	Alternative 3—Forest plans	Alternative 4—proposed rule with public identified upper tier acres
Local Challenges and Resources: Roadless Area Management				
Fire and Fuels (Hazardous Fuel Reductions).	Tree cutting projected for 890 acres per year in the analysis area to reduce hazardous fuels (30 acres of which are within IRAs substantially altered acres); this amounts to 1% of average annual fuel treatments on all NFS lands in Colorado. Least flexibility to conduct hazardous fuel reduction and reduce fire hazard around at-risk communities and municipal water supply systems.	Tree cutting projected for 5,510 acres per year in the analysis area to reduce fuels (4,900 of which are within CRAs, mostly with the CPZ); this amounts to 9% of annual fuel treatments on all NFS lands in CO and is 4,620 acres more than the 2001 rule and 7,869 acres less than forest plans. More flexibility than the 2001 rule (and Alternative 4) to conduct hazardous fuel reduction and reduce fire risk to communities and municipal water supply systems. Less flexibility than forest plans. Limited amounts of the CRAs within either the 0.5 or 1.5 mile CPZs are in the upper tier acres.	Tree cutting projected for 13,350 acres per year in the analysis area to reduce fuels; this amounts to 21% of annual fuel treatments on all NFS lands in CO. Greatest flexibility to conduct hazardous fuel reduction and reduce fire risk to communities and municipal water supply systems. Options available for fuel reduction include prescribed fire, mechanical treatment, and road construction as needed to facilitate treatment.	Tree cutting projected for 2,000 acres per year in the analysis area to reduce fuels (1,390 of which are within CRAs, mostly within the CPZ); this amounts to 3% of annual fuel treatments on all NFS lands in CO and is 110 acres more than the 2001 rule and 11,350 less than forest plans. Within the CRAs that are non-upper tier acres, the flexibility to conduct hazardous fuel reduction and reduce fire risk to communities and municipal water supply systems is identical to the final rule. Greater amount of upper tier acres with tree cutting prohibited results in least number of acres for tree cutting for fuels reduction. Unable to conduct hazardous fuels reduction on 48% of 0.5 mile CPZ and 52% of 1.5 mile CPZ due to upper tier acre prohibitions.
Forest Health including reduced risk from Insect and Disease Outbreaks.	Forest health treatments are limited to some degree due to the characteristics and locations of roadless areas, as well as economic viability of treatments, under all alternatives. Most or large portions of roadless areas will remain unmanaged (i.e., with no treatments) under the alternatives and baseline conditions. Roadless areas that remain unmanaged will likely continue to depart from desired conditions. Declines in forest health would result in some landscapes being less resilient to large-scale insect and disease outbreaks.			
	Fewest opportunities to improve forest health. Tree cutting for treatment purposes is projected for 2,670 acres per year.	Greater opportunity to improve forest health compared to the 2001 rule and Alternative 4 but lower than forest plans. Tree cutting for treatment purposes projected for 7,320 acres per year (4,650 acres more than the 2001 rule and 10,060 acres less than forest plans). Increased likelihood of achieving management objectives in CPZs but similar to Alternative 1 outside of CPZs.	Greatest opportunity and flexibility to improve forest health. Tree cutting for treatment purposes projected for 17,380 acres per year. Higher likelihood of achieving management objectives.	Similar effects compared to the final rule but slight decrease in opportunities to improve forest health due to restrictions on tree-cutting in upper tier roadless areas. Tree-cutting for treatment purposes projected for 3,140 acres per year (470 acres more than the 2001 rule and 14,240 less than forest plans). Increased likelihood of achieving management objectives in CPZs but similar to Alternative 1 outside of CPZs.

TABLE 3—COMPARISON OF THE FINAL RULE AND ALTERNATIVE 4 WITH BASELINE CONDITIONS—Continued

Issue or affected resource	Alternative 1—2001 Roadless Rule (baseline condition)	Alternative 2—Final rule	Alternative 3—Forest plans	Alternative 4—proposed rule with public identified upper tier acres
Timber	Reduction in allowable sale quantity (ASQ) estimates, may occur. However, foreseeable timber production (volume of timber sold) is well below the ASQ and is expected to remain so under the alternatives and baseline conditions. Therefore, timber supplies outside of roadless areas are available to substitute for decreases in timber availability within roadless. Timber output is expected to vary only by location (i.e., proportion of cutting occurring within versus outside of roadless areas). Tree cutting (sale or removal) in the roadless analysis area is projected to occur in association with treatments on 2,670, 7,320, 17,380, and 3,140 acres per year respectively under the 2001 rule, the final rule, forest plans, and Alternative 4 respectively. Average annual treatment acreage on all NFS land is not expected to be affected substantially by the alternatives.			
Oil and Gas	Projections are for approximately 732 oil and gas wells drilled in the analysis area with access to 1,276 bcfg over a 15-year period [wells produce for 30 yrs] (same for the final rule and Alternative 4). Projected development activities within IRAs over 15 years: 143 miles of road, 705 wells, 146 well pads.	Projections are for approximately 732 oil and gas wells drilled in the analysis area with access to 1,276 bcfg over a 15-year period [wells produce for 30 yrs] (same for the 2001 rule and Alternative 4). Projected development activities within CRAs over 15 years: 146 miles of road, 715 wells, 162 well pads.	Projections are for approximately 819 oil and gas wells in the analysis area with access to 1,384 bcfg over a 15-year period [wells produce for 30 yrs], providing slightly more opportunity compares to the other alternatives. Projected development activities within IRAs over 15 years: 159 miles of road, 787 wells. 160 well pads.	Same as Alternative 2.
Coal (North Fork mining area).	Projections are for 16 miles of new roads in the analysis area, of which 7 are in IRAs. Foreseeable production opportunities would be limited to 8,600 acres of accessible coal reserves (157 million tons). Approximately 7,100 acres out of 8,600 acres are leased (5,900 leased acres are within IRAs), and 1,500 acres are unleased. A total of 2,700 acres out of 8,600 acres are outside of IRAs.	Projections are for 52 miles of new roads in the analysis area, of which 50 are in CRAs. Reduces restrictions on access to potential coal resources in CRAs compared to the 2001 rule, but is more restrictive than forest plans (limits new roads to the North Fork coal mining area). Foreseeable production opportunities are estimated to be 19,125 acres of accessible reserves (504 million tons) of which 7,100 acres are leased (4,000 leased acres are within CRAs) and 12,025 acres are unleased. A total of 15,025 out of 19,125 acres are outside of CRAs. Accessible reserves are 347 million tons greater than the 2001 rule and 211 million tons less than forest plans.	Projections are for 73 miles of new roads in the analysis area, of which 64 are in areas that overlap IRAs. Least restrictive on access to potential coal resources in IRAs compared to the other two alternatives. Foreseeable production opportunities are estimated to be 715 million tons of reserves on 36,400 acres of accessible reserves, of which 7,100 are leased (5,900 leased acres within IRAs) and 29,300 acres are unleased. A total of 32,400 out of 36,400 acres are outside of IRAs.	Same as the final rule.
Geothermal	Opportunities for geothermal development in roadless areas would not occur under the final rule, Alternative 4, or the 2001 rule due to new road prohibitions. Opportunities for some geothermal development in roadless areas may occur under forest plans as most land management plans allow new roads in roadless areas for this purpose. However, there are no current leases on NFS lands in Colorado.			
Public Safety	The final rule, Alternative 3, and Alternative 4, as well as baseline conditions provide adequate flexibility to respond to emergency situations or major threats to public health and safety in roadless areas (refer to features common to all alternatives). In contrast, the potential for accidents and safety hazards increases as the amount of activity and traffic increases, The Forest Service will continue to respond to wildfires, chemical or oil spills, abandoned mine hazards, road-design hazards, hazard trees, and other similar situations. Roads for this purpose must be temporary under the final rule, and would be expected to be temporary under the 2001 rule and forest plans.			

TABLE 3—COMPARISON OF THE FINAL RULE AND ALTERNATIVE 4 WITH BASELINE CONDITIONS—Continued

Issue or affected resource	Alternative 1—2001 Roadless Rule (baseline condition)	Alternative 2—Final rule	Alternative 3—Forest plans	Alternative 4—proposed rule with public identified upper tier acres
	Road construction or reconstruction is allowed in IRAs where needed to: Address road safety hazards and imminent threats of flood, fire, and other catastrophic events that may threaten loss of life or property.	Road construction permissions are similar to the 2001 rule within both standard tier and upper tier acres.	Same as the 2001 rule, per agency regulations and policy directives.	Same as the final rule within both standard and upper tier acres.
Special Uses: Non-recreational (pipelines, electrical or telecommunication lines, water conveyances).	Special use authorizations issued prior to the effective date of rulemaking would be unaffected under the alternatives and baseline conditions.			
	Future special use authorizations in IRAs would generally prohibit road construction, but there would be no prohibition on the use of LCZs. 3.2 miles per year of LCZs projected.	Future special use authorizations in CRAs would generally prohibit road construction. Limited exceptions for the construction of LCZ for future oil and gas pipelines, electrical power lines or telecommunication lines, and water conveyance structures in CRAs. LCZs for future oil and gas pipelines, electrical power lines and telecommunication lines would be prohibited in upper tier. 3.2 miles per year of LCZs projected.	Future special use authorizations would generally allow for road construction; except where prohibited under forest plans. There would be no prohibition on the construction of LCZs, for future electrical power lines or telecommunication lines, water conveyance structures or oil and gas pipelines. 3.6 miles per year of LCZs projected.	More restrictions than Alternative 2, due to the greater proportion of upper tier acres. 3.2 miles per year of LCZs.
Developed Ski Areas	Least opportunities for ski area development and expansion. Road construction and tree cutting permitted on 6,600 acres within IRA boundaries and also under permit prior to the effective date of this rule. Roads and tree cutting would be prohibited in 1,700 acres of ski areas allocated under forest plans but outside of existing permits.	Greater opportunity for ski area development and expansion than the 2001 rule. Opportunities similar to forest plans except expansion of ski areas into roadless areas through plan amendments not permitted under the final rule. Road construction and tree cutting permitted on 6,600 acres under permit as well as the additional 1,700 acres of ski areas allocated under forest plans and located outside existing permits that would not be allowed under the 2001 rule.	Same as the final rule, recognizing that Forest plans can be amended or revised to expand ski area allocations beyond the current allocation.	Same as the final rule.
Other Developed Recreation.	Effects on developed recreation opportunities are not projected to differ substantially across alternatives compared to baseline conditions.			
Livestock Management	None of the projected activities in roadless areas that vary by alternative would be likely to have any substantial beneficial or adverse impacts on livestock management operations in roadless area grazing allotments.			
Saleable and Locatable Minerals.	Impacts and differences in impacts to or from these resources are found to be minimal or insignificant across alternatives. There are no effects to the statutory right of reasonable access to prospect, explore and develop locatable minerals under any alternative or baseline conditions. There will be no roads for saleable mineral development except under forest plans if road construction is allowed, although need is expected to be minimal.			

TABLE 3—COMPARISON OF THE FINAL RULE AND ALTERNATIVE 4 WITH BASELINE CONDITIONS—Continued

Issue or affected resource	Alternative 1—2001 Roadless Rule (baseline condition)	Alternative 2—Final rule	Alternative 3—Forest plans	Alternative 4—proposed rule with public identified upper tier acres
Roadless Area Characteristics and Values				
Scenic Quality	Projected activity levels (e.g., tree cutting) occur on relatively small percentages of total roadless area under the alternatives compared to baseline conditions.			
	Maintains the most IRA acreage at high to very high scenic integrity levels where it exists. However, many substantially altered IRAs would continue to exhibit low scenic integrity.	Greater percentages of roadless areas would retain high to very high scenic integrity compared to the 2001 rule due to removal of substantially altered areas under the final rule. Retains majority of CRAs at high or very high integrity, including CRAs in upper tiers; the scenic integrity of some areas would be reduced by the roads and road-related activities projected as likely to occur in CRAs. Lower risk to scenic integrity compared to forest plans. New unroaded areas would add to areas protected for high scenic integrity compared to the 2001 rule. More opportunities for treatments to contribute to scenic quality in long-run compared to the 2001 rule.	Highest risk to scenic integrity, as more unroaded acres may shift to a moderate to low scenic integrity as a result of projected road and tree cutting activities. Greater opportunities for treatments may contribute more to high quality scenic levels in the long-term.	Similar to the final rule within CRAs that are not upper tier. Greater assurances about preserving high quality scenic levels in upper tier acres, compared to the final rule.
Wilderness and Other Congressionally Designated Areas.	No major difference among the alternatives and baseline conditions related to the risk of adverse effects on congressionally designated areas. There would be no potential direct effect on these areas as they are outside the roadless areas that are the subject of each alternative. Effects on areas recommended as wilderness would not differ across alternatives and baseline conditions as land management plans generally prohibit road construction and tree cutting and removal activities in those areas.			
	Indirect effects on wilderness area characteristics or experience from activities in adjacent roadless areas are expected to be low and similar to the 2001 rule because projected activities are not expected to occur adjacent to wilderness area boundaries. Unlike the 2001 rule, the final rule provides opportunities to establish uniform management approaches for recommended wilderness through placement of roadless areas in upper tier.		Higher risk of indirect adverse effects on wilderness experience from activities in the analysis area due to higher likelihood that activities could occur adjacent to wilderness boundaries.	Effects similar to the final rule and the 2001 rule. Greater opportunity to establish uniform management approaches for recommended wilderness through placement of roadless areas in upper tier.
Soil	No major difference among alternatives related to the risk of soil impacts. The 2001 rule and Alternative 4 would have the least risk of adverse effects, and the final rule would have a slightly higher risk than the 2001 rule but lower than forest plans. However, these differences are expected to be small in magnitude and spread over a wide geographic area. Most of the potential effects would be mitigated by site-specific mitigation measures. The risk of post-fire soil erosion under the final rule may be higher compared to forest plans and lower relative to the 2001 rule as a result of projected levels of fuel treatments.			
Water Quality, Quantity, and Stream Flow.	Projected activities under the alternatives and baseline conditions are unlikely to contribute to water quality impairment (i.e., exceeding water quality standards) due to adverse effects being mitigated through the use of site-specific Watershed Conservation Practices, Best Management Practices, and other mitigation measures and regulatory (Clean Water Act) permit requirements, as well as compliance with wetland regulations (E.O. 11990 and Section 404(b)(1) guidelines. Water quantity effects expected to be minimal as the area of tree-cutting on any one watershed affected is likely to be small.			

TABLE 3—COMPARISON OF THE FINAL RULE AND ALTERNATIVE 4 WITH BASELINE CONDITIONS—Continued

Issue or affected resource	Alternative 1—2001 Roadless Rule (baseline condition)	Alternative 2—Final rule	Alternative 3—Forest plans	Alternative 4—proposed rule with public identified upper tier acres
	Lowest risk of direct adverse effects from tree cutting and road construction. Slightly greater potential for adverse effects from severe fire to water supplies.	Slightly greater risk of direct adverse effects from tree cutting and road construction compared to the 2001 rule, but lower compared to forest plans. Fewer restrictions on fuel treatments and slightly lower potential for adverse effects to water supplies from fire compared to the 2001 rule, but slightly higher potential compared to forest plans.	Higher risk of direct adverse effects from tree cutting and road construction. Least restrictions on fuel treatments and slightly lowest potential for adverse effects from severe fire.	Similar to the final rule though slightly lower direct risk due to more upper tier acres. More restrictions on fuel treatments and slightly greater risk to water supplies from severe fire, compared to the final rule and forest plans.
Air Resources	Differences in effects on air quality do not substantially differ between the alternatives and baseline conditions. Atmospheric emissions within the analysis area are not expected to increase to a level that would be likely to exceed State or Federal air quality standards. Potential for smoke related impacts under the final rule would be only slightly lower than the 2001 rule and slightly greater than forest plans.			
Threatened Endangered or Sensitive Plants.	No direct adverse impacts to threatened or endangered plants because no road construction or tree cutting, sale or removal is projected to occur where threatened or endangered plants exist. Site specific design criteria and mitigation measures are expected to minimize risk. Individual sensitive plants may be affected by projected activities, however, none of the alternatives or baseline conditions are expected to result in the loss of viability, nor cause a trend toward Federal listing of sensitive species.			
	Least risk of adverse impacts to sensitive plants, including threats from invasives.	More potential risk of adverse impacts to sensitive plants, including threats from invasives, compared to the 2001 rule but less risk than forest plans.	Greatest risk of adverse impacts to sensitive plants, including threats from invasives.	More risk of adverse impacts to sensitive plants compared to the 2001 rule, including threats from invasives; but less risk than the final rule or forest plans.
Aquatic Species and Habitat (also includes Threatened Endangered or Sensitive).	No measurable declines are expected on threatened and endangered (T&E) species, sensitive species, and MIS population trends; downstream T&E species; or wetlands and riparian areas under the alternatives or baseline conditions due to the assumption that mitigation measures and best management practices would help avoid or minimize impacts from the projected activities.			
	Greatest level of protection and least risk of adverse impacts. Provides most protection of cutthroat trout (similar to Alternative 4).	Some limited potential for reduced protection and increased risk of adverse impacts compared to the 2001 rule and Alternative 4 (but less risk than forest plans). Provides greater protection for cutthroat trout compared to forest plans.	Least amount of protection and greatest potential for adverse impacts.	Greatest level of protection and least risk for adverse impacts. Provides most protection of cutthroat trout (similar to the final rule).
		Increasing amounts of fuel reduction and forest health treatments under the final rule and forest plans could have long-term beneficial effects on aquatic habitat and species, compared to the 2001 rule.		
Terrestrial Species and Habitat (also includes Threatened, Endangered or Sensitive).	For the final rule, Alternative 3, Alternative 4, and baseline conditions, site-specific design criteria and mitigation measures are expected to avoid or minimize adverse effects from projected tree-cutting and road construction; projected activities are not likely to adversely affect federally listed species or designated critical habitat, nor result in the loss of viability or cause a trend toward Federal listing for sensitive species. Given the large acreage afforded roadless protection under the final rule, Alternative 4, and the 2001 rule, any changes in population trends for MIS would likely be an increase above current Forest Plan projections.			

TABLE 3—COMPARISON OF THE FINAL RULE AND ALTERNATIVE 4 WITH BASELINE CONDITIONS—Continued

Issue or affected resource	Alternative 1—2001 Roadless Rule (baseline condition)	Alternative 2—Final rule	Alternative 3—Forest plans	Alternative 4—proposed rule with public identified upper tier acres
	Least risk to terrestrial species and habitat from projected tree-cutting and road construction.	Increased risk to terrestrial species and habitat from projected tree-cutting and road construction compared to the 2001 rule and Alternative 4 (though effects are expected to be minimal and short-lived). More opportunities for tree-cutting (when combined with prescribed fire) to improve habitat and reduce potential for adverse effects from severe wildfire compared to the 2001 rule, but fewer opportunities compared to forest plans. Updated inventory of roadless areas provides higher quality portfolio of wildlife habitat within roadless areas compared to the 2001 rule.	Greatest risk to terrestrial species and habitat from projected tree-cutting and road construction. Greatest opportunity for tree-cutting (in combination with prescribed fire) to improve habitat and reduce adverse effects from severe wildfire.	Reduced risk to terrestrial species and habitat from projected activities, compared to the 2001 rule and the final rule. Reduced opportunity for tree-cutting to improve habitat and reduce adverse effects from severe wildfire compared to forest plans and the final rule. Updated inventory of roadless areas provides higher quality portfolio of wildlife habitat within roadless areas compared to the 2001 rule.
Diversity of Plant and Animal Communities.	The value of roadless areas in conserving plant and animal diversity is likely to increase as habitat loss and habitat degradation increase in scope and magnitude in lands outside of roadless areas. Opportunities for protected large contiguous blocks of secure habitat, biological strongholds, and habitat connectivity would be greatest for the 2001 rule and lowest under forest plans. Increasing opportunities for treatments under Alternative 4, the final rule, and forest plans respectively to address hazardous fuels and ecosystem restoration may have beneficial effects on long-term diversity compared to the 2001 rule.			
Invasive Plants	Site-specific design criteria and mitigation measures are expected to minimize risk. The magnitude and extent of spread of invasives in roadless areas would be relatively small under the alternatives and baseline conditions.			
	Lowest risk of spread due to low projections of road construction or tree cutting.	Intermediate risk of spread, higher than the 2001 rule and Alternative 4, but less than forest plans, due to greater projections of road construction or tree cutting.	Substantially greater risk of spread due to the greatest projections for road construction, tree cutting, fuels management, and future oil, gas, and coal activities compared to other alternatives.	Slightly higher risk of spread than the 2001 rule but less than the final rule and forest plans due to lower projections of road construction and tree cutting.
Recreation—Primitive and Semi-Primitive Recreation Settings and Opportunities.	Tree cutting activity is projected to occur on only a small percentage of roadless areas over 15 years under the alternatives and baseline conditions. Dispersed recreation opportunities (including hunting and fishing) are therefore not expected to change under the final rule and Alternative 4, but feelings of remoteness and solitude may change for periods of time in areas where activity occurs compared to the 2001 rule.			

TABLE 3—COMPARISON OF THE FINAL RULE AND ALTERNATIVE 4 WITH BASELINE CONDITIONS—Continued

Issue or affected resource	Alternative 1—2001 Roadless Rule (baseline condition)	Alternative 2—Final rule	Alternative 3—Forest plans	Alternative 4—proposed rule with public identified upper tier acres
	Likely to retain a high proportion of IRA acreage in a primitive or semi-primitive setting. The substantially altered areas and developed ski areas in IRAs may continue to appear inconsistent with semi-primitive characteristics expected in roadless areas. The newly identified roadless acres (409,500 acres) where road construction and tree cutting are projected to occur but are not within the IRAs could shift to less primitive settings.	Likely to retain a high proportion of CRA acreage in a primitive or semi-primitive setting; although some CRA acres would shift toward roaded natural settings in areas where the most roads, tree-cutting, and energy operations are projected in CRAs. By not including substantially altered areas and developed ski areas in CRAs and adding newly identified roadless areas to CRAs, the CRAs would appear more consistent with semi-primitive characteristics expected in roadless areas, compared to less consistency within IRAs under the 2001 rule.	Greatest risk of shifts from primitive/semi-primitive settings to roaded natural settings in areas where the most tree cutting, roads, or energy operations are projected to occur. .	Likely to retain greatest greater proportion of CRA acreage in primitive/semi-primitive setting compared to the final rule given slight reductions in construction and tree cutting activity and larger percent of CRAs in upper tier. By not including substantially altered areas and developed ski areas in CRAs and adding unroaded areas to CRAs, the CRAs would appear more consistent with semi-primitive characteristics expected in roadless areas compared to less consistency within IRAs under the 2001 rule.
Outfitters and Guides (recreation).	Out of 1,390 recreational special use permits authorized on NFS lands in Colorado, 1,066 are associated with outfitters and guides, some of which are likely to operate in roadless areas. The final rule, Alternative 4, and baseline conditions are expected to have negligible adverse effects on recreational special uses, including outfitter and guide opportunities, based on the projected magnitude and distribution of reasonably foreseeable activities. Limitations on road construction and tree cutting under any alternative would not be likely to affect ability to obtain or use a recreation use authorization.			
Cultural and Heritage Resources.	Site-specific inventories, design criteria, and mitigation measures are expected to minimize risk. Under the final rule, Alternative 3, Alternative 4, and baseline conditions, there may be small, localized impacts from a number of ongoing activities. The magnitude of human activities in roadless areas would continue to be much lower than on other NFS lands.			
	Least risk of damage to cultural and heritage resources due to lowest projected amounts of tree-cutting and road construction.	Intermediate risk of damage to cultural and heritage resources because of higher projected tree cutting and road construction, compared to the 2001 rule, but lower risk than forest plans.	Highest risk of damage to cultural and heritage resources because of highest projected amounts of tree cutting and road construction.	Same as the final rule.
Geological and Paleontological Resources.	None of the projected activities in roadless areas that vary across alternatives and baseline conditions would be likely to adversely affect geological or paleontological resources, which would be avoided or otherwise protected from potential adverse impacts. Management of these resources does not require road construction or tree cutting and would be the same under the alternatives and baseline conditions.			
Climate Change	Future emission of GHGs associated with projected activities under the alternatives and baseline conditions are too speculative for estimation. Potential releases of greenhouse gases due to the net effect of energy development and changes in wildfire conditions might be highest for forest plans and lowest for the 2001 rule, with the final rule being less than forest plans but more than the 2001 rule. Strategy options for adapting to climate change are more restrictive under the 2001 rule and Alternative 4, more flexible under the final rule, and most flexible under forest plans.			

TABLE 3—COMPARISON OF THE FINAL RULE AND ALTERNATIVE 4 WITH BASELINE CONDITIONS—Continued

Issue or affected resource	Alternative 1—2001 Roadless Rule (baseline condition)	Alternative 2—Final rule	Alternative 3—Forest plans	Alternative 4—proposed rule with public identified upper tier acres
Agency Costs				
Vegetation and Fuel Treatments.	Treatments are likely to be less efficient and more costly in IRAs.	Decreased flexibility to achieve management objectives in critical insect and disease areas compared to forest plans (but increased flexibility compared to the 2001 rule). Decreased ability to strategically and cost effectively locate treatments and improve efficiency as compared to forest plans but increased treatment cost effectiveness compared to the 2001 rule.	Capacity to shift the greatest amount of treatment acreage into roadless areas; increased efficiency, cost effectiveness and timeliness of wildfire suppression response as well as fuel reductions in CPZs compared to the final rule and Alternative 4.	Management flexibility is similar to the final rule, but projected treatment amounts are lower due to constraints imposed by more upper tier acreage under Alternative 4.
Other Costs	Administrative costs are estimated to not change. Emphasis on road decommissioning and temporary roads is expected to ease demands on maintenance backlog. Overall need to address invasive plants is expected to remain relatively constant across alternatives and baseline conditions. Although new roads can contribute to the spread of invasive plants, roads can also be an asset in helping to cost effectively control invasive populations.			

TABLE 4—SUMMARY OF DISTRIBUTIONAL EFFECTS AND ECONOMIC IMPACTS OF THE FINAL RULE AND ALTERNATIVES

	Alternative 1—2001 Roadless Rule (no action)	Alternative 2—Final rule	Alternative 3—Forest plans	Alternative 4—Proposed rule with public identified upper tier acres
Leaseable Minerals: Coal, Oil and Gas—Output Value, Jobs and Income (2009$) Contributed [1].	$694 million/yr Output. 2,100 Jobs supported. $147 million per year Labor Income.	*$760 million/yr Output* * $33 million/yr less than forest plans. * $66 million/yr greater than the 2001 rule. *2,300 Jobs supported* * 100 fewer jobs than forest plans. * 200 more jobs than the 2001 rule. *$164 million/year Labor Income* * $5 million/yr less than forest plans. * $17 million/yr more than the 2001 rule.	$793 million/yr Output. 2,400 Jobs supported. $169 million per year Labor Income.	Same as the final rule.
Revenue Sharing: Mineral Lease Payments and Tax Revenues per year (2009$) [2].	State Total: $28.8 million Energy-Affected Counties: $5.9 million. All other CO Counties: $2.9 million.	*State Total: $31.2 million* * $1.4 million less than forest plans. * $2.4 million more than the 2001 rule. *Energy-Affected Counties: $6.2 million* * $0.4 million less than forest plans. * $0.3 more than the 2001 rule. *All other CO Counties: $3.2 million* * $0.1 million less than forest plans. * $0.3 more than the 2001 rule.	State Total: $32.6 million Energy-Affected Counties: $6.6 million. All other CO Counties: $3.3 million.	Same as the final rule.

TABLE 4—SUMMARY OF DISTRIBUTIONAL EFFECTS AND ECONOMIC IMPACTS OF THE FINAL RULE AND ALTERNATIVES—Continued

	Alternative 1—2001 Roadless Rule (no action)	Alternative 2—Final rule	Alternative 3—Forest plans	Alternative 4—Proposed rule with public identified upper tier acres
Values at risk: Number of Counties Where Potential for Fuel Treatments in CPZs may Increase or Decrease Compared to Alternative 3 and Baseline Conditions [3].	In comparison to forest plans: Decrease: 13 counties Increase: 0 county.	In comparison to forest plans: Decrease: 2 counties. Increase: 2 counties. In comparison to the 2001 rule: Decrease: 1 county. Increase: 13 counties.	In comparison to 2001 rule: Decrease: 0 counties. Increase: 13 counties.	In comparison to forest plans: Decrease: 16 counties. Increase: 2 counties. In comparison to 2001 rule: Decrease: 6 counties. Increase: 13 counties.

[1] Jobs and income contributed annually (2009 dollars) based on projected levels of coal, oil, and gas production and regional economic modeling multipliers derived from an IMPLAN model representing the five counties where employment effects are assumed to occur (Delta, Garfield, Mesa, Montrose, and Rio Blanco).

[2] Payments consist of property tax receipts from coal, oil, and gas production; State distribution of severance taxes and Federal royalties. Energy-affected counties are Delta, Garfield, Gunnison, Mesa, and Pitkin counties. Changes in payments associated with the Secure Rural Schools and Self Determination Act and Payments in Lieu of Taxes (PILT) are not expected to change significantly.

[3] CPZs = community protection zones (0.5 to 1.5 mile buffer area surrounding communities that have been identified as being at-risk to wildfire. ''Potential for fuel treatments'' implies that at least one CPZ area in a county overlaps with an IRA or CRA where tree cutting has at least a low likelihood of occurring, according to national forest unit field staff.

Proper Consideration of Small Entities

The final rule has also been considered in light of Executive Order 13272 (E.O. 13272) regarding proper consideration of small entities and the SBREFA, which amended the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*). The Forest Service has determined that this action will not have a significant economic impact on a substantial number of small entities as defined by the E.O. 13272 and SBREFA, because the final rule does not directly subject small entities to regulatory requirements. Therefore, an initial regulatory flexibility analysis is not required for this final rule. However, given public interest in the final rule's potential effects on small entities, including rural counties and economies, and efforts to be consistent with related rule-making analysis in the past, the indirect effects or reasonably foreseeable losses in potential small entity opportunities resulting from the final rule are analyzed.

For small businesses affiliated with most industry sectors involved with activities in roadless areas (e.g., coal, oil and gas), there are minimal differences between the final rule and baseline or no-action condition (2001 Roadless Rule). As a result, there is little or no potential for significant adverse economic impacts to small businesses under the final rule relative to baseline conditions.

There are about 1,390 recreation special use permits currently authorized within National Forest System lands in Colorado of which a large majority are small businesses, and 1,066 (77%) are associated with outfitter and guide permits, some of which are likely to operate within roadless areas. However, there is no difference between alternatives with respect to recreation special use authorizations in roadless areas, because limitations on road construction and tree cutting under any alternative would not be likely to affect ability to obtain or use recreation use authorizations. Impacts under the final rule compared to the baseline condition are not expected to be significant due to the small percentage of acreage affected and roads constructed per year spread across more than 4 million acres of CRAs. It is also noted that a significant percentage of road construction and tree cutting activity will occur within or near the CPZs where primitive or semi-primitive settings may already be affected. Timber sales and harvest levels for Colorado national forests as a whole are projected to be similar during the 15-year analysis period across the alternatives.

Flat and declining budgets imply the percentage of harvest from roadless areas may change under the alternatives, but aggregate volumes across all NFS land in Colorado are expected to remain relatively unchanged, on average based on budget, implying little potential for adverse impacts to small entities.

For leasable minerals associated with energy resources (coal, oil and gas), changes in output are projected across alternatives. More than 95 percent of the firms associated with these sectors can be classified as ''small''; as defined by Small Business Administration standards. Any changes in oil and gas, or coal development or production can, therefore, have an effect on small business opportunities in these sectors. A five-county region has been defined to model the economic impacts associated with energy resources (Delta, Garfield, Mesa, Montrose, and Rio Blanco counties). A total of 355 firms associated with oil and gas, and coal development and extraction are estimated to be located within this region, of which 95% are likely to be small (337 firms). However, energy resource sector jobs (i.e. jobs associated with oil, gas and coal development) within this five-county area, supported annually by projected activity within roadless areas, are estimated to increase from 2,100 under the 2001 Roadless Rule alternative to 2,300 jobs under the final rule (as well as Alternative 4). Estimated jobs supported decrease from 2,400 under Alternative 3 to 2,300 under the final rule. Labor income for oil, gas and coal sectors increases by a similar degree from $147 million per year under the 2001 rule to $164 million under the final rule; estimated labor income decreases from $169 million under forest plans to $164 million under the final rule. Estimated job and labor income contributions for oil, gas and coal sectors are equivalent for the final rule and Alternative 4. These results indicate that the final rule will not have significant adverse impacts to small entities associated with energy resource development and extraction relative to Alternative 1.

For all other economic sectors considered, changes in resource outputs are not projected to be significant to the extent that adverse impacts to small entities could occur in aggregate or within regions.

Among 64 counties in the state of Colorado, 36 counties (56%) are considered to be small governments (population less than 50,000). These 36 counties are considered to be small rural counties having NFS lands within

roadless areas. Six counties are energy (coal, oil and gas) producing counties. These six counties (Delta, Garfield, Gunnison, Mesa, Montrose, and Pitkin) are expected to be the counties most likely to benefit from mineral lease payments and revenue sharing under the final rule (as well as Alternative 4), and Alternative 3. Changes in mineral lease payments would be minimal in Montrose County. All of these counties, with the exception of Mesa can be considered small governments (population less than 50,000). The small population counties within the energy impact area (i.e., Delta, Garfield, Gunnison, and Pitkin), are forecasted to receive increases in aggregate payments associated with property tax receipts, severance tax distributions, and federal royalty distributions from coal, and oil and gas production, under the final rule relative to the 2001 Roadless Rule. There are slight decreases in aggregate payments to the small population counties under the final rule relative to Alternative 3 (aggregate payments decrease from $4.9 million to $4.7 million per year).

Under the final rule, as compared to forest plans, the potential opportunities for fuel treatments near at-risk communities (i.e., within CPZs) may increase for two ''small population'' counties and decrease for one ''small population county '' (i.e., populations less than 50,000). In contrast, potential opportunities for fuel treatments near at-risk communities may increase for ten ''small population'' counties and decrease for one county under the final rule compared to 2001 Roadless Rule. These results indicate that adverse impacts to small governments, regarding protection of values at risk from wildfire, are not likely, when comparing the final rule with 2001 Roadless Rule.

Therefore, for small governments, including counties with small populations and at-risk communities from wildfire within those counties, opportunities for revenue sharing, as well as protection of values-at-risk are not expected to significantly decrease under the final rule relative to baseline conditions. Mitigation measures associated with existing programs and laws regarding revenue sharing with counties and small business shares or set-asides will continue to apply.

Controlling Paperwork Burdens on the Public

This rule does not call for any additional recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 that are not already required by law or not already approved for use and, therefore, imposes no additional paperwork burden on the public. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320 do not apply.

Federalism

The Department has considered this final rule under the requirements of Executive Order 13132 issued August 4, 1999 (E.O. 13132), Federalism. The Department has made an assessment that the final rule conforms with the Federalism principles set out in E.O. 13132; would not impose any compliance costs on the State; and would not have substantial direct effects on the State, on the relationship between the national government and the State, nor on the distribution of power and responsibilities among the various levels of government. Therefore, the Department concludes that this rule does not have Federalism implications. This rule is based on a petition submitted by the State of Colorado under the Administrative Procedure Act at 5 U.S.C. 553(e) and pursuant to Department of Agriculture regulations at 7 CFR 1.28. The State's petition was developed through a task force with the involvement of local governments. The State is a cooperating agency pursuant to 40 CFR 1501.6 of the Council on Environmental Quality regulations for the development of the supporting environmental impact statement. State and local governments were encouraged to comment on the final rule, in the course of this rulemaking process.

No Takings Implications

The final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630 issued March 15, 1988. It has been determined that the rule does not pose the risk of a taking of private property.

Civil Justice Reform

The final rule has been reviewed under Executive Order 12988, Civil Justice Reform. After adoption of this rule, (1) all State and local laws and regulations that conflict with this rule or that would impede full implementation of this rule will be preempted; (2) no retroactive effect would be given to this rule; and (3) this rule would not require the use of administrative proceedings before parties could file suit in court challenging its provisions.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), the Department has assessed the effects of this final rule on State, local, and tribal governments and the private sector. This rule does not compel the expenditure of $100 million or more by State, local, or tribal governments or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required.

Energy Effects

Based on guidance for implementing Executive Order 13211 (E.O. 13211) of May 18, 2001, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use, issued by Office of Management and Budget (Memorandum for Heads of Executive Departments and Agencies, and Independent Regulatory Agencies (M–01–27), July 13, 2001), this final rule does not constitute a ''significant energy action'' as defined in E.O. 13211 because projected changes in oil, gas, and coal production under the final rule are not sufficient to cause exceedance of criteria for significance.

Projections of natural gas production are discussed in the FEIS and the ''Minerals and Energy: Analysis of Alternatives—Oil and Gas'' and ''Distributional Effects: Economic Impacts'' sections within this report. Based on those projections, it has been determined that natural gas production from the combined roadless analysis area varies across alternatives for only two National Forests (Grand Mesa, Uncompahgre, Gunnison National Forests and White River National Forest). For the San Juan National Forest, production occurs within roadless areas but does not vary across alternatives for that National Forest. It has also been determined that there is no appreciable difference in projected natural gas production between Alternatives 1 and 2 or Alternative 4. The difference in potential average annual natural gas production between Alternatives 1, 2, or 4 (35 billion cubic feet per year) and Alternative 3 for the Grand Mesa, Uncompahgre, Gunnison and White River National Forests (39 billion cubic feet per year) is a decrease of about 4 bcf/year, or 4 million mcf/year, which is well below the E.O. 13211 criterion for adverse effects of 25 million mcf/year.

Projected oil production ranges from approximately 50,000 barrels under 2001 Roadless Rule, final rule, and Alternative 4 to approximately 110,000 barrels under Alternative 3 over a period of 15 to 30 years. The corresponding reduction in oil production per day under the 2001 Roadless Rule, final rule, or Alternative 3 is inconsequential compared to the

E.O. 13211 criterion of 10,000 barrels per day.

Natural gas pipeline mileage across roadless areas is projected to be similar for the final rule, Alternative 4, and the 2001 Roadless Rule, implying that gas distribution costs are also projected to be similar across these alternatives (i.e., distribution costs will not increase under the final rule compared to the 2001 Roadless Rule). Average annual coal production is projected to be greater under the final rule (and Alternative 4) compared to the 2001 Roadless Rule, implying that economic impacts associated with coal are positive under the final rule, compared to the 2001 Roadless Rule. The final rule will increase access to an estimated 347 million tons of coal reserves over the 2001 Roadless Rule (the baseline condition) and could extend coal mining activity in the North Fork Valley by as much as 34 years. It should be noted that one of the existing mining companies in the North Fork Valley has announced plans to shift its operations to BLM and private lands once currently leased reserves under NFS lands have been recovered. This shift would occur regardless of roadless area alternatives considered.

Approximately 53% of all coal produced from Colorado in 2010 (25.2 million tons) was exported to other States, suggesting that regional markets and prices are likely to be heavily influenced by national prices, supplies, and market trends.

The impacts of a number of other factors affecting energy markets and national market trends may outweigh the effects of implementing 2001 Roadless Rule.

No novel legal or policy issues regarding adverse effects to supply, distribution or use of energy are anticipated beyond what has already been addressed in the FEIS, or the Regulatory Impact Analysis (RIA). None of the proposed corridors designated for oil, gas, and/or electricity under Section 368 of the Energy Policy Act of 2005 are within CRAs.

The final rule does not restrict access to privately held mineral rights, or mineral rights held through existing claims or leases, and allows for disposal of mineral materials. The final rule does not prohibit future mineral claims or mineral leasing in areas otherwise open for such. The rule also provides a regulatory mechanism for consideration of requests for modification of restrictions if adjustments are determined to be necessary in the future. Based on the evidence above, criteria for ''significance'' under E.O. 13211 are not exceeded for the final rule. The final rule is therefore not considered a significant energy action.

List of Subjects in 36 CFR Part 294

National forests, Recreation areas, Navigation (air), State petitions for inventoried roadless area management.

Therefore, for the reasons set forth in the preamble, the Forest Service is amending part 294 of Title 36 of the Code of Federal Regulations by adding subpart D to read as follows:

PART 294—SPECIAL AREAS

Subpart D—Colorado Roadless Area Management

Sec.
294.40 Purpose.
294.41 Definitions.
294.42 Prohibitions on tree cutting, sale, or removal.
294.43 Prohibition on road construction and reconstruction.
294.44 Prohibition on linear construction zones.
294.45 Environmental documentation.
294.46 Other activities.
294.47 Modifications and administrative corrections.
294.48 Scope and applicability.
294.49 List of designated Colorado Roadless Areas.

Authority: 16 U.S.C. 472, 529, 551, 1608, 1613; 23 U.S.C. 201, 205.

Subpart D—Colorado Roadless Area Management

§ 294.40 Purpose.

The purpose of this subpart is to provide, within the context of multiple use management, State-specific direction for the protection of roadless areas on National Forest System lands in Colorado. The intent of this regulation is to protect roadless values by restricting tree cutting, sale, and removal; road construction and reconstruction; and linear construction zones within Colorado Roadless Areas (CRAs), with narrowly focused exceptions. Activities must be designed to conserve the roadless area characteristics listed in § 294.41, although applying the exceptions in § 294.42, § 294.43, and § 294.44 may have effects to some roadless area characteristics.

§ 294.41 Definitions.

The following terms and definitions apply to this subpart.

At-Risk Community: As defined under section 101 of the Healthy Forests Restoration Act (HFRA).

Catchment: A watershed delineation beginning at the downstream point of occupation of native cutthroat trout and encompassing the upstream boundary of waters draining in the stream system.

Colorado Roadless Areas: Areas designated pursuant to this subpart and identified in a set of maps maintained at the national headquarters office of the Forest Service. Colorado Roadless Areas established by this subpart shall constitute the exclusive set of National Forest System lands within the State of Colorado to which the provisions 36 CFR 220.5(a)(2) shall apply.

Colorado Roadless Areas Upper Tier Acres: A subset of Colorado Roadless Areas identified in a set of maps maintained at the national headquarters office of the Forest Service which have limited exceptions to provide a high-level of protection for these areas.

Community Protection Zone: An area extending one-half mile from the boundary of an at-risk community; or an area within one and a half miles from the boundary of an at-risk community, where any land:

(1) Has a sustained steep slope that creates the potential for wildfire behavior endangering the at-risk community;

(2) Has a geographic feature that aids in creating an effective fire break, such as a road or a ridge top; or

(3) Is in condition class 3 as defined by HFRA.

Community Wildfire Protection Plan: As defined under section 101 of the HFRA, and used in this subpart, the term ''community wildfire protection plan'' means a plan for an at-risk community that:

(1) Is developed within the context of the collaborative agreements and the guidance established by the Wildland Fire Leadership Council and agreed to by the applicable local government, local fire department, and State agency responsible for forest management, in consultation with interested parties and the Federal land management agencies managing land in the vicinity of the at-risk community;

(2) Identifies and prioritizes areas for hazardous fuel reduction treatments and recommends the types and methods of treatment on Federal and non-Federal land that will protect one or more at-risk communities and essential infrastructure; and

(3) Recommends measures to reduce structural ignitability throughout the at-risk community.

Condition Class 3: As defined under section 101 of the HFRA the term ''condition class 3'' means an area of Federal land, under which:

(1) Fire regimes on land have been significantly altered from historical ranges;

(2) There exists a high risk of losing key ecosystem components from fire;

(3) Fire frequencies have departed from historical frequencies by multiple return intervals, resulting in dramatic changes to:

(i) The size, frequency, intensity, or severity of fires; or

(ii) Landscape patterns; and

(4) Vegetation attributes have been significantly altered from the historical range of the attributes.

Fire Hazard: A fuel complex defined by volume, type, condition, arrangement and location that determines the ease of ignition and the resistance to control; expresses the potential fire behavior for a fuel type, regardless of the fuel type's weather influenced fuel moisture condition.

Fire Occurrence: One fire event occurring in a specific place within a specific period of time; a general term describing past or current wildland fire events.

Fire Risk: The probability or chance that a fire might start, as affected by the presence and activities of causative agents.

Forest Road: As defined at 36 CFR 212.1, the term means a road wholly or partly within or adjacent to and serving the National Forest System that the Forest Service determines is necessary for the protection, administration, and utilization of the National Forest System and the use and development of its resources.

Hazardous Fuels: Excessive live or dead wildland fuel accumulations that increase the potential for intense wildland fire and decrease the capability to protect life, property and natural resources.

Linear Construction Zone: A temporary linear area of surface disturbance over 50-inches wide that is used for construction equipment to install or maintain a linear facility. The sole purpose of the linear disturbance is to accommodate equipment needed to construct and transport supplies and personnel needed to install or maintain the linear facility. It is not a road, not used as a motor vehicle route, not open for public use, and is not engineered to road specifications.

Linear Facility: Linear facilities include pipelines, electrical power lines, telecommunications lines, ditches, canals, and dams.

Municipal Water Supply System: As defined under Section 101 of the HFRA, and used in this subpart, the term means the reservoirs, canals, ditches, flumes, laterals, pipes, pipelines, and other surface facilities and systems constructed or installed for the collection, impoundment, storage, transportation, or distribution of drinking water.

Native Cutthroat Trout: Collectively, all the native subspecies of cutthroat trout historically occurring in Colorado before European settlement which includes yellowfin, Rio Grande, Greenback, and Colorado River Trout.

Permanent Road: Roads that are either a forest road; private road (a road under private ownership authorized by an easement granted to a private party or a road that provides access pursuant to a reserved or outstanding right); or public road (a road under the jurisdiction of and maintained by a public road authority and open to public travel).

Pre-Existing Water Court Decree: An adjudicated conditional or absolute decree issued by a Colorado Court, the initial application for which was filed prior to July 3, 2012, adjudicating as the point of a diversion or the place of use a location within a Colorado Roadless Area. A pre-existing water court decree does not include decrees for water rights with a point of diversion and place of use outside of a Colorado Roadless Area, the holder of which proposes to change the point of diversion or place of use to within a Colorado Roadless Area, except for a change in location of a head gate and associated ditch pursuant to Colorado Revised Statute 2011 § 37–86–111.

Responsible Official: The Forest Service line officer with the authority and responsibility to make decisions about protection and management of Colorado Roadless Areas pursuant to this subpart.

Road: As defined at 36 CFR 212.1, the term means a motor vehicle route over 50 inches wide, unless identified and managed as a trail.

Roadless Area Characteristics: Resources or features that are often present in and characterize Colorado Roadless Areas, including:

(1) High quality or undisturbed soil, water, and air;

(2) Sources of public drinking water;

(3) Diversity of plant and animal communities;

(4) Habitat for threatened, endangered, proposed, candidate, and sensitive species, and for those species dependent on large, undisturbed areas of land;

(5) Primitive, semi-primitive non-motorized and semi-primitive motorized classes of dispersed recreation;

(6) Reference landscapes;

(7) Natural-appearing landscapes with high scenic quality;

(8) Traditional cultural properties and sacred sites; and

(9) Other locally identified unique characteristics.

Temporary Road: As defined at 36 CFR 212.1, the term means a road necessary for emergency operations or authorized by contract, permit, lease, or other written authorization that is not a forest road and that is not included in a forest transportation atlas.

Water Conveyance Structures: Facilities associated with the transmission, storage, impoundment, and diversion of water on and across National Forest System lands. Water conveyance structures include, but are not limited to: Reservoirs and dams, diversion structures, headgates, pipelines, ditches, canals, and tunnels.

Water Influence Zone: The land next to water bodies where vegetation plays a major role in sustaining long-term integrity of aquatic systems. It includes the geomorphic floodplain (valley bottom), riparian ecosystem, and inner gorge. Its minimum horizontal width (from top of each bank) is 100 feet or the mean height of mature dominant late-seral vegetation, whichever is greater.

Watershed Conservation Practice: The watershed conservation practices are stewardship actions based upon scientific principles and legal requirements to protect soil, aquatic and riparian resources. Each watershed conservation practice consists of a management measure, a set of design criteria used to achieve the management measure, and guidance for monitoring and restoration. For specific information, refer to Forest Service Manual 2509.25.

§ 294.42 Prohibition on tree cutting, sale, or removal.

(a) *General.* Trees may not be cut, sold, or removed in Colorado Roadless Areas, except as provided in paragraph (b) and (c) of this section.

(b) *Upper Tier Acres.* Notwithstanding the prohibition in paragraph (a) of this section, trees may be cut, sold, or removed in Colorado Roadless Areas upper tier acres if the responsible official determines the activity is consistent with the applicable land management plan, and:

(1) Tree cutting, sale, or removal is incidental to the implementation of a management activity not otherwise prohibited by this subpart; or

(2) Tree cutting, sale, or removal is needed and appropriate for personal or administrative use, as provided for in 36 CFR part 223, subpart A.

(c) *Non-Upper Tier Acres.* Notwithstanding the prohibition in paragraph (a) of this section, trees may be cut, sold, or removed in Colorado Roadless Areas outside upper tier acres if the responsible official, unless otherwise noted, determines the activity is consistent with the applicable land management plan, one or more of the

roadless area characteristics will be maintained or improved over the long-term with the exception of paragraph (5) and (6) of this section, and one of the following circumstances exists:

(1) The Regional Forester determines tree cutting, sale, or removal is needed to reduce hazardous fuels to an at-risk community or municipal water supply system that is:

(i) Within the first one-half mile of the community protection zone, or

(ii) Within the next one-mile of the community protection zone, and is within an area identified in a Community Wildfire Protection Plan.

(iii) Projects undertaken pursuant to paragraphs (c)(1)(i) and (ii) of this section will focus on cutting and removing generally small diameter trees to create fuel conditions that modify fire behavior while retaining large trees to the maximum extent practical as appropriate to the forest type.

(2) The Regional Forester determines tree cutting, sale, or removal is needed outside the community protection zone where there is a significant risk that a wildland fire disturbance event could adversely affect a municipal water supply system or the maintenance of that system. A significant risk exists where the history of fire occurrence, and fire hazard and risk indicate a serious likelihood that a wildland fire disturbance event would present a high risk of threat to a municipal water supply system.

(i) Projects will focus on cutting and removing generally small diameter trees to create fuel conditions that modify fire behavior while retaining large trees to the maximum extent practical as appropriate to the forest type.

(ii) Projects are expected to be infrequent.

(3) Tree cutting, sale, or removal is needed to maintain or restore the characteristics of ecosystem composition, structure and processes. These projects are expected to be infrequent.

(4) Tree cutting, sale, or removal is needed to improve habitat for federally threatened, endangered, proposed, or Agency designated sensitive species; in coordination with the Colorado Department of Natural Resources, including the Colorado Division of Parks and Wildlife.

(5) Tree cutting, sale, or removal is incidental to the implementation of a management activity not otherwise prohibited by this subpart.

(6) Tree cutting, sale, or removal is needed and appropriate for personal or administrative use, as provided for in 36 CFR part 223, subpart A.

§ 294.43 Prohibition on road construction and reconstruction.

(a) *General.* A road may not be constructed or reconstructed in a Colorado Roadless Area except as provided in paragraphs (b) and (c) of this section.

(b) *Upper Tier Acres.* Notwithstanding the prohibition in paragraph (a) of this section, a road may only be constructed or reconstructed in Colorado Roadless Area upper tier acres if the responsible official determines that the conditions in subsection 1 or 2 are met.

(1) A road is needed pursuant to reserved or outstanding rights, or as provided for by statute or treaty, or

(2) A road is needed to protect public health and safety in cases of an imminent threat of flood, fire or other catastrophic event that, without intervention, would cause the loss of life or property.

(3) For any road construction/reconstruction authorized pursuant to this provision, subject to the legal rights identified in 36 CFR 294.43(b)(1), the responsible official must determine:

(i) Motorized access, without road construction is not feasible;

(ii) When proposing to construct a forest road, that a temporary road would not provide reasonable access;

(iii) Road construction is consistent with the applicable land management plan direction;

(iv) Within a native cutthroat trout catchment or identified recovery watershed, road construction will not diminish, over the long-term, conditions in the water influence zone and the extent of the occupied native cutthroat trout habitat; and

(v) That watershed conservation practices will be applied to all projects occurring in native cutthroat trout habitat.

(c) *Non-Upper Tier Acres.* Notwithstanding the prohibition in paragraph (a) of this section, a road or temporary road may only be constructed or reconstructed in Colorado Roadless Areas outside upper tier acres if the responsible official determines:

(1) That one of the following exceptions exists:

(i) A road is needed pursuant to reserved or outstanding rights, or as provided for by statute or treaty;

(ii) Road realignment is needed to prevent irreparable resource damage that arises from the design, location, use, or deterioration of a forest road and that cannot be mitigated by road maintenance. Road realignment may occur under this paragraph only if the road is deemed essential for administrative or public access, public health and safety, or uses authorized under permit, easement or other legal instrument;

(iii) Road reconstruction is needed to implement a road safety improvement project on a forest road determined to be hazardous on the basis of accident experience or accident potential on that road;

(iv) The Regional Forester determines a road or temporary road is needed to allow for the construction, reconstruction, or maintenance of an authorized water conveyance structure which is operated pursuant to a pre-existing water court decree with the use of the road limited to the water right identified in the pre-existing water court decree (see also § 294.44(b)(2));

(v) A temporary road is needed to protect public health and safety in cases of imminent threat of flood, fire, or other catastrophic event that, without intervention, would cause the loss of life or property;

(vi) The Regional Forester determines a temporary road is needed to facilitate tree cutting, sale, or removal (§ 294.42(c)(1)) within the first one-half mile of the community protection zone to reduce the wildfire hazard to an at-risk community or municipal water supply system;

(vii) The Regional Forester determines a temporary road is needed to facilitate tree cutting, sale, or removal (§ 294.42(c)(3)) within the first one-half mile of the community protection zone to maintain or restore characteristics of ecosystem composition, structure and processes;

(viii) A temporary road is needed within a Colorado Roadless Area pursuant to the exploration or development of an existing oil and gas lease that does not prohibit road construction or reconstruction, including the construction of infrastructure necessary to transport the product, on National Forest System lands that are under lease issued by the Secretary of the Interior as of July 3, 2012. The Forest Service shall not authorize the Bureau of Land Management to grant any request for a waiver, exception, or modification to any oil or gas lease if doing so would result in any road construction within a Colorado Roadless Area beyond that which was authorized by the terms and conditions of the lease at the time of issuance; or

(ix) A temporary road is needed for coal exploration and/or coal-related surface activities for certain lands within Colorado Roadless Areas in the North Fork coal mining area of the Grand Mesa, Uncompahgre, and Gunnison National Forests as defined by the North Fork coal mining area

displayed on the final Colorado Roadless Areas map. Such roads may also be used for collecting and transporting coal mine methane. Any buried infrastructure, including pipelines, needed for the capture, collection, and use of coal mine methane, will be located within the rights-of-way of temporary roads that are otherwise necessary for coal-related surface activities including the installation and operation of methane venting wells.

(2) If proposed road construction/reconstruction meets one of the exceptions, subject to the legal rights identified in § 294.43(c)(1), the responsible official must determine:

(i) Motorized access, without road construction is not feasible;

(ii) When proposing to construct a forest road, that a temporary road would not provide reasonable access;

(iii) Road construction is consistent with the applicable land management plan direction;

(iv) Within a native cutthroat trout catchment or identified recovery watershed, road construction will not diminish, over the long-term, conditions in the water influence zone and the extent of the occupied native cutthroat trout habitat; and

(v) That watershed conservation practices will be applied to all projects occurring in native cutthroat trout habitat.

(d) *Road construction/reconstruction/decommissioning project implementation and management.* The following elements will be incorporated into any road construction/reconstruction projects implemented within Colorado Roadless Areas.

(1) *Road construction/reconstruction.* If it is determined that a road is authorized in a Colorado Roadless Area, conduct construction in a manner that reduces effects on surface resources, and prevents unnecessary or unreasonable surface disturbance.

(2) *Road decommissioning.* Decommission any road and restore the affected landscape when it is determined that the road is no longer needed for the established purpose prior to, or upon termination or expiration of a contract, authorization, or permit, if possible; or upon termination or expiration of a contract, authorization, or permit, whichever is sooner. Require the inclusion of a road decommissioning provision in all contracts or permits. Design decommissioning to stabilize, restore, and revegetate unneeded roads to a more natural state to protect resources and enhance roadless area characteristics. Examples include obliteration, denial of use, elimination of travelway functionality, and removal of the road prism (restoration of the road corridor to the original contour and hydrologic function).

(3) *Road designations.* The designation of a temporary road constructed or reconstructed pursuant to this subpart may not be changed to forest road except where a forest road is allowed under paragraphs (b) and (c) of this section.

(4) *Road use.* Use of motor vehicles for administrative purposes by the Forest Service and by fire, emergency, or law enforcement personnel is allowed. All roads constructed pursuant to paragraphs (b) and (c) of this section shall prohibit public motorized vehicles (including off-highway vehicles) except:

(i) Where specifically used for the purpose for which the road was established; or

(ii) Motor vehicle use that is specifically authorized under a Federal law or regulation.

(5) *Road maintenance.* Maintenance of roads is permissible in Colorado Roadless Areas.

§ 294.44 Prohibition on linear construction zones.

(a) *General.* A linear construction zone may not be authorized in Colorado Roadless Areas except as provided in paragraph (b) and (c) of this section and § 294.48 (a).

(b) *Upper Tier Acres.* Notwithstanding the prohibition in paragraph (a) of this section, a linear construction zone may only be authorized within Colorado Roadless Area upper tier acres if the Regional Forester determines the LCZ is needed:

(1) Pursuant to reserved or outstanding rights, or as provided for by statute or treaty.

(2) For the construction, reconstruction, or maintenance of an authorized water conveyance structure which is operated pursuant to a pre-existing water court decree (see § 294.43(c)(1)(iv));

(c) *Non-Upper Tier Acres.* Notwithstanding the prohibition in paragraph (a) of this section, a linear construction zone may only be authorized within Colorado Roadless Area non-upper tier acres if the Regional Forester determines the LCZ is needed:

(1) Pursuant to reserved or outstanding rights, or as provided for by statute or treaty.

(2) For the construction, reconstruction, or maintenance of an authorized water conveyance structure which is operated pursuant to a pre-existing water court decree (see § 294.43(c)(1)(iv));

(3) For the construction, reconstruction, or maintenance of existing or future authorized electrical power lines or telecommunication lines. Electrical power lines or telecommunication lines within Colorado Roadless Areas will only be authorized if there is no opportunity for the project to be implemented outside of a Colorado Roadless Area without causing substantially greater environmental damage; or

(4) For the construction, reconstruction or maintenance of a pipeline associated with operation of an oil and gas lease that allows surface use within a Colorado Roadless Area or the construction, reconstruction or maintenance of a pipeline needed to connect to infrastructure within a Colorado Roadless Area from outside a Colorado Roadless Area where such a connection would cause substantially less environmental damage than alternative routes. The construction of pipelines for the purposes of transporting oil or natural gas through a Colorado Roadless Area, where the source(s) and destination(s) of the pipeline are located exclusively outside of a Colorado Roadless Area, shall not be authorized.

(d) *Proposed Linear Construction Zones.* If a proposed linear construction zone meets one of the above exceptions, then the following must be determined:

(1) Motorized access, without a linear construction zone, is not feasible;

(2) A linear construction zone is consistent with the applicable land management plan direction;

(3) A linear construction zone is no wider than its intended use;

(4) Within a native cutthroat trout catchment or identified recovery watershed, a linear construction zone will not diminish, over the long-term, conditions in the water influence zone and the extent of the occupied native cutthroat trout habitat;

(5) Reclamation of a linear construction zone will not diminish, over the long-term, roadless area characteristics; and

(6) That watershed conservation practices will be applied to all projects occurring in catchments with occupied native cutthroat trout habitat.

(e) *Linear construction zone decommissioning.* Where a linear construction zone is authorized in a Colorado Roadless Area, installation of the linear facility will be done in a manner that minimizes ground disturbance, including placement within existing right-of-ways where feasible. All authorizations approving the installation of linear facilities through the use of a linear construction

zone shall include a responsible official approved reclamation plan for reclaiming the affected landscape while conserving roadless area characteristics over the long-term. Upon completion of the installation of a linear facility via the use of a linear construction zone, all areas of surface disturbance shall be reclaimed as prescribed in the authorization and the approved reclamation plan and may not be waived.

§ 294.45 Environmental documentation.

(a) Environmental documentation will be prepared pursuant to Section 102 of the National Environmental Policy Act, 40 CFR part 1500, and 36 CFR part 220 for any proposed action within a Colorado Roadless Area. Proposed actions that would significantly alter the undeveloped character of a Colorado Roadless Area require an Environmental Impact Statement (EIS).

(b) The Forest Service will offer cooperating agency status to the State of Colorado, for all proposed projects and planning activities subject to this rule that would be implemented on lands within Colorado Roadless Areas. Where the Forest Service does not have the authority to offer formal cooperating agency status, the Forest Service shall offer to coordinate with the State.

§ 294.46 Other activities.

(a) *Water Rights.* This subpart in no manner restricts any party from seeking modification of a pre-existing water court decree, but after July 3, 2012 any Forest Service authorization required for road construction, road reconstruction, tree cutting, or linear construction zones associated with a modified water court decree must conform to the requirements in this subpart; provided that road construction or reconstruction may be authorized where necessary to change the location of a headgate and associated ditch, pursuant to Colorado Revised Statute 2011 § 37–86–111.

(b) *Oil and Gas Leases.* Oil and gas leases issued within a Colorado Roadless Area after July 3, 2012 will prohibit road construction/reconstruction. The Forest Service shall not authorize the Bureau of Land Management to grant any request for a waiver, exception, or modification to any oil or gas lease if doing so would result in any road construction within a Colorado Roadless Area. For oil and gas leases issued in a Colorado Roadless Area prior to July 3, 2012, the rule preserves any existing leases and surface development rights. The rule also preserves any existing limitations on surface development rights arising from lease terms, lease stipulations, conditions of approval, 36 CFR 228.100, and Onshore Oil and Gas Orders.

(c) *Oil and Gas Leases on Upper Tier Acres.* Oil and gas leases issued within upper tier acres after July 3, 2012 will require a no surface occupancy stipulation. The Forest Service shall not authorize the Bureau of Land Management to grant any request for a waiver, exception, or modification to any oil or gas lease if doing so would result in surface occupancy within an upper tier area.

(d) *Oil and Gas Surface Use Plans of Operation.* Where applicable and consistent with lease rights, during the review of any application for a surface use plan of operations affecting lands within a Colorado Roadless Area, the responsible official will:

(1) Locate, without compromising health and safety standards, roads, well sites, and facilities on pre-existing areas of surface disturbance. Project design shall minimize the amount of necessary temporary road construction or reconstruction.

(2) Consider an alternative for proposed operations that addresses locating directional drilling of multi-well sites on pre-existing areas of surface disturbance. Such an alternative can be dismissed from detailed analysis with clear justification.

(3) Restrict road construction for leases partially within Colorado Roadless Areas to portions of the lease outside of Colorado Roadless Areas except when doing so will be substantially more environmentally damaging, compromise safety standards, or is unfeasible due to surface and/or operational conditions.

(4) Perform reclamation of surface disturbances incrementally, to minimize the total area of disturbance at any given point in time during the exploration or development of a lease.

(5) Design temporary roads and facilities to blend with the terrain to minimize visual impacts and to facilitate restoration when the road is no longer needed.

(6) Co-locate, consistent with health and safety standards, power lines, flow lines and pipelines within the right-of-way of roads or other LCZs to minimize the area of surface disturbance.

(7) Consider new and developing low impact techniques and technologies and either apply or dismiss with justification.

(8) Consider the best available technology to minimize noise and air emissions.

(e) *Trails.* Nothing in this subpart shall affect the current or future management of motorized and non-motorized trails in Colorado Roadless Areas. Decisions concerning the management or status of motorized and non-motorized trails within Colorado Roadless Areas under this subpart shall be made during the applicable forest travel management processes.

(f) *Motorized access.* Nothing in this subpart shall be construed as limiting the authority of the responsible official to approve existing and future motorized access not requiring road construction or reconstruction in Colorado Roadless Areas associated with grazing permits, special use authorizations, and other authorizations.

(g) *Livestock grazing.* The authority to issue livestock grazing permits on national forest system lands within a Colorado Roadless Area is not affected by this subpart; however, no new temporary or forest roads shall be authorized through grazing permits issued after July 3, 2012.

§ 294.47 Modifications and administrative corrections.

Modifications and administrative corrections pursuant to this subpart, after coordination with the State, may be made under the following circumstances:

(a) *Modifications to boundaries.* The Chief of the Forest Service may modify the boundaries of any designated Colorado Roadless Area identified in § 294.49 or add new Colorado Roadless Areas based on changed circumstances. Modifications and additions will be reflected in the set of maps maintained at the national headquarters office of the Forest Service. The construction or reconstruction of a temporary road or tree cutting, sale, or removal will not result in any boundary modification of a Colorado Roadless Area. Public notice with a minimum 90-day comment period will be provided for any proposed Colorado Roadless Area boundary modifications or additions.

(b) *Administrative corrections to boundaries.* The Chief of the Forest Service may issue administrative corrections after public notice and a 30-day comment period. Administrative corrections to the maps of any designated Colorado Roadless Areas identified in § 294.49, including upper tier acres are adjustments to remedy errors such as clerical or improvements in mapping technology. Other than clerical errors, an administrative correction is based on improved field data due to updated imagery, global positioning system data, or other collected field data.

(c) *Amendments to rule language.* Any amendment of this subpart will include coordination with the State and

the appropriate level of NEPA analysis. A minimum 90-day comment period will be provided.

§ 294.48 Scope and applicability.

(a) This subpart does not revoke, suspend, or modify any permit, contract, lease, or other legal instrument authorizing or granting rights to the occupancy and use of National Forest system land issued prior to July 3, 2012 nor does it affect the authority or the discretion of the responsible official to reissue any such permit, contract, or other legal instrument upon its expiration or termination.

(b) This subpart does not revoke, suspend, or modify any project or activity decision made prior to July 3, 2012.

(c) The provisions set forth in this subpart provide the maximum level of tree cutting, sale and removal, and road construction and reconstruction activity allowed within Colorado Roadless Areas. Land management plan components can be more restrictive than this subpart and will continue to provide direction and guidance for projects and activities within Colorado Roadless Areas. Nothing in this subpart shall prohibit a responsible official from further restricting activities allowed within Colorado Roadless Areas. This subpart does not compel the amendment or revision of any land management plan.

(d) The prohibitions and restrictions established in this subpart are not subject to reconsideration, revision, or rescission in subsequent project decisions or land management plan amendments or revisions undertaken pursuant to 36 CFR part 219.

(e) Nothing in this subpart waives any applicable requirements regarding site specific environmental analysis, public involvement, consultation with Tribes and other agencies, or compliance with applicable laws.

(f) If any provision in this subpart or its application to any person or to certain circumstances is held to be invalid, the remainder of the regulations in this subpart and their application remain in force.

(g) After July 3, 2012 36 CFR 294.10 through 294.14 shall have no effect within the State of Colorado.

§ 294.49 List of designated Colorado Roadless Areas.

All National Forest System lands within the State of Colorado listed in this section are hereby designated as Colorado Roadless Areas. An ''X'' in the third column indicates that some or all of that CRA contains upper tier acres.

Line No.	Colorado roadless area name	Includes upper tier acres
	Arapaho-Roosevelt National Forest	
1	Bard Creek	X
2	Byers Peak	X
3	Cache La Poudre Adjacent Areas	X
4	Cherokee Park	
5	Comanche Peak Adjacent Areas	X
6	Copper Mountain	
7	Crosier Mountain	
8	Gold Run	X
9	Green Ridge -East	X
10	Green Ridge -West	X
11	Grey Rock	
12	Hell Canyon	
13	Indian Peaks Adjacent Areas	X
14	James Peak	
15	Kelly Creek	X
16	Lion Gulch	
17	Mount Evans Adjacent Areas	X
18	Mount Sniktau	X
19	Neota Adjacent Area	X
20	Never Summer Adjacent Area	
21	North Lone Pine	X
22	North St. Vrain	X
23	Rawah Adjacent Areas	X
24	Square Top Mountain	X
25	Troublesome	X
26	Vasquez Adjacent Area	X
27	White Pine Mountain	
28	Williams Fork	X
	Grand Mesa, Uncompahgre, Gunnison National Forest	
29	Agate Creek	
30	American Flag Mountain	
31	Baldy	
32	Battlements	
33	Beaver	X
34	Beckwiths	
35	Calamity Basin	
36	Cannibal Plateau	
37	Canyon Creek-Antero	
38	Canyon Creek	
39	Carson	X
40	Castle	
41	Cataract	X
42	Cimarron Ridge	

Line No.	Colorado roadless area name	Includes upper tier acres
43	Clear Fork	
44	Cochetopa	X
45	Cochetopa Hills	
46	Cottonwoods	
47	Crystal Creek	
48	Crystal Peak	X
49	Curecanti	X
50	Currant Creek	
51	Deer Creek	
52	Dominguez	
53	Double Top	
54	East Elk	
55	Electric Mountain	
56	Failes Creek-Soldier Creek	X
57	Flatirons	
58	Flattop Mountain	
59	Flattops-Elk Park	
60	Gothic	
61	Granite Basin	X
62	Hightower	
63	Hope Lake	X
64	Horse Ranch Park	
65	Horsefly Canyon	X
66	Huntsman Ridge	
67	Italian Mountain	
68	Johnson Basin	X
69	Kannah Creek	
70	Kelso Mesa	
71	Last Dollar-Sheep Creek	
72	Little Cimarron	X
73	Long Canyon	
74	Matchless Mountain	
75	Matterhorn	X
76	McClure Pass	
77	Mendicant	X
78	Mineral Mountain	X
79	Mirror Lake	
80	Mount Lamborn	X
81	Munsey-Erickson	X
82	Naturita Canyon	X
83	North Henson	
84	Pilot Knob	
85	Poverty Gulch	X
86	Salt Creek	
87	Sanford Basin	X
88	Sawtooth	X
89	Schofield Pass	
90	Soap Creek	X
91	Steuben	
92	Sunnyside	
93	Sunset	
94	Texas Creek	
95	Tomahawk	
96	Turner Creek	
97	Turret Ridge	X
98	Unaweep	X
99	Union	
100	Whetstone	
101	Whitehouse Mountain	X
102	Willow Creek	
103	Wilson	X
104	Windy Point	
	Manti-La Sal National Forest	
105	Roc Creek	X
	Pike-San Isabel National Forest	
106	Antelope Creek	
107	Aspen Ridge	X
108	Babcock Hole	
109	Badger Creek	X

Line No.	Colorado roadless area name	Includes upper tier acres
110	Boreas	
111	Buffalo Peaks East	X
112	Buffalo Peaks South	
113	Buffalo Peaks West	X
114	Burning Bear	X
115	Chicago Ridge	
116	Chipeta	
117	Cuchara North	
118	Cuchara South	
119	Elk Mountain-Collegiate North	X
120	Elk Mountain-Collegiate South	
121	Elk Mountain-Collegiate West	X
122	Farnum	
123	Green Mountain	
124	Greenhorn Mountain: Badito Cone to Dry Creek	X
125	Greenhorn Mountain: Cisneros Creek to Upper Turkey Creek	
126	Greenhorn Mountain: Graneros Creek to Section 10	X
127	Greenhorn Mountain: Little Saint Charles Creek to Greenhorn Creek	
128	Gunbarrel	
129	Hardscrabble	
130	Highline	
131	Holy Cross	X
132	Hoosier Ridge	X
133	Jefferson	
134	Kaufman Ridge	
135	Kreutzer-Princeton	X
136	Little Fountain Creek	X
137	Lost Creek East	
138	Lost Creek South	
139	Lost Creek West	
140	Methodist Mountain	
141	Mount Antero	
142	Mount Elbert	
143	Mount Evans	X
144	Mount Massive	X
145	Pikes Peak East	
146	Pikes Peak West	
147	Porphyry Peak	
148	Puma Hills	
149	Purgatoire	X
150	Rampart East	X
151	Rampart West	
152	Reveille Canyon	
153	Romley	X
154	Saint Charles Peak	
155	Sangre de Cristo: Alvarado Campground to Music Pass	X
156	Sangre de Cristo: Blanca Peak to Slide Mountain	X
157	Sangre de Cristo: Lake Creek to Hermit Creek	X
158	Sangre de Cristo: Medano Pass to Carbonate Mountain	X
159	Sangre de Cristo: Silverheels Gulch to Hunts Creek	
160	Sangre de Cristo: West Creek to Big Cottonwood	
161	Schoolmarm Mountain	
162	Scraggy Peaks	
163	Sheep Rock	
164	Silverheels	X
165	Spanish Peaks	X
166	Square Top Mountain	X
167	Starvation Creek	
168	Tanner Peak	X
169	Thirtynine Mile Mountain	X
170	Thunder Butte	
171	Weston Peak	X
	Rio Grande National Forest	
172	Alamosa River	X
173	Antora Meadows-Bear Creek	X
174	Beartown	X
175	Beaver Mountain	X
176	Bennet Mountain-Blowout-Willow Creek-Lion Point-Greenie Mountain	X
177	Big Buck-Kitty-Ruby	X
178	Box-Road Canyon	X
179	Bristol Head	X

Line No.	Colorado roadless area name	Includes upper tier acres
180	Butterfly	
181	Chama Basin	X
182	Conejos River-Lake Fork	
183	Copper Mountain-Sulphur	X
184	Cotton Creek	
185	Crestone	
186	Cumbres	X
187	Deep Creek-Boot Mountain	X
188	Dorsey Creek	X
189	Elkhorn Peak	X
190	Four Mile Creek	X
191	Fox Creek	X
192	Fox Mountain	X
193	Gibbs Creek	
194	Gold Creek-Cascade Creek	X
195	Hot Springs	
196	Indian Ridge	X
197	Kitty Creek	
198	La Garita	X
199	Lake Fork	X
200	Lower East Bellows	X
201	Middle Alder	X
202	Miller Creek	
203	Pole Creek	
204	Pole Mountain-Finger Mesa	X
205	Red Mountain	X
206	Ruby Lake	X
207	Sawlog	X
208	Sheep Mountain	X
209	Silver Lakes-Stunner	X
210	Snowshoe Mountain	X
211	Spectacle Lake	
212	Spruce Hole-Sheep Creek	X
213	Stunner Pass-Dolores Canyon	X
214	Sulphur Tunnel	
215	Summit Peak-Elwood Pass	X
216	Taylor Canyon	X
217	Tewksberry	X
218	Tobacco Lakes	X
219	Trout Mountain-Elk Mountain	X
220	Ute Pass	X
221	Wason Park	X
222	Wightman Fork-Upper Burro	X
223	Wightman Fork -Lookout	X
224	Willow Mountain	X
	Routt National Forest	
225	Barber Basin	
226	Black Mountain	
227	Bunker Basin	X
228	Bushy Creek	
229	Chatfield	X
230	Chedsey Creek	
231	Dome	
232	Dome Peak	X
233	Elkhorn	
234	Gold Creek	
235	Grizzly Helena	
236	Kettle Lakes	X
237	Little Green Creek	
238	Long Park	
239	Mad Creek	
240	Morrison Creek	
241	Never Summer North	
242	Never Summer South	
243	Nipple Peak North	X
244	Nipple Peak South	X
245	Pagoda Peak	X
246	Shield Mountain	X
247	South Fork	X
248	Sugarloaf North	
249	Sugarloaf South	X

Line No.	Colorado roadless area name	Includes upper tier acres
250	Troublesome North	X
251	Troublesome South	X
252	Walton Peak	
253	Whalen Creek	
	San Juan National Forest	
254	Baldy	
255	Blackhawk Mountain	
256	East Animas	X
257	Fish Creek	
258	Florida River	
259	Graham Park	X
260	HD Mountains	
261	Hermosa	X
262	Lizard Head Adjacent	X
263	Piedra Area Adjacent	X
264	Runlett Park	
265	Ryman	X
266	San Miguel	X
267	South San Juan Adjacent	X
268	Storm Peak	
269	Treasure Mountain	X
270	Turkey Creek	X
271	Weminuche Adjacent	X
272	West Needles	X
273	Winter Hills/Serviceberry Mountain	
	White River National Forest	
274	Adam Mountain	
275	Ashcroft	
276	Assignation Ridge	X
277	Baldy Mountain	
278	Basalt Mountain A	
279	Basalt Mountain B	
280	Berry Creek	
281	Big Ridge to South Fork A	X
282	Big Ridge to South Fork B	X
283	Black Lake East	
284	Black Lake West	
285	Blair Mountain	
286	Boulder	
287	Budges	
288	Buffer Mountain	
289	Burnt Mountain	
290	Chicago Ridge	X
291	Corral Creek	X
292	Crystal River	
293	Deep Creek	X
294	Dome Peak	X
295	East Divide-Four Mile Park	
296	East Vail	
297	East Willow	
298	Elk Creek B	
299	Elliot Ridge	X
300	Fawn Creek-Little Lost Park	
301	Freeman Creek	X
302	Gallo Hill	
303	Game Creek	
304	Grizzly Creek	
305	Gypsum Creek	X
306	Hardscrabble	
307	Hay Park	
308	Holy Cross City	
309	Homestake	
310	Hoosier Ridge	X
311	Housetop Mountain	
312	Hunter	X
313	Little Grand Mesa	X
314	Lower Piney	
315	Mamm Peak	
316	Maroon East	

Line No.	Colorado roadless area name	Includes upper tier acres
317	Maryland Creek	
318	McClure Pass	
319	McFarlane	
320	Meadow Mountain A	
321	Meadow Mountain B	
322	Morapos A	
323	Morapos B	
324	Mormon Creek	X
325	No Name	
326	North Elk	
327	North Independent A	X
328	North Independent B	
329	North Woody	
330	Pagoda Peak	
331	Piney Lake	
332	Porcupine Peak	X
333	Ptarmigan A	
334	Ptarmigan B	X
335	Ptarmigan C	X
336	Ptarmigan Hill A	
337	Ptarmigan Hill B	
338	Red Dirt A	
339	Red Dirt B	
340	Red Mountain	
341	Red Table	X
342	Reno Mountain	
343	Ripple Creek Pass-Trappers Lake	X
344	Ryan Gulch	
345	Salt Creek	
346	Sloan Peak	X
347	Spraddle Creek A	X
348	Spraddle Creek B	
349	Sweetwater A	X
350	Sweetwater B	
351	Tenderfoot Mountain	X
352	Tenmile	
353	Thompson Creek	
354	Tigiwon	X
355	Treasure Mountain	X
356	West Brush Creek	
357	West Lake Creek	
358	Wildcat Mountain	
359	Wildcat Mountain B	
360	Wildcat Mountain C	
361	Williams Fork	
362	Willow	
363	Woods Lake	X

Dated: June 25, 2012.

Arthur L. Blazer,

Deputy Under Secretary, Natural Resources and Environment.

[FR Doc. 2012–15958 Filed 7–2–12; 8:45 am]

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Part III

The President

Presidential Determination No. 2012–10 of June 25, 2012—Presidential Determination on a U.S. Export-Import Bank Transaction With Vietnam

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Title 3—

The President

Presidential Determination No. 2012–10 of June 25, 2012

Presidential Determination on a U.S. Export Import Bank Transaction with Vietnam

Memorandum for the Secretary of State

Pursuant to section 2(b)(2)(D) of the Export Import Bank Act of 1945, as amended, I determine that it is in the national interest of the United States for the Export Import Bank of the United States to extend a loan in the amount of approximately $125,870,890 to the Vietnam Post and Telecommunications Group, a wholly state-owned company, for the purchase of a U.S. manufactured telecommunications and television satellite.

You are authorized and directed to publish this determination in the *Federal Register.*

THE WHITE HOUSE,
Washington, June 25, 2012

[FR Doc. 2012–16527
Filed 7–2–12; 11:15 am]
Billing code 4710–10–P

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S. 404/P.L. 112–137
To modify a land grant patent issued by the Secretary of the Interior. (June 27, 2012; 126 Stat. 386)

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To provide for the conveyance of certain parcels of land to the town of Alta, Utah. (June 27, 2012; 126 Stat. 388)

S. 997/P.L. 112–139
East Bench Irrigation District Water Contract Extension Act (June 27, 2012; 126 Stat. 390)

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